

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

Lance Pruitt,

Plaintiff,

v.

Lt. Governor Kevin Meyer, in his
official capacity as Lt. Governor for
the State of Alaska, and Gail Fenumiai,
in her official capacity as Director of
the Division of Elections,

Defendants.

v.

Elizabeth A. Hodges Synder,

Intervenor.

Case No. 3AN-20-09661 CI

Findings of Fact and Conclusions of Law Regarding Count II

Introduction

This court granted Defendant's and Intervenor's motions to dismiss this complaint in this matter. With respect to Count II of the complaint, the court ordered dismissal after concluding that it failed to allege sufficient facts to show that the plaintiff was entitled to relief under AS 15.20.540 because the complaint did not allege that any violation of AS 15.10.090 was knowing or reckless, and did not allege facts that would support a finding of knowing or reckless conduct. This court

concluded that failure to allege the “scienter” element of malconduct in the complaint required its dismissal.

The order dismissing Plaintiff’s complaint will be reviewed de novo by the Alaska Supreme Court.¹ In doing so, the Court will “adopt the rule of law that is most persuasive in light of precedent, reason, and policy”² and will give no deference to this court’s determination of the legal sufficiency of the complaint’s allegations.³ Under normal circumstances, a trial court would not conduct a trial on a complaint that has been dismissed; if the reviewing court reversed the trial court on the order of dismissal the reviewing court would remand the matter to the trial court for further proceedings consistent with its decision.⁴

This situation is unique, however, because this matter is an election contest⁵ that must be decided under strict timelines.⁶ If the Supreme Court reverses this court’s order there will be little time for a remand and further proceedings, including any appellate review of those proceedings and this court’s decisions, before the Legislature convenes on January 19, 2021. With the parties’ agreement and to ensure that Plaintiff has adequate time to litigate his contest if this court’s order is reversed, and given the reason for which the court ordered dismissal, this court held trial on

¹ *Alleva v. Municipality of Anchorage*, 467 P.3d 1083, 1088 (Alaska 2020).

² *Id.*

³ *Cf. David v. State*, 372 P.3d 265, 269 (Alaska App. 2016) (whether a petition for post-conviction relief and supporting documents set forth a prima facie claim for post-conviction relief is a question of law reviewed do novo “i.e., without deference to the superior court’s decision”).

⁴ *Eg. Dapo v. State*, 454 P.3d 171, 174 (Alaska 2019).

⁵ AS 15.20.540.

⁶ S-17951(*Order Appointment of Special Master, Briefing Schedule, Oral Argument Date*) (issued 12/15/2020).

December 22 and 23, 2020 on Count II⁷ and makes findings of fact and conclusions of law that may be reviewed by the Supreme Court on the briefing schedule ordered.⁸

Findings of Fact

1. Lance Pruitt and Elizabeth Snyder were candidates for Alaska House District 27 in the 2020 General Election. The General Election occurred on November 3, 2020.
2. The normal polling place for Precinct 27-915, also known as Chugach Foothills #1, is Wayland Baptist Academy. Due to the Covid Pandemic the Division of Elections changed the polling place for 27-915 one day before the 2020 Primary Election and six days before the 2020 General Election.
3. The polling place for Precinct 27-915 was changed one day before the August 18, 2020 Primary Election, after Precinct Chair Raymond Baker went to the polling place to inspect the polling site, which he typically does to make sure the booths are set up properly. He was asked by someone at Wayland Baptist Academy about potential Covid exposure and, based on his conversation with this person, became concerned that voters in Precinct 27-915 would be subjected to questions in order to vote that other voters would not have to answer. He called the Election Field Office

⁷ This court does not do the same with respect to the other counts because this court dismissed Count II for failing to plead an essential element—essentially a pleading error, whereas the dismissal of the other counts in the complaint was for more substantive reasons.

⁸ *Id.* This court makes any findings of fact by a preponderance of the evidence. The Alaska Supreme Court will review this court's factual findings for clear error and will review its legal conclusions—whether

of the Division of Elections to them know and was told that the polling place would likely be moved to Muldoon Town Center, where another precinct also had a polling place.

