

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

ROBERT CORBISIER, Executive)
Director of Alaska State Commission)
For Human Rights, *ex. rel.* B.L.,)
)
Plaintiff,)

v.)

KEVIN MEYER, in his official)
capacity as Lieutenant Governor of)
the State of Alaska; GAIL FENUMIAI,)
in her official capacity as the Director)
of the Alaska Division of Elections; and)
the STATE OF ALASKA, DIVISION)
OF ELECTIONS,)
)
Defendants.)

Case No. 3AN-22-6525CI

**ORDER GRANTING PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Before this Court is Plaintiff's *Application for Temporary Restraining Order and Motion for Preliminary Injunction* filed on June 8, 2021. Plaintiff Alaska State Commission for Human Rights, *ex rel.* B.L. ("Plaintiff" or "ASCHR") asks this Court to enjoin Defendants ("Defendants" or "DOE") from certifying the results of the June 11, 2022 Special Primary Election ("Special Primary Election") until DOE enacts measures that comply with the mandates of state and federal disability law in order to give visually impaired Alaskans a full and fair opportunity to vote independently, secretly and

privately.¹ DOE opposes Plaintiff's requests. The Court held a hearing on June 10th, 2022 at 11:30 A.M. to hear oral argument.

Having considered the pleadings before the Court and arguments of counsel, the Court now GRANTS Plaintiff's application and enters a temporary restraining order enjoining Defendants as set forth in this Order.

BACKGROUND

On March 18, 2022, U.S. Representative Don Young passed away, which created a vacancy for that office.² The vacancy necessitated a special election to fill Congressman Young's empty seat in short order. Under Alaska law, a special primary election must occur "not less than 60, nor more than 90, days after the vacancy."³ DOE officials decided to hold the Special Primary Election on June 11, 2022, with the special general election to be held on August 16, 2022, which will allow for in-person voting on the same day as the regular primary election.⁴

On May 14, 2022, ASCHR Executive Director Robert Corbisier was invited to meet with DOE Region V Supervisor, Julie Hussman, at the Alaska Chapter of the National Federation of the Blind.⁵ At the meeting, various election topics were

² Division's Opp. to Application for T.R.O. and Prelim. Inj. ("Opposition") at 1.

³ AS § 15.40.140.

⁴ *Id.* at 3.

⁵ Application for T.R.O. and Mot. for Prelim. Inj. ("Application") at 2.

discussed, including an assurance “that accessible voter machines [would be] made available at all polling locations.”⁶

At this meeting, DOE informed the attendees that the Special Primary Election would be conducted solely by mail-in ballot and that only five locations with accessible voting machines would be open statewide.⁷ DOE also stated that an online ballot request option would be available.⁸ DOE provided four options to vote: (1) absentee vote by mail, (2) vote at an absentee in-person location, (3) vote at an early voting location, or (4) complete a ballot using the online delivery system.⁹

Plaintiff notified DOE that the voting options would not reasonably accommodate visually impaired voters due to an alleged lack of communication as to where they could vote using accessible vote tablets, difficulties in following detailed instructions for mail-in ballots, a widespread lack of internet and required technology in the visually impaired community, and concerns of the lack of privacy, secrecy, and independence of the voting options.¹⁰ The parties attempted to work together to resolve issues regarding lack of accommodations for the visually impaired.¹¹ Unsatisfied with the proffered solutions, Plaintiff B.L. filed a complaint with the ASCHR on May 25,

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

⁹ Opposition at 4.

¹⁰ Application at 5.

¹¹ Reply in Support of Application for T.R.O. and Mot. for Prelim. Inj. (“Reply”) at 1.

2022. The Commission investigated the complaint and met with various officials to address B.L.'s concerns.¹²

DOE maintains that the online ballot is a lawful and reasonable accommodation and further notes that the in-person locations were only established to distribute mail-in ballots, not to act as a polling location.¹³ Further, DOE maintains that it would be impracticable to open up additional polling locations with the accessible tablets due to issues with staffing and timing.¹⁴

Due to the inability of the parties to resolve this impasse, on June 8, 2022, Plaintiff, *ex rel.* B.L., filed an application for a temporary restraining order and motion for preliminary injunction.

