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Division of Elections

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Voter registration
irregularities

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I. Introduction

You recently received a batch of 20 voter registration cards upon which someone other than the registrar whose name appears on the transmittal form apparently signed the registrar's name. All of the cards were signed on July 10, 1990, in advance of the cutoff date for the primary election, July 29, 1990. One of the persons whose cards were included in the batch has already submitted an absentee ballot. You have two immediate problems: whether or not to accept the registrations and enter them into the voter list, effective July 10, and what to do with the vote already cast. For the reasons set forth below we recommend that you attempt to reregister all of the individuals involved, but with July 10 as the effective date, and that you count the vote already cast. However we anticipate that you will be able to reregister few if any of the voters before election day, and we discuss that problem below. 1/

II. Analysis

A. Background

Your investigation in this matter has just begun but these are the facts that have been gathered thus far, as we understand them. On Thursday, August 23, 1990, the southcentral regional office received a call from a voter who wanted to make certain she was included on the voter registration list. Her name could not be located. She indicated that she had registered in July before a woman whose name the office did not have listed as a registrar. The name was a first initial and a last name which resembled the name of a known registrar. However the known registrar, whose voter number was entered next to the signature on each card, was male. The voter to register before a bona fide election official at the request of the office. At closing time

1/ We do not address at this time what actions should be taken with respect to the registrar and the person signing the person's name.

that same day, a person who had just voted absentee returned with a bundle which had been delivered to the office as he was leaving. The bundle contained 20 voter registration cards, including that of the voter who had called and come in to register. All 20 were signed by the voter on July 10, 1990. None of the signatures in the blank for the registrar resembles the signature of the registrar whose voter number the signer uses. There are 11 address changes (including voters whose names were to be purged, voters who also wanted to change their party affiliation, and a voter with a name change), 2 party affiliation changes, 5 initial registrations, and one person who attempted to register after being suspended for conviction of a felony. 2/ Of these, only the felon appears to be ineligible to vote. If these registrations were to be deemed void, the 5 people registering for the first time would be disenfranchised; and the votes of the 9 persons among those who listed address changes involving changed districts might be disenfranchised as to district races but not as to statewide races.

A review of case law from other jurisdictions concerning registration irregularities suggests to us that this is not a proper result.

B. Applicable Law

A person must be properly registered to be qualified to vote in this state. AS 15.05.010(6). A person may register by mail or before a registration official. Under AS 15.07.070(b), a person registering by mail must sign the registration form before a notary public, a commissioned officer in the armed forces, a district judge or magistrate, a postal official, or other person qualified to administer oaths. If such an official is not "reasonably accessible", a person may sign the registration form in front of two people over the age of 18, provided the person certifies on pain of perjury that the information is true and correct. A qualified voter may register in person before a registration official. AS 15.07.070(d). In order for a person mailing a registration form to participate in an election, the person's registration must be received by the division more than 30 days before that election; if a voter registers in person more than 30 days before the election, he is entitled to vote in that

2/ As to party affiliation (the listing of which is optional), 4 are listed as nonpartisan, one as "other", two as Alaskan Independence, six as Republican, and five as Democrat. Two did not check any of the boxes in this section.

election. For voters registering in person, the date of registration is the date the voter signs the form in front of a registration official. These requirements are clearly designed to assure that a voter is who he or she says he is, thereby protecting the registration process from fraud and abuse.

AS 15.07.070(f) provides:

Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official or the date the application is received by the director or election supervisor if the application for registration is by mail.

The registration forms we are concerned with here were not actually signed by the registration official whose name appears on them. At some point they must be re-executed. However, in these circumstances, we believe it is appropriate to maintain the July 10, 1990, registration date, and construe the above subsection of the statute to be directed primarily at voter error.

The Alaska Supreme Court has adopted the basic rule that errors which are solely the fault of election officials will ordinarily not invalidate an elector's vote unless the legislature has clearly stated that violation of the rule in question is to have that effect. See Carr v. Thomas, 586 P.2d 625, 626-27 (Alaska 1978) (use of punch card ballots where statute called for paper ballots will not invalidate votes where voters blameless; right to vote paramount, even where statute mandatory rather than directory); Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979) (apparent failure of registration official to send in registration applications will not invalidate votes of properly registered voters); Fischer v. Stout, 741 F.2d 217, 223, 225 (Alaska 1987) (director should have accepted affidavit of registrar as to lost voter application; statute regarding name change to be construed to avoid disenfranchisement). But see Finkelstein v. Stout, 774 P.2d 786, 790-92 (Alaska 1989) (some requirements, such as proper attestation of the absentee ballot form, so affect the integrity of the process that vote cannot be counted even where fault lies with election officials).