4. Julie Husman, the Region II Supervisor for Division of Elections, is responsible for conducting elections in Region II, which includes District 27. She is responsible for overseeing recruitment of election officials, absentee review boards, questioned ballot review boards, temporary employees, and for polling locations. She decided to change the polling place for the 2020 Primary Election after learning from Baker that 27-915 voters going to Wayland Baptist Academy would need to respond to a Covid questionnaire. She had a poster printed notifying voters of the change and gave it to a field worker. The sign was placed at Wayland Baptist Academy directing voters to go to Muldoon Town Center. Voting for 27-915 occurred at Muldoon Town Center for the 2020 Primary. The Division's website was updated with the new polling place information between the August primary and October 22, 2020.
5. The Division of Elections intended to conduct the 2020 General Election for 27-915 at Muldoon Town Center. The Division did not send out cards to voters in 27-915 to inform them of the intended change, did not publish the intended change in a newspaper, and did not provide notice to the Municipal Clerk, to community councils, or to tribal groups. The Division

did update its website to reflect the change. The 27-915 polling place for the 2020 General Election was not at Muldoon Town Center.

6. On or about October 22, 2020, Husman communicated with managers of the Muldoon Town Center to confirm the polling place and learned that Muldoon would not agree to host dual polling sites. Muldoon Town Center had some complaints about the primary or hosting a polling place generally and informed Husman that they would not allow their facilities to be used for two precincts. Husman had made backup plans before the primary to use Anchorage School District schools as polling sites because she anticipated that conducting the elections during Covid would present challenges requiring backup plans. She immediately contacted the Anchorage School District to request permission to conduct the polling site for 27-915 at Begich Middle School. The next day, October 23, 2020 (a Friday), she heard from Leslie Clark, the Director of Community Services at Anchorage Services, who communicated that the District would respond to her formal request. The District responded the following Monday, October 26, 2020, approving the request (although the principal still needed to sign off on it).

7. On Tuesday, October 27, 2020, Husman sent a formal polling place change to Director Gail Fenumiai, Carol Thompson, and Steven Niven.⁹ On Wednesday, October 28, 2020, Thompson responded with an interactive voice recording (IVR). The IVR recording is a voice recording stating the polling place change. It is used to update the Division's website and it is also posted on the Division's call-in number or "voter hotline" that a voter can call to learn his or her polling place. The list of polling places was updated on the website the day before (October 27, 2020), according to the Division's IT logs.
8. Husman also created two signs, one large A-frame sign approximately 1.5 X 2 feet that was posted at Wayland Baptist Academy, and another smaller sign that was posted at the south entrance of Muldoon Town Center.
9. When Baker, the Precinct Chairperson, picked up supplies for the 2020 General Election on Wednesday, October 28, 2020, he thought that the 27-915 polling place would be the Muldoon Town Center. He learned on Sunday, November 1, 2020, that it would be at Begich Middle School. He took the signs created by Husman and placed the larger one at Wayland and the smaller one at Muldoon Town Center on Sunday. He drove by both locations at approximately 5:45 a.m. on the day of the 2020 General Election and confirmed the signs were still there. He confirmed the signs

⁹ Carol Thompson was a Division employee responsible for creating an interactive voice recording describing the polling location and Nivens was a Division employee responsible for the Division's website. There was an additional recipient but the parties did not present evidence regarding this person's role.

were there later through a local voter whom he asked to check both locations later in the day. When he went a week later to pick up the signs the Wayland one was there but the Muldoon one was not.

10. The Division did not send out written notice of the change of the polling place to each affected registered voter in the precinct.¹⁰ The Division did not publish notice in a local newspaper.¹¹ The Division did not provide notice of the change to the Municipal Clerk.¹² The Division did not include notice in the official election pamphlet.¹³

11. The Division posted notice of the change on the Division's website.¹⁴ However, there was evidence that one page of the Division's website incorrectly listed one of the prior polling places (Wayland Baptist Academy or Muldoon Town Center).¹⁵ Precinct Chair Baker observed this when a voter alerted him to the problem on Election Day. The Division's online list of polling places properly listed the polling place as Begich Middle School and highlighted the change by affixing the word "NEW" in red in the right column of the list. The Division's website has a

¹⁰ AS 15.10.090(1).

¹¹ AS 15.10.090(2)(A).

¹² AS 15.10.090(4). It also appears the Division also did not notify community councils, tribal groups, Native villages or village regional corporations but AS 15.10.090(4) requires notification of "appropriate community councils, tribal groups, Native villages or village regional corporations and there is no evidence in the record regarding any "appropriate" community councils, tribal groups, Native villages or village regional corporations.

¹³ AS 15.10.090(5).

¹⁴ AS 15.10.090(3).

