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

BENJAMIN N. NAGEAK, ROB ELKINS
ROBIN D. ELKINS, LAURA WELLES
and LUKE WELLES,

Plaintiffs,

vs.

LT. GOVERNOR BYRON MALLOT, in
his official capacity as Lt. Governor for the
State of Alaska, and JOSEPHINE
BAHNKE, in her official capacity as
Director of the Division of Elections,

Case No. _____

Defendants.

COMPLAINT

COMES NOW Plaintiffs Benjamin N. Nageak, Rob Elkins, Robin D. Elkins,
Laura Welles and Luke Welles by and through their attorneys, Holmes, Weddle &
Barcott, P.C. and for their complaint against Defendant Lt. Governor Byron Mallot
and Josephine Bahnke, in their official capacities by stating and alleging as follows:

I. JURISDICTION AND VENUE

1. The Alaska Superior Court has jurisdiction under and by virtue of Alaska Stat. § 15.20.550 and other applicable law. The Third Judicial District at Anchorage is an appropriate venue under Alaska R. Civ. P. 3(c) and 4(d)(8).

II. PARTIES

2. Plaintiff Benjamin N. Nageak, a registered Democrat, appeared on the Primary Election Day ballot for reelection to the Alaska State House District 40, and at the conclusion of the most recent recount was behind his challenger by eight votes.

3. The remaining plaintiffs are qualified voters pursuant to AS 15.20.540

4. Defendant Byron Mallot is the Lt. Governor of the State of Alaska. He is vested with the executive power of the State and is responsible for the faithful execution of the election.

5. Josephine Bahnke is the Director of the Alaska Division of Elections, which administers the elections.

III. FACTS

6. The Primary Election took place in the State of Alaska on August 16, 2016.

7. There were several errors and in the conduct of the election that likely changed the results of the election.

8. In the District 40 Precinct of Point Lay, there was only one election worker present in violation of Alaska State Law. In other voting locations only two election workers were present during voting hours.

9. In Shungnak, the poll workers provided every voter with both the Republican and Democrat ballots and of the 50 votes that were cast, all 50 voters were apparently voted both the Republican and Democrat ballot. The voters were not required to cast questioned ballots

10. In the District 40 Precinct of Kivalina, seven voters were allowed to vote both the Republican and Democrat ballot but were required to cast questioned ballots. While those questioned ballots were originally not counted by the regional and statewide review boards, they were counted during the recount.

11. In the District 40 Precinct of Browerville, voters were registered Republicans were required to vote questioned ballots if they asked to vote the Democrat ballot.

12. In the District 40 Precinct of Bettles, one voter was identified by an election worker as a Republican and handed a ballot, not given the choice of which ballot to vote.

13. In the District 40 Precinct of Buckland, there were numerous issues with special needs ballots. Only one voter indicated a party preference on the application, but all of the voters received the Democrat ballot, in spite of the fact that some of these voters are non-declared and eligible to vote a Republican ballot.

14. In addition to the foregoing, the voters, the representatives and the election workers failed to properly complete the envelopes needed to establish the validity of these ballots and some information on the envelopes appears to have been modified, or revised. A single person claims to have acted as the representative for 10 of the special

needs voters. The date the special needs ballots were issued was not listed, and likewise the date/time the ballots were returned. The date the signature of the representative signed the ballot was obscured on 11 of the 12 ballots. These special needs ballots were not cast in accordance with the requirements of the Division of Elections.

15. The special needs ballots were not returned to Nome until six days after the election.

16. The Precinct of Buckland had more special needs ballots voted than Palmer or Wasilla despite the population disparity.

17. In Nome, during the regional absentee and questioned ballot review board session, there was an issue when four absentee ballots were misplaced. The workers in Nome conferred with Division officials in Juneau in private, and upon their return they indicated they had been instructed to randomly select four questioned ballots and count them as absentee ballots.

IV. COUNT I – VIOLATION OF ALASKA STATUTE § 15.10.120

18. Plaintiff realleges and incorporates by reference the allegations set forth above.

19. AS 15.10.120 provides that there shall be appointed in each precinct an election board composed of at least three qualified voters.

20. In at least one precinct, the election supervisor failed to ensure there were at least three qualified voters comprising the election board.

21. With only one election board worker, the integrity of the election is at question and thus, plaintiff is entitled to relief.

**V. COUNT II – VIOLATION OF ALASKA STATUTE §
15.15.080**

22. Plaintiff realleges and incorporates by reference the allegations set forth above.

23. Pursuant to State law the polls shall be open from 7:00 AM until 8:00 PM.

24. During the time that the polls are open, special needs ballots are likewise required to be returned during those hours.

25. In at least one precinct, the date of issuance of special needs ballots was not recorded and the date and time the ballot were returned was not recorded this making it impossible to determine if the ballots were cast prior to the close of voting. .

**VI. COUNT III – VIOLATION OF ALASKA STATUTE §
15.15.210**

26. Plaintiff realleges and incorporates by reference the allegations set forth above.

27. A voter may only be questioned as not qualified to vote under AS 15.05.

28. Election workers improperly challenged the right of fully Republican voters who sought to vote the other ballot thus depriving voters of their right to vote for the candidate of their choice. .

29. Plaintiff is entitled to relief based on the disenfranchisement of one class of voters.

**VII. COUNT IV – VIOLATION OF ALASKA STATUTE §
15.15.215**

30. Plaintiff realleges and incorporates by reference the allegations set forth above.

31. Pursuant to AS 15.20.207 and AS 15.15.215, the questioned ballots are to be kept separate.

32. In at least one case, ballots were misplaced and/or lost.

33. As a result of the missing ballots, four questioned ballots were taken from the questioned group and wrongfully comingled with other ballots, thus improperly allowing votes which may be invalid to be counted.

**VIII. VIOLATION OF THE 14TH AMENDMENT TO THE
UNITED STATES CONSTITUTION**

34. By allowing certain voters to cast more than one ballot and allowing those multiple ballots to be counted and by failing to otherwise properly conduct the election the Division of Elections has deprive other voters in District 40 of the equal protection guaranteed by the 14th Amendment to the United States Constitution

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Benjamin N. Nageak and qualified voters pray for the following relief:

1. An order directing that the votes properly and legally cast in the August 16, 2016 primary election in House District 40 be properly tabulated and the correct result be certified.

2. In the alternative for an order declaring that because of the many manifest errors in the conduct of the August 16, 2016 primary election in House District 40, that

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the true winner cannot be determined and ordering that a new election conducted in accordance with law be conducted.

3. Costs and attorneys' fees pursuant to any applicable statute or authority;

and

4. Any other relief this Court deems just and appropriate.

Dated this 16th day of September, 2016, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Counsel for Appellant

By: 

Timothy A. McKeever
Alaska Bar No. 7611146
Stacey C. Stone
Alaska Bar No. 1005030

CERTIFICATE OF SERVICE

The undersigned certifies that on this 16th day of September, 2016, a true and correct copy of the foregoing document was served via:

- E-Mail
 U.S. Mail
 Facsimile
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to:

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By: 

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Holmes Weddle & Barcott, P.C.