

IN THE SUPREME COURT FOR THE STATE OF ALASKA

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

Appellants,

v.

LT. GOVERNOR NANCY
DAHLSTROM, in her official capacity as
Lieutenant Governor for the State of
Alaska, and MICHAELA THOMPSON,
in her official capacity as Acting Director
of the Division of Elections, and JENNIE
ARMSTRONG,

Appellees.

Supreme Court No. S-18619

Trial Court Case No. 3AN-22-09325CI

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE JUDGE HERMAN G. WALKER, JR.

BRIEF OF APPELLEE JENNIFER “JENNIE” ARMSTRONG

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
AUTHORITIES PRINCIPALLY RELIED UPON	v
PARTIES.....	1
INTRODUCTION.....	1
ISSUES PRESENTED.....	3
STATEMENT OF THE CASE.....	3
I. Factual History	3
II. Procedural History.....	4
A. Evidentiary hearing.....	5
i. Armstrong’s testimony	5
ii. Kellie’s testimony.....	9
iii. Congdon’s testimony.....	11
B. The superior court’s findings of fact and conclusions of law.....	11
ARGUMENT	14
I. To Succeed In Her Election Contest, Vazquez Bears The Burden Of Proving That Armstrong Was Not A Resident Of Alaska On Or Before June 1, 2019.	14
II. The Legal Standard For Determining The Date Of A Candidate’s Residency In Alaska Is Based On Intent, Consistent With Title 15’s Applicable Statutes.	16
III. The Superior Court Did Not Clearly Err When It Found That Armstrong Became An Alaska Resident On May 20, 2019.	21
IV. Even If This Court Were To Conclude That The Superior Court Clearly Erred And That Armstrong Is Ineligible To Serve — Which It Cannot — This Court Should Not Declare Vazquez The Winner Of The Election.	25
CONCLUSION	27

TABLE OF AUTHORITIES

CASES

<i>Adamson v. Univ. of Alaska</i> , 819 P.2d 886 (Alaska 1991)	18
<i>Carwile v. Jones</i> , 101 P. 153 (Mont. 1909)	12
<i>Ebertz v. Ebertz</i> , 113 P.3d 643 (Alaska 2005)	24
<i>Edgmon v. State</i> , 152 P.3d 1154 (Alaska 2007).....	14
<i>Fairview Dev., Inc. v. City of Fairbanks</i> , 475 P.2d 35 (Alaska 1970).....	18
<i>Fischer v. Stout</i> , 741 P.2d 217 (Alaska 1987).....	15, 25, 26
<i>Gilbert v. State</i> , 526 P.2d 1131 (Alaska 1974)	14
<i>Grove v. Grove</i> , 400 P.3d 109 (Alaska 2017).....	21
<i>Hammond v. Hickel</i> , 588 P.2d 256 (Alaska 1978).....	27
<i>Hansen v. Hansen</i> , 119 P.3d 1005 (Alaska 2005).....	21
<i>In Re Hutchinson’s Estate</i> , 577 P.2d 1074 (Alaska 1978).....	21
<i>Lake & Peninsula Borough Assembly v. Oberlatz</i> , 329 P.3d at 221 (Alaska 2014).....	
.....	passim
<i>Maksym v. Bd. of Election Comm’rs of Chi.</i> , 950 N.E.2d 1051 (Ill. 2011)	15
<i>Miller v. Treadwell</i> , 245 P.3d 867 (Alaska 2010).....	14
<i>Morris v. Morris</i> , 506 P.3d 8 (Alaska 2022).....	22
<i>N. Slope Borough v. State</i> , 484 P.3d 106 (Alaska 2021)	15, 16
<i>Nageak v. Mallott</i> , 426 P.3d at 947 (Alaska 2018)	25, 27
<i>Nash v. Matanuska-Susitna Borough</i> , 239 P.3d 692 (Alaska 2010).....	21
<i>Nelson v. Mun. of Anchorage</i> , 267 P.3d 636 (Alaska 2011).....	21

