IN THE COURT OF APPEALS OF THE STATE OF ALASKA

TUPE SMITH, Petitioner, v. STATE OF ALASKA, Respondent.	Court of Appeals No. A-14529

Trial Case No. 3AN-23-08873CR

APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT ANCHORAGE THE HONORABLE PETER R. RAMGREN, PRESIDING

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION OF ALASKA

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of the State of Alaska on June 5, 2025.

Meredith Montogomery, Clerk of the
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VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

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AS 15.56.040(a)(3)

Voter Misconduct in the First Degree. (a) A person commits the crime of voter misconduct in the first degree if the person . . . (3) intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title.

STATEMENT OF INTEREST OF AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization that since 1920 has sought to protect the civil liberties guaranteed by the Constitution and our Nation's civil rights laws. It has over six million members, supporters, and activists nationwide. The ACLU of Alaska ("ACLU-AK") is the ACLU's Alaska affiliate and has thousands of members statewide. The protection and expansion of voting rights, and the rights of the accused in criminal proceedings, are of deep and abiding concern to both organizations.

PRELIMINARY STATEMENT

It is bedrock law that "wrongdoing must be conscious to be criminal."[1] This rule is particularly important in the context of elections, where voters often must navigate a complex web of laws and regulations to cast their ballots—and where punishing a person for innocent mistakes risks chilling eligible voters from exercising their fundamental right to vote. It is particularly cruel to punish the act of voting by one excluded from the franchise when she is unaware of her exclusion.

But the superior court's interpretation of AS 15.56.040(a)(3) allows voters to be punished for such an innocent mistake. The statute makes it a crime for a person to "intentionally make[] a false affidavit, swear[] falsely, or falsely affirm[] under an oath required by this title." And Tupe Smith was charged with violating AS 15.56.040(a)(3) because, in registering to vote, she checked a box denoting that she is a U.S. citizen, when she is recognized as a non-citizen U.S. national who "owes permanent allegiance to the

[1] *Alex v. State*, 484 P.2d 677, 681 (Alaska 1971) (quoting *Morissette v. United States*, 342 U.S. 246, 252 (1952)).

United States."[2] As a result of this status unique to persons—like her—born in American Samoa, Ms. Smith misapprehended that she was eligible to vote in local elections and filled out registration forms incorrectly indicating that she was recognized as a U.S. citizen. [R.149] That misapprehension was seemingly shared and encouraged by local election officials: when she had previously voted, Ms. Smith asked officials how to denote that she is a U.S. national on the registration form, which lacks a field for "U.S. national[s]." [R.149] She then followed their instruction to indicate that she is a U.S. citizen. [R.152]

Nevertheless, the State charged Ms. Smith with voter misconduct for affirming that she is a U.S. citizen, and the superior court sustained the indictment, clearing the way for the State to criminalize individuals' honest mistakes. [R.110, 148] This was a legal error. *Amici* agree with Ms. Smith that the text, structure, and purpose of AS 15.56.040(a)(3) make clear that the State must prove that a person acted with an intent to mislead or deceive a public official for the purpose of unlawfully voting.

Amici submit this brief to explain further why this Court should adopt such an intent-to-deceive requirement even if the Court concludes that the *mens rea* requirement of AS 15.56.040(a)(3) is unclear. *First*, election-crime statutes should be construed to avoid punishing innocent mistakes. *Second*, upholding the superior court's view of the law would make Alaska an outlier among states that have prosecuted defendants for voter-misconduct crimes. *And third*, the *sui generis* status of American Samoans makes it all the more important to construe Alaska's election-crime statutes to avoid punishing innocent mistakes.

[2] 8 U.S.C. § 1101(a)(22); *see also id.* § 1408.

Amici respectfully urge this Court to reverse the superior court's denial of Ms. Smith's motion to dismiss the indictment.

ARGUMENT

I. Election-Crime Statutes Should Be Construed To Avoid Punishing Innocent Mistakes.

Voting has long been "regarded as a fundamental political right, because [it is] preservative of all rights."[3] To effectuate that right, states "have evolved comprehensive, and in many respects complex, election codes," which help to ensure that elections are "fair and honest."[4] These rules, however, "inevitably affect[]—at least to some degree—the individual's right to vote and his right to associate with others for political ends."[5] To ensure that election rules don't needlessly disenfranchise voters, courts across the country have held that statutes "should be liberally construed in . . . favor" of the right to vote.[6]

Alaska courts likewise have embraced these principles, emphasizing that voting is "key to participatory democracy"[7]—indeed, to our very "concept of democratic government."[8] The Alaska Supreme Court therefore has made clear that "election statutes

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[3] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *see also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws[.]").

