

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 LIZ VAZQUEZ, CHRIS DUKE,
4 RANDY ELEDGE, STEVE STRAIT,
and KATHRYN WERDAHL,

5 Plaintiffs,

6 v.

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8 LT. GOVERNOR KEVIN MEYER, in
his official capacity as Lieutenant
9 Governor for the State of Alaska, and
10 GAIL FENUMIAI, in her official
capacity as Director of the Division of
11 Elections,

12 Defendants,

13 and

14 JENNIE ARMSTRONG,

15 Intervenor.
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INTERVENOR’S TRIAL BRIEF

Case No. 3AN-22-09325CI

17 **I. INTRODUCTION**

18 Based on little more than a single post on Instagram, the defeated candidate for
19 House District 16 has brought this election contest claiming that her opponent was not
20 “a resident of Alaska for at least three years” prior to her “filing for office.” The
21 defeated candidate also seeks an extraordinary remedy; rather than have the seat filled
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1 by appointment or ask for a new election, she seeks to override the will of the voters
2 and have herself declared the winner despite losing by over 10 percentage points.¹

3 The defeated candidate, Plaintiff Liz Vazquez (“Vazquez”), is wrong on both
4 counts.² Intervenor and prevailing candidate Jennie Armstrong (“Armstrong”) has been
5 a resident of Alaska since May 20, 2019, more than three years prior to filing to run for
6 office.³ As explained in greater detail below, this is confirmed by multiple sources,
7 including Armstrong’s sworn declaration when she filed for office,⁴ and her affidavit
8 about: (1) deciding to move in with her now-husband Benjamin Kellie (“Ben”) on May
9 20, 2019; (2) leaving her personal belongings in Alaska on that day; (3) searching for
10 flights back to Alaska on that day, and booking return flights that same month;
11 (3) having multiple conversations with family and friends about her move to Alaska;
12 (4) sending multiple text messages and emails confirming her move occurred in May
13 2019; and (5) making additional Instagram posts, all long before even considering
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17 ¹ See Complaint at 7.

18 ² Because an election contest must be brought by *either* “[a] defeated candidate or
19 10 qualified voters,” and there are only four other qualified voters named in this suit,
20 Intervenor Jennie Armstrong will refer to Vazquez individually as Plaintiff because this
21 case can only be maintained and brought by her. See AS 15.20.540.

22 ³ See Alaska Const. art. II, § 2; see also Complaint at 1-7 (Nov. 30, 2022). There
23 is also, however, another interpretation of article II, section 2 of the Alaska Constitution
24 that only requires an elected official to be a resident of Alaska for at least three years
25 prior to being sworn into office. See *infra* Section III.B and accompanying text.

26 ⁴ See State of Alaska Declaration of Candidacy, Jennifer Armstrong (June 1, 2022)
[hereinafter Declaration] (Attachment A to Affidavit of Jennifer “Jennie” Armstrong
(Dec. 16, 2022) [hereinafter Armstrong Aff.]).

1 running for office, that are consistent with her intent to reside in Alaska on May 20,
2 2019.⁵ Moreover, Vazquez’s self-serving suggested “remedy” should be swiftly
3 rejected. Even assuming this Court somehow found that Armstrong was not a resident
4 of Alaska for the requisite time period — and it should not — there is no logical or
5 legal basis for this Court to do anything other than either order (1) the Governor to
6 appoint a replacement from Armstrong’s same political party or (2) the Division of
7 Elections (“Division”) to hold a new election.
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9 After the conclusion of the evidentiary hearing scheduled for December 22,
10 2022, this Court will determine whether Armstrong was a resident of Alaska for at least
11 three years before filing for office on June 1, 2022.⁶ Vazquez will not come close to
12 meeting her burden of proving otherwise, and the evidence will confirm Armstrong’s
13 sworn declarations and statements that she became a resident of Alaska on May 20,
14 2019. Once this Court makes such a finding, no additional decision or analysis will be
15 required.⁷
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21 ⁵ See generally *Armstrong Aff.*

22 ⁶ See also *infra* Section III.B and accompanying text.

23 ⁷ In the unlikely event this Court determines that Armstrong was not a resident for
24 the requisite time period — and it should not — this Court would then need to order an
25 appropriate remedy. As explained below, in that unlikely scenario, this Court could
26 either: (1) direct the Governor to appoint a replacement for Armstrong consistent with
AS 15.40.320 or (2) order a new election.