¹⁵ This court did not admit Intervenor's proposed testimony and evidence regarding what was actually posted on the website on the date of the general election after concluding that the proposed evidence regarding determining a website's posting history using "wayback machine" technology was expert testimony that should have been disclosed before trial. But Plaintiff never rebutted the evidence, on which this court relies, that 3AN-20-09661 CI

“myvoterinformation” page where a registered voter could enter his or her name and it provided the correct polling place, and a registered voter could learn his or her polling place by calling the IVR line.

12. There were significant challenges to running the elections during fall 2020, primarily because of the Covid Pandemic. The Division had to contend with absent poll workers, poll workers the Division thought were available who became unavailable because of a positive Covid test or the need to quarantine, and the need to procure personal protective equipment for poll workers. A significant increase in absentee voting required additional office space and additional training. It was a dynamic situation.

13. With respect to polling places, the Division had Covid-related problems as some traditional polling places were unwilling to serve because they did not want people congregating, others were too small to permit the social distancing that would be required to safely conduct the election. The Division, and Supervisor Husman in particular, had to contend with an unusually high number of changes to polling locations; during 2020 there were changes of eighteen out of 119 polling places in Anchorage, greatly exceeding the normal four or five.

14. Given how close to the election the polling place change occurred, some of the requirements of AS 15.10.090 were not feasible to implement, such as publishing notice in the Official Election Pamphlet (it had already been

printed and mailed to voters weeks earlier) or sending written notice to affected registered voters (which requires procuring a printer, printing, and mailing notices with enough time for the United States Post Office to deliver the notices the day before the election); and publishing notice in a local newspaper.¹⁶ Some of the notice provisions not implemented were feasible, such as notifying the Municipal Clerk. Under normal circumstances, the Division would accomplish full notice. As a matter of practice, when the polling place change occurred too close to implement “full notice” or send out mailers, the Division would post signs at the old polling place notifying voters of the change.

15. Another polling place change occurred in District 27 during 2020. The Stuckagain Heights 27-935 polling place was changed in July before the August 18, 2020 Primary Election. There, the Division sent voter notification cards to affected registered voters.

16. The Division did not contact the Pruitt and Snyder campaigns to notify them of the change in polling place. Representative Pruitt learned of the 2020 Primary polling place change through a constituent. He did not know where the 2020 General Election polling place would be and called the Anchorage Office of the Division on October 21, 2020 to ask. He and the person he spoke to on the phone looked it up on the Division’s website,

the Division’s “myvoterninformation” webpage, and on the IVR line.

¹⁶ The Division presented un rebutted testimony that it could not have published notice in a local newspaper in the six days before the election.

which listed Muldoon Center as the 27-915 and designated a change with the word “NEW” in the right column. Pruitt’s campaign prepared a voter card designating Muldoon Town Center as the 27-915 polling place. Representative Pruitt learned of the subsequent change the weekend before the 2020 General Election. He was not notified by the Division.

17. On the morning of the 2020 General Election, Begich Middle School was busy. According to election worker Kathleen Steigelman, some voters seemed confused. Mary Jo Cunniff, a registered voter, left her home to go to Wayland Baptist Academy at approximately 8:30 a.m.. There was a sign at the entrance notifying voters to go to Begich Middle School to vote. She did, arriving there at approximately 8:45 a.m. and there was a long line, possibly 30-40 people. She ended up leaving without voting because she had an appointment at 10 a.m. did not believe she could make it through the line and be on time for the appointment. She had other obligations and priorities that day, including bringing her daughter dinner, and did not go back to Begich Middle School to cast her vote. She was frustrated by the polling place change because the same thing had happened in the 2020 Primary Election.

18. Plaintiff’s expert Randy Ruedrich testified that, in his opinion, 2020 General Election Day turnout in 27-915 (20.13% of registered voters) reflected an undervote of 3.66%, or 57 votes. Ruedrich testified that this undervote was sufficient to change the results of the election. Ruedrich

arrived at his opinion by comparing the Election Day turnout in 27-910 (23.44% of registered voters) and 27-920 (24.12% of registered voters) to Election Day turnout in 27-915 (20.13% of registered voters). Ruedrich averaged the difference between 27-910 and 27-910 (3.31%) and 27-920 and 27-915 (3.99%) to arrive at his calculation of 3.66% undervote. He compared Election Day turnout in these precincts because they are politically similar (registered Republicans outnumber registered Democrats by similar proportions), the neighborhoods are similar, and the precincts are next to one another.