THE PRELIMINARY INJUNCTION STANDARD

“Equitable injunctive relief is an extraordinary remedy that is appropriate only where the party requesting relief is likely to otherwise suffer irreparable injury and lacks an adequate remedy at law.”¹⁵ As discussed below, a moving party may obtain a

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ Opposition at 2.

¹⁵ *Lee v. Konrad*, 337 P.3d 510, 517 (Alaska 2014) (citing *Carroll v. El Dorado Estates Div. No. Two Ass'n, Inc.*, 680 P.2d 1158, 1160 (Alaska 1984); *Sbarp v. 251st St. Landfill, Inc.*, 925 P.2d 546, 549 (Okla.1996); and *Grimes v. Enter. Leasing Co. of Philadelphia, LLC.*, 66 A.3d 330, 340 (Pa.2013)).

preliminary injunction by meeting either the balance of hardships standard or the probable success on the merits standard.¹⁶

A. Balance of Hardships

The balance of hardships standard requires the Court to balance the harm the plaintiff will suffer without the injunction against the harm the injunction will impose on the defendant.¹⁷ A preliminary injunction is warranted under the balance of hardships standard when three factors are present:

- (1) the plaintiff must be faced with irreparable harm;
- (2) the opposing party must be adequately protected; and
- (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit.¹⁸

When applying the balance of hardships standard, the Court “is to assume the plaintiff ultimately will prevail when assessing the irreparable harm to the plaintiff absent an injunction, and to assume the defendant ultimately will prevail when assessing the harm to the defendant from the injunction.”¹⁹ An injunction under this standard is

¹⁶ *Alsworth v. Seybet*, 323 P.3d 47, 54 (Alaska 2014) (citing *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970) [modified in other respects]).

¹⁷ *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (citing *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.3d 537, 540 (Alaska 1970)).

¹⁸ *Id.* (quoting *State v. Kluti Kaab Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992)).

¹⁹ *Id.* (citing *A.J. Indus., Inc.* at 540).

appropriate when “the injury which will result from the temporary restraining order... is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.”²⁰

B. Clear Showing of Probable Success On The Merits

If the party seeking a preliminary injunction does not stand to suffer irreparable harm, or where the party against whom the injunction is sought will suffer injury if the injunction is issued, the party requesting the preliminary injunction must meet a different standard: they must make a clear showing of probable success on the merits.²¹

ANALYSIS

A. Plaintiff Has Met The Balance of Hardships Test.

The Court finds that Plaintiff has met the three requisites for a preliminary injunction under the balance of hardships test.

1. Plaintiff Has Shown That Plaintiff Will Suffer Irreparable Harm.

On its surface, this case pits the interests of disabled Alaskans against the rest of Alaskan voters. But Plaintiff's fellow Alaskans are not the ones responsible for

²⁰ *Id.* (citing *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378–79 (Alaska 1991)(citations omitted) (citing *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970), *modified on other grounds*, 483 P.2d 198 (Alaska 1971); *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975))).

²¹ *State v. Kluti Kaab Native Village of Copper Center*, 831 P.2d 1270, 1274 (Alaska 1992) (quoting *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970)).

upholding Plaintiff's rights; it is Defendants - state agencies and actors - who are mandated to protect the rights of all Alaskans. No court should consider lightly an injunction that potentially upends an ongoing election, but neither can the Court allow flawed state procedures to disenfranchise a group of Alaskans who already face tremendous barriers in exercising a fundamental right.

The harm to Plaintiff, and others similarly situated, lies in not being able to cast a vote independently, secretly and privately. Not being able to vote in this manner is unquestionably irreparable harm. DOE acknowledges that it has and will provide more methods for accessible voting in past and future elections; it is only *this* election where it was not possible to do so.