1 **II. PROCEDURAL BACKGROUND**

2 **A. Armstrong Filed For Office And Was Certified The Winner Of The**
3 **Election For House District 16.**

4 Armstrong officially filed to become a candidate for office for House District 16
5 on June 1, 2022.⁸ As part of her June 1 filing, Armstrong signed a sworn declaration
6 that she had been a resident of Alaska for at least three years prior to that date, and a
7 resident of the newly-created House District 16 for at least one.⁹ No one challenged her
8 residency within the required 10 days after Armstrong filed for office,¹⁰ and the
9 Division certified Armstrong as a candidate for House District 16 for placement on the
10 primary ballot.¹¹

11 Armstrong was one of four candidates in the primary election for House
12 District 16 that took place on August 16, 2022. Armstrong received over 50% of the
13 vote in that divided primary field.¹² Two of the four candidates for House District 16
14 withdrew after the primary, leaving a head-to-head matchup between Armstrong and
15 Vazquez in the general election.
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18 ⁸ See Declaration (Attachment A to Armstrong Aff.).

19 ⁹ See *id.* (stating that she has “been an Alaskan residence since May 20, 2019,”
20 and that she has “been a resident of the Election District . . . since September 29,
21 2020”).

22 ¹⁰ See 6 AAC 25.260(a); see also AS 15.25.040(a); AS 15.25.042.

23 ¹¹ See Attachments R-T to Affidavit of Samuel G. Gottstein (Dec. 19, 2022)
24 [hereinafter Gottstein Aff.].

25 ¹² See State of Alaska, 2022 Primary Election, Election Summary Report, Official
26 Results, August 16, 2022, at 12 (Sept. 2, 2022)
<https://www.elections.alaska.gov/results/22PRIM/ElectionSummaryReportRPT.pdf>.

1 Alaska’s general election occurred on November 8, 2022. Armstrong defeated
2 Vazquez in the race for House District 16 with over 55% of the vote,¹³ and the Division
3 certified her as the winner of that election on November 30, 2022.¹⁴

4 **B. Plaintiffs File Lawsuits To Challenge Armstrong’s Residency.**

5 On October 31, 2022 — 8 days before the general election and after early voting
6 had already begun — four registered voters filed a complaint for declaratory and
7 injunctive relief, claiming that Armstrong did not meet the residency requirements
8 outlined in article II, section 2 of the Alaska Constitution.¹⁵ The Court in that case
9 denied those voters’ request and granted the Division’s cross motion to dismiss the case
10 “because there is no statutory procedure under Alaska law to permit” such a challenge
11 filed during that time period.¹⁶

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14 Vazquez, along with the four registered voters who had brought the prior
15 challenge, filed this election contest on November 30, 2022, the same day the Division
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18 ¹³ See State of Alaska, 2022 General Election, Election Summary Report, Official
19 Results, November 8, 2022, at 12 (Nov. 30, 2022),
<https://www.elections.alaska.gov/results/22GENR/ElectionSummaryReportRPT.pdf>.

20 ¹⁴ See *id.*

21 ¹⁵ See Complaint for Declaratory and Injunctive Relief, 3AN-22-08794CI (dated
22 Oct. 28, 2022). At the time, Armstrong characterized that filing as “a last-minute
23 campaign stunt.” See Intervenor’s Opposition to Motion for Preliminary Injunction and
24 Joinder in Defendants’ Cross Motion to Dismiss, 3AN-22-08794CI, at 10 (Nov. 8,
25 2022).

26 ¹⁶ See Order on Preliminary Injunction and Dismissal, 3AN-22-08794CI, at 12
(Nov. 18, 2022). Armstrong filed a joinder to the Division’s cross motion to dismiss.

1 certified the results of the election.¹⁷ Given the looming start to the legislative session,
2 this Court granted Vazquez’s unopposed motion to consider her election contest on an
3 expedited basis.¹⁸ An evidentiary hearing has been scheduled for December 22, 2022.¹⁹

4 **III. APPLICABLE LAW**

5 Vazquez has brought an election contest pursuant to AS 15.20.540(2), claiming
6 that Armstrong “is not qualified” to hold elected office.²⁰ Specifically, Vazquez claims
7 that Armstrong had not “been a resident of Alaska for at least three years . . .
8 immediately preceding [her] filing for office.”²¹ Because Armstrong filed for office on
9 June 1, 2022, and the Division approved that declaration, it is Vazquez’s burden to
10 show that Armstrong has not been a resident of Alaska for the requisite time period.
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12 Armstrong vigorously disputes Vazquez’s claim that she had not been a resident
13 of Alaska for at least three years before she filed for office on June 1, 2022. As
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18 ¹⁷ See generally Complaint.

19 ¹⁸ See Order Granting Unopposed Motion to Expedite Proceedings and Schedule
20 Status Hearing (Dec. 6, 2022).

21 ¹⁹ See Calendaring Notice (Dec. 14, 2022).

22 ²⁰ See AS 15.20.540 (“A defeated candidate . . . may contest the . . . election of any
23 person . . . (2) when the person certified as elected . . . is not qualified as required by
24 law[.]”).

25 ²¹ See Alaska Const. art. II, § 2; see also *infra* Section III.B and accompanying text
26 (outlining an alternative prerequisite timeframe based on article II, section 2 of the
Alaska Constitution).

