ORIGINAL

24-1277
No. _____

In the Supreme Court of the United States

PAMELA L. BICKFORD,
Petitioner,

v.

MICHAEL J. DUNLEAVY, ET AL.
Respondent.

On Petition for Writ of Certiorari
To The Supreme Court of Alaska

PETITION FOR WRIT OF CERTIORARI

Date: June 6, 2025

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QUESTIONS PRESENTED

Whether the failure of the Alaska Legislature to establish "state-based administrative procedures" is a violation of the Constitution of the United States, Article I, § 4 and the Help America Vote Act (HAVA) of 2002, 52 U.S.C. 21112.

Whether the failure of the Alaska Legislature to establish "minimum" requirements for administrative procedures is a violation of the Constitution of the United States, Article I, § 4; and HAVA, Subchapter III, 52 U.S.C. 21081-21083, to establish an Alaska State HAVA Plan; and

Whether, the failure of the Legislative Branch, the Executive Branch, and the Judicial Branch, of the State of Alaska; is a violation of HAVA and violation of the rights of qualified voters residing in Alaska to "State-based administrative complaint procedures" to file a complaint requesting a hearing on the record for claims of violation of federal HAVA requirements in the administration and conduct federal elections.

PARTIES TO THE PROCEEDING

Petitioner is Pamela L. Bickford. Respondents are Michael J. Dunleavy, in his official capacity as Governor of the State of Alaska; Nancy Dahlstrom, in her official capacity as Lieutenant Governor; Treg Taylor, in his official capacity as Attorney General; Carol Beecher, in her official capacity as the Director of the Division of Elections, and the State of Alaska.

RELATED PROCEEDINGS

State of Alaska, Division of Elections (Juneau, AK): Administrative Complaint and Request for Hearing, filed Sept. 1, 2022, dismissed Dec. 16, 2022.

Superior Court for the State of Alaska (Third Judicial District at Anchorage): *Thomas Oels, et. al., v. State of Alaska, et. al.,* No. 3AN-22-09328CI, filed Nov. 30, 2022, dismissed May 12, 2023.

Supreme Court of the State of Alaska: *Pamela L. Bickford, et al., v. State of Alaska, et. al.,* No. S-18776, filed June 16, 2023, decision Jan. 2, 2025.

Separate from this case, but related:

The U.S. District Court for the District of Alaska: *Thomas W. Oels, David H. Johnson, Pamela Bickford, William C. de Schweinitz, and Loy A. Thurman, v. Michael J. Dunleavy, et. al.,* No. 3:23-cv-00006-SLG. Appellants filed an admin. agency appeal on Jan. 13, 2023 (dismissed Aug. 28, 2023).

In the U.S. Court of Appeals for the Ninth Circuit: *David H. Johnson, Pamela L. Bickford, and Loy A. Thurman,* Complainants-Plaintiffs-Appellants, *v. Michael J. Dunleavy, et. al.*, Defendants-Defendants-Appellees, No. 23-35598, filed Nov. 16, 2023 (stayed by appellants' Feb. 20, 2025, motion to stay Court's appointment of counsel and stay proceedings to file this writ of certiorari).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Pamela L. Bickford respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Alaska.

OPINIONS BELOW

The memorandum opinion and judgment of the Alaska Supreme Court is attached, (App., 2a-15a). The opinions of the Alaska Superior Court are reproduced in Petitioner's Appendix, (App., 18a, 20a, 21a, 22a, and 23a).

JURISDICTION

The Memorandum Opinion and Judgment of the Supreme Court of Alaska was entered on January 2, 2025, (App. 2a). The Office of the Clerk on April 8, 2025, extended the time to submit the petition in corrected form within 60 days of the date of her letter. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL PROVISION INVOLVED

Article I, Section 4, of the United States Constitution provides: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Further, Article I, Section 8, cl. 18 provides, Congress shall have Power: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers

vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

STATUTORY PROVISIONS INVOLVED

52 U.S.C. 21112 of the Help America Vote Act of 2002 (HAVA) provides for establishment of "State-based administrative complaint procedures to remedy grievances," a statutory requirement. Further, the complaint procedures are to provide "minimum" requirements for complaints "a person" believes to be "a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur)," 52 U.S.C. 21112(a)(2)(B).

STATEMENT OF THE CASE

This case presents foundational constitutional questions whether Alaska has "unreasonably delayed" establishing a compliant state-based HAVA Plan with state-based complaint procedures, by Jan. 1, 2004. The State of Alaska is a State of the United States of America and is subject to the requirements of HAVA, including specifically those requirements with respect to state administrative complaint procedures. 52 U.S.C. 21112, 21141.