19. One assumption of his calculation was that the percentage of Election Day turnout in 27-915 should be the same as that in 27-910 and 27-920 and that anything less reflected an “undervote.” This assumption is flawed because 2020 Election Day turnout was not the same in 27-910 and 27-920 and it is not always the same historically in the three precincts. For example, in the 2016 General Election, Election Day turnout in 27-910 was 40% of registered voters, in 27-915 was 38% of registered voters, and in 27-920 was 41% of registered voters. In the 2018 General Election turnout in 27-910 was 32% of registered voters, in 27-915 was 32% of registered voters and in 27-920 was 34% of registered voters. Given these differences, and the absence of explanation (statistical or qualitative) for them, it cannot be said that averaging the differences between 27-910 and

27-915 and 27-920 and 27-915 results in a reliable calculation of any Election Day undervote in 27-915 in the 2020 General Election.

20. Nor can it be said that a 3-4% difference in Election Day voting between the precincts reliably reflects an undervote at all. For example, in 2016, there was a 3% difference in Election Day voting between 27-915 and 27-920. As Ruedrich testified, without analyzing the particular dynamics and variables of an election, it is impossible to say what factors might account for those differences.

21. The Division presented the testimony of Ralph Townsend, an economist and professor with the Institute of Social and Economic Research at the University of Alaska Anchorage, who reviewed Ruedrich's report. Townsend testified that because Ruedrich's method did not use any research methodology or any well-established statistical techniques to support his hypothesis of an undervote, it was unreliable. According to Townsend, Ruedrich's method merely asserted, but did not prove, that the Election Day turnout in 27-915 demonstrated a 57-person undervote because the three precincts he compared should be the same. According to Townsend, the first thing a researcher should do is determine whether any difference in in-person voting was the result of chance. After ruling out this possibility, a researcher would consider whether any difference not due to chance was caused by the change in polling place location or by other factors. Ruedrich's calculation did none of these things.

22. Ruedrich's analysis considered one potential cause—the change in the polling location-- and concluded that any difference in Election Day turnout between 27-915 and the other two precincts must be the result of the polling place change in 27-915. However, given the 3% difference between 27-915 and 27-20 in 2016, there appear to be other variables that may account for differences between Election Day turnout in the precincts, even given their similarities. But his two primary assumptions (first, that the three precincts should have precisely equal Election Day turnout and second, that any difference in turnout was caused by the change of the polling place) are also his conclusions.

23. Ruedrich testified, and this court credits his testimony, that moving polling places generally lowers turnout. It is reasonable to assume that the more notice there is of polling place change the less turnout will be lowered by the change. But this court cannot determine by what increment additional feasible notice under AS 15.10.090, such as notifying the Municipal Clerk, would have mitigated any reduction in turnout caused by the polling place change sufficient to change the result in the election. That is particularly true where, as here, the Division implemented other means of notifying voters that may have been as effective as notifying the Municipal Clerk, such as posting signs at Wayland Baptist University and Muldoon Town Center.

24. As voter Mary Jo Cunnif's testimony reflects, the change in the polling place had an impact on voters in 27-915. By her own account, Cunnif lost 15 minutes by going to Wayland Baptist University the morning of the 2020 General Election, where she was notified of the change. But she did not cast her vote because the line at Begich Middle School was long and she had an appointment and other obligations that day. When she voted in the 2020 Primary Election she had a similar experience, but because she voted midday and had less going on she cast her vote. Critically, Cunnif did not testify that she was unable to locate her polling place or that she was prevented from voting. She found it fifteen minutes after she left home, it just had a long line. If voters in 27-915 received actual notice of the polling place change and chose not to go to Begich Middle School or, like Cunnif, went but did not cast their vote, this court cannot count those "undervotes" in determining whether any malconduct was sufficient to change the results of the election absent evidence that voters were actually prevented from voting as a result of the Division's alleged malconduct.

25. The court cannot find that, even if there was an Election Day undervote in 27-915 (which is not clear), and even if the undervote was solely the result of the change in the polling place (which is not clear), the Division's failure to notify the Municipal Clerk caused a reduction in votes sufficient to change the result of the election. There is no evidence what steps the Municipal Clerk would have taken after October 27, 2020 or how it would

have affected turnout. There is no evidence in the record quantifying how much less Election Day turnout would have been affected by a last-minute polling place change had perfect notice been provided.

