APPENDIX

PETITION FOR WRIT of CERTIORARI

The SUPREME COURT of the STATE of ALASKA

PAMELA L. BICKFORD, et al.,	) Supreme Ct.
Appellants,	) No. S-18776
	) Superior Ct. No.
v.	) 3AN-22-09328CI
STATE OF ALASKA, et.al.,	)
Appellees.	)

MEMORANDUM OPINION AND JUDGMENT*

No. 2065 – January 2, 2025

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Andrew Guidi, Judge.

Appearances: Pamela L. Bickford, pro se, Anchorage, David H. Johnson, pro se, Wasilla, and Loy A. Thurman, pro se, Wasilla, Appellants. Thomas S. Flynn, Assistant Attorney General, Anchorage, and Treg Taylor, Attorney General, Juneau, for Appellees.

Before: Maassen, Chief Justice, and Carney, Borghesan, Henderson, and Pate, Justices.

* Entered under Alaska Appellate Rule 214.

I. INTRODUCTION

Citizens filed a complaint with the Division of Elections in late 2022, alleging various violations of state and federal law in the November 2020 general election. The Division sought clarification, then rejected the complaint on grounds that it failed to satisfy regulatory requirements.

The citizens then filed a complaint in superior court, contending that various state officials and entities acted unlawfully by complying with judicial

orders in *Arctic Village Council v. Meyer*[1] suspending the witness requirement for absentee ballots in the context of the COVID-19 pandemic. The superior court dismissed the citizens' complaint for failure to state a claim under Alaska Civil Rule 12(b)(6).

The citizens appeal, arguing that the court erred by dismissing their claim. We construe their arguments as also asserting that the court abused its discretion by not reviewing the Division's rejection of their administrative complaint or considering the legality of the Division's regulations governing the complaint process. But because the superior court did not err or abuse its discretion, we affirm its judgment dismissing the case.

II. FACTS AND PROCEEDINGS

A. *Arctic Village Council* And The Administrative Complaint

Alaska law requires absentee ballots to be signed not only by the voter but also by a qualified witness.[2] In September 2020, in the midst of the COVID-19 pandemic, the League of Women Voters of Alaska and the Arctic Village Council sued to enjoin the Division of Elections from enforcing the witness requirement for the November 2020 general election.[3] The plaintiffs in *Arctic Village Council* argued that requiring absentee voters to choose between not voting or risking infection by coming into contact with someone outside their households in order to satisfy

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[1] No. 3AN-20-07858 CI, 2020 WL 6120133 (Alaska Super., Oct. 5, 2020), *aff'd sub nom. State v. Arctic Vill. Council*, 495 P.3d 313 (Alaska 2021).

[2] AS 15.20.081(d).

[3] *Arctic Vill. Council*, 495 P.3d, 316-17.

the witness requirement was an unconstitutional burden on the right to vote.[4]

The superior court agreed with the plaintiffs and granted the requested preliminary injunction.[5] To effectuate relief, the court ordered the parties to submit a proposed order giving specific directions to the Division on how to implement and inform the public of the witness requirement's suspension.[6] The court directed that the parties immediately confer and, if possible, stipulate to a proposed order addressing "proposed language to be displayed on the Division's website and any other appropriate state websites"; proposals for the use of social media, television, and radio; whether it was still feasible to send informational mailings to absentee voters; and "any other topics the parties believe to be relevant to implementation of the order."[7] The court further ordered: "If they cannot agree, each party shall submit a proposed order."[8] Accordingly, the State negotiated a proposed order with the plaintiffs and submitted it to the court. At the same time, however, the State filed an appeal with us; but after hearing oral argument we affirmed the preliminary injunction on October 12, 2020.[9]

Nearly two years later, in September 2022, five private citizens unassociated with the *Arctic Village Council* litigation — Thomas W. Oels, David H. Johnson, Pamela L. Bickford, William de Schweinitz, and Loy A. Thurman — submitted a complaint to the

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[4] *Id.* at 317.
[5] *Id.* at 318.
[6] *Arctic Vill. Council*, 2020 WL 6120133, at *7.
[7] *Id.*
[8] *Id.*
[9] *Arctic Vill. Council*, 495 P.3d at 319.

