



Alaska Advisory Committee to the U.S. Commission on Civil Rights Urges Safe and Secure Election Administration During the COVID-19 Pandemic

September 4, 2020

The Alaska advisory Committee to the U.S. Commission on Civil Rights offers this statement¹ as an addendum to our 2019 Report² reviewing

- (i) Alaska's implementation of the court order in the *Toyukak v. Treadwell/Mallott* case, which mandated a broad range of language assistance to be provided in elections;³ and
- (ii) the potential impact of mandatory absentee voting in Alaska.

The current public health crisis facing our state makes this recommendation all the more urgent because although voting in person poses public health risks, segments of Alaska's population are not able to reliably vote by mail and thus both *in-person* and mail options must be maintained. This addendum provides additional recommendations for the optimal adaptations based on our two-year study of and report on voting issues in Alaska.

The Alaska Advisory Committee recommends the following to the Alaska Division of Elections:

- (i) Evaluate ways to accommodate voters and count the votes of those who cannot secure a signature, including but not limited to waiving the witness signature requirement for mail-in ballots. Similarly, it is not clear to what extent Alaska enforces a signature match requirement for voters submitting absentee ballots

¹ On September 4, 2020, the Alaska Advisory Committee approved this statement in a 6-0 vote and the Chair of the Committee abstained.

² Alaska Advisory Committee to the U.S. Commission on Civil Rights, *Alaska Native Voting Rights Report*, June 2019, <https://www.usccr.gov/pubs/2019/09-19-AK-SAC-Voting-Report.pdf> (Hereafter cited as *Alaska Native Voting Rights Report*).

³ See Stipulated Judgement and Order at 10, *Toyukak v. Mallott*, No. 3:13-cv-00137-SLG (D. Ala. Sep. 30, 2015). See also *Alaska Native Voting Rights Report* at 19 (discussing the procedural history of the *Toyukak* case).

as there are some indications it is uneven in enforcement, but to the extent they do, we recommend this also be waived for the general election.⁴

- (ii) Continue advocating to retain the option to have in-person voting locations especially in rural Alaska at which they direct appropriate physical distancing and sanitizing measures.

The Alaska Division of Elections decided not to make changes to the elections systems for the August 2020 primary.⁵ This means that voters were able to vote in-person or by mail, which is critical for those voters who are in immunocompromised or otherwise higher-risk groups. However, voting by mail still presents challenges for those voters. Even before the pandemic, testimony to our committee indicated that some post offices in rural Alaska were insufficiently staffed, creating conditions in which some mail was left unsecured. Additionally, Alaska is one of only twelve states that still requires the signature of a witness over 18 years of age in order for an absentee ballot to be counted.⁶ This forces voters in the most fragile categories to expose themselves to illness just to get a signature, and there is no evidence that a witness signature on ballots decreases fraud.⁷

We do agree with the Alaska Division of Elections' decision to retain an in-person voting option, especially in rural Alaska. Our detailed fact-finding over a period of two years revealed that mail service was not sufficiently reliable to serve as the primary or only voting method in rural Alaska.⁸ The pandemic has further degraded the mail service especially since the bankruptcy of the primary rural air carrier.⁹ This is under even greater threat now that Postmaster General DeJoy has indicated that the rural mail subsidy Alaska needs is "on the table" for consideration as part of budget cuts.¹⁰ Such uncertainty should not cloud the ability to vote. Even under optimal conditions, our report indicated

⁴ *Id.* at 48.

⁵ Office of Lt. Governor Kevin Meyer, "Press Release: State of Alaska to Focus on Ballot Access for August Primary," May 15, 2020, <https://ltgov.alaska.gov/newsroom/2020/05/state-of-alaska-to-focus-on-ballot-access-for-august-primary/>.

⁶ See Kira Lerner, "States Expect People to Risk Their Health Even When Voting by Bail, Advocates Warn," *Appeal*, Jun, 17, 2020, <https://theappeal.org/politicalreport/absentee-ballots-witness-notary-requirements/>; Alaska Stat. § 15.20.081(d).

⁷ For example, 31 out of the 146 total documented voting fraud convictions concerning absentee balloting nationwide have occurred in the twelve states with witness signature requirements. See Election Fraud Cases, THE HERITAGE FOUND., https://www.heritage.org/voterfraud/search?combine=&state=All&year=&case_type=All&fraud_type=24489 (last visited Aug. 7, 2020).

⁸ *Alaska Native Voting Rights Report* at 42-52.

⁹ Tess Williams, "Ravn Air Group files for bankruptcy, stops flights, and lays off remaining staff due to COVID-19," Anchorage Daily News, April 6, 2020, <https://www.adn.com/alaska-news/2020/04/05/ravnair-group-stops-all-flights-and-lays-off-staff-due-to-covid-19/>. As of now, the carrier "hopes" it can relaunch this fall, <https://www.alaskapublic.org/2020/08/13/ravn-hopes-to-relaunch-service-to-rural-hubs-in-september/>.

¹⁰ Liz Ruskin, "Postmaster General Considers Bringing Budget Axe Down on Alaska's Bypass Mail," *Alaska Public Media*, Aug. 21, 2020, <https://www.alaskapublic.org/2020/08/21/postmaster-general-considers-bringing-budget-axe-down-on-alaskas-bypass-mail/>.

that there was a lack of access to the postage requirement for mail-in ballots (Alaska still requires postage) and many rural communities do not have a post office that is open with regularity. We also agree with the sentiments expressed by the Alaska Division of Elections in a letter to the U.S. Postal Service that postal employees should be permitted to witness a ballot as this is especially important in rural Alaska and we encourage the Division to continue to pursue this issue where possible.

The second reason why rural communities should retain the option to have in-person voting locations is that Alaska is still under a court order to provide language assistance in large areas of the State.¹¹ This cannot occur in a vote-by-mail situation, especially considering that Alaska does not provide written translated materials to each household the way they do with the English language voter pamphlet; the language assistance program consists of a combination of sample ballots and in-person oral assistance.¹² Closing polling locations in places for which language assistance is required would violate the court order and disenfranchise the voters protected by that order.

¹¹ See *Toyukak v. Treadwell*, No. 3:13-CV-137-SLG (D. Alaska Jun. 3, 2014) (holding “any election information and materials provided to voters in English must be provided in the language of the applicable minority group as well”).

¹² *Alaska Native Voting Rights Report* at 19-22.