Nicolos v. N. Slope Borough, 424 P.3d 318 (Alaska 2018) 15

Pruitt v. State, 498 P.3d 591 (Alaska 2021)..... 14, 22

Soules v. Ramstack, 95 P.3d 933 (Alaska 2004)..... 16

Stanhope v. Stanhope, 306 P.3d 1282 (Alaska 2013) 22

State v. O’Neill Investigations, Inc., 609 P.2d 520 (Alaska 1980) 18

ALASKA STATUTES

AS 01.10.055..... passim

AS 15.05.020..... passim

AS 15.20.540..... 4, 12, 14, 22

AS 15.20.560..... 27

AS 15.25.043..... passim

AS 15.40.320..... 26

AS 15.40.330..... 26

AS 15.40.350..... 26

Ch. 83, §1.02, SLA 1960..... 19

Ch. 67, §1, SLA 1983..... 18

Ch. 59, §2, FSSLA 2005 19

ALASKA CONSTITUTION

Alaska Const. art. II, § 2 passim

Alaska Const. art. II, § 4 26

OTHER ALASKA AUTHORITIES

Alaska Constitutional Convention, Commentary to Committee Proposal 5, at 1 (Dec. 14,
1955) (folder 310.5) 20

AUTHORITIES PRINCIPALLY RELIED UPON

CONSTITUTIONAL PROVISION

Article II, section 2 of the Alaska Constitution. Members: Qualifications.

A member of the legislature shall be a qualified 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. A senator shall be at least twenty-five years of age and a representative at least twenty-one years of age.

STATUTES

AS 01.10.055. Residency.

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

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

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

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

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

AS 15.05.020. Rules for determining residence of voter.

For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state or the United States or of the high seas, while

residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home or the Alaska Veterans' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary work sites do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state, or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which the person comes without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010.

(7) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(8) The address of a voter as it appears on the official voter registration record is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence.

AS 15.20.540. Grounds for election contest.

A defeated candidate or 10 qualified voters may contest the nomination or election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds:

(1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election;

(2) when the person certified as elected or nominated is not qualified as required by law;

(3) any corrupt practice as defined by law sufficient to change the results of the election.

AS 15.20.550. Jurisdiction and time for contest.

The action may be brought in the superior court within 10 days after the completion of the state review.

AS 15.20.560. Judgment of court.

The judge shall pronounce judgment on which candidate was elected or nominated and whether the question or proposition was accepted or rejected. The director shall issue a new election certificate to correctly reflect the judgment of the court. If the court decides that the election resulted in a tie vote, the director shall immediately proceed to determine the election by lot as is provided by law. If the court decides that no candidate was duly elected or nominated, the judgment shall be that the contested election be set aside. The provisions of this section and AS 15.20.540 and 15.20.550 are not intended to limit or interfere with the power of the legislature to judge the election and qualifications of its members.

AS 15.25.043. Determination of residency of candidate.

In determining the residence within a house district of a qualified voter for the purposes of compliance with art. II, sec. 2, Constitution of the State of Alaska, the director shall apply the rules established in AS 15.05.020 together with the following rules:

- (1) a person establishes residence within a house district
 - (A) by actual physical presence at a specific location within the district; and
 - (B) by maintaining a habitation at the specific location;
- (2) a person may maintain a place of residence at a specific location within a district while away from the location for purposes of employment, education, military service, or vacation if the person does not establish residency at another location; and
- (3) a qualified voter loses residence by voting in another house district or in another state's elections.

PARTIES

Appellants are Liz Vazquez, the defeated candidate in the election for House District 16 (“Vazquez”), Chris Duke, Randy Eledge, Steve Strait, and Kathryn Werdahl. Appellees are Lieutenant Governor Nancy Dahlstrom, in her official capacity as the Lieutenant Governor for the State of Alaska, Michaela Thompson, in her official capacity as the Acting Director of the Division of Elections (collectively “the State”), and Jennifer “Jennie” Armstrong, the winning candidate in the election for House District 16 (“Armstrong”).

INTRODUCTION

When she filed for office on June 1, 2022, Armstrong swore in her declaration of candidacy that she had been a resident of Alaska since May 20, 2019. She was certified as the winner of the general election for House District 16 on November 30, 2022. Vazquez filed this election contest on the same day, claiming that Armstrong is ineligible to serve as a member of the legislature because she had not been a resident of Alaska for at least three years prior to filing for office. After an evidentiary hearing, the superior court found that Armstrong did become a resident of Alaska on May 20, 2019 — more than three years before she filed for office — and ruled that “Armstrong remains the certified winner” of the election for House District 16.

With an eye towards overturning the results of that election, Vazquez is asking this Court to reverse the superior court’s findings of fact and conclusions of law in three dramatic and unprecedented ways. First, Vazquez asks this Court to create a brand-new (and retroactive) “super” test for residency that would only apply to the three-year

residency requirement for candidates that exists in article II, section 2 of the Alaska Constitution (this new residency test would not even apply to the one-year district residency requirement). Second, Vazquez argues that the superior court clearly erred when it found that the evidence showed Armstrong became a resident of Alaska on May 20, 2019, and that Vazquez failed to meet her burden of showing otherwise. Finally, Vazquez requests a remedy “unprecedented” in Alaska law: that she, the loser of the election for House District 16, be declared the winner.