Division and several other state officials and entities, requesting "a Full Forensic Audit of 2020 Election Records." The complaint included elements of both a public records request and an administrative complaint under the Help America Vote Act (HAVA),[10] a federal law passed in 2002 with "[t]he preeminent purpose of . . . assist[ing] states with the administration and regulation of federal elections."[11] The Division requested clarification, asking specifically that the complainants separate out their HAVA complaint and their public records request (if they intended both) and that they comply with the procedural requirements for those filings; the Division included a link to the appropriate HAVA complaint form. The Division also asked that the complainants "eliminate any factual and legal allegations irrelevant to [their] complaints and requests."

Rather than more clearly focusing their claims as requested, however, the complainants submitted an addendum arguing that their existing complaint was clear enough. On October 17, 2022, in a five-page, substantive letter, the Division rejected the complaint. Treating it as a complaint under HAVA, the Division explained that Congress, in the interest

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[10] 52 U.S.C. §§ 20901-21145; see 52 U.S.C. § 21112 for the requirements for state-based administrative complaint procedures. See 6 AAC 25.400–490 for the Division's responsive regulations.

[11] *Crowley v. Nevada*, 678 F.3d 730, 735 (9th Cir. 2012) (emphasis omitted); *see also State ex rel. League of Women Voters v. Herrera*, 203 P.3d 94, 99 (N.M. 2009) ("In HAVA's preamble, the legislation's purpose is set forth as establishing '*minimum* election administration standards for States and units of local government with responsibility for the administration of Federal Elections.' " (emphasis by the court) (quoting Pub. L. No. 107-252, 116 Stat. 1666, 1666 (2002))).

of uniformity in federal elections standards, had mandated certain procedural requirements for challenges to state elections, and that the Division had responded by creating "an approved state plan" for such complaints implemented by regulations "set forth at 6 AAC 25.400–.490." One of the regulatory requirements is that a complaint be rejected for filing "if . . . it does not, on its face, allege a violation of [52 U.S.C. §§ 21081–21085]."[12] Deciding that the complainants had failed to meet this standard, the Division rejected their complaint, concluding with a request that the complainants "please ensure that any future complaint complies with 6 AAC 25.400–.490." When the complainants responded with a second addendum, the Division rejected it summarily, advising that "there will be no hearing or further action taken on [the] Complaint" and again asking that "any future complaint" comply with the regulations.

The complainants returned to the Division in December 2022 after having filed this action, apparently in the belief that their superior court case cured the deficiencies in their administrative complaint. The Division reiterated the regulatory requirements for a viable HAVA complaint and advised the complainants that, having filed an action in superior court, they should now consider that to be the appropriate forum for any "requests for hearings and other motions."

B. Superior Court

The complainants filed this action in superior court in November 2022, expressly disclaiming any

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[12] 6 AAC 25.430(d)(3). The sections of the United States Code referenced within this provision of the AAC have been reclassified as 52 U.S.C. §§ 21081–21085.

intent to appeal the Division's decision but seeking declaratory and injunctive relief. Their complaint was aimed primarily at the Attorney General's review of a ballot measure[13] and the *Arctic Village Council* litigation, although it also alleged that the Division's complaint procedures were not in compliance with HAVA. They filed an amended complaint a few months later focused entirely on the *Arctic Village Council* litigation.