I. Factual and Legal Background

A. The Help America Vote Act

Congress passed the Help America Vote Act of 2002 (HAVA) (52 U.S.C. 10101-30146), establishing the Elections Assistance Commission (EAC), recodifying all previous Acts of Congress providing protection for the election franchise, and established a program to assist States to conduct elections for

federal offices by providing federal funds. State complaint procedures, 52 U.S.C. 21112, were to have been provided to "any person" claiming a violation of federal statutes not subject to standing, a statute of limitations, ripeness, or mootness, as the goals were to improve the administration of elections for Federal office. The procedures allow a complainant to correct State records to protect a person's private interests, remedy grievances to protect the public's interest in the electoral processes of federal elections and ensure the public's confidence in State elections.

B. State Complaint Procedures to Remedy Grievances.

HAVA, 52 U.S.C. 10101-30146, was enacted pursuant to Congress's constitutional authority to alter state laws governing the administration of federal elections. *See*, United States Constitution, Art. I, § 4. If a "State receives any payment under a program under this chapter, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2)," 52 U.S.C. 21112(a)(1). Additionally, when a State is a "nonparticipating State" the State shall either "certify to the Commission that the State meets the requirements of subsection (a) in the same manner as a State receiving a payment under this chapter;" or "submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of subchapter III." 52 U.S.C. 21112(b).

To date, the Alaska legislature has not enacted statutes to establish the State-based administrative complaint procedures per 52 U.S.C. 21112 nor has it

enacted statutes establishing the "minimum requirements" for a State Plan per subchapter III (52 U.S.C. 21081-21083). Alaska regulations, 6 AAC 25.400-.490 not only do not comply with statutory requirements of 52 U.S.C. 21112(a)(2) but were promulgated by State election officials but have never been enacted by the Alaska legislature's rule-making procedures.

C. Elections Clause and the State Plan and Complaint Procedures.

HAVA clearly delineated the respective roles of the States and the federal government on one hand, and individual voters on the other, in its enforcement. Congress's statute provides Article I administrative complaint procedures must be exhausted prior to state judicial review. The United States Constitution itself provides that while Congress is authorized to modify those rules, it has always recognized a State's historic and constitutional role in administering federal elections. HAVA's enforcement scheme demonstrates that Congress intended election mechanisms to remain largely the province of the States, requiring individual citizens to seek redress within those state systems. By requiring each State to provide an administrative enforcement process for individual complaints that provides real relief, HAVA makes certain that state and local election officials comply with its requirements. The statute rests on Congress's power to regulate federal elections, and on its power under the Necessary and Proper Clause, to enact laws

to protect the federal election process from potential corruption.[1]

State law defines the qualifications and privileges of voters as, "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State ... shall be entitled and allowed to vote at all such elections..." 52 U.S.C. 10101(a)(1). And, to "vote" is defined as "all actions necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election," 52 U.S.C. 10101(e). The term "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State." *Id.* Congress intentionally refers to state law for qualification and definition of terms.

The Elections Clause provides: The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the chusing Senators." U.S. Constitution, Art I, § 4.[2] This Clause could have said that these rules are to be prescribed "by each State," which would have left it up to each State to decide which branch, component, or officer of the state government should exercise that power, as States are generally free to allocate state power as they choose. But that is not what the

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[1] Federal Prosecution of Election Offenses, by Richard C. Pilger, Director of the Election Crimes Branch (8th Edition, Dec. 2017).
[2] *Declaration of Independence and the Constitution of the United States,* U.S. Citizenship and Immigration Services (rev. 07/08).

Elections Clause says. Its language specifies a particular organ of a state government, its legislature and the Court must take that language seriously.

The Supreme Court in *Moore v. Harper*, 143 S. Ct. 2065, 600 U.S. 1, 2 (2023) found:

> "The Clause "imposes" on state legislatures the "duty" to prescribe rules governing federal elections. *Arizona v. Inter-Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). It also guards "against the possibility that a State would refuse to provide for the election of representatives" by authorizing Congress to prescribe its own rules."[3]

In this case, the Alaska Legislature has not enacted a required provision of HAVA, 52 U.S.C. 21112, and by not enacting "state-based administrative complaint procedures" State officials essentially authorize "Congress to prescribe its own rules." The question presented is one of federal law - not state law.

The Supremacy Clause provides in relevant part that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Constitution, Article VI, § 2. The Clause thus enshrines and safeguards Congress's legislative authority by depriving the States of any "power ... to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vesting in the general government." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436

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[3] *Moore v. Harper*, 600 U.S. 1, p. 2 (2023).

(1819). Any state law that conflicts with federal law is "without effect." *Maryland v. Louisiana,* 451 U.S. 725, 746 (1981). The Supremacy Clause thus strikes a specific "federal-state balance," in which federal actions "supersede" inconsistent actions of the States in areas the Constitution assigns to the federal government's authority, providing a rule of decision for resolving "federal-state conflict[s]." *Geier v. American Honda Motor Co.*, 529 U.S. 861, 874 (2000).