26. The forms of notice the Division actually used, such as placing signs at the old polling places, updating the polling place list on the Division website (even given the error on one page), updating the IVR line and ensuring that the “myvoterninformation” website provided accurate information to any voter who sought polling place information and did provide notice to the registered voters of the change in polling location (as evidenced by Voter Cunnif’s testimony). The court does not find that all registered voters in 27-915 received actual notice of the change. The court also does not find that at least 11 registered voters were prevented from voting because they did not receive actual notice of the polling place change.

27. The Division, the Director, the Region II Supervisor, and other Division employees acted in good faith in attempting to notify affected voters about the change to the polling location. There is more the Division could have done. The Division could have communicated earlier with Muldoon Town Center and may have learned earlier that it would not be available as a polling place for 27-915. The Division could have promptly notified the campaigns or political parties of the change. The Division could have posted to Facebook. The Division could have issued a press release and asked local media to run stories over the weekend before the election.

However, in this election contest the court must determine whether the Division significantly deviated from statutory or constitutional requirements and, if so, whether the malconduct was sufficient to change the results of the election.

Conclusions of Law

1. Alaska Statute 15.20.540 “parallels the ‘directory’ view that statutes prescribing election procedures are directory and that they therefore establish a desirable rather than mandatory norm.”¹⁷ To contest an election a party must “show more than lack of total and exact compliance with the constitutionally and statutorily prescribed form of ballot” and “has the dual burden of showing a significant deviation from the prescribed form and that such departure was of a significant magnitude to change the result.”¹⁸
2. Alaska Statute 15.10.090 provides:

The director shall give full public notice if a precinct is established or abolished, if the boundaries of a precinct are designated, abolished, or modified, or if the location of a polling place is changed. Public notice must include

 - (1) whenever possible, sending written notice of the change to each affected registered voter in the precinct;
 - (2) providing notice of the change
 - (A) by publication once in a local newspaper of general circulation in the precinct; or
 - (B) if there is not a local newspaper of general circulation in the precinct, by posting written notice in three conspicuous places as close to the precinct as possible; at least one posting location must be in the precinct;
 - (3) posting notice of the change on the Internet website of the division of elections;
 - (4) providing notification of the change to the appropriate

¹⁷ *Nageak v. Mallot*, 426 P.3d 930, 943-40 (Alaska 2020) (citing *Boucher v. Bombhof*, 495 P.2d 77, 80 (1972)).

¹⁸ *Id.*

municipal clerks, community councils, tribal groups, Native villages, and village regional corporations established under 43 U.S.C. 1606 (Alaska Native Claims Settlement Act); and

(5) inclusion in the official election pamphlet.

3. Alaska Statute 15.10.090 applies to all polling place changes, including emergency or last-minute polling place changes. The intent of the statute is to provide notice to affected voters of the location of polling places when a polling place changes. The Division must comply with the statute, even for temporary polling changes, if compliance is possible under the circumstances. While some of the requirements of the statute would be impossible to accomplish when a polling place is changed close to the election, the court does not agree with Defendant's and Intervenor's argument that AS 15.10.090 only applies to permanent polling changes.
4. Alaska Statute 15.10.090 provides: "[t]he Director shall give full public notice if a precinct is established or abolished, if the boundaries of a precinct are designated, abolished, or modified, or if the location of a polling place is changed." The plain language of statute does not distinguish between temporary and permanent changes of location. However, Alaska courts will consider legislative history and, under its sliding scale approach, the more unambiguous the plain language, the more convincing the contrary legislative history must be.¹⁹ The court has reviewed the legislative history cited by Defendants and Intervenor. It is true that in a hearing before the House State Affairs Committee, the then-Director stated that "the intent is not to do a

notice every time the division has a polling place modification, but instead to [give] notice [to] people of a polling place location.”²⁰ But she was discussing the fiscal impact of requiring publication once in a newspaper, not referring to the statute as a whole. Her testimony indicated that if the Division is aware of a polling place change, at the time the Division publishes notice in the newspaper close in time to the election (which, according to her, was the Division’s practice), the Division would include that location in the notice, but would not republish each time there is a change close in time to the election. Earlier in the hearing, she explained that inclusion in the Official Election Pamphlet would be required for “only those polling place changes that we make at the time.”²¹ She stated that precinct boundaries modifications are completed by the time the pamphlet is printed but that some polling place modifications, especially emergency ones, occur after the pamphlet is printed. In other words, if the Division changed a polling place prior to publication of the Official Election Pamphlet, that change would be included, regardless of whether the change is permanent or temporary. Thus, the court interprets AS 15.10.090 as directory: the Division is required to notify voters of polling places as provided in the statute when it is reasonably able to do so, regardless of whether the change is permanent or temporary. But where a change to a polling place occurs close in time to the election and the Division cannot

¹⁹ *State v. Alex*, 646 P.2d 203, 208 & n. 4 (Alaska 1982).