The State soon filed a motion to dismiss under Alaska Civil Rule 12(b)(6). The motion characterized the complaint's sole claim as, in essence, an argument that the defendants had violated the law by following a court order, and argued that because the "Division violated no law or constitutional provision by following the[] court orders," the complainants had stated no claim on which relief could be granted. The court granted the State's motion to dismiss. It agreed with the State that the case was primarily an attempt to "collaterally attack" the superior court order and our decision on appeal in *Arctic Village Council*, and "[i]n non-legal terms, that ship ha[d] sailed." The complainants filed several subsequent motions attempting to litigate the Division's rejection of their complaint and the lawfulness of the Division's HAVA regulations, but the court denied those motions and entered final judgment for the State.

Three of the complainants — Bickford, Johnson, and Thurman (collectively "Bickford") — filed this appeal.

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[13] State of Alaska, Dep't of Law, Op. Att'y Gen., 2019200578 (Aug. 29, 2019), https://law.alaska.gov/pdf/opinions/opinions_2019/19-003_2019200578.pdf.

III. STANDARD OF REVIEW

We review motions to dismiss "de novo, construing the complaint liberally and accepting as true all factual allegations."[14] "We review the denial of a motion to amend a pleading for abuse of discretion."[15]

IV. DISCUSSION

We conclude, for the reasons that follow, that the superior court did not err by dismissing Bickford's amended complaint and that it did not abuse its discretion by declining to consider other claims Bickford may have attempted to raise following the dismissal order.

A. Bickford's Amended Complaint Did Not State A Claim On Which Relief Could Be Granted.

The crux of Bickford's complaint was that the courts violated the state and federal constitutions by their rulings in *Arctic Village Council*; that the Attorney General and the lawyers in the Department of Law lacked the "statutory authority" to help draft or agree to the proposed order the superior court issued allegedly in violation of the constitutions; and that the Lieutenant Governor and the Division lacked the "statutory authority" to follow that order once it had issued. Bickford's argument is based on a fundamental misunderstanding of the constitutional responsibilities of the judicial and executive branches.

"Early in this country's jurisprudence it was established that we are a government of laws, not of

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[14] *Sagoonick v. State*, 503 P.3d 777, 791 (Alaska 2022) (quoting *Pedersen v. Blythe*, 292 P.3d 182, 184 (Alaska 2012)).

[15] *Patterson v. GEICO Gen. Ins. Co.*, 347 P.3d 562, 568 (Alaska 2015).

men, and that the task of expounding upon fundamental constitutional law and its application to disputes between various segments of government and society rests with the judicial branch of government."[16] This means that state courts have the broad "power to void laws incompatible with constitutional provisions."[17] And executive branch agencies like the Division and the Department of Law do not act unlawfully — instead they act in accordance with basic constitutional principles — when they respect judicial decisions in constitutional matters and follow court orders.[18]

In *Arctic Village Council*, reviewing the preliminary injunction against enforcement of the witness requirement, we affirmed on grounds that the plaintiffs were likely to prevail on the merits of their claim.[19] In doing so we applied our well-established analysis for assessing an election law's constitutionality,[20] beginning with the undisputed premise that the right to vote "is one of the

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[16] *Boucher v. Bomhoff*, 495 P.2d 77, 79 (Alaska 1972) (citing *Marbury v. Madison*, 5 U.S. 137, 163 (1803)).
[17] *Moore v. Harper*, 143 S. Ct. 2065, 2081 (2023).
[18] *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (explaining that interpreting Constitution is responsibility of judiciary; state legislators, executives, and judges are sworn to follow Constitution; therefore, state officials who do not abide by judicial interpretations of Constitution violate their "undertaking to support it"); *Nelson v. Steiner*, 279 F.2d 944, 948 (7th Cir. 1960) ("The executive branch of government has no right to treat with impunity the valid orders of the judicial branch.").
[19] *State v. Arctic Vill. Council*, 495 P.3d 313, 320-26 (Alaska 2021).
[20] *Id.* At 321.

fundamental prerogatives of citizenship."[21] We concluded that "the witness requirement imposed a substantial constitutional burden [on this right] in the unique context of the COVID-19 pandemic," and that "the State's countervailing interests," though "compelling 'in the abstract,' " did not justify the burden because "the witness requirement was not shown to effectively advance the State's interest in deterring fraud and [was] not narrowly tailored to advance the interest in promoting confidence in the election."[22] Our decision to affirm the preliminary injunction — based on our interpretation of the Alaska Constitution — was an exercise of the judicial authority accorded us by our constitutional form of government.[23] And the fact that executive branch officials then followed the courts' orders is what the citizens of a constitution-based government are entitled to expect.