Alaska has a shared system of responsibility for the conduct of federal elections. Alaska does not elect constitutional sheriffs, relying on the Supremacy Clause, Article VI, cl. 3, that all members of both legislatures, and all executive and judicial Officers, both of the United States and of the several States, "shall be bound by Oath and Affirmation, to support [the U.S.] Constitution."

The following Alaskan executive officers are: (1) The Governor is an elected officer of Alaska, Constitution of the State of Alaska, Article III, § 1, and in his official capacity as Governor, is responsible for "the faithful execution of the laws ... enforce compliance with any constitutional or legislative mandate ... restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions," *Id.*, § 16; (2) The Lieutenant Governor is the elected chief state election official, who "shall control and supervise the division of elections" and "appoint a director of elections," AS 15.10.105; (3) The Director of the Alaska Division of Elections is responsible for "general administrative supervision over the conduct of state elections and adopts regulations under AS 44.62" "necessary for the administration of state elections." AS 15.15.010; and

(4) The Attorney General is appointed by the Governor, Alaska Constitution, Article III, § 25.

II. Proceedings Below

A. *Arctic Village Council v. Meyer* and *Meyer v. Arctic Village Council* Stipulated Agreement to Waive Statutes and Regulations.

On Aug. 31, 2020, prior to the General Election on Nov. 5, 2020, the Lt. Governor and Director of the Division of Elections received correspondence, from three individuals demanding State election officials alter election procedures for the upcoming General Election to "Let every Alaskan vote: waive the absentee witness requirement." (ER 109-112).

On Sept. 4, 2020, Lt. Governor Meyer responded that he "lacked the power to unilaterally waive the statutory witness requirement." (ER 113).

On Sept. 8, 2020, the Native American Rights Fund filed suit in the Superior Court, *Arctic Village Council v. Meyer*, No. 3AN-20-07858 CI.

On Oct. 5, 2020, the U. S. Supreme Court found two reasons for granting an application to stay an injunction: first, the Constitution "entrusts the safety and the health of the people to the politically accountable officials of the States," and second, the Supreme Court "repeatedly emphasized that federal courts ordinarily should not alter state election rules in the period close to an election," *Andino v. Middleton,* 141 S.Ct. 9 (2020).

On Oct. 6, 2020, in *Arctic* Village, the State of Alaska Department of Law filed a notice and proposed preliminary injunction order detailing the waiver of the "Witness Requirement" for Absentee Ballots, as required by AS 15.20.066(b), AS 15.20.081(d), 6 AAC

25.550, and 6 AAC 25.680 revising absentee/by-mail ballot verification as "an unconstitutional burden on the right to vote." (ER 114-124).

The Alaska Superior Court order was dated Oct. 5, 2020.

On Oct. 6, 2020, the State appealed in *State of Alaska v. Arctic Village,* S-17902.

On Oct. 12, 2020, less than a month before the Nov. 5, 2020, General Election, the Alaska Supreme Court granted the petition for review and affirmed the superior court's order. Based on this order, citing State court order, the Division of Elections posted public notice waiving the election procedures requiring witness signatures for all absentee ballots.

On Sept. 11, 2021, the full opinion in *State of Alaska v. Arctic Village,* was issued and reported at 495 P.3d 313 (Alaska 2021). *Id.* The documents Petitioner and other complainants filed as exhibits to the administrative complaint were copied from publicly available court records from the excerpt of records in S-17902.

B. Citizens' Administrative Complaint

Months after the 2020 presidential election, citizens became aware of the October 5, 2020, Superior Court decision in *Arctic Village Council v. Meyer,* 3AN-20-07858CI, wherein the Alaska Superior Court by preliminary injunction, ordered election officials to vacate the "witness requirement" and the statutes and regulations providing for the casting and counting for all absentee ballots, finding under State law, the safeguards to be an unconstitutional burden on the right to vote in the 2020 general election.

On Sept. 1, 2022, without Alaska legislative guidelines, policies, or procedures, relying on federal

statutes and a copy of the Alaska Department of Law "Hearing Officer Handbook," Petitioner and four other interested citizens filed *pro se* a written, notarized, administrative complaint with a request for a hearing, signed by all five complainants (App 1a).

The Administrative Complaint ("Complaint") alleged: 1.) the Alaska legislature failed to enact HAVA requirements and as a result state officials had not administered federal elections in compliance with federal law for an unknown number of years; 2.) due to lack of public notification of HAVA requirements several State decisions, administrative and judicial, conflicted with federal law; 3.) the Alaska regulations purporting to resolve HAVA complaints were inconsistent with the federal statute; 4.) requests for relevant documents regarding a State audit of the Division of Elections, and 5.) a request for access to election records to conduct an independent forensic audit of the certified election.

