



February 18, 2021

The Honorable Mike Shower, Chair  
Senate State Affairs Committee  
Butrovich Room 205  
Alaska Capitol Building  
120 4<sup>th</sup> Street  
Juneau, AK 99801

*via email to:* [ssta@akleg.gov](mailto:ssta@akleg.gov)

**Re: ACLU of Alaska Opposition of Senate Bill 39**

Dear Chair Shower and Members of the Senate State Affairs Committee,

The ACLU of Alaska writes to you in opposition of Senate Bill (SB) 39, which as introduced would create barriers for Alaskans' ability to engage in the voting process, rather than further this committee's stated goal of increasing the security and integrity of this state's elections.

The right to vote is fundamental, enshrined in both the Alaska and United States constitutions. We work to ensure that Alaskans can exercise this right in policy and practice and agree with the committee that our elections need to be secure and fair for all voters, regardless of political affiliation, geography, and personal circumstance.

But pursuing integrity in elections requires focusing on reasons why people cannot vote, and eliminating well documented barriers to the ballot box. This is not to say that error, fraud, or violations of privacy should not be taken seriously. It is imperative that when a person votes, that vote is counted. We note that, over the last few weeks of hearings on SB 39, the committee has maintained that voter suppression is not the intent of this bill.

However, SB 39 would make it harder for Alaskans to vote; we describe these provisions later in this letter. The committee has not shown that the problems SB 39 purports to solve exist, or that the policies within are the least restrictive way to address these supposed problems. We are additionally disappointed that, during this process, the committee has not sought to learn more about well documented reasons why people have trouble voting — such as inadequate language assistance, insufficient elections administration infrastructure, and telecommunications challenges. Any elections reform bill is incomplete without considering these factors.

SB 39 is based on the premise that in order to provide for secure and fair elections, the state must overburden voters and threaten them with criminal penalties. We fundamentally reject that premise. Harm occurs any time a voter is turned away from voting because of unnecessary requirements, intimidation, uncertainty, or a lack of adequate information.

Should this committee consider revisions to SB 39, we urge it to refocus its efforts to address the documented ways Alaskans are left out of the voting process—especially by addressing how Alaska Native people continue to be disenfranchised.<sup>i</sup> For example, HB 66, introduced by Representative Tuck, offers a series of reforms that would improve access to voting. The Senate should take the same approach. Expanding access to the right to vote does not come at the expense of the security and fairness of elections. It will only make the state stronger.

If you have any questions, please do not hesitate to reach out to me at [mgarvey@acluak.org](mailto:mgarvey@acluak.org).

Sincerely,



Michael Garvey  
Advocacy Director

- **Changing registration under the Permanent Fund Dividend (PFD) application to an opt-in system (Sec. 1).** This provision would require people completing a PFD application form to check a box to affirmatively request to be registered as a voter. Currently, under the law approved by voters via ballot measure in 2016, the state automatically registers eligible applicants to vote, or updates voter registration information of registered voters, of people who apply for a PFD.<sup>ii</sup> The measure also provided applicants an opt-out. Changing PFD voter registration to an opt-in system would overturn the will of Alaskans who voted to approve the 2016 ballot measure, and undercut the benefits of automatic voter registration — increasing registration of eligible voters, saving the state money on administrative and personnel costs necessary to register through another method, and increasing the accuracy and security of the voter rolls.<sup>iii</sup> Automatic voter registration helps more people participate in the democratic process, and exercise their fundamental right to vote. If the committee intends this provision to address the maintenance of the state’s voter rolls, it should pursue less restrictive and more targeted means of doing so — for instance, by ensuring the Division of Elections has adequate resources to carry out its duties under law.

- **Requiring immediate enforcement of the witness signature requirement after an emergency risks confusing voters, and invalidating their votes (Sec. 14).** This section is a direct response to *Arctic Village Council v. Meyer*, in which the Alaska Supreme Court affirmed a superior court ruling that maintaining the witness requirement in the middle of the COVID-19 pandemic would force Alaskans to risk their health in order to vote.<sup>iv</sup> As a result of this ruling, Alaskans were not required to have a witness sign their absentee ballots during the 2020 general election. This section seeks foremost to end the effect of that ruling — as soon as the governor declares the COVID-19 emergency over, witness signatures would once again be required for absentee ballots in an election.

But this section is additionally imprecise, and risks producing confusion in election administration. The section would require the Division of Elections to resume enforcement of the witness signature requirement after “the emergency declaration expires,” should a court invalidate the requirement “during an emergency.” But the language does not specify that the court’s action needs to be related to the emergency, only “during.” It also does not specify that the sequence of events described in the section needs to be related to the same emergency disaster. For instance, this language seems to leave open the possibility that the expiry of any emergency declaration—which under AS 26.23.900 could be issued because of storms, earthquakes, mudslides, fires, and prolonged extreme cold; environmental disasters created by the release of oil or other hazardous materials; enemy or terrorist attacks; or infection disease outbreaks—would trigger enforcement of the witness signature requirement, regardless of its connection to a court order.