[4] *Storer v. Brown*, 415 U.S. 724, 730 (1974).

[5] *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

[6] *Owens v. State ex rel. Jennett*, 64 Tex. 500, 509 (1885); *see also* Richard L. Hasen, *The Democracy Canon*, 62 Stan. L. Rev. 69, 76 & n.24 (2009) (collecting cases).

[7] *Miller v. Treadwell*, 245 P.3d 867, 869 (Alaska 2010).

[8] *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995).

generally will be liberally construed to," among other things, "guarantee to the elector an opportunity to freely cast his ballot."[9]

These interpretive principles apply with their fullest force when criminal penalties are attached to election-related conduct. When a statute imposes criminal liability in the voting context, it implicates not only the "Democracy Canon" but also the Rule of Lenity—a foundational principle of criminal law that requires ambiguous penal statutes to be construed narrowly in favor of the accused.[10] Election crimes sit at the intersection of these two principles—potentially punishing conduct that also implicates fundamental democratic rights.

Because of this overlap, statutes criminalizing voting-related behavior must be clear enough (and properly applied) to ensure they do not ensnare well-meaning voters who misunderstand complex rules. Otherwise, they would chill lawful participation. Indeed, because voters often must navigate intricate election laws, the threat of criminal liability for honest mistakes—such as misunderstanding eligibility—can deter participation and undermine public confidence in the democratic process. To safeguard the right to vote, courts should apply both the Democracy Canon and the Rule of Lenity in tandem, construing ambiguous statutes narrowly to avoid criminalizing innocent electoral conduct.

Applied here, these principles mandate that—to the extent AS 15.56.040(a)(3) is unclear—it should be construed to avoid punishing a voter who makes a false statement on

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[9] *Carr v. Thomas*, 586 P.2d 622, 626 n.11 (Alaska 1978) (quoting *Brown v. Grzeskowiak*, 101 N.E.2d 639, 646 (Ind. 1951)).

[10] *Staples v. United States*, 511 U.S. 600, 619 n.17 (1994); *see also State v. Strane*, 61 P.3d 1284, 1286 (Alaska 2003).

an election form *unless* that false statement is made with the intent to mislead or deceive a public official. If a false statement is made for a different reason—*e.g.*, a domestic-violence victim, believing that the voter-registration form is not confidential, writes down an incorrect address to hide her residence from an abuser—the statement ought not violate Alaska's voter-misconduct statute. For the same reason, Ms. Smith did not violate the statute when she checked the citizenship box because she lacked the necessary intent to mislead a public official for the purpose of unlawfully voting.

The fact that Ms. Smith is not herself eligible to vote doesn't change things. Ms. Smith clearly thought she was an eligible voter. As the superior court explained, key record evidence indicates Ms. Smith told a law-enforcement officer "that if she had known she could not vote, she would not have," and "acknowledge[d] she knew she could not vote for the U.S. President but thought that she could vote in state elections." [R.155] Consistent with that stated understanding, it is undisputed that Ms. Smith never tried to vote in a Presidential election. [R.149] Punishing Ms. Smith for an innocent mistake would make well-meaning eligible voters think twice before casting their ballots, lest it turn out that they too are, in fact, ineligible. To avoid chilling eligible voters, it is important to protect ineligible voters who mistakenly believe they are eligible.

Indeed, the U.S. Supreme Court has required a similar approach in the related context of First Amendment speech restrictions: to avoid chilling protected speech, the law "protect[s] even some historically unprotected speech through the adoption of a subjective mental-state element."[11] True threats of violence, for example, "lie outside the bounds of

[11] *Counterman v. Colorado*, 600 U.S. 66, 73 (2023).

the First Amendment's protection."[12] But a state cannot punish a speaker for making a true threat unless the speaker "had some understanding of his statements' threatening character."[13] Absent that *mens rea* requirement, "[a] speaker may be unsure about the side of a line on which his speech falls," resulting in "'self-censorship' of speech that could not be proscribed."[14] Such "a 'cautious and restrictive exercise' of First Amendment freedoms"[15] is anathema to "the deeper traditions of democracy embodied in the First Amendment."[16]

What is true of free speech is true for voting. After all, free speech is important in part because it helps to ensure that the government remains "responsive to the will of the people."[17] To avoid chilling eligible voters, then, it is crucial to avoid punishing people like Ms. Smith who register to vote because of an honest mistake as to their eligibility—especially when that mistake is facilitated by actions of election workers.[18]

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[12] *Id.* at 72.