Because there is no question that the state officials and entities named in the complaint were acting appropriately, within their constitutional roles, in the context of the *Arctic Village Council* case, the complaint failed to allege any wrongdoing on the part of the defendants. The superior court did not err when it dismissed the complaint under Rule 12(b)(6) for failing to state a claim on which relief could be granted.

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[21] *Id.* (quoting *Miller v. Treadwell*, 245 P.3d 867, 868 (Alaska 2010)).

[22] *Id.* at 326 (quoting *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1066 (Alaska 2005)).

[23] *See Moore v. Harper*, 143 S. Ct. 2065, 2089 (2023) ("State courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause [of the U.S. Constitution].").

B. The Superior Court Did Not Abuse Its Discretion By Denying The Plaintiffs' Attempts To Raise New Issues Following The Dismissal.

In addition to her arguments related to the case, Bickford argues that the superior court erred by failing to consider the legality of the Division's rejection of the administrative complaint, devoting much of her brief on appeal to alleged flaws in the State regulations adopted to implement HAVA. The first complaint Bickford filed in court included a claim for declaratory relief apparently asking for a holding that the Division's election-related complaint procedures failed to comply with federal law. But Bickford abandoned this claim in her amended complaint, and the superior court was therefore not asked to address it on the State's motion to dismiss and cannot have erred by failing to do so.

Following the court's dismissal order, however, Bickford filed a motion to amend the judgment, more accurately characterized as a motion for reconsideration of various orders including the dismissal order. At the same time, she filed a "Partial Notice of Appeal" and a request for a trial de novo, attaching, among other things, the Division's letters rejecting the administrative complaint. Reading these documents together it appears that Bickford was asserting that she had intended to pursue her HAVA-related claims in court, and that her failure to do so was due solely to her "ignorance of the rules and methods to distinguish claims in two jurisdictions." On appeal she contends that the superior court abused its discretion when it denied these motions and an earlier-filed motion to amend her complaint.

The court denied reconsideration of its dismissal order both because Bickford's motion was

untimely[24] and because it did "not state grounds for reconsideration under [Alaska] Civil R[ule] 77(k)." The court denied Bickford's motion to file a second amended complaint because she had not filed a proposed complaint with the motion and thus had failed to demonstrate an ability to "articulate[] any new claims that would not be subject to dismissal." Finally, in denying Bickford's "Partial Notice of Appeal," the court explained that because "the entire case has been disposed of at the trial court level by the final judgment," Bickford was "now free to appeal the case in full" pursuant to the Alaska Appellate Rules. We see no abuse of discretion in any of these rulings. Because Bickford was self-represented, we read her various pleadings liberally in an effort to determine what claims and procedural steps she intended.[25] Although she did not file a proposed second amended complaint, as the court noted, her argument in support of doing so observed that the State had substituted the current officeholders for "two defendants . . . whose actions are the basis of this complaint," and she asked that she be allowed "to join the past office holders upon which Plaintiffs' claims rest." The motion for leave to file the second amended complaint made no other argument in support of joining the past officeholders.

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[24] Bickford filed her motion to amend the judgment — asking the court to reconsider its dismissal order — on April 24, 21 days after the dismissal order was distributed. Motions for reconsideration are governed by Alaska Civil Rule 77(k), which provides that "[a] motion to reconsider the ruling must be made within ten days after the date of notice of the ruling as defined in Civil Rule 58.1(c)."

[25] *Torrence v. Blue*, 552 P.3d 489, 492-93 (Alaska 2024).