This basic principle has been applied in other states to violations of registration procedures by election officials. Violations of election laws and constitutional provisions

requiring that a voter be sworn when registered, and registration by someone other than the actual registrar, were held not to invalidate the votes of otherwise qualified voters, where the error was the fault of the registrar (whether by inadvertence or fraud), not the voters. Quinn v. Lattimore, 26 S.E. 638, 639 (N.C. 1897). See also Gibson v. Bd. of Comm's, 79 S.E. 976, 977 (1913) (none of voters in local election properly sworn; voters can't be deprived of their right to vote through inadvertence or neglect of registrars); McPherson v. City Council, 107 S.E.2d 147, 151 (N.C. 1959) (irregularities in registrars' performance of their duties held not to void election where no evidence the election result was affected thereby); Overton v. Mayor of the City of Hendersonville, 116 S.E.2d 808, 815 (N.C. 1960) (failure of registrar to require oath, unsolicited "assistance" to voters in marking their ballots, and registration of voters by persons other than the registrar will not result in denial of right to vote where neither election officials or voters engaged in fraud; ignorance, negligence, or misconduct of election officials ought not to disenfranchise voters).

The courts of states other than North Carolina have adopted similar principles. Celler v. Larkin, 335 N.Y.S.2d 791 (N.Y. Sup. Ct. 1972), aff'd 335 N.Y.S.2d 801 (A.D.2d 1972), aff'd 288 N.E.2d 135 (N.Y. 1972), involves a primary election in which, among many other things, over 1300 voter registration cards were submitted by special street corner registrars without the two signatures required by law. The court ruled that the voters whose cards were not properly signed should not be disenfranchised because election officials neglected to perform a ministerial act. Recognizing that the statute was designed to prevent fraud, the court nonetheless ruled that it could not be interpreted to disenfranchise a voter who registered in good faith at a place designated by election officials and on forms supplied by them, without giving the voter an opportunity to rectify the improper registration. Id. at 797-98. Cf. Woodall v. City of Gadsden, 179 So. 2d 759, 760-61 (Ala. 1965) (votes of voters not properly vouched for should be counted where voters were without notice that their sponsor not eligible to vouch for them, and had otherwise complied with registrar's requirements); Malone v. Tison, 282 S.E.2d 84, 88-89 (Ga. 1981) (violation of mandatory statute regarding advertising of registration location won't defeat registration of those who had already registered; pre-election case); Robinson v. State, 61 S.E.2d 773, 777 (Ga. 1950) (irregularities in voter registration lists held not to invalidate election where they did not affect the result); In re Smock, 68 A.2d 508, 511 (N.J. Super. 1949) (registration of voters outside place designated by election officials by persons sympathetic to one candidate won't defeat election results);

Emery v. Robertson County Election Comm'n, 586 S.W.2d 103, 107-09 (Tenn. 1979) (failure of registrar to obtain answers to all questions on applications, and her great dereliction of duty in passing out large numbers of absentee ballots to persons associated with a candidate to distribute where law did not permit others to handle ballots, won't result in disenfranchisement of voters).

Here, there is no doubt that all but one of the voters are eligible to register, and would have been registered but for the improper signing of one person's name by another. There is no evidence to suggest that the voters acted in bad faith, or that the registrar and the person signing did anything other than exercise exceptionally poor judgment. Since there is evidence of a timely effort to register by each voter (better evidence, we submit, than the affidavit approved by the court in Fischer v. Stout), and no evidence of intent to interfere with the election by the registrar and signer, and since each voter is required to present evidence of identity when voting, there would seem to be sufficient safeguards against fraud to permit you to count these voters' votes this primary election.

III. Conclusion

The voter who has already cast a ballot should have her ballot counted if she is otherwise qualified. As to those who have not voted, we believe that, since the division learned of the irregularity too late to attempt to reregister everyone before the election, their votes should be counted if they do vote, provided they appear to be qualified but for the improper signature on their registration form. The division does have a burden to notify the voters affected of the problem with their registration and give them a reasonable amount of time to correct the situation, as the information they provided on the form needs to be provided to a bona fide registrar and signed properly. Cf. Quinn, 26 S.E. at 639; Celler, 335 N.Y.S.2d at 798.

We think it would be preferable for the voters to correct the information during the counting process. We understand, however, that phone information is not readily available for these voters, and it may be unrealistic to expect to reregister everyone before the counting closes if notice is by mail, preferably certified. We recommend that you make the effort to make phone contact, and that if that is unavailing, send certified notices requiring the voters to reregister. We are concerned about making backdated entries into the lists until an election official has verified the information on the registration card. The equivalent of this will occur when the

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voters who vote in this election, who will not be correctly listed on the register, fill out questioned ballot forms. The balance can be done on reregistration. You will want to make arrangements to be sure that the ballots of any of these 20 people who vote are brought to the attention of your staff in Anchorage.

KS:me