The purpose of the Complaint was to notify Executive Branch officials, of the lack of state law that complied with federal election law regarding citizen complaint procedures and the failure to identify the "minimum requirements" to be established by the legislature. The requested hearing was to obtain the documentary evidence needed to justify the Governor's emergency changes requiring "the force of law," vested in the Governor by the Constitution of the State of Alaska, Article III, under his power and authority, § 1, § 16, §17, § 22, § 23, and § 24, as he had recently exercised in January 2020 in his response to the "pandemic."

As residents, the Constitution of the State of Alaska, Article I, § 1, identifies Inherent Rights "that all persons are equal and entitled to," and "that all

persons have corresponding obligations to the people and to the State." As citizens, the Constitution of the United States, Amend. I, provides no law abridging "the right of the people" to "petition the government for a redress of grievances." Petitioner and other citizens alleged "as citizens and as residents of the State of Alaska, it [was] our right and our duty to protect the voting franchise from state officials maladministering our elections"[4] in a "manner that compromises our representation in Congress,"[5] and "yields to federalization of our state's elections."[6]

C. Proceeding of the Directors' Complaint

On Sept. 19, 2022, the Director of the Division of Elections raised issues with the Administrative Complaint.[7] The Director's correspondence raised conflict-of-interest issues as she refused to refer the Complaint to an impartial employee, a hearing officer, another impartial state official, or a designee of the Office of Management and Budget as required by 6 AAC 25.440(a)-(c). The Director was concerned the complaint did not meet the standard of 6 AAC 25.400-.490, or the jurisdictional time limits in 6 AAC 25.430. (Appellants' Brief, p. 4). In contrast, 52 U.S.C. 21112(a)(2)(B) provides "a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint."

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[4] U.S. Const., Amend. XIV, § 3.
[5] U.S. Const., Amend. XIV, § 2.
[6] U.S. Const., Article IV, § 4.
[7] The Director was a defendant in the *Arctic Village Council* State court case wherein State administrators agreed to waive statutes and regulations safeguarding all absentee ballots in the 2020 election.

On Oct. 17, 2022, the Director raised a specific objection that "the Division's HAVA complaint regulations are limited in scope and include strict pleading requirements ... [and] the Complaint fails to meet these requirements ... the Division rejects the Complaint for filing." (ER 100-104). *Id.*

On Nov. 30, 2022, Complainants filed a complaint in State Superior Court to accommodate the Director's objections. Aware that the 90-day deadline to appoint a hearing officer was imminent, the citizen complainants complied with the Director's implied instructions by a filing the objectionable claims with Alaska's Superior Court (ER 54-73).

D. Proceedings in State Superior Court

Without a final administrative decision, on Nov. 30, 2022, complainants filed in Alaska Superior Court a complaint requested declaratory and injunctive relief, citing failure of the State to enact federal HAVA requirements, and objected to the action of state officials who were parties in the court decision to waive the witness requirement for all absentee ballots (ER 60-61).

On January 25, 2023, Petitioner and other complainants ("Plaintiffs") filed a discovery request to produce documents requested in the Administrative Complaint.

On February 27, 2023, the State filed a motion to dismiss citing Civil Rule 12(b)(6) for failure to state a claim as the "Division is accused of nothing more than following court orders." (ER 74-81)

On April 3, 2023, the Court dismissed the complaint with prejudice (App. 23a).

Realizing the case as filed and then amended may have confused the Court, Plaintiffs motioned for

a pre-trial conference and leave to file a second amended complaint, but under the appellant rules as the same issues had been raised in an administrative complaint and request for a hearing. The Court dismissed the complaint with prejudice on April 13, 2023 (22a).

On April 21, 2023, Plaintiffs filed a motion to amend judgement and a second motion to file a partial notice of appeal under Appellate Rule 602 requesting a trial de novo for the by-then dismissed Initial Administrative Complaint.

On May 12, 2023, the Superior Court dismissed the complaint with prejudice (20a, 21a) but also denied the State's request for attorney's fees (18a).

E. Proceedings in Alaska Supreme Court

On June 16, 2023, Appellants filed a notice of appeal. On Aug. 2, 2023, Superior Court Judge Guidi filed a subsequent "Order on Motion for Attorneys' Fees" recounting the request for an award of attorney fees, his deliberation regarding his May 12, 2023, order - suggesting alternative rules by which the State may receive an award of attorney fees from the opposing party.