Leave to amend a complaint under Alaska Civil Rule 15(a) should be "freely given," but amendments asserting claims that are legally insufficient on their face should be denied as futile.[26] The officeholders that Bickford named in her complaint were no longer in office; current officeholders were automatically substituted as parties, as Alaska Civil Rule 25(d)(1) requires.[27] Adding the former officeholders back into the case would have served no conceivable purpose, as Bickford requested only declaratory relief about the legality of their official actions in the Arctic Village Council case and an injunction requiring actions that only current officeholders could take.[28] And adding parties would have done nothing to cure the obvious legal deficiency in Bickford's claims.

Although Bickford gave only this limited party-based rationale for filing a second amended complaint, her motion to amend the judgment and to "File Partial Notice of Appeal" may be read as seeking to amend her complaint more broadly — specifically to convert it into an appeal of the Division's decision to dismiss the administrative complaint. In that motion, after referring to the claims formerly presented to the Division, she asserts that "the supervisor's consideration, and dismissal of the claims, was the error." But a judicial appeal from that administrative

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[26] *Krause v. Matanuska-Susitna Borough*, 229 P.3d 168, 176-77 (Alaska 2010); Alaska R. Civ. P. 15(a).

[27] The rule provides: "When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party."

[28] *See Krause*, 229 P.3d at 176-77.

decision was untimely by many months.[29] Moreover, Bickford made no attempt to address the core of the administrative decision — that the complainants failed to follow the regulatory requirements for a valid HAVA complaint.[30] Even if an administrative appeal had been timely, Bickford gave the superior court no reason to believe it would be anything but futile.

Bickford's post-dismissal pleadings may also be read as asserting a direct challenge to the Division's HAVA regulations, resurrecting the claim for declaratory relief asserted in the original complaint but omitted from the amended complaint.[31] But again, Bickford's post-dismissal pleadings do not describe the substance of such a claim — for example,

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[29] *See* Alaska R. App. P. 602(a)(2) ("An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant."). The Division's written decision rejecting Bickford's complaint is dated October 17, 2022; Bickford filed her first court complaint about 45 days later, specifically stating, "This action is not an appeal of an administrative hearing or decision." Reading her pleadings liberally, she apparently sought to assert the administrative appeal for the first time on April 24, 2023, 190 days after the written decision was issued.

[30] Those requirements are simple and straightforward. *See* 6 AAC 25.420 ("Form of complaint"). Notably, the regulations also *require* the director to reject a complaint for filing if "more than 90 days have elapsed since the final certification of the federal election at issue." 6 AAC25.430(d)(4). Bickford sought to challenge the results of an election that had been certified over 20 months before.

[31] In her "Partial Notice of Appeal," for example, Bickford referred to "errors and omissions of the State of Alaska in enacting the enforcement requirements of [HAVA]" and asserted "that Alaska has conducted elections since 2002 (if not before) 'out-of-compliance' with specific federal requirements having to do with absentee ballots."

identifying which regulations were unlawful and why — and the superior court was not required to formulate the claim for her in order to determine whether it was legally viable. Bickford is not precluded from bringing such a claim,[32] but the superior court did not abuse its discretion by failing to recognize that she intended to bring one in this case. And we do not consider on appeal the merits of a claim that was not litigated in the trial court.[33]

V. CONCLUSION

The superior court's judgment is AFFIRMED.

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[32] *See* AS 44.62.300(a) ("An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court."); *see also Coghill v. Boucher*, 511 P.2d 1297, 1304 (Alaska 1973) (holding that registered voters are "interested persons" under Administrative Procedure Act for purposes of challenging election regulations).

[33] *Pieper v. Musarra*, 956 P.2d 444, 446 (Alaska 1998) ("Notwithstanding the leeway given to pro se litigants, the requirement that an issue be preserved by being presented in the superior court arises out of notions of judicial finality and efficiency, as well as fairness to the opposing party.").