None of Vazquez’s arguments have merit. The superior court correctly determined that this Court’s decision in *Lake & Peninsula Borough Assembly v. Oberlatz* controls as to when and where a candidate intends to reside,¹ and that the general residency statute contained in AS 01.10.055 is inapplicable to determine whether a candidate meets the Alaska Constitution’s three-year residency requirement. The superior court did not clearly err when it found — after considering the evidence and testimony — Armstrong’s Alaska residency date was credible, and that Vazquez had failed to meet her burden of presenting credible evidence of fraud, unreasonableness, or implausibility to rebut that date. And there is absolutely no legal basis to support Vazquez’s requested remedy of having herself declared the winner of the election for House District 16.

Because none of the superior court’s findings of fact or conclusions of law can be reversed, this Court should AFFIRM that Armstrong is the certified winner of the election for House District 16.

¹ 329 P.3d 214, 222-23 (Alaska 2014).

ISSUES PRESENTED

1. *Intent Determines Residency.* Did the superior court correctly determine that Alaska’s statutes (specifically Title 15) and case law concerning residency for voters and candidates should apply when interpreting the three-year residency requirement contained in article II, section 2 of the Alaska Constitution?
2. *Factual Findings.* Did the superior court clearly err when it found that Armstrong became a resident of Alaska on May 20, 2019, and that Vazquez failed to meet her burden of presenting credible evidence of fraud, unreasonableness, or implausibility?
3. *Remedy.* Should this Court adopt Vazquez’s unprecedented suggested remedy of declaring her, the certified loser of the election, as the winner?

STATEMENT OF THE CASE

I. Factual History

Armstrong filed to become a candidate for office for House District 16 on June 1, 2022. [Ae. Exc. 19] As part of her June 1 filing, Armstrong signed a sworn declaration that she had been a resident of Alaska for over three years prior to that date, and a resident of the newly-created House District 16 for at least one. [Ae. Exc. 119; *see* Ae. Exc. 19;] No one challenged her residency within the required 10 days after Armstrong filed for office, and the Alaska Division of Elections (“the Division”) certified Armstrong as a candidate for House District 16 for placement on the primary ballot. [Ae. Exc. 19] After Armstrong received over 50% of the vote in a divided primary field, two of the four candidates for

House District 16 withdrew, leaving a head-to-head matchup between Armstrong and Vazquez in the general election. [Ae. Exc. 19]

Eight days before the general election, and after early voting had begun, four registered voters filed a complaint for declaratory and injunctive relief, claiming that Armstrong did not meet the three-year residency requirement outlined in article II, section 2 of the Alaska Constitution.² [Ae. Exc. 20] The superior court in that case denied those voters' request and promptly granted the State's and Armstrong's cross motion to dismiss "because there is no statutory procedure under Alaska law to permit" such a challenge filed during that time period. [Ae. Exc. 20]

Alaska's general election occurred on November 8, 2022. [Ae. Exc. 20] Armstrong defeated Vazquez in the race for House District 16 by nearly 11%. [Ae. Exc. 20] The Division certified Armstrong as the winner of that election on November 30, 2022. [Ae. Exc. 20]

II. Procedural History

Vazquez, along with the four registered voters who had brought the prior defective challenge, filed this election contest on November 30, 2022.³ [Ae. Exc. 20-21] Vazquez claimed that Armstrong was ineligible to serve as "[a] member of the legislature" because

² See Alaska Const. art. II, § 2 ("A member of the legislature shall be a qualified 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.").

³ Because an election contest must be brought by either "[a] defeated candidate or 10 qualified voters," and there are only four other qualified voters named in this case, Armstrong has referred to Vazquez individually as the Appellant because this case and appeal can only be maintained and brought by her. See AS 15.20.540.

she had not “been a resident of Alaska for at least three years” before “filing for office.”⁴ [Ae. Exc. 1-8] Based on Armstrong’s alleged ineligibility, Vazquez requested that she herself be declared the winner of the election for House District 16. [Ae. Exc. 7] The superior court granted Armstrong’s unopposed motion to intervene, [Ae. Exc. 11] Vazquez’s unopposed motion to expedite proceedings, [Ae. Exc. 14-15] accepted trial briefs, witness lists, and proposed exhibits, [Ae. Exc. 16-118] and held an evidentiary hearing on December 22, 2022.⁵ [Ae. Exc. 152]