1 outlined below, the evidence will show that Armstrong established residency in Alaska
2 on May 20, 2019, which is consistent with her declaration of candidacy.²²

3 **A. The Legal Standard For Determining Residency Is Based On A**
4 **Person’s Intent.**

5 Because the longstanding legal standard for residency confirms Armstrong’s
6 residency as of May 20, 2019, Vasquez is expected to ask this Court to create an
7 entirely new standard for purposes of article II, section 2 of the Alaska Constitution.²³
8 But there simply is no legal basis for this Court to “reinvent the wheel” and create a
9 brand-new test for determining residency for candidates out of whole cloth. Instead,
10 this Court should simply apply the same legal standard that is used to determine voter
11 residency. That standard is rooted in Title 15 pertaining to elections and has already
12 been interpreted by the Alaska Supreme Court. It is also the standard that the Division
13 applies.
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15 **1. Oberlatz controls**

16 In *Lake & Peninsula Borough Assembly v. Oberlatz*, the Alaska Supreme Court
17 considered residency requirements, holding that a voter’s residency is determined by
18 that voter’s intent.²⁴ The Court explained that “[a] voter’s residency intent is a question
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21 ²² See *infra* Section IV; see also Declaration (Attachment A to Armstrong Aff.).

22 ²³ See Alaska Const. art. II, § 2 (“A member of the legislature shall be a qualified
23 voter who has been a resident of Alaska for at least three years and of the district from
24 which elected for at least one year, immediately preceding his filing for office.”); see
also Complaint at ¶¶ 30, 33.

25 ²⁴ See 329 P.3d 214, 222-23 (Alaska 2014).

1 of fact determined by the superior court after sifting and weighing evidence,”²⁵ and that
2 “[t]he burden of [contesting residency] . . . is on the challenger.”²⁶

3 The *Oberlantz* Court affirmed the superior court’s determination that, “[a]bsent
4 any indicia of fraud or unreasonableness or implausibility, the court should accept the
5 statements of the voter as to their intended residence if supported by sufficient indicia
6 of residency.”²⁷ The Court also reiterated that “even a park bench will be sufficient” to
7 establish residency,²⁸ and recognized that leaving personal property at a residence may
8 be evidence to support residency.²⁹

10 *Oberlantz* is controlling as to when Armstrong became a resident of Alaska.
11 Although not specifically addressed by the Alaska Supreme Court, the explicit language
12 of the Alaska Constitution ties residency for purposes of one’s candidacy to whether a
13 person is a “qualified voter.”³⁰ There is no legal basis to conclude that Armstrong was
14 a resident for purposes of *voting*, but not for being a *candidate*. Although there are
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18 ²⁵ See *id.* at 222 (citations omitted).

19 ²⁶ See *id.* (quoting *Edgmon v. State, Office of the Lieutenant Governor, Div. of*
20 *Elections*, 152 P.3d 1154, 1159 (Alaska 2007)).

21 ²⁷ See *id.* (emphasis omitted).

22 ²⁸ See *id.* at 223 n.25 (citing *Fischer v. Stout*, 741 P.2d 217, 221 (Alaska 1987)).

23 ²⁹ See *id.* (citing *Maksym v. Bd. of Election Comm’rs of Chi.*, 950 N.E.2d 1051,
24 1065-66 (Ill. 2011)).

25 ³⁰ See Alaska Const. art. II, § 2 (“A member of the legislature shall be a qualified
26 voter who has been a resident of Alaska for at least three years and of the district from
which elected for at least one year, immediately preceding his filing for office.”).

1 different requisite periods of time required to vote versus being a candidate,³¹ there is
2 only one residency test for voters and candidates.

3 **2. Intent determines residency**

4 Despite the holding in *Oberlatz*, Vazquez may nevertheless argue that residency
5 in this case should be determined by AS 01.10.055 rather than AS 15.05.020. Not only
6 would this approach likely be error, but it also would not lead to a different outcome.
7 That is because the intent of a person to become a resident is what controls under both
8 statutes.
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10 Alaska Statute 15.05.020, which was the statute at issue in *Oberlatz*, outlines the
11 rules for determining residency in Alaska.³² And AS 15.05.020 — which is in Title 15
12 concerning “elections” — makes it clear that a person’s intent to reside in Alaska
13 controls.³³ The fact that Armstrong has made (and will make at the evidentiary
14 hearing) sworn statements that she manifested an intent to reside in Alaska while she
15 was in Alaska on May 20, 2019 is dispositive of this case.³⁴ There is no reason for this
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18 ³¹ Compare AS 15.05.010(3) (providing that a person may vote if they have “been
19 a resident . . . for at least 30 days just before the election”), with Alaska Const. art. II,
20 § 2 (requiring three years of residency to be a candidate).

21 ³² AS 15.05.020.