On Aug. 14, 2023, Appellants motioned to stay proceedings for leave to request the U.S. Department of Justice, Civil Rights Division for a statement of interest regarding the State of Alaska's compliance with HAVA, specifically 52 U.S.C. 21112 (24a) and the requirements of subchapter III, 52 U.S.C. 21081-85. A statement of interest was to assist the Court "in adhering to the interpretation and constitutionality of federal civil rights statutes that the Department of Justice is empowered to enforce." The motion was both opposed and denied on August 18, 2023.

On Sept. 12, 2023, Appellants motioned to supplement the record with the Division of Election's administrative complaint record. The motion was both opposed and denied on September 19, 2023 (16a). The record was compiled, briefing proceeded, and the reply brief was filed January 11, 2024. The decision of the Alaska Supreme Court was issued Jan. 2, 2025 (2a).

REASONS FOR GRANTING THE PETITION

A reviewing court lacks authority to disregard evidence of the total failure of the Legislature, the Executive Branch, and the Judicial Branch of the State of Alaska to enact compliant federal election administrative requirements. The decision below is irreconcilable with a fair reading of a federal statute unambiguously requiring the State to establish state-based administrative complaint procedures to remedy grievances of alleged violations of federal election law.

The Alaska Supreme Court departed from the decisions of two other state courts of last resort, which have correctly applied the principles of judicial review of an Article I administrative hearing under the Administrative Procedures Act (APA), recognizing the authority vested in the State Legislature by the U.S. Constitution, Article I, Section 4, as to the times, places, and manner of federal elections. The decision below threatens to unsettle the federal and State shared responsibility for the lawful administration of federal elections conducted by each State. The petition for a writ of certiorari should be granted.

I. This case raises a question of exceptional importance to the people of Alaska.

A. Separation of Powers and Judicial Notice

The Alaska Legislature, in violation of the Constitution of the United States, Article I, Section 4, in violation of the Help America Vote Act, and in violation the Constitution of the State of Alaska's separation of powers, has not, to date, enacted state-based administrative hearing procedures required by 52 U.S.C. 21112. Although, the Alaska Legislature has enacted fifty-plus administrative hearing procedures required by both federal and state statutes, AS 44.64.030(a), under the State APA, the "state-based administrative complaint procedures" required by HAVA, 52 U.S.C. 21112, are not identified by the Alaska Department of Administration, Office of Administrative Hearings, (https://oah.doa.alaska.gov) as requiring Article I administrative procedures.

The Alaska Supreme Court, in *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 35 (2007), found:

> "We have recognized that the separation of powers and its complementary doctrine of checks and balances are part of the constitutional framework of this state. The separation of powers doctrine is derived from the distribution of power among the three branches of government. The Alaska Constitution vests legislative power in the legislature; executive power in the governor; and judicial power in the supreme court, the superior court, and additional courts as established by the legislature. The separation

> of powers doctrine limits the authority of each branch to interfere in the powers that have been delegated to the other branches. The purpose of the separation of powers doctrine are to preclude the exercise of arbitrary power and to safeguard the independence of each branch of government." (citations omitted) .... Although the Alaska Constitution vests judicial power in the courts, it also explicitly envisions legislatively created quasi-judicial agencies within the executive branch," *citing* the Alaska Constitution, Article III, § 22.

The State of Alaska has a rich history of providing administrative complaint and hearing procedures while maintaining the separation of powers within Alaska's constitutional framework. As the authority vested in the Legislature to prescribe the "Manner of holding Elections," Article I requirements to establish state complaint procedures to protect federal elections the State of Alaska has failed to uphold its statutory and constitutional obligations to the people of Alaska and fulfill its contractual obligation with the federal government for the receipt of federal funds.

B. A State Chief Executive Officer is Required.

In passing HAVA, Congress required States to establish administrative complaint procedures to remedy grievances under a Chief Executive Officer by Jan. 1, 2004, (App. 25a). *See also* 52 U.S.C. 21112(a) - (b)(1), and 20509.

Under the APA, as a condition for receipt of federal funds "the chief executive officer of the State" certifies "that the State is in compliance with the requirements ... of the requirements ... of the Help America Vote Act

of 2002." 52 U.S.C. 20509, 21003(a). Alaska's Chief Executive Officer is the elected Lieutenant Governor, not the appointed Director of the Division of Elections.

C. AK HAVA Complaint Procedure Notice

Twenty three years after Congress passed HAVA, requiring establishment of "state-based administrative complaint procedures" (52 U.S.C. 21112) and State HAVA Plan for Alaska (52 U.S.C. 21081-21085), the Alaska State Legislature has not enacted either federal requirement, in violation of both the U.S. Constitution and the Constitution of the State of Alaska.