[13] *Id.* at 73; *see also Hess v. Indiana*, 414 U.S. 105, 109 (1973) (same principle for incitement); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) (same principle for defamation).

[14] *Counterman*, 600 U.S. at 75.

[15] *Id.*

[16] *Elrod v. Burns*, 427 U.S. 347, 357 (1976).

[17] *Sullivan*, 376 U.S. at 301 (Goldberg, J., concurring) (quoting *De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937)).

[18] *See Keathley v. Holder*, 696 F.3d 644, 647 (7th Cir. 2012) (explaining why an ineligible voter "who behaves with scrupulous honesty only to be misled by a state official" into voting should not be punished).

II. The Superior Court's Failure To Impose an Intent-To-Deceive Requirement Would Make AS 15.56.040(a)(3) More Punitive Than Other Election-Crime Provisions Across the Country.

Courts across the country regularly construe election-crime statutes to avoid punishing innocent mistakes, including mistakes about a voter's eligibility. This Court should do no different.

That is true where, as here, a voter is alleged to have made a false statement on an election document. Consider, for example, Tennessee. In 2019, Pamela Moses was ineligible to vote in Tennessee because she was on probation from an earlier conviction. Because Moses was unsure whether she was still on probation, she sought guidance from a state probation officer who told her (incorrectly) that her probation had ended. Relying on that guidance, Moses registered to vote—only to be charged with "knowingly mak[ing] . . . any false entry on any . . . official registration or election document" in violation of Tennessee Code § 2-19-109.[19]

Moses argued that she didn't violate the statute because she didn't know that she was on probation and thus ineligible to vote; to the contrary, a state official had told her that her probation had ended. Although the jury initially voted to convict Moses, the judge ordered a new trial once evidence came out corroborating Moses' account that a probation

[19] *See* Sam Levine, *The Untold Story of how a US Woman was Sentenced to Six Years for Voting*, The Guardian (Dec. 27, 2022), https://www.theguardian.com/us-news/2022/dec/27/pamela-moses-voting-rights-mistake-jail.

officer mistakenly instructed Moses that she was no longer on probation.[20] The government then dropped the charges.[21]

Federal law, too, punishes inaccuracies on elections forms only when the inaccuracy is made with an intent to deceive. 52 U.S.C. § 10307(c), for example, makes it a crime to "knowingly or willfully give[] false information as to his name, address or period of residence in the voting district *for the purpose of establishing his eligibility to register or vote*."[22] If someone gives false information for some purpose other than establishing eligibility, that does not violate Section 10307(c).

And when a federal election-crime statute lacks an explicit *mens rea*, courts can read one in. For example, the federal statute that prohibits multiple voting, 52 U.S.C. § 10307(e), does so with no explicit *mens rea* terminology: "Whoever votes more than once in [a covered] election . . . shall be [subject to punishment]." Despite the absence of *mens rea* terminology, the federal courts have read the statute to criminalize multiple voting only when the person acts "knowingly, willfully and expressly for the purpose of having [their] vote count more than once."[23]

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[20] Sam Levine, *New Evidence Undermines Cases Against Black US Woman Jailed for Voting Error*, The Guardian (Feb. 24, 2022), https://www.theguardian.com/us-news/2022/feb/24/fight-to-vote-newsletter-black-woman-jailed-voting-error-evidence.

[21] Sam Levine, *Prosecutor Drops All Charges Against Pamela Moses, Jailed Over Voting Error*, The Guardian (Apr. 22, 2022), https://www.theguardian.com/us-news/2022/apr/22/pamela-moses-prosecutor-drops-charges-memphis-tennessee.

[22] 52 U.S.C. § 10307(c) (emphasis added).

[23] *United States v. Salisbury*, 983 F.2d 1369, 1377 (6th Cir. 1993) (citing *United States v. Hogue*, 812 F.2d 1568, 1576, 1582 (11th Cir. 1987)).