A. Evidentiary hearing

The superior court heard testimony from three witnesses at the scheduled evidentiary hearing: (1) Armstrong; [Ae. Exc. 153-157] (2) Benjamin “Ben” Kellie (“Kellie”), Armstrong’s now-husband; [Ae. Exc. 157; *see also* Ae. Exc. 157-158] and (3) Jeffrey Congdon (“Congdon”), the “regional supervisor of region II for the Division, which includes [House] District 16.” [Ae. Exc. 152; *see also* Ae. Exc. 152-153] Although the court heard the three witnesses’ testimony out of order, Armstrong was the only witness Vazquez called. [*See* Ae. Exc. 153]

i. Armstrong’s testimony

Armstrong testified at the evidentiary hearing that she “was born and raised in Louisiana,” “attended college at Louisiana State University from 2007 to 2011,” and then obtained a “Master’s degree i[n] Paris, France in 2012.” [Ae. Exc. 153] Armstrong testified

⁴ *See* Alaska Const. art. II, § 2.

⁵ Armstrong has provided some, but not all, of the exhibits that were admitted at the evidentiary hearing in her excerpt.

that she then moved to and lived in Seattle from approximately 2012 to 2014, after which she moved to Washington, D.C. [Ae. Exc. 153] She testified that she lived in Washington, D.C. until the summer of 2016, when she “sold the majority of her belongings” and “considered herself to be ‘location independent.’ ” [Ae. Exc. 153]

Armstrong testified that she first met her now-husband Kellie while “on a video call with a friend from graduate school” in January 2019. [Ae. Exc. 154; *see also* Audio at 9:19] It was on that call that “Kellie invited her to make a trip to Alaska.” [Ae. Exc. 154] She testified that “Kellie enticed Armstrong to [visit] Alaska with two [P]ower[P]oint presentations,” and that “their relationship became romantic” as the two of them “remained in regular communication.” [Ae. Exc. 154] Armstrong testified that she “later booked a flight into Anchorage for May 10, 2019, to depart [on] May 20, 2019.” [Ae. Exc. 154 (footnote omitted); *see also* Ae. Exc. 149-150] Armstrong had never been to Alaska before this trip, and “testified that it was not her original intent to move to Alaska.” [Ae. Exc. 154]

Armstrong testified extensively about her time in Alaska prior to May 20, 2019. [Ae. Exc. 154; *see* Ae. Exc. 73 (listing admitted exhibits (3004-3010) of photographs of Armstrong spending time with Kellie across Alaska); *see also* Ae. Exc. 50-56 (containing the photographs before they were marked as exhibits 3004-3010)] While she was in Alaska, she spent time with Kellie in Valdez, Chicken, Chena Hot Springs, Talkeetna, Hope, Seward, Girdwood, and Anchorage. [Audio at 9:30, 10:27-10:38] And at the end of her trip, Armstrong testified that she “decided to accept Kellie’s proposal to live with him in Anchorage.” [Ae. Exc. 154] In other words, as she testified at the evidentiary hearing,

before departing Armstrong made the decision that she “was all in” on her relationship with Kellie and living with him on May 20, 2019. [Ae. Exc. 154]

When Armstrong left Alaska on “May 20, 2019 to attend ‘prior commitments,’ ” [Ae. Exc. 155] she testified that she left some personal belongings behind with Kellie at their then-shared residence. [Ae. Exc. 165; *see* Ae. Exc. 147] This was consistent with “her intent . . . to return to Anchorage once her obligations were complete.” [Ae. Exc. 155] Armstrong also testified that she looked for flights to return to Alaska between commitments on that same day,⁶ [Ae. Exc. 155; *see* Ae. Exc. 147] but that she ultimately purchased tickets on May 25, 2019 [Ae. Exc. 121] to return to Alaska on June 8, 2019. [Ae. Exc. 155] She further testified that she went with Kellie to “Toronto on June 11, 2019,” and “returned to Anchorage on June 14, 2019.” [Ae. Exc. 155]

Armstrong testified that she posted a series of thirteen (13) posts on Instagram when she was in Toronto on June 13, 2019. [Audio at 11:29-11:42] She further testified that a portion of this series of posts were meant to recall portions of her time in Alaska from May 10-20, 2019, but were not meant to be taken literally. [Audio at 11:29-11:42] Armstrong also testified that she would frequently draft language for her Instagram posts ahead of time, which was consistent with the tenses and phrasing of the thirteen posts that she made simultaneously while she was in Toronto.⁷ [Audio at 11:29-11:42]

⁶ Armstrong had a draft itinerary and flights, but ultimately she and Kellie decided that it did not make financial or logical sense for her to come back to Alaska in between her prior commitments. [Ae. Exc. 155; *see* Ae. Exc. 120]

⁷ Armstrong’s testimony, and the content of the posts themselves, left no doubt that this series of Instagram posts was clearly not drafted contemporaneously with their posting.