22 ³³ See AS 15.05.020(2) (“The residence of a person is that place in which the
23 person’s habitation is fixed, and to which, whenever absent, the person has the intention
24 to return.”); AS 15.05.020(4) (“A person does not gain residence in any place to which
25 the person comes without the present intention to establish a permanent dwelling at that
26 place.”).

³⁴ See generally *Armstrong Aff.*

1 Court to deviate from Title 15’s well-tread framework defining residency as interpreted
2 by *Oberlatz*.³⁵

3 Additionally, AS 01.10.055 does not require a different outcome. Alaska
4 Statute 01.10.055 provides, in full:

5 (a) **A person establishes residency in the state by being**
6 **physically present in the state with the intent to remain**
7 **in the state indefinitely and to make a home in the state.**

8 (b) A person demonstrates the intent required under (a) of
9 this section

10 (1) **by maintaining a principal place of**
11 **abode in the state** for at least 30 days or **for a**
12 **longer period if a longer period is required**
13 **by law or regulation;** and

14 (2) by providing other proof of intent as **may**
15 be required by law or regulation, which **may**
16 include proof that the person is not claiming
17 residency outside the state or obtaining
18 benefits under a claim of residency outside the
19 state.

20 (c) **A person who establishes residency in the state**
21 **remains a resident during an absence from the state**
22 unless during the absence the person establishes or claims
23 residency in another state, territory, or country, or performs
24 other acts or is absent under circumstances that are
25 inconsistent with the intent required under (a) of this section
26 to remain a resident of this state.^[36]

21 In other words, the same fundamental question — whether a person intends to reside in
22 Alaska — is still the critical question at issue under Title 1 as well as Title 15. The fact
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24 ³⁵ See also *infra* Subsection III.A.3 (discussing agency deference).

25 ³⁶ AS 01.10.055 (emphasis added).

1 that AS 01.10.055 gives examples of what “*may*” either establish or defeat a person’s
2 intent to reside in Alaska does not lead to a different outcome from an analysis rooted
3 in AS 15.05.020. Under both statutes, the question is whether a person: (1) intended to
4 reside in Alaska indefinitely; and (2) made this decision while they were in Alaska,
5 excluding a person who (3) establishes residency in any other state.³⁷
6

7 Although Vazquez may argue otherwise, the Alaska Constitution does not
8 require a candidate to be a resident of Alaska for three years *plus* 30 days;³⁸ the Alaska
9 Constitution only requires candidates to be “a resident of Alaska for at least **three**
10 **years**.”³⁹ Especially in light of history from Alaska’s constitutional convention,⁴⁰ this
11 Court need not adopt a new, different, and more stringent residency test for candidates
12 based on a general statute that is not specific to elections.⁴¹
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17 ³⁷ See AS 15.05.020; AS 01.10.055.

18 ³⁸ See AS 01.10.055(b)(1).

19 ³⁹ See Alaska Const. art. II, § 2 (emphasis added).

20 ⁴⁰ See Alaska Constitutional Convention, Commentary to Committee Proposal 5, at
21 1 (Dec. 14, 1955) (folder 310.5) (“The age and residence requirements for senators and
representatives are set low in order to induce young people to take an early and active
part in the democratic process.”).

22 ⁴¹ See *Nelson v. Mun. of Anchorage*, 267 P.3d 636, 642 (Alaska 2011) (“If one
23 statutory ‘section deals with a subject in general terms and another deals with a part of
24 the same subject in a more detailed way, the two should be harmonized, if possible; *but*
25 *if there is a conflict, the specific section will control over the general.*’ ” (emphasis
added) (quoting *In re Hutchinson’s Estate*, 577 P.2d 1074, 1075 (Alaska 1978))).

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3. The Division correctly accepted Armstrong’s Declaration

We expect Vazquez to attempt to conflate the date that Armstrong registered to vote in Alaska with her residency date.⁴² But that is not, and has never been, the standard to determine residency.

The Division checked Armstrong’s voter registration when she submitted her declaration on June 1, 2022.⁴³ The Division was therefore aware of when Armstrong registered to vote — August 26, 2019⁴⁴ — when it certified her candidacy.⁴⁵ This only confirms that the Division does not consider when a person registered to vote for purposes of when a person became a resident, because when a person decides to register to vote is not determinative of when that person became a resident. Indeed, a longtime Alaska residence could register to vote on the date they file for office and still be a qualified candidate.

The Division’s interpretation of Alaska’s residency requirements and how it applies to candidates should be afforded deference by this Court.⁴⁶ “For ‘questions of law involving ‘agency expertise or the determination of fundamental policies within the scope of an agency’s statutory functions,’” [courts] evaluate ‘whether the agency’s

⁴² See Complaint; see also Attachment T to Gottstein Aff.

⁴³ See Attachments R-T to Gottstein Aff.; see also Declaration (Attachment A to Armstrong Aff.).

⁴⁴ See Attachment T to Gottstein Aff.