The SUPREME COURT of the STATE of ALASKA

Pamela L. Bickford, et. al.,) Supreme Court
Appellants,) No. S-18776
v.) **Order**
STATE OF ALASKA, et.al.,) Superior Court No.
Appellees.) 3AN-22-09328CI

Appellants' Motion to Supplement the Record with the Division of Election's 6 AAC 25.400-.490 Administrative Complaint Record

Date of Order: 9/22/2023

On consideration of the Appellants' Motion to Supplement the Record with the Division of Election's 6 AAC 25.400-.490 Administrative Complaint Record filed by Pamela Bickford, David Johnson, and Loy Thurman on 9/12/2023, and the opposition filed by the State of Alaska, Division of Elections on 9/19/2023,

IT IS ORDERED:

The motion is **DENIED**. Four of the requested documents are already in the record on appeal. See Bates numbered pages of the record on appeal 148-152 and 153-156. As for the other requested documents, under Appellate Rule 210(a), "the record on appeal consists of the entire trial court file, including the original papers and exhibits filed in the trial court, the electronic record of proceedings before the trial court, and transcripts, if any, of the trial court proceedings." "Material never presented to the trial court may not be added to the record on appeal." The court cannot consider material that wasn't previously presented to the superior court in case number 3AN-22-09328CI, *Thomas W. Oels, et al. vs. State of Alaska, Division of Elections, et al.*, and the parties may not add material

to this appeal, or the eventual excerpt(s) of record, that is not already a part of the superior court record.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts
[Stephanie Crone]
Stephanie Crone, Deputy Clerk

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In The Superior Court For The State Of Alaska
Third Judicial District At Anchorage

THOMAS OELS, et. al.,)
Plaintiffs,)
v.)
STATE OF ALASKA, et. al.,)
Defendants.)

Case No. 3AN-22-09328CI

[ ] FINAL JUDGMENT

IT IS ORDERED that judgment is entered in favor of the defendants State of Alaska, Division of Elections, et. al., as follows:

1. [Pursuant to the courts order of April 3, 2023, no further issues remain and] [t]he plaintiffs" Complaint is dismissed with prejudice. [*] The defendants shall recover from and have judgment against the plaintiffs Thomas William Oels, d.o.b. 07/09/1951, David Howard Johnson, d.o.b. 09/27/1957, Pamela Louise Bickford, d.o.b. 02/22/1952, William Crane de Schweinitz, d.o.b. 11/26/1952, and Loy Alfonzo Thurman, d.o.b. 12/22/1948, jointly and severally, as follows:

a. Attorney's Fees
Date Awarded: _____ $_____
Judge: _____

b. Costs: $ Ø
Date Awarded: _____
Clerk: _____

TOTAL JUDGMENT: $_____

Dated this 12th day of May 2023, at Anchorage, Alaska,

[Andrew Guidi]
The Honorable Andrew Guidi
Superior Court Judge

[* The court observes that plaintiffs' claims all pertain to the 2020 general election and, in essence, seek to relitigate *State v. Arctic Village Council*, 495 P.3d 313 (Alaska 2021). The present action does not include claims related to the 2024 general election, and nothing in the court's rulings in this case control that election. The court does not express any opinion concerning the extent to which court decisions pertaining to the 2020 general election apply to the 2024 election.]

(Note: The Superior Court's handwritten declarations are reproduced in brackets, on this document and similar documents in this appendix.)

In The Superior Court For The State Of Alaska
Third Judicial District At Anchorage

THOMAS OELS, et. al.,)
Plaintiffs,) Case No.
v.) 3AN-22-09328CI
STATE OF ALASKA, et. al.,)
Defendants.)

[ ] ORDER [ ]

[Plaintiffs' "motion to amend judgment" is DENIED*]

Effective Date: May 12, 2023

[Andrew Guidi]
SUPERIOR COURT JUDGE

[* The motion appears to be intended as a motion for reconsideration of the 4-03-2023 order dismissing the claims. As such, the motion is untimely and does not state grounds for reconsideration under Civil R. 77(k).]