The Court has no reason to believe that DOE is acting maliciously or deliberately; on the contrary, DOE appear to be doing its sincere best to provide options under these circumstances. But this is not a "we tried our best" scenario; this is a state agency responsible for overseeing the voting rights of all Alaskans. DOE's position that tablets could not be ready on time or additional poll locations could not be staffed adequately does not justify visually impaired voters being the ones to pay the price. Nor has DOE provided the Court with evidence of how this group of voters could have been on notice that their particular voting options in this election, and only this election, are more limited than in the past.

The Court recognizes that across the country, voters limited to mail-in voting have sought in-person voting, and voters limited to in-person voting have sought mail-in voting. Those cases underscore this Court's conclusion that voters of all stripes should be provided with as many safe, accessible voting options as possible.

2. Plaintiff Has Shown that Defendants Will Be Adequately Protected.

As to the second prong, Plaintiff argues that DOE's interest in upholding state law is not a legitimate interest to be protected when doing so controverts federal discrimination law.²² The Court agrees. Plaintiff cites the Alaska Human Rights Act²³, the Americans With Disabilities Act²⁴ and the Rehabilitation Act of 1973²⁵, all federal laws protecting the rights of persons with disabilities and ensuring that they are provided with reasonable accommodations. Plaintiff also cites the Help America Vote Act ("HAVA"), which contains both a standard for states to follow by requiring at least one voting system equipped for disabled voters at each polling place.²⁶

DOE argues – accurately – that this election, and the one to follow, will be thrown into chaos if the Court enters an injunction and thus delays certification.²⁷ But this is an unavoidable consequence of the situation with which the Court is presented.

²² Reply at 15.

²³ AS § 18.80 *et seq.*

²⁴ 42 U.S.C. § 12101 *et seq.*

²⁵ 29 U.S.C. § 791 *et seq.*

²⁶ 52 U.S.C. § 21081(3)(B).

²⁷ Opposition at 9-11.

The Court grants that this result is more than a slight injury to Defendants; nonetheless, it is outweighed by Plaintiff's right to vote. The Court also notes that this case would have much less impact had Plaintiff brought it sooner; however, the timing of this filing appears to be at least partly due to Plaintiff being unaware of the changes to the previous voting arrangement until very late in the game.

3. Plaintiff Has Raised Serious and Substantial Questions Going To The Merits of the Case.

Defendants did not dispute this issue, and the Court finds Plaintiff has successfully raised serious and substantial questions going to the merits of this case.

B. Alternatively, Plaintiff Has Made A Clear Showing Of Probable Success On The Merits.

The Court finds that Plaintiff has also met the standard for injunctive relief based on a clear showing of probable success on the merits. Defendants admit that the Special Primary Election is providing fewer voting methods for visually impaired voters than in the past. Although this reduction in voting resources may not occur again, it occurred this time. The Court finds that even if Plaintiff has not demonstrated irreparable harm, injunctive relief is warranted because Plaintiff is likely to prevail on the merits of their allegations.

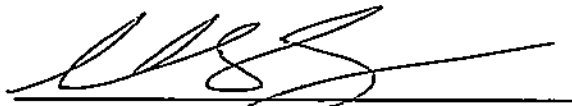
CONCLUSION

Although the Court empathizes with DOE's plight, it is not the place of the Court, nor the Plaintiff, to impose a solution. The Court recognizes the need for all Alaskans, including those who have already voted, to know that their votes matter. For this reason, the Court strongly urges the parties to work together expeditiously to find a timely, appropriate remedy.

Accordingly, IT IS ORDERED:

1. Plaintiff's request for a preliminary injunction and declaratory relief pursuant to AS 18.80.105 and Civil Rule 65 is GRANTED.
2. Defendants are enjoined from certifying the results of the 2022 Special Primary Election until Alaska's visually impaired voters are provided a full and fair opportunity to participate in said election.

SO ORDERED this 10th day of June, 2022, at Anchorage Alaska.



UNA S. GANDBHIR
Superior Court Judge

I certify that on 6/10/22
a copy of the above was mailed/emailed to
each of the following at their address of record:

J. Michaels / Flynn / Demarest / Miller
R. Davis, Judicial Assistant
Alexander / Darman / Pator-Walsh