The story is much the same with state statutes that criminalize ineligible voting. Section 64.012(a)(1) of the Texas Election Code makes it a crime to "vote[] . . . in an election in which the person *knows* the person is not eligible to vote."[24] Under this provision, Crystal Mason was sentenced to five years in prison for casting a provisional ballot while under federal supervised release, a condition she did not realize meant she had yet to fully complete her punishment from a prior conviction. At trial, the State did not present evidence to prove that Ms. Mason knew that Texas still considered her ineligible to vote once she completed her term of imprisonment for the prior conviction. Nor did the State present evidence that Ms. Mason had any motive to commit a felony by voting, had she *actually realized* her ineligibility to vote while at the polling place.

The Court of Criminal Appeals, Texas' highest criminal court, overturned Ms. Mason's conviction. Speaking to the *mens rea* element, the court found that the lower court "fail[ed] to require proof that [Ms. Mason] had actual knowledge that it was a crime for her to vote while on supervised release."[25] It explained that "the State was required to prove not only that [Ms. Mason] knew she was on supervised release but also that she actually realized that these circumstances in fact rendered her ineligible to vote."[26] Indeed, as a group of former state and federal prosecutors explained in an amicus brief on Mason's behalf: "Ms. Mason's prosecution was far outside the bounds of any reasonable exercise of

[24] Tex. Elec. Code Ann. § 64.012(a)(1) (emphasis added).

[25] *Mason v. State*, 663 S.W.3d 621, 624 (Tex. Crim. App. 2022).

[26] *Id.* at 632 (internal quotation marks and emphasis omitted).

the prosecutorial power."[27] On remand, the lower court held that the evidence was legally insufficient to show Ms. Mason knew she was ineligible to vote, resulting in an acquittal.[28]

Federal courts have applied the law just the same elsewhere. In Florida, in discussing the constitutionality of a law that required people with past convictions to pay off all court-ordered debts assigned at the time of their felony sentencing before they may legally vote, the Eleventh Circuit Court of Appeals made clear that "no felon who honestly believes he has completed the terms of his sentence commits a crime by registering and voting."[29] Likewise, the Ninth Circuit Court of Appeals construed a Hawaii law that forbids "knowingly vot[ing] when the person is not entitled to vote" to require proof that the voter "knew that she was not entitled to vote."[30] And a federal district court in North Carolina struck down a law that criminalized illegal voting on the ground that "some District Attorneys have declined to prosecute cases in which there was no evidence of intent while others have prosecuted voters without any evidence of intent."[31] The legislature then amended the statute to explicitly require intent.[32]

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[27] Br. of Former Prosecutors as Amici Curiae in Support of Appellant Crystal Mason at *5, *Mason v. State*, No. 02-18-00138-CR, 2021 WL 3410404 (Tex. Crim. App. 2022).

[28] The Court of Criminal Appeals has since agreed to review the sufficiency-of-the-evidence question. *See State v. Mason*, No. PD-0300-24 (Tex. Crim. App. Aug. 21, 2024) (order granting discretionary review). However, the order granting review does not disturb the court's earlier *mens rea* holding.

[29] *Jones v. Governor of Fla.*, 975 F.3d 1016, 1048 (11th Cir. 2020) (citing Fla. Stat. §§ 104.011(2), 104.15).

[30] *McDonald v. Gonzales*, 400 F.3d 684, 688–89 (9th Cir. 2005).

[31] *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, 730 F. Supp. 3d 185, 201 (M.D.N.C. 2024).

[32] *See* N.C. Gen. Stat. Ann. § 163-275(5) (2023), *amended by* S.B. 747, § 38, Gen. Assembly, Reg. Sess. (N.C. 2023) (effective Jan. 1, 2024).

The throughline is that courts refuse to interpret election-crime statutes in ways that would ensnare hapless persons who mistakenly understand that they are eligible to register to vote. This Court should hew to that prudent line and align Alaska with other states and federal courts that have properly construed election-crime statutes to avoid punishing innocent mistakes.

III. Due to Their *Sui Generis* Status, People Born In American Samoa, Like Ms. Smith, Are Especially Likely To Be Confused About Their Eligibility To Vote.

It is particularly important to correctly apply the *mens rea* element in this case because individuals born in American Samoa—an island under sole U.S. control for 125 years[33]—are especially prone to be ensnared by imprecise election statutes. People born in American Samoa, like Ms. Smith, have *sui generis* status upon moving to one of the fifty States that makes much of their everyday lives resemble those common to U.S. citizens. But "[w]hile nationals from American Samoa do enjoy many of the rights of citizens, they also suffer some problems due to their confusing status."[34] Ms. Smith's experience puts this truth in stark relief.

