



July 19, 2022

Lieutenant Governor Kevin Meyer
Director Gail Fenumiai
Alaska Division of Elections
P.O. Box 110017
Juneau, Alaska 99811

by email only to: *kevin.meyer@alaska.gov*
 gail.fenumiai@alaska.gov

Re: Request for details on Division of Election’s plan to ensure all Alaskans’ votes count by providing timely notice and a meaningful opportunity to cure rejected absentee ballots

Dear Lieutenant Governor Meyer and Director Fenumiai:

Voting is the most important civic duty that we have in our democracy and the most vital way for the people to have their voices heard. Turnout for June’s special primary election reflects this importance: over 164,000 Alaskans voted by mail. However, more than 7,500 of these votes were rejected (more than 4.5% of votes).¹ And more than 63% of the rejected ballots were not counted because of purported defects, including, but not limited to, rejections related to witness signatures or voter identification that easily could have been cured by the voter if notified and given a meaningful opportunity to remedy the deficiency.² We recognize that the Division of Elections does eventually notify voters that their absentee ballots have been rejected, but that notification comes at least ten days after the election is

¹ State of Alaska—Division of Elections, *Absentee Review Board Report Details* (Jun. 22, 2022), available at https://www.alaskapublic.org/wp-content/uploads/2022/06/Absentee-Review-Board-Details_SW-6.21.2022-1.pdf.

² Of the ballots rejected, 2,724 ballots were rejected for “improper or insufficient witnessing,” 1,556 ballots were rejected because “no [voter] identifier provided,” 698 ballots were rejected because the voter “identifier does not match voter record,” and 443 ballots were rejected because the voter failed to sign their ballot. *See* State of Alaska—Division of Elections, *Absentee Review Board Report Details*. All of these reasons for rejection are “curable,” meaning that with timely notice, the voter could fix the deficiency to render their ballot valid.

certified. This notification does not allow a voter to cure any deficiencies to make their vote count. This means that almost 3% of Alaskan voters were unnecessarily denied their vote in this special election.

Alaska law permits any qualified voter to apply for an absentee ballot either in person, by mail, by facsimile, by scanning, or by other electronic transmission.³ A prospective absentee applicant who requests delivery of the absentee ballot by mail must submit the application at least ten days prior to election day.⁴ Alternatively, an applicant who requests electronic transmission of their ballot vis-à-vis a state election must submit the application by 5 p.m. Alaska time on the day before election day.⁵ Once the director receives a timely absentee ballot application, he or she must send the absentee ballot and other absentee voting material to the applicant by the most expeditious mail service.⁶ Where the applicant seeks electronic transmission of an absentee ballot for a state election, the director must send the ballot and other absentee voting material by electronic transmission.⁷ An absentee applicant who returns their absentee ballot by mail must postmark the ballot by election day (along with proof of identification). In order for an absentee ballot to count, it must be received by the director no later than ten business days after election day.⁸

Even though Alaska is a no-excuse absentee state, permitting anyone to request and vote absentee, the lack of procedures to provide for timely notice and meaningful opportunity to cure harms voters. Even more troubling is the fact that the rejection rates were significantly higher in house districts in predominantly rural areas of the state where the percentage of Alaska Native voters is substantially greater. For example, in the Bethel and Lower Kuskokwim district, the rejection rate was nearly 17%. In the Bering Straits/Nome/Yukon Delta district, the rate was over 14%. For the Arctic/Utqiagvik/Kotzebue district, it was greater than 12%, and in the Bristol Bay/Aleutians/Dillingham/Unalaska district it was just under 11%. These rates show that

³ AS 15.20.081(a).

⁴ AS 15.20.081(b).

⁵ *Id.*

⁶ AS 15.20.081(c).