In The Superior Court For The State Of Alaska
Third Judicial District At Anchorage

THOMAS OELS, et. al.,	)
Plaintiffs,	) Case No.
v.	) 3AN-22-09328CI
STATE OF ALASKA, et. al.,	)
Defendants.	)

[ ] ORDER [DENYING] LEAVE TO FILE PARTIAL NOTICE OF APPEAL (AP Rule 602)

Plaintiffs' Motion to file Partial Notice of Appeal, dated 4-21-2023 [is DENIED. The motion is MOOT because, with the entry of final judgment, *]

Effective Date: May 12, 2023

[signed by Andrew Guidi]
SUPERIOR COURT JUDGE
Andrew Guidi

[* plaintiffs are now free to appeal the case in full, pursuant to Appellate Rules 201-220. In other words, the entire case has been disposed of at the trial court level by the final judgment, as opposed to a partial judgment entered under Civil R. 54(b).]

In The Superior Court For The State Of Alaska
Third Judicial District At Anchorage

THOMAS OELS, et. al.,)
Plaintiffs,)
v.) Case No.
STATE OF ALASKA, et. al.,) 3AN-22-09328CI
Defendants.)

[ ] Order [Denying] Plaintiffs' Motion For A Pre-Trial Conference And Subsequent Leave To Amend Complaint

[ ] Plaintiffs' Motion Requesting a Pre-Trial Conference and Motion for Leave to File Second Amended Complaint [ ] [are DENIED. No proposed second Am. Complaint has been filed * and plaintiffs have not articulated any new claims that would not be subject to dismissal.]

[* A proposed 2nd Am. Complaint is required to be filed with the motion.]

DATED: April 13, 2023, at Anchorage, Alaska.

[Andrew Guidi]
The Honorable Andrew Guidi
Superior Court Judge

In The Superior Court For The State Of Alaska
Third Judicial District At Anchorage

THOMAS OELS, et. al.,)
Plaintiffs,) Case No.
v.) 3AN-22-09328CI
STATE OF ALASKA, et. al.,) ORDER GRANTING
Defendants.) MOTION TO DISMISS

For the reasons stated in the Division's motion to dismiss, filed February 27, 2023, IT IS HEREBY ORDERED that the motion is GRANTED. There are no grounds upon which the superior court's decision in *Arctic Village Council v. Meyer,* 3AN-20-07858CI, or the Alaska Supreme Court's affirmance of that decision, might be challenged as invalid or unlawful on their face, as opposed to merely wrong. Similarly, the fact that this or any other court today might decide the validity of the ballot witness requirement differently is immaterial-the decisions in *Arctic Village Council* are now final and cannot be collaterally attacked in this proceeding. In non-legal terms, that ship has sailed. Under the circumstances, the Division of Elections' compliance with the court decisions in *Arctic Village Council* cannot support plaintiffs' claims for relief.

This constitutes a final order of dismissal with prejudice.

April 3, 2023 [Andrew Guidi]
Effective Date SUPERIOR COURT JUDGE
Andrew Guidi

52 USC Subtitle II – Voting Assistance and Election Administration – Subchapter IV – ENFORCEMENT

52 U.S.C. §21112. Establishment of State-based administrative complaint procedures to remedy grievances

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds. 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).

(2) Requirements for procedures.

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is 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,

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III, the State shall provide the appropriate remedy.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds

(1) In general – Not later than January 1, 2004, each nonparticipating State shall elect –

(A) to 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

(B) to 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.

(2) States without approved plan deemed out of compliance – A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of subchapter III if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined. In this section, a "nonparticipating State" is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under this chapter of its intent to participate in, and receive funds under, the program.

(Pub. L. 107-252, title IV, §402, Oct. 29, 2002, 116 Stat. 1715.)