Born in American Samoa, Ms. Smith is recognized as a non-citizen U.S. national. That designation is unique to people like her: "Those with ties to American Samoa are the only group . . . eligible for non-citizen national status."[35] That means she is not an "alien"

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[33] *See Borja v. Nago*, 115 F.4th 971, 974 (9th Cir. 2024).

[34] Sean Morrison, *Foreign in a Domestic Sense: American Samoa and the Last U.S. Nationals*, 41 Hastings Const. L.Q. 71, 84 (2013).

[35] *Koonwaiyou v. Blinken*, 69 F.4th 1004, 1005 (9th Cir. 2023). Persons born in any of the other populated U.S. territories are U.S. citizens by birth. *See* 8 U.S.C. § 1402 (defining eligibility for persons born in Puerto Rico); *id.* § 1406 (same for people born in the U.S.

under the federal immigration laws.[36] As a non-citizen U.S. national, she "can serve in the American military, receive most federal benefits, and travel freely in the United States."[37] She is entitled to a U.S. passport and U.S. diplomatic representation while abroad.[38] And while not recognized as a citizen, Ms. Smith cannot be removed from the country,[39] even if she never naturalizes.[40] She thus belongs to a discrete class of persons whom the U.S. Supreme Court long ago explained "ha[ve] become . . . American[s]" by virtue of the Nation's "assum[ption]" of the islands where they were born.[41]

The U.S. criminal laws reflect and codify this *sui generis* American status. Because she is a U.S. national, Ms. Smith wouldn't be liable under the federal law that criminalizes voting on account of immigration status. Specifically, 18 U.S.C. § 611 makes it a crime for an "alien" to vote in federal elections. But this law doesn't apply to Smith because federal law defines the term "alien" to mean "any person not a citizen *or national* of the United States."[42] And it defines the term "national of the United States" for purposes of the

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Virgin Islands); *id.* § 1407 (same for people born in Guam); *see also Fitisemanu v. United States*, 1 F.4th 862, 865 (10th Cir. 2021).

[36] 8 U.S.C. § 1101(a)(3).

[37] *Id.* at § 1006.

[38] *Alaka v. Elwood*, 225 F. Supp. 2d 547, 551 n.18 (E.D. Pa. 2002).

[39] *See Hughes v. Ashcroft*, 255 F.3d 752, 756 (9th Cir. 2001); *see also Vidal-Barraza v. Ashcroft*, No. 04-cv-310, 2004 WL 7337498, at *2 (D.N.M. Dec. 30, 2004) (distinguishing between non-citizen nationals and aliens and noting "only aliens are removable").

[40] Persons born in American Samoa who move from the U.S. territory can commonly apply for naturalization after establishing three-months' residency in one of the fifty states or the District of Columbia. *See* 8 U.S.C. § 1427(a)(1).

[41] *Gonzales v. Williams*, 192 U.S. 1, 10, 15 (1904).

[42] 8 U.S.C. § 1101(a)(3) (emphasis added).

immigration laws as "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."[43] Thus, because Smith is not an "alien" she could not be prosecuted for voting, as a matter of federal law, in a federal election.

Any danger of unwitting ensnarement that follows from the *sui generis* status that people born in American Samoa occupy upon moving to a State is amplified in Alaska, because certain state programs automatically register non-citizen U.S. nationals to vote.[44] As a non-citizen U.S. national, Ms. Smith lawfully qualified for a Permanent Dividend Fund ("PFD"), for which she applied in March 2019. [R.7, 101] When she applied for that PFD, Ms. Smith "disclosed that she was a U.S. National," [R.149] but the PFD itself "automatically registers recipients to vote in Alaska." [R.158] And while Alaska's Division of Elections website instructs non-citizen nationals to cancel their voter registration if they have been automatically registered via a PFD application,[45] the PFD application itself had no such instruction at the time Ms. Smith filled it out.

For someone born in American Samoa who moves to Alaska, this explicit clarification that a non-citizen U.S. national is ineligible to vote is often not just helpful, but critical. In American Samoa, non-citizen U.S. nationals can vote and run in local

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[43] *See id.* § 1101(22).