⁴⁵ See Attachment R to Gottstein Aff.

1 decision is supported by the facts and has a reasonable basis in law, even if we may not
2 agree with the agency’s ultimate determination.”⁴⁷ “When applying the reasonable
3 basis standard of review, [courts] seek ‘to determine whether the agency’s decision is
4 supported by the facts and has a’ reasonable basis in law, even if [the court] may not
5 agree with the agency’s ultimate determination.”⁴⁸ And here, because the Division’s
6 decision to certify Armstrong’s candidacy is both “supported by the facts,” and “has a
7 reasonable basis in law,”⁴⁹ this Court should defer to the Division’s decision certifying
8 Armstrong’s eligibility for office.⁵⁰

10 **4. Summary**

11 Ample evidence will show that, on May 20, 2019, Armstrong: (1) was physically
12 present in Alaska; (2) intended to remain in Alaska indefinitely; and (3) intended to
13 (and actually did) make a home in Alaska.⁵¹ None of her subsequent trips outside of
14 Alaska changed her residency.⁵² And Armstrong maintained her residency for over
15 three years, as is required by the Alaska Constitution.⁵³

18 ⁴⁶ See *N. Slope Borough v. State*, 484 P.3d 106, 113 (Alaska 2021) (quoting *Nicolos*
19 *v. N. Slope Borough*, 424 P.3d 318, 325 (Alaska 2018)).

20 ⁴⁷ See *id.* (quoting *Nicolos*, 424 P.3d at 325).

21 ⁴⁸ See *id.* at 117 (quoting *City of Valdez v. State*, 372 P.3d 240, 246 (Alaska 2016)).

22 ⁴⁹ See *id.* at 113, 117 (quotations omitted).

23 ⁵⁰ See generally *Armstrong Aff.*; *Gottstein Aff.*

24 ⁵¹ See AS 15.05.020; see also AS 01.10.055(a).

25 ⁵² See AS 15.05.020; see also AS 01.10.055(c).

26 ⁵³ See Alaska Const. art. II, § 2; see also AS 15.05.020; AS 01.10.055(b)(1).

1 Taken together, by applying the applicable standard outlined in *Oberlatz*:
2 (1) Vazquez, not Armstrong, bears the burden of contesting Armstrong’s residency
3 date⁵⁴ (2) by presenting decisive evidence of “fraud or unreasonableness or
4 implausibility,”⁵⁵ with the understanding that (3) “the court should accept the
5 statements of the [candidate] as to their intended residence if supported by sufficient
6 indicia of residency,”⁵⁶ and (4) deferring to the Division’s eligibility determination.⁵⁷
7 Stated differently, unless Vazquez meets her burden to provide adequate “indicia of
8 fraud or unreasonableness or implausibility,”⁵⁸ and shows that the Division’s
9 determination is either not supported by facts or has no reasonable basis in law,⁵⁹
10 Armstrong’s declaration and evidence supporting her residency as of May 20, 2019
11 soundly defeats Vazquez’s election contest.⁶⁰

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14 **B. The Legal Standard For Determining The Appropriate Three-Year
Eligibility Period.**

15 Article II, section 2 of the Alaska Constitution provides, in full:

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17 **A member of the legislature shall be a qualified voter
who has been a resident of Alaska for at least three years**
18 and of the district from which elected for at least one year,

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20 ⁵⁴ See *Oberlatz*, 329 P.3d at 222 (quoting *Edgmon*, 152 P.3d at 1159).

21 ⁵⁵ See *id.*

22 ⁵⁶ See *id.* (emphasis omitted).

23 ⁵⁷ See *N. Slope Borough*, 484 P.3d at 113.

24 ⁵⁸ See *Oberlatz*, 329 P.3d at 222.

25 ⁵⁹ See *N. Slope Borough*, 484 P.3d at 113, 117.

26 ⁶⁰ See generally *Armstrong Aff.*

1 immediately preceding his filing for office. A senator shall
2 be at least twenty-five years of age and a representative at
least twenty-one years of age.^[61]

3 Although Vazquez is expected to argue that Armstrong must have “been a resident of
4 Alaska for at least three years” before she “fil[ed] for office” on June 1, 2022,⁶² that is
5 only one interpretation of the language of this constitutional provision, and one that
6 should not be adopted by this Court. Although Ms. Armstrong still prevails under the
7 legal test proposed by Vasquez, a proper interpretation of the Constitution to require
8 three years of residency *prior to taking office* provides an alternative basis to reject
9 Vasquez’s claims.
10

11 Article II, section 2 simply provides that “[a] member of the legislature shall be
12 a qualified voter who has been a resident of Alaska for at least three years[.]”⁶³ This
13 Court therefore can (and should) interpret that constitutional provision to mean
14 precisely what it says; that a candidate is eligible for office if they have: (1) “been a
15 resident of Alaska for at least three years” and are (2) “a qualified voter” (3) when they
16 become “[a] member of the legislature.”⁶⁴ The better reading of the Alaska
17 Constitution is to have the phrase “immediately preceding his filing for office” qualify
18 only the requirement of that a candidate have one year residency in the district. After
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21 _____
61 Alaska Const. art. II, § 2 (emphasis added).