⁷ *Id.*

⁸ AS 15.20.081(e)–(f). A absentee voter who resides outside the U.S. or is a qualifying overseas voter (under AS 15.05.011) has additional time to return their absentee ballot—tenth day following a primary or special election or fifteenth day following a general or special election (other than a special primary election). AS 15.20.081(h).

the absence of timely notice and meaningful opportunity to cure has an outsized disenfranchising impact on Alaska Native voters who attempt to vote by mail.⁹

As we are sure you are aware, the rates of ballot rejections in the June 2022 special primary received a significant amount of media attention and public criticism. And rightly so. No one who makes a good faith effort to vote should have their ballot discarded without having a chance to fix an easily remedied mistake. That is why, as we move towards elections in August, October, and November, we urge you to ensure that all Alaskans who vote absentee can count on their vote counting by promptly notifying voters that their ballot was rejected and why, and providing them a meaningful opportunity to remedy any curable defects that caused the rejection.

Timely notice and a meaningful opportunity to cure are not novel concepts. Twenty-four states have codified a process for officials to notify voters if there is an issue with their mail-in ballot and allow them to make any necessary changes before rejecting it, thereby ensuring voter's voices are not silenced by a mere clerical error.¹⁰ Similarly, the Municipality of Anchorage, which conducts vote-by-mail-only elections and uses a signature verification process to validate voters' ballots, provides notice and an opportunity for cure when a ballot appears defective.

Timely notice and a meaningful opportunity to cure are also fundamental aspects of the constitutional right to vote. While the U.S. and Alaskan Constitutions do not require an absentee ballot scheme, once a state establishes absentee voting, those procedures *must* comport with due process.¹¹ In Alaska every "qualified voter may vote an absentee ballot for any reason."¹² Yet current procedures, which do not provide for timely notice to absentee voters that their ballot has been rejected nor allow them to fix curable mistakes on their ballot to make sure their vote is counted, violate due process. Indeed, in the absence of statutory procedures, courts across the country have ordered elections boards to provide

⁹ See *supra* note 1, *Absentee Review Board Report Details*. The Absentee Review Board Report also shows disproportionate rejection rates in higher minority urban areas. For example, in the Mountainview district of Anchorage, the rate was more than twice the statewide average, at over 9%.

¹⁰ See National Conference of State Legislatures, *States with Signature Cure Processes* (Jan. 18, 2022), available at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>.

¹¹ *Martin v. Kemp*, 341 F.Supp.3d 1326, 1338 (N.D. Ga. 2018); *Raetzl v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990).

¹² AS 15.20.010.

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timely notice of rejection and a meaningful opportunity to cure rejected ballots to protect this most fundamental cornerstone of our democracy.¹³

Alaskans' right to vote is fundamental, guaranteed by the United States and Alaska Constitutions,¹⁴ and to make this right meaningful, Alaskans must be given: (1) timely notice that their absentee ballot is being rejected with the reason for rejection; and (2) a meaningful opportunity to cure fixable error(s) that caused the rejection. It is critical that any curing procedure for absentee ballots work for all voters in Alaska. Specifically, the Division of Elections should explain how it will provide a meaningful notification and cure process for voters in rural Alaska. We are willing to work with the Division of Elections to help develop a process that is fair and equitable.

By July 26, 2022, we hope to hear that you're making sure every Alaskan voter's voice is heard, and will make this commitment to provide timely notice of rejected absentee ballots and a meaningful opportunity to cure the reason for rejection. Please contact Stephen Koteff, the ACLU of Alaska's legal director, at skoteff@acluak.org, to let us know how you plan to proceed.

Sincerely,

/s/ Stephen Koteff

Stephen Koteff
Legal Director
ACLU of Alaska

/s/ Jon Greenbaum

Jon Greenbaum
Ezra Rosenberg
Pooja Chaudhuri
Lawyers' Committee for
Civil Rights Under Law

/s/ Megan Condon

Megan Condon
Staff Attorney
Native American
Rights Fund

¹³ See, e.g., *Democracy North Carolina v. North Carolina State Board of Elections*, 476 F.Supp.3d 158, 229 (M.D.N.C. 2020); *Self Advocacy Solutions, N.D. v. Jaeger*, 464 F.Supp.3d 1039, 1056 (D.N.D. 2020); see also *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, at *2, 10 (N.D. Ill. Mar. 13, 2006).

¹⁴ U.S. Const. amend. I, XIV, XV, XIX, and XXVI; Alaska Const. art. V.