Armstrong testified that when she applied for two nonresident sportfishing licenses in June 2019, she “listed her childhood home in Louisiana” to “err[] on the side of caution.” [Ae. Exc. 155] She testified that she wanted to be cautious with her fishing licenses because “Kellie instilled in her how serious Alaska takes residency requirements when applying for fishing licenses.” [Ae. Exc. 155] She similarly listed her residency in “an abundance of caution” when obtaining resident fishing licenses in 2020 and 2021, [Ae. Exc. 155-156] because she only counted full months that she was in Alaska, rounded down. [Audio at 11:42-11:48] Armstrong listed her length of residency differently on her 2022 resident fishing license “because she had ‘recently determined the exact date she became a resident of Alaska’ ” because of her declaration of candidacy. [Ae. Exc. 156; *see also* Ae. Exc. 119]

Armstrong testified about other actions she took after she decided to move to Alaska on May 20, 2019. She obtained her Alaska driver’s license and registered to vote on August 26, 2019. [Ae. Exc. 156; *see also* Ae. Exc. 128, 148] Armstrong also testified that she re-licensed her businesses in Alaska in the summer of 2019. [See Ae. Exc. 156] She

The post Vazquez critically relies on is one of thirteen posts that were made simultaneously. They reflected previously-written thoughts about traveling to different places that were posted later, including locations in Alaska, Washington, and New York. But the text for all of these posts were published at the same time while Armstrong was in Toronto, making it entirely reasonable for the superior court to disregard them because they were neither literal nor factual representations of where Armstrong was on that specific date. [Audio at 11:29-11:42] Additionally, Vazquez’s reliance on a theory that Armstrong’s Instagram posts should be taken literally is completely undermined by two other posts which directly support Armstrong’s Alaska residency beginning in May 2019. [See Ae. Exc. 63 (indicating in May 2020 that “this time a year ago” she “found” herself “here” in Alaska when she “began an epic adventure”); Ae. Exc. 64 (stating, in May 2021, “[t]wo years ago today I landed in Alaska [and] . . . I never left”)]

further testified that after moving to Alaska in May 2019, she never voted in or became a resident of any other State.⁸ [Audio at 10:55] Additionally, she drafted and sent a text message to a friend on August 5, 2019 stating that she moved to Alaska in May of that year. [Ae. Exc. 156; *see* Ae. Exc. 123] Armstrong purchased the home that she and Kellie currently live in on September 29, 2020, [Ae. Exc. 156; *see also* Ae. Exc. 125-126] got married on October 1, 2020, and has a 19-month-old son with Kellie. [Audio at 11:21-11:24]

Finally, Armstrong testified that “she did not intend to run for office until” early May of 2022. [See Ae. Exc. 157] Although she decided to run, it was “contingent upon Representative Matt Claman[.]” deciding to run “for [the] Alaska State Senate.” [Ae. Exc. 157] Armstrong testified that it was during this time, in May 2022, that “she first learned of and researched the residency requirement” to run for office, [Ae. Exc. 157] and pinpointed that she became a resident of Alaska on May 20, 2019. [Ae. Exc. 119]

ii. Kellie’s testimony

Kellie testified that he “was born in Fairbanks and raised in Nikiski.” [Ae. Exc. 157] He obtained his undergraduate degree from the University of Alaska Fairbanks, [Audio at 12:04] obtained a master’s degree from Ohio State, [Audio at 12:04] and worked for SpaceX in California as both an employee and a contractor for approximately four years.

⁸ This was confirmed by records from Louisiana, the state where she had previously been registered to vote. [See Ae. Exc. 138 (showing that Armstrong never again voted in Louisiana after becoming a resident of Alaska on May 20, 2019)]

[Audio at 12:05; *see* Ae. Exc. 157] Kellie testified that he “moved back to Alaska in 2015, where he has remained [ever] since.” [Ae. Exc. 157]

Kellie testified, consistent with Armstrong’s testimony, that he first met her “on a video call with a mutual friend” in January 2019. [Ae. Exc. 157] He also testified that “he invited Armstrong to come visit Alaska” on that call, and “that he and Armstrong maintained regular communication before she came to Alaska.” [Ae. Exc. 157] Kellie testified that their