Moreover, during the preceding weeks of hearings and testimony on SB 39, we have heard allegations that the court’s decision swayed the 2020 election and ran counter to legislative intent. We note that these allegations did not specify which election was swayed, or include specific allegations of fraud or error. If the court’s decision made it possible for people to vote because they did not have to identify a witness to sign their absentee ballots, we consider that a just outcome. But we are also concerned that the committee may seek to exercise control of the judiciary. In *Arctic Village*, the court’s decision was well within its constitutional powers. A necessary and critical function of the judiciary is to weigh the constitutionality of laws that the legislature passes. There is a difference between considering legislative intent and being deferential to it. If the committee suggests the latter, then there is no limit to the kinds of laws the legislature may pass.

- **Applying criminal penalties to possession of ballots is voter suppression, and a solution in search of a problem (Sec. 18).** This bill would make it a crime for a person to knowingly collect a ballot from another voter unless 1) the person possesses only one other voter’s ballot, and 2) is a family member, household member, or caregiver of the other voter; or is handling the ballot in the course of their duties as an election official or a delivery service. Put in other words, this bill would make it a crime for a person to carry both their parents’ absentee ballots to a

drop box, or deliver ballots for community elders, neighbors or friends for whom a drop box is not accessible. Threatening to impose criminal penalties for civic engagement constitutes clear voter suppression, especially considering that Alaska already has similar law on the books. AS 15.20.081(a) states that nothing in a subsection about the application, completion, and submission of absentee ballots is intended to “prohibit a voter from giving a completed absentee ballot application to a friend, relative, or associate for transfer to the United States Postal Service or a private commercial delivery service for delivery to the division.”

Levying criminal penalties for substantially similar behavior is both legally confusing, unnecessary, and a careless invocation of the criminal legal system. The committee ought to take extreme care when proposing to impose criminal penalties for any behavior. Being arrested or charged with a criminal offense will change the course of a person’s life, especially if they are incarcerated for any amount of time.

- **The bill would improperly limit by-mail voting (Sec. 22).** This section would amend the state’s Municipal Government statute, adding language to prohibit a municipality from mailing general or special election ballots to voters unless requested by the voter. Voting exclusively by mail does not work for all communities in Alaska—notably Native American and rural communities. We note that Chair Shower did not intend to apply this provision to Home Rule cities such as Anchorage and Juneau.<sup>v</sup> But we also note that Anchorage and Juneau have successfully utilized a secure vote by mail system. Just as municipalities and localities should not be required to operate a vote-by-mail system when they determine it will disenfranchise voters, they should not be pre-emptively restricted from conducting an election by mail when they deem it viable.

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<sup>i</sup> Alaska Advisory Committee to the U.S. Commission on Civil Rights, *Alaska Native Voting Rights* (June 2019), <https://www.usccr.gov/pubs/2019/09-19-AK-SAC-Voting-Report.pdf>; Nov. 2, 2020 letter from Native Peoples Action Community Fund, First Alaskans Institute et al., to Lieutenant Governor Kevin Meyer, available at <https://nativepeoplesaction.org/wp-content/uploads/2020/11/Letter-to-Lt-Gov-Meyer-on-Elections-11.2.2020.pdf>.

<sup>ii</sup> Alaska Division of Elections, *Permanent Fund Dividend Automatic Voter Registration*, <https://elections.alaska.gov/Core/PFDAVRindex.php>.

<sup>iii</sup> Brennan Center for Justice at New York University School of Law, *Automatic and Permanent Voter Registration: How It Works* (2015), [https://www.brennancenter.org/sites/default/files/publications/Automatic Permanent Voter Registration How It Works.pdf](https://www.brennancenter.org/sites/default/files/publications/Automatic%20Permanent%20Voter%20Registration%20How%20It%20Works.pdf).

<sup>iv</sup> ACLU of Alaska, *Alaska Supreme Court Waives Witness Signature Requirement on Absentee Ballots for Upcoming Election* (Oct. 14, 2020), <https://www.acluak.org/en/news/alaska-supreme-court-waives-witness-signature-requirement-absentee-ballots-upcoming-election>.

<sup>v</sup> Alaska’s News Source, *Wasilla Republican senator’s election bill sparks calls for his ouster as committee chair, but he says it’s about election integrity* (Jan. 26, 2021), <https://www.alaskasnewssource.com/2021/01/27/wasilla-republican-senators-election-bill-sparks-calls-for-his-ouster-as-committee-chair-but-he-says-its-about-election-integrity/>.