22 62 See Alaska Const. art. II, § 2; see also Declaration (Attachment A to Armstrong
23 Aff.).

24 63 See Alaska Const. art. II, § 2.

25 64 See Alaska Const. art. II, § 2.

1 all, the United States Constitution has a less stringent residency requirement that only
2 requires a candidate to “be an [i]nhabitant of [a] State” “*when elected*.”⁶⁵ Although it is
3 not determinative in this case because Armstrong was in fact a resident of Alaska for
4 three years prior to filing for office on June 1, 2022, this Court should also have no
5 problem whatsoever determining that she will have been a resident of Alaska for over
6 three years by the time she is scheduled to be sworn into office in January 2023.⁶⁶
7

8 **IV. EXPECTED EVIDENCE**

9 Armstrong wishes to provide the Court with a roadmap of what it will hear at the
10 evidentiary hearing scheduled for December 22, 2022. Ultimately, the evidence will
11 show that Armstrong manifested her intent to become a resident of Alaska on May 20,
12 2019, which is when she and her now-husband Ben decided that she would move in
13 with him while she was at their then-shared residence.
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15 As detailed in her accompanying affidavit,⁶⁷ Armstrong began communicating
16 with her now-husband Ben in January 2019.⁶⁸ Their relationship flourished and moved
17 quickly, and Armstrong made travel plans to spend time with Ben in Alaska in May
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20 ⁶⁵ See U.S. Const. art. I, § 2 (“No Person shall be a Representative who shall not
21 have attained to the Age of twenty five Years, and been seven Years a Citizen of the
22 United States, and who shall not, *when elected, be an Inhabitant of that State in which*
he shall be chosen.” (emphasis added)).

23 ⁶⁶ See generally Complaint.

24 ⁶⁷ See generally Armstrong Aff.

25 ⁶⁸ See *id.* at ¶ 7.

1 2019.⁶⁹ When she arrived in Alaska on May 10, 2019, she brought many of her
2 personal belongings with her.⁷⁰ And in the end, before she left Alaska on May 20, 2019
3 for preexisting out-of-state commitments, Armstrong and Ben had a conversation and
4 decided that she would move in with him, thereby becoming a resident of Alaska on
5 that date.⁷¹ In fact, she left personal items and clothes behind at their now-shared
6 residence for that reason.⁷²
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8 This Court will consider an abundance of evidence about Armstrong’s time in
9 Alaska in May 2019 and her decision to become a resident on May 20, 2019.
10 Consistent with her decision, Armstrong left personal belongings at their residence on
11 May 20, 2019,⁷³ searched for flights that same day to possibly return to her home in
12 Alaska in-between her preexisting out-of-state commitments,⁷⁴ and booked flights on
13 May 25, 2019 to return.⁷⁵ Armstrong did return home to Alaska as scheduled on June
14 8, 2019,⁷⁶ and quickly continued putting down roots by promptly moving her business,
15 registering to vote, and obtaining an Alaska driver’s license.⁷⁷ And long before
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18 ⁶⁹ See *id.* at ¶¶ 7-8.

19 ⁷⁰ See *id.* at ¶¶ 9-10, 20, 26.

20 ⁷¹ See *id.* at ¶¶ 2, 18, 26.

21 ⁷² See *id.* at ¶¶ 18, 20.

22 ⁷³ See *id.*

23 ⁷⁴ See *id.* at ¶ 19.

24 ⁷⁵ See *id.* at ¶ 21.

25 ⁷⁶ See *id.*

26 ⁷⁷ See *id.* at ¶ 22.

1 considering filing for office,⁷⁸ Armstrong’s actions and statements to others confirm
2 that she intended to reside in Alaska beginning in May 2019.⁷⁹

3 By contrast, the evidence that Vazquez is likely to present at the evidentiary
4 hearing will be insufficient to show that Armstrong committed “fraud” when she
5 declared that she became a resident on May 20, 2019, or that her explanation is
6 “unreasonable or implausible.”⁸⁰ If anything, most of Vazquez’s evidence will only
7 confirm that Armstrong immediately began putting down substantial and permanent
8 roots in Alaska almost immediately after becoming a resident.
9

10 Vazquez’s primary evidence will likely be an Instagram post about Armstrong’s
11 10 days in Alaska in May 2019.⁸¹ But unlike declarations or affidavits that come with
12 penalties for perjury, Instagram posts are not sworn statements. There is limited
13 evidentiary value in a vague statement in a person’s pre-written Instagram post about
14 the timing of a particular “weekend”;⁸² the caption of a single Instagram post is much
15 too slender of a reed to support an election contest. Armstrong was obviously not
16 engaging in a legal analysis or committing to a sworn statement in that single post.
17 None of the other evidence Vazquez is expected to present at the evidentiary hearing
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21 ⁷⁸ See *id.* at ¶ 26 (“I had not considered running for office until May 2022[.]”).