The State of Alaska has complied with the EAC Federal Register notification, but the Alaskan public was not informed, training for local election officials did not inform precinct officials, no election-related publication contain notification of State complaint procedures, and there is no public access to prior decisions resolving grievances of any complaint.

Due to the significant federal interests at stake in this case in Alaska's compliance with HAVA, Petitioner requests the Court to call for the views of the Solicitor General as to a fair reading of the federal statutes questioned that are applicable to each State.

II. The Decision Below Creates a Conflict Among State Courts on the Questions Presented

Alaska Supreme Court departed from decisions of two other state courts of last resort, Colorado and Iowa, which have applied the principles of judicial review of an Article I administrative hearing under the APA, recognizing authority vested in both State and Congress under the Elections Clause to protect

the integrity of federal elections, *McConnell v. Federal Election Comm'n.*, 540 U.S. 93, 187 (2003), *Ex parte Yarbrough*, 110 U.S. 651, 657-58 (1884), and *McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316, 421 (1819).

Both courts held that upon judicial review the judgment below erred in determining the complainant lacked standing to file an administrative complaint under HAVA and erred in failing to hold a hearing at the request of the complainant.[8] Both cases were remanded with instructions for hearing on the record.

a. In *Marks v. Gessler*, 350 P.3d 883 (Aug. 1, 2013) (page citation to Westlaw 2013 COA 115 "p.#"), the Colorado Court of Appeals held: Colorado "adopted the State HAVA in 2003 to implement the changes required by the federal HAVA, to obtain federal funds, and to provide" Colorado Department of State "with sufficient authority to ensure Colorado's compliance with the federal HAVA, § 1-1.5-101(2), C.R.S. 2012," pgs. 7-8. *Marks* filed an administrative complaint alleging her belief that HAVA violations "had occurred or were occurring in the 2010 general election." *Id.*, p.8. Without holding a hearing, defendants dismissed Marks's complaint for lack of standing. *Id. Marks* then filed to obtain judicial review of the dismissal of her complaint on standing grounds and that she had a federal right to receive a hearing on the record in connection with her HAVA complaint. *Id. Marks* requested the court determine that a conflict existed between state and federal law relative to the standing requirements, and that the federal standard was controlling. *Id.*

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[8] Both cases are distinguishable from this case, as both Colorado and Iowa have enacted a State HAVA Plan – Alaska has not.

Marks sought an order reversing the secretary's dismissal of her administrative complaint and remanding the matter to the State administrative procedures with instructions to provide her with a hearing on the record. Marks also sought an order directing the secretary to comply with requirements by submitting a report to the general assembly explaining the conflict between the two statutes and suggesting language to resolve the conflict. *Id.*

Defendants moved to dismiss all claims under Colorado Rules of Civil Procedure 12(b)(1) and (5), asserting Marks lacked standing and had failed to state a claim for relief, and that the court lacked subject matter jurisdiction to declare the existence of a conflict between the state HAVA and the federal HAVA. *Id.* The court issued an order denying defendants' motion to dismiss and stated that defendants had erred in dismissing Marks's complaint on standing grounds and that she was entitled to a hearing. *Id.*

Following issuance of the original order, defendants filed an answer to Marks's complaint, parties exchanged initial disclosures and requested a trial setting conference. *Id.* The court issued an order "Addendum to Court's Order" stating that the court was clarifying its original order and determined that Marks "is entitled to a hearing on the issues she alleged in the {administrative} complaint," citing for its authority to act, *City & County of Denver v. Board of Assessment Appeals*, 947 P.2d 1373, 1380 (Colo. 1997), as courts reviewing under the APA have plenary authority to review and remand a case for further proceedings if it concludes that the agency has acted contrary to law. *Id.*

Under its standard of review, the court reviewed the APA procedures for judicial review of an administrative proceeding and the issue of statutory interpretation "according to its plain and ordinary meaning without resort to any statutory construction aids," *Id.* p.10. In reviewing the APA, State HAVA, and application of the law to the APA's definition of a "state agency," the court found the prerequisite for judicial review "... is a final agency action, not a final agency adjudication." *Id.* p.11. The court then distinguished an administrative remedy from a judicial remedy. *Id.*, p.12. *Black's Law Dictionary* 1407 (9th ed. 2009) defines both a "judicial remedy" and "administrative remedy," finding the appeal clause, which allows a person aggrieved by a final determination of the secretary to appeal the decision to potentially obtain a judicial remedy. *Id.*

The Defendants contended *Marks* lacked standing to maintain her first claim for relief in which she sought judicial review of the administrative determination. The Court found; under Colorado law a plaintiff must satisfy two criteria: a plaintiff must have suffered an injury in fact, and second, the harm must have been to a legally protected interest. *Id.*, p.17. Citing state case law finding an injury in fact conferring standing "may exist solely by virtue of statutes creating legal rights the invasion of which creates standing," *Id.* and a right to judicial review of administrative action under APA is limited to those "persons or parties adversely affected or aggrieved by agency actions," noting "[i]n the context of administration action, the injury in fact element does not require that a party suffer actual injury, as long as the party can demonstrate that the administrative action threatens to cause an injury." *Id.*