²⁰ Minutes of Alaska House State Affairs Committee, March 15, 2005, 8:35:27 a.m. - 8:37:19 a.m. (Hearing on HB94).

reasonably accomplish the particular form of notice, the statute does not require it.

5. The court is aware that this interpretation is inconsistent with the inclusion of the “whenever possible” qualifier only applies to subsection (1). But given the then-Director’s explanation, and the House State Affairs Committee’s apparent adoption (by voting to include the proposed amendment), of how the statute would operate, the court is persuaded that this interpretation is correct.
6. When the Division changed the polling place of 27-915, the Division did not accomplish all the notification requirements of AS 15.10.090. The Division did not send written notice to affected registered voters, publish notice in the local newspaper, notify the Municipal Clerk’s Office, or publish notice in the Official Election Pamphlet. But for a change this close to the election, most of the forms of notice under AS 15.10.090 could not reasonably be accomplished and were therefore not mandated by the statute. The Division partially complied with the statute by posting notice on its website. The Division took other steps to provide notice, such as posting signs at the old polling places and having accurate information available to any voter who called the IVR line or who accessed the “myvoterinformation” webpage.

7. Under AS 15.20.540(1) malconduct, is “a significant deviation from statutorily or constitutionally prescribed norms.”²² This requires more than a failure to comply perfectly with an election statute.²³ To constitute a significant deviation, the act or omission must significantly frustrate the purpose of the statute.²⁴ In considering how significant any deviation from the statutory requirement was, the court only considers those requirements that could reasonably have been met because it would be contrary to public policy to void an election where last-minute polling place changes necessitated by a global pandemic rendered it impossible to comply with much of the statute’s requirements. In this case that appears to be notification under AS 15.10.090(4).

8. The Division’s lack of strict compliance with AS 15.10.090(4) is not a significant deviation because it did not significantly frustrate the purpose of the statute, full compliance was impossible, it partially complied by posting notice on its website, and it took other steps to notify affected voters by posting signs at the old polling places, and had accurate information available on its IVR line for any voter who called to find his or her polling place.²⁵

²² *Boucher*, 495 P.2d at 80-81; see also *Hammond v. Hickel*, 588 P.2d 256, 258 (Alaska 1978).


²³ *E.g., Hammond*, 588 P.2d at 261 (discarding ballots rather than mailing them to the Lieutenant Governor is a significant deviation from AS 15.15.370, but failure to count all ballots at an alternate site when a computer malfunctions requires removal of some ballots for counting at alternate computer in violation of AS 15.20.690 is not a significant deviation)

²⁴ *See Danserau v. Ulmer*, 903 P.2d 555, 567-69 (Alaska 1995) (no significant deviation when postcard intended to influence election did not contain statutorily required language but the purpose of the statute was substantially met).

²⁵ The court does not consider whether the Division would have significantly deviated from AS 19.10.090 had the election been held at Muldoon Town Center because this is not where the polling for 27-915 took place.

9. The court does not find that any deviation from the notice requirements of AS 19.10.090 was knowing²⁶ or done in reckless disregard of the statute's requirements.
10. Plaintiff has not met his burden to demonstrate that any malconduct was sufficient to change the results of the election because he has not demonstrated that any voter was prevented from voting as a result of any lack of notice required by the statute. In addition, the court is unable to conclude that there was a reduction in Election Day turnout in 27-915 resulting from any failure to comply with AS 15.10.090 sufficient to change the results of the election.

DONE this 29th day of December 2020, at Anchorage, Alaska.



Josie Garton
Superior Court Judge

I certify that on 12/29/2020
a copy of the above was mailed to
each of the following at their
addresses of record:

Stacy Stone; Thomas Flynn; Laura Fox;
Margaret Paton-Walsh; Jennifer Alexander;
Holly Wells

Elsie Roehl

²⁶ *Cf. Moffit v. State*, 207 P.3d 593, 601 (Alaska App. 2009) (proof that a criminal defendant knowingly failed to appear required proof that the defendant made a deliberate, conscious decision not to come to court).