

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

~~COPY~~

Original Received

SEP 28 2020

Clerk of the Trial Courts

Case No. 3AN-20-07858 CI

ARCTIC VILLAGE COUNCIL *et al.*,

Plaintiffs,

v.

KEVIN MEYER *et al.*,

Defendants.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Pursuant to Alaska Rule of Civil Procedure 65(b), Plaintiffs Arctic Village Council, League of Women Voters of Alaska, Elizabeth L. Jones, and Barbara Clark respectfully request that the Court grant a temporary restraining order (“TRO”) restraining Defendants from mailing absentee ballots on October 2, 2020, and until the Court has resolved the merits of Plaintiffs’ Motion for Preliminary Injunction, and requiring them to maintain the original, publicly posted date of October 9, 2020 for mailing absentee ballots. A TRO may be granted when “it clearly appears from specific facts . . . that immediate and irreparable injury, loss, or damage will result” without the issuance of a TRO.<sup>1</sup> Around close of business Friday, September 25, 2020, and without notice to the Court or to Plaintiffs, Defendants made key changes to their election schedule that will prevent this Court from entering meaningful relief. Accordingly, Plaintiffs request that the Court enter a TRO in order to preserve the Court’s ability to hear this case and issue any meaningful and necessary relief.

<sup>1</sup> Alaska R. Civ. Pro. 65(b)(1).

Plaintiffs filed their case on September 8, 2020, accompanied with a Motion for Preliminary Injunction to ensure that Alaska’s most vulnerable voters are able to safely vote absentee in the November general election. Specifically, and most relevant to this application, Plaintiffs requested injunctive relief “[o]rder[ing] Defendants to modify election materials, including mail-in ballots, to reflect the elimination of the Witness Requirements for the November 2020 general election . . . .”<sup>2</sup> Plaintiffs filed this suit almost two months before the election.

Plaintiffs also moved for expedited review of their Motion for Preliminary Injunction in order to provide the Court and Defendants as much time as possible to render a decision and to make adjustments to voting materials as may be ordered by this Court. Plaintiffs’ proposed expedited schedule would have made this case ripe for decision on September 18, 2020, and, if oral argument were granted, ripe for decision by September 23, 2020. Defendants opposed Plaintiffs’ proposed schedule and filed an opposition to the Motion for Preliminary Injunction on September 21, 2020. Defendants improperly combined a motion to dismiss with their opposition, filling a total of eighty-one pages, despite Plaintiffs’ reply being due just four days later on September 25, 2020. At a status conference ordered by the Court on September 22, 2020, Defendants themselves suggested that oral argument be held on October 1, 2020.

During the pendency of this process, and indeed throughout 2020, the date for mailing absentee ballots was publicly listed as October 9—twenty-five days before the

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<sup>2</sup> Pls.’ Compl. at 28, ¶ iv.

general election.

Without notice to this Court or to Plaintiffs, at the close of business on September 25, Defendants unilaterally moved the absentee ballot mailing date up by a week to October 2. See @ak\_elections, Twitter.com (Sept. 25, 2020, at 4:45 p.m.), [https://mobile.twitter.com/ak\\_elections/status/1309657672023552002](https://mobile.twitter.com/ak_elections/status/1309657672023552002). This is less than twenty-four hours after oral argument in this case, leaves absolutely no time for this Court to take the case under advisement and render a decision, and no time for this Court to enter any meaningful relief with regard to the absentee ballots at the heart of this case. It also leaves no time for Defendants to actually comply with any order the Court may issue and for Plaintiffs to appeal should the Court rule in Defendants' favor. Defendants' announcement is an unprecedented manipulation of the timeline and thwarting of the judicial process in order to evade relief in this case and attempt to tip the balance of hardships in their favor. A TRO is necessary to prevent this from happening. Only a TRO and preliminary injunction from this Court will prevent immediate and irreparable harm to Plaintiffs.

Had Defendants been clear with the Court and Plaintiffs that this event was planned, Plaintiffs would have opposed any lengthening of the timeline that occurred at the September 22 conference as a courtesy to Defendants, and would have opposed expedited consideration of the improperly filed motion to dismiss so that Plaintiffs could have focused their efforts to responding to just the arguments related to their motion for preliminary injunction. Had Plaintiffs known Defendants were poised to significantly alter the relevant timeline for this case, Plaintiffs also would have included this in the relief

requested in their Complaint or at least brought this attention to the Court much earlier.

Defendants' improper actions have placed the Court and Plaintiffs in this untenable position. Plaintiffs and the voting public have relied on the October 9 mailing date for absentee ballots. Yet, by unilaterally altering that date at the last minute without notice to the Court, Plaintiffs, or the voting public so that the mailing is scheduled for less than one day after the oral argument, Defendants are manipulating the judicial process and attempting to deny Plaintiffs' requested relief of their own volition. Had Defendants acted with candor toward the Court and Plaintiffs or not unilaterally altered the ability of the Court to issue meaningful relief, a TRO would not be necessary. But Defendants' action necessitates this extraordinary remedy.

Undersigned counsel for Plaintiffs emailed counsel for Defendants on Sunday, September 27, 2020, providing them notice of Plaintiffs' intent to seek a TRO. In that email, undersigned counsel for Plaintiffs told counsel for Defendants that Plaintiffs would file this Application on Monday, September 28, 2020, at 8:30 a.m., unless Defendants agreed not to begin mailing absentee ballots on October 2 and instead await this Court's ruling on Plaintiffs' motion for preliminary injunction. . Counsel for Defendants responded that Defendants oppose this Application and remain on track to begin mailing absentee ballots requiring what Plaintiffs argue is an unconstitutional Witness Requirement in the next few days. Defense counsel's response reinforced Plaintiffs' understanding that Defendants do not intend to leave the Court any ability to provide meaningful relief if Plaintiffs prevail.

Plaintiffs respectfully request that the Court enter a TRO restraining Defendants

from mailing absentee ballots until the Court has resolved Plaintiffs' Motion for Preliminary Injunction. Should the Court not resolve Plaintiffs' Motion for Preliminary Injunction before October 9, Plaintiffs reserve the right to seek further emergent relief. This Application is supported by the attached Affidavit of Wesley James Furlong.

DATED this 28th day of September, 2020, at Anchorage, Alaska.



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of September, 2020, I mailed and emailed a true and correct copy of the foregoing to:

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