22 ⁷⁹ See *id.* at ¶¶ 23, 25.

23 ⁸⁰ See *Oberlatz*, 329 P.3d at 222.

24 ⁸¹ See Complaint at ¶ 9 (“[L]ast weekend, I moved to Alaska[.]”).

25 ⁸² See *id.*

1 will require a different conclusion.⁸³ If anything, this evidence will show that
2 Armstrong completed many tasks much more rapidly than would typically be expected
3 for a person moving to Alaska, which only support a conclusion that she became a
4 resident on May 20, 2019.

5 **V. POSSIBLE REMEDIES**

6 Finally, the parties have vastly different views on what an appropriate remedy
7 should be if this Court somehow disagrees with the applicable law and evidence and
8 determines that Armstrong is not eligible to serve. Armstrong firmly believes that this
9 Court should find, after an evidentiary hearing, that Vazquez has failed to meet her
10 burden of proving that Armstrong had not been a resident of Alaska for three years for
11 the requisite time period.⁸⁴ But if this Court ultimately agrees with Vazquez on the
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14 ⁸³ With respect to Armstrong's statements about residency on her fishing licenses,
15 she simply rounded down to only count full months that she had been a resident of
16 Alaska to make sure that she would not get a fishing violation. *See* Armstrong Aff. at
17 ¶ 6. She also decided to list her prior Louisiana address because she believed that she
18 had to list an out-of-state address for a non-resident fishing license. *See id.* at ¶ 5.
19 Moreover, the fact that Armstrong wound down and moved her business from Louisiana
20 to Alaska within a matter of months is further evidence of her decision to become an
21 Alaska resident in May 2019. *See id.* at ¶ 22. The same is true with respect to the
22 timing of her registering to vote and obtaining an Alaska driver's license. *See id.*
23 Finally, the mere fact that Armstrong continued to take scheduled trips outside of
24 Alaska in 2019 does not change the timing of when she became a resident. *See*
25 AS 15.05.020(4); *see also* AS 01.10.055(c).

26 ⁸⁴ In her response to Armstrong's discovery requests, Vazquez suggests that
because Armstrong joined in the Division's motion to dismiss in the prior case (3AN-
22-08794CI), and the Division referenced AS 15.20.560 in its motion, Armstrong has
already conceded that Vazquez's remedy is somehow an appropriate option. But
(1) AS 15.20.560 does not go nearly as far as Vazquez suggests; (2) Armstrong has not
previously weighed in on this question; (3) the Court in the prior case granted the

1 evidence presented and the applicable law for determining residency — which it should
2 not — Vazquez’s proposed anti-democratic “solution” of having her represent House
3 District 16 should be rejected, because there is absolutely no basis for such a result in
4 Alaska law.

5 The Alaska Supreme Court has already considered and rejected the type of self-
6 serving “remedy” Vazquez proposes. In *Nageak v. Mallott*, the Supreme Court
7 unanimously agreed that completely “changing an election result . . . is *unprecedented*
8 in Alaska law and is an even *more* ‘extreme remedy’ than ordering a new election.”⁸⁵
9 Vazquez’s request to impose a “more ‘extreme remedy’ ”⁸⁶ would effectively overturn
10 the will of the voters for House District 16 — who rejected her by a ten point margin —
11 thereby undermining the electorate’s faith in the democratic process. Vazquez’s
12 request should not be seriously considered by this Court.

13 Instead of choosing Vazquez’s anti-democratic proposal that has no basis in
14 Alaska law, this Court *could* order the Governor fill any vacancy consistent with the
15 law if it were to find that Armstrong did not meet the residency requirements. The
16 Alaska Constitution provides that the Governor “shall fill [a] vacancy by
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21 Division’s motion to dismiss because there was no jurisdiction for that claim; and (4) as
22 explained in this Section, there is no legal basis to support Vazquez’s proposed remedy.

23 ⁸⁵ See 426 P.3d 930, 950 n.91 (Alaska 2018) (emphasis added) (quoting *Fischer v.*
24 *Stout*, 741 P.2d 217, 226 (Alaska 1987)); see also *id.* at 951 (Winfree, J., dissenting) (“I
25 agree with the [C]ourt that . . . the superior court’s order directing the Division . . . to
26 certify [a new] . . . winner . . . was legal error and must be reversed.”).

⁸⁶ See *id.* at 950 n.91 (quoting *Fischer*, 741 P.2d at 226).