Reviewing the layers of judicial review, the Court of Appeals found: Colorado § 1-1.5-105(2)(b) "provides *Marks* with a right to file a state HAVA complaint, and section 1-1.5-105(2)(g) states that a complainant is entitled to a hearing on the record." In addition, "*Marks* has a right under section 24-4-106(2) of the APA to seek judicial review of the agency action. *Id.*, p. 18. Defendants' dismissal of her complaint for lack of standing violated her right to file a state HAVA complaint, and therefore, she was adversely affected by the decision...concluding that judicial review of a final agency action is limited to those parties to the proceeding before the administrative agency whose rights, privileges, or duties are adversely affected by the decision." The Court found the defendants erred and "that *Marks* has satisfied the jurisdictional prerequisites for standing, as well as the standing requirements to obtain judicial review of an agency action under the APA and HAVA." *Id.*

b. In *Linn County Auditor Joel Miller v. Iowa Voter Registration Commission,* 13 N.W. 3d 1 (Oct. 2024) (WL 4469172, p. 1). The Supreme Court of Iowa found: "Iowa has a shared system of responsibility for the conduct of elections." The case began when a county auditor filed an administrative complaint raising concerns about the security and integrity of the statewide voter registration file. The Secretary of State moved to dismiss the complaint without further proceedings. The administrative body dismissed the complaint. On petition for judicial review, the State raised an additional argument that the county auditor lacked standing to pursue the matter in court. The court denied relief and the county auditor appealed. *Id.*, p. 5. The Supreme Court of Iowa reversed and remanded, "we conclude that the administrative body

acted improperly in resolving factual questions without allowing an opportunity for the presentation of evidence." *Id.* The Court reviewed proceedings for the July 1, 2019, administrative complaint, to the Iowa VRC (alternative when the secretary of state is a respondent) voting 2-1 to dismiss the complaint.

The County Auditor petitioned for Judicial Review and the district court dismissed the case finding the auditor "had not demonstrated an injury in fact." The Supreme Court of Iowa, citing Iowa Admin. Code r. 721-25.2 and 52 U.S.C. § 21112(a)(2)(b), found the county auditor, who was "responsible for conducting elections within their own counties" satisfied "standing," the Dec. 2019, hearing "was not a merits hearing," and VRC "should not have decided factual issues at the motion to dismiss stage ... [f]indings of fact shall be based solely on the evidence in the record and on the matters officially noticed in the record," concluded dismissing the "petition for judicial review should be reversed [and] remanded for further proceedings consistent with this opinion." *Id.*, p.13.

In sum, there are a limited number of decisions in cases reviewing administrative decisions in States that have adopted a State Plan in furtherance of the requirements of federal law. There are no state cases providing judicial review guidance of administrative hearing conducted by State executive branch officials who did not have legislative authority to conduct State administrative complaint procedures with a request for hearing. This Court's review is warranted.

III. Abuse of Discretion Denying Due Process.

The Alaska Supreme Court Memorandum and Judgment affirming the Superior Court's dismissal with prejudice on state grounds and not based on a record sufficient to afford judicial review denied aggrieved administrative complainants "due process." The Constitution of the State of Alaska, Art. I, § 7. Due Process:

> No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

The State Courts in Colorado and Iowa found under State law, a plaintiff must satisfy two criteria: the plaintiff must have suffered an injury in fact, and second, the harm must have been to a legally protected interest. Both Courts found, a denial of administrative complaint procedures is an injury to a protected interest provided by federal statute and is a deprivation of due process. The protected interest is a "fair and impartial trial" defined in *Black's* (6th ed. 1997), as

> "[a] hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial considerations of evidence and facts as a whole. A basic constitutional guarantee contained

> implicitly in the Due Process Clause of Fourteenth Amendment, U.S. Constitution."

The administrative injury to a complainant's access to State administrative complaint procedures requesting a hearing, is not resolved when a State administrator dismisses a complaint without a hearing on the merits. A reviewing State court does not resolve the administrative complaint by dismissing the case by finding aggrieved complaints failed to "state a claim."

As the Alaska Supreme Court has found: a right to appeal in superior court includes the right to a record sufficient for appellate review, in an administrative appeal by a pro se appellant aggrieved by an administrative decision "where there is an alleged violation of fundamental constitutional rights in an adjudicative proceeding producing a record capable of review," *Brandon v.* State, 938 P.2d 1029, 1032 (1997), (citing *Owen v. Matsumoto*, 859 P.2d 1308, 1310 (1993)).

