



August 31, 2020

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

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

**Re: Let every Alaskan vote: waive the absentee witness requirement**

Dear Lieutenant Governor Meyer and Director Fenumiai:

There is no job more paramount in our democracy than the job of voter. In November, Alaskans will elect our President, our U.S. Senator and U.S. Representative, and 51 state legislators, and we'll decide two ballot measures. Turnout for August's primary reflects this year's importance: over 133,000 Alaskans voted—more than in the 2018 or 2016 primaries—a third of whom voted by mail, online, or by fax.<sup>1</sup> November's significance and August's numbers foretell similarly high turnout in the general election.

For August's voters, voting by mail made sense because, as the Lt. Governor's chief of staff Josh Applebee testified, in this global COVID-19 pandemic, "voters may therefore wish to avoid going to the polls, standing in close proximity, and using touch screens or handling ballots."<sup>2</sup>

Yet, the Division of Elections' enforcement of Alaska Statutes 15.20.066(b)(2) and 15.20.081(d), which require Alaskans who vote by mail or electronic transmission to have

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<sup>1</sup> Alaska Division of Elections, *Primary, General and Statewide Special Election Results*, <https://www.elections.alaska.gov/doc/info/ElectionResults.php>.

<sup>2</sup> Declaration of Josh Applebee, docket no. 25 at ¶ 7, *Disability Law Center of Alaska v. Meyer*, No. 3:20-cv-00173-JMK (D. Alaska Aug. 3, 2020).

witnesses sign their ballots, disenfranchises many voters. So we write to ask you not to enforce this requirement this fall: let every qualified voter freely vote during this pandemic.

In Alaska, every “qualified voter may vote an absentee ballot for any reason.”<sup>3</sup> Alaskans who are in “high-risk group[s] who must be particularly careful to avoid exposure to COVID-19,”<sup>4</sup> including those whom you have recognized as “people 65 and older” and “with certain underlying medical conditions,”<sup>5</sup> may wish to vote absentee so as to, in Mr. Applebee’s words, “avoid going to the polls, standing in close proximity, and using touch screens or handling ballots.”<sup>6</sup>

Voters who are concerned about getting COVID-19 should be able to easily cast their absentee ballots: that’s why you “reach[ed] out to encourage [the] high-risk group” of 65 and older voters “to vote absentee,” because it “was a reasonable measure that comported with the public health information available at the time.”<sup>7</sup> And as you said, “The more people who vote absentee the easier it will be for those who go to the polls to maintain social distance and limit their potential exposure to COVID-19.”<sup>8</sup> And we appreciate your promise that “[t]he Division is doing everything it can to avoid . . . forcing many voters . . . to choose between going to potentially crowded polling places or being disenfranchised.”<sup>9</sup>

Enforcing the witness requirement, however, forces this very choice on voters. For many Alaskans who, for example live alone or who are single parents with children,<sup>10</sup> getting a witness and maintaining safe social distancing isn’t feasible.<sup>11</sup> But, without a witness, their votes will be rejected and uncounted. You recognized that Alaska should not force voters

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<sup>3</sup> Alaska Stat. § 15.20.010.

<sup>4</sup> Defs.’ Opposition to Motion for Preliminary Injunction, docket no. 22 at 8, *Disability Law Center of Alaska v. Meyer*, No. 3:20-cv-00173-JMK (D. Alaska Aug. 3, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> Applebee Decl. at ¶ 7.

<sup>7</sup> Defs.’ Opposition to Motion for Preliminary Injunction at 19.

<sup>8</sup> *Id.* at 21.

<sup>9</sup> *Id.* at 28.

<sup>10</sup> Absentee voters’ witnesses must be at least 18. Alaska Stat. §§ 15.20.066(b)(2)(C) & 15.20.081(d).

<sup>11</sup> Alaska’s Chief Medical Officer Dr. Anne Zink testified, “The most effective ways to minimize the spread of the disease continue to be social distancing, frequent handwashing or sanitizing, and wearing adequate face coverings that cover the nose and mouth.” Declaration of Anne Zink, docket no. 23 at ¶ 7, *Disability Law Center of Alaska v. Meyer*, No. 3:20-cv-00173-JMK (D. Alaska Aug. 3, 2020).

into the Sophie's Choice of a fatal virus or democratic disenfranchisement: please don't enforce the witness requirement and make Alaskans choose between their health or their vote.

Alaskans' right to vote is fundamental, guaranteed by the United States and Alaska Constitutions,<sup>12</sup> and the health consequences of COVID-19 are dire: 1 out of 5 people become seriously ill and require hospitalization,<sup>13</sup> and while "[o]ur understanding of this virus is constantly evolving,"<sup>14</sup> we know that of the almost 6 million Americans it has infected, it has killed more than 182,000.<sup>15</sup>

In upholding Alaskans' fundamental right to elect our public servants, and "to avoid . . . forcing many voters . . . to choose between going to potentially crowded polling places or being disenfranchised,"<sup>16</sup> the Division of Elections should recognize that enforcing the witness requirement now is unwise and poor policy. Its harm of disenfranchising Alaskans is not offset by any good: instances of voter fraud are so incredibly rare that the witness requirement cannot serve a compelling purpose, especially since there is no way to confirm the identity of a witness who signs another's ballot.

COVID-19 is serious and so too is the right to vote, free from unnecessary ballot barriers. Alaska should continue its "long history of expanding voting access and facilitating voters' exercise of their right to vote,"<sup>17</sup> by not enforcing the absentee witness requirement now, in this global pandemic.

By Friday, September 4, we hope to hear that you're putting the safety of our democracy and the safety of Alaska first, and will make this commitment. Please contact Stephen Koteff, the ACLU of Alaska's legal director, at [skoteff@acluak.org](mailto:skoteff@acluak.org).

Thank you.

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<sup>12</sup> U.S. Const. amend. I, XIV, XV, XIX, and XXVI; Alaska Const. art. V.

<sup>13</sup> World Health Organization, *Q&A on coronaviruses: What are the symptoms of COVID-19?*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

<sup>14</sup> Zink Decl. at ¶ 2.

<sup>15</sup> Centers for Disease Control and Prevention, *CDC COVID Data Tracker*, <https://covid.cdc.gov/covid-data-tracker>.

<sup>16</sup> Defs.' Opposition to Motion for Preliminary Injunction at 28.

<sup>17</sup> *Id.* at 3.

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Sincerely,

/s/

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Executive Director

American Civil Liberties Union of Alaska Foundation

/s/

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/s/

Kristen Clarke

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