1 appointment,”⁸⁷ and AS 15.40.320 requires that the Governor select someone to fill a
2 vacancy within 30 days.⁸⁸ The person to fill any vacancy must “be a member of the
3 same political party” and must be “subject to confirmation by a majority of the
4 members of the legislature who are members of the same political party . . . and of the
5 same house.”⁸⁹ If an appointee is rejected, the Governor then has 10 more days to
6 appoint another qualified person.⁹⁰

7
8 In this case, should it have to decide this issue, it would be perfectly reasonable
9 for this Court to order this remedy. In fact, this is precisely what happened when the
10 Governor appointed a replacement for Nancy Dahlstrom in December 2018 — who had
11 just won the 2018 general election for then-House District 13 — when, prior to being
12 sworn in, Dahlstrom became ineligible to serve after accepting appointment as the
13 Commissioner of the Alaska Department of Corrections.⁹¹ And, at a minimum, it
14 would avoid the “even more ‘extreme remedy’ ” of declaring a defeated candidate
15 (Vazquez here) the victor in an election.⁹²

16
17 An alternative to ordering that a replacement be selected by the Governor — and
18 one that has a basis in Alaska law — would be to apply the general rule for an election
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21 ⁸⁷ Alaska Const. art. II, § 4.

22 ⁸⁸ AS 15.40.320.

23 ⁸⁹ See AS 15.40.330(a).

24 ⁹⁰ See AS 15.40.350.

25 ⁹¹ See Press Release, Governor Mike Dunleavy, Sharon Jackson Selected as House
26 District 13 Representative (Dec. 20, 2018) (Attachment U to Gottstein Aff.).

1 contest, which would be to “set aside” a “contested election.”⁹³ But it is only in
2 “extreme” circumstances where courts should consider “ordering a new election.”⁹⁴
3 And doing so would be particularly “extreme” and problematic in this case for at least
4 three reasons. First, it would likely leave the residents of House District 16 without
5 representation in the Alaska State House for a substantial period of time. Second, it
6 would be costly to hold a special election in House District 16. Finally, the results of a
7 new election would be unlikely to change the outcome of the past election; if a new
8 election were to occur, even under Vazquez’s interpretation of the facts and the law,
9 Armstrong will have been a resident of Alaska for at least three years, and eligible to
10 run.
11

12 In sum, Vazquez will not be able to cite any law in Alaska to support her
13 position that she, rather than Armstrong, should be declared the victor in the race for
14 House District 16 (in the unlikely event this Court agrees with her allegations). Indeed,
15 this Court would likely be reversed in short order were it to adopt Vazquez’s
16 interpretation.⁹⁵ Rather, the only remedies with a basis in law would be to either:
17 (1) allow the Governor to appoint a replacement (subject to confirmation by other
18 elected Democrats in the Alaska State House) or (2) order a new election. But again,
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21 ⁹² See *Nageak*, 426 P.3d at n.91 (quoting *Fischer*, 741 P.2d at 226).

22 ⁹³ See AS 15.20.560.

23 ⁹⁴ See *Nageak*, 426 P.3d at 947 n.73 (quoting *Hammond v. Hickel*, 588 P.2d 256,
24 259 (Alaska 1978)).

25 ⁹⁵ See *id.* at 950 n.91, 951.

1 this Court need not reach this issue, because the evidence will make evident that
2 Armstrong was a resident of Alaska on May 20, 2019.

3 **VI. CONCLUSION**

4 Vazquez bears the burden of presenting evidence of fraud, unreasonableness, or
5 implausibility to contest Armstrong’s declaration — accepted by the Division of
6 Elections — where she swore that she became a resident of Alaska on May 20, 2019.
7 The Division’s eligibility determination is subject to deference by this Court, and there
8 is ample evidence showing that Armstrong intended to reside in Alaska on May 20,
9 2019. Moreover, the Alaska Constitution only requires a candidate to be a resident for
10 three years before becoming a member of the legislature, and Vazquez’s proposed
11 “remedy” has absolutely no basis in Alaska law. After the conclusion of the evidentiary
12 hearing, this Court should reject Vazquez’s claims and declare Armstrong the winner of
13 the election for House District 16.
14
15

16 CASHION GILMORE & LINDEMUTH
17 Attorneys for Jennie Armstrong

18 DATE: December 19, 2022



19 Scott M. Kendall
20 Alaska Bar No. 0405019
21 Samuel G. Gottstein
22 Alaska Bar No. 1511099

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on December 19, 2022, on the following:

Stacey C. Stone
Richard Moses
Anna E. Cometa
Holmes, Weddle & Barcott, P.C.
sstone@hwb-law.com
rmoses@hwb-law.com
acometa@hwb-law.com

Margaret Paton-Walsh
Thomas S. Flynn
Alaska Department of Law
margaret.patonwalsh@alaska.gov
Thomas.flynn@alaska.gov

CASHION GILMORE & LINDEMUTH

By: *s/Jennifer Ditcharo*