Further, the Alaska Supreme Court reviewing an appeal to a superior court found appellate jurisdiction could be cured pursuant to AS 22.10.020(d)[9] if the record is "insufficient for appellate review" when "appeal is provided by law." In *Smith v. Municipality of Anchorage,* S-18710 (2025 WL 1352024, p. 10), the Alaska Supreme Court reversed and remanded the decision of the superior court for further proceedings adding:

> If "the court determines that the existing administrative record is inadequate for purposes of meaningful appellate review, our cases illustrate some of the options for dealing

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[9] 6 AAC 25.460(h) "the final decision of an administrative agency under AS 22.10.020(d) for which review may be sought."

with that inadequacy, including (1) ordering the Municipality to supplement the record,[10] (2) remanding the case to the Municipality for further proceedings,[11] and (3) conducting a trial de novo.[12]

Appellate review of State-based administrative complaint procedures which provide a venue for opposition and challenges to the State administration of the electoral system to repair the broken links and strengthen the weak links - serve to ensure the overall betterment of future elections. The process of filing an administrative complaint with a request for a hearing on the record, the process of the decision maker, and the resulting decision (available to any interested individual) is an invaluable educational resource for the public.

Administrative complaint procedures cover a wide range of claims, from considering claims violating an individual's private interests (who is qualified to vote) in registering to vote or obtaining a ballot, to claims alleging the public's interests in a free and fair election franchise have been abandoned years ago by a previous administration. This is a remedy required by federal law to provide administrative procedures to prevent "corruption of the election process."[13] The premise is "[e]lection crimes usually occur largely in public," "often involve many players," and "tend to leave paper trails, either in state voting

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[10] *Sw. Marine, Inc. v. State, Dep't of Transp. & Pub. Facilities, Div. of Alaska Marine Highway Sys.*, 941 P.2d 166, 172 (1997).
[11] *Yost v. State, Div. of Corps., Bus. & Pro. Licensing*, 234 P.3d 1264, 1274 (AK 2010).
[12] *Sw. Marine*, 941 P.2d at 172.
[13] *Federal Prosecution of Election Offenses*, p. 1, by Richard C. Pilger, Director of the Election Crimes Branch (8th ed., 2017).

documentation or in public reports filed by federal campaigns."[14]

In this case, in part because the superior court did not have a statute providing State complaint procedures, the superior court did not obtain the administrative record from the Division of Elections, (1) because there had not been a final decision, (2) the Director would not refer the complaint to an impartial or alternative state official as provided by 6 AAC 25.440(c) [App 37a], and (3) Petitioner and interested persons were ignorant of appellant procedure in cases where the state official receiving the complaint and request for hearing simply raises threshold pleading requirements not found in the federal statute, 52 U.S.C. 21112.

However, instead of reviewing the federal law in this complicated case, the Alaska Supreme Court recounted numerous procedural errors that were attributed to the citizens aggrieved by the delays, decisions, and final dismissal by the administrative officials (App 1a, 2a, 4a, 5a, 6a, 7a, 8a, 9a, 10a, 11a, 12a, 13a, and 14a). Upon notification on December 16, 2022, that the Director dismissed the complaint, aggrieved complainants attempted to correct the deficiencies in the original and amended pleadings, (App 15-16 a, 19a, 20a, 21a, and 22a).

Complainants, now appellants, upon realizing their err, (*see* "Proceedings in State Superior Court" above) attempted to correct the record to reflect the present claims were filed as provided by administrative regulations, and exhausted administrative remedies, as required by the APA for judicial review by a State court. Complainants reasoned that if the superior

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[14] *Id.*, p. 2.

court obtained the administrative record, the court would reverse his dismissal as the claim before the superior court, if viewed in context of the related claims alleged in the original complaint - it would be evident to the Court that the complaint alleged the States' failure to establish state law providing the policies, practices, and procedures of federal statutes required by law. The Alaska Supreme Court failed to recognize or acknowledge the Alaska legislature had not enacted the federal statutes into state law, a claim alleged in the administrative complaint filed by mail on Sept. 1, 2022, to the Director of Elections (App 1a).

The Alaska Supreme Court on appeal refused to remand the case to the lower trial court and obtain the administrative record from the Division of Elections. Appellant's motion filed on Sept. 12, 2023, opposed on September 19, 2023, and denied on September 22, 2023 (App 15a) preserved the request for the administrative record for this review.

Petitioner's request is this Court vacate the Alaska Supreme Court decision, vacate the Superior Court dismissal, and remand this case to a competent court for an administrative hearing and a decision on the record.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Pamela L. Bickford DATED: June 6, 2025