[44] The confusion is exacerbated because Alaska law considers American Samoans to be U.S. citizens for certain purposes. *See* 7 AAC 45.215(g) ("As used in this section, (1) 'United States citizen' means a citizen of one of the 50 states, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands; in addition, the department will consider . . . nationals from American Samoa or Swain's Island, to be United States citizens for purposes of ATAP.").

[45] Alaska Division of Elections, *Voter Information*, https://www.elections.alaska.gov /voter-information/ (last visited May 30, 2025).

elections for governor, lieutenant governor, local representative, and non-voting delegate to the U.S. House so long as they satisfy certain residency requirements.[46] So, as recent testimony to the Alaska Legislature attests, it is understandable for many American Samoa-based non-citizen U.S. nationals who later travel and settle in a state to naturally assume that they are similarly entitled to vote and run for any state or local level office.[47] Many others are uncertain—and understandably so—as to whether their right to vote in these elections moves with them to the states.

They are not alone: even State election officials are often themselves confused as to whether American Samoans are allowed to vote in U.S. elections. According to recent testimony presented to the Alaska Legislature, in 2021, the Pacific Community of Alaska, a non-profit organization serving Alaska's Native Hawaiian and Pacific Islander community, reached out to the Anchorage office of the Division of Elections to clarify whether American Samoans could vote in state and local elections.[48] The Anchorage office acknowledged its uncertainty on the issue and directed organization representatives to the Director of the Division of Elections who, in turn, referred them back to the Anchorage

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[46] *See* Am. Sam. Const. art. II, § 7 (establishing eligibility of voters in American Samoa); 48 U.S.C. § 1732(a) (authorizing those eligible to vote for elected officials in American Samoa to vote for the non-voting delegate to the U.S. House).

[47] *Legal Implications of Prosecuting American Nationals in Alaska's Elections Before the H. Jud. Comm.*, 2025-2026 Leg., 34th Sess. at 18:44-19:05 (statement of Charles Ala'ilima), https://www.ktoo.org/video/gavel/house-judiciary-committee-2025051096/ ("When American Samoans establish residency in a state they lose their right to vote in American Samoa but they assume that they would be similarly entitled to vote and run for any state level office just as any American that came down to Samoa and established residency could do.").

[48] *Id.* at 1:18:51-1:21:29 (statement of Tafilisaunoa Toleafoa).

office because the Director also did not know.[49] According to its Executive Director's testimony to the Alaska House Judiciary Community, the Pacific Community of Alaska did not receive a written answer to their inquiry until 2024.[50]

This confusion is shared by members of the city council for the City of Whittier, where Ms. Smith resides. In an April 2025 special meeting held, in part, to discuss issues related to the recent indictment of Whittier residents for voter-misconduct charges, one member explained that the voting status of American Samoans is "very confusing."[51] That member admitted to being "unaware of what an American national was until a month ago," and speculated that 80 percent of Americans believed that American Samoans are eligible to vote.[52] The member also acknowledged that the city council may have encouraged American Samoans to vote and suggested that the council "should let the court know that [it] may have done that."[53]

Given this pervasive uncertainty, it's little surprise that Ms. Smith—along with other American Samoans reside in Alaska[54]—have been confused about their eligibility to vote. To avoid punishing them for innocent mistakes, this Court should construe

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[49] *Id.*

[50] *Id.*

[51] City of Whittier, Alaska, *04.29.2025 City Council Special Meeting* at 24:06-25:35 (YouTube, Apr. 29, 2025), https://www.youtube.com/watch?v=3t3G5sUKKVM&t=241s.

[52] *Id.*

[53] *Id.*

[54] Victoria Petersen, *Misinformed by Election Officials, American Samoans in Alaska Now Face Prosecution*, The Alaska Current (May 1, 2025), https://thealaskacurrent.com/2025/05/01/misinformed-by-election-officials-american-samoans-in-alaska-now-face-prosecution/.

AS 15.56.040(a)(3)—and similar criminal provisions invoked to punish other American Samoans for similar mistakes—to require an intent to mislead or deceive a public official for the purpose of unlawfully voting. Because Ms. Smith plainly lacked such intent, this Court should reverse the trial court's denial of her motion to dismiss the indictment.

CONCLUSION

The Court should reverse the trial court's denial of Ms. Smith's motion to dismiss the indictment.

Respectfully submitted this 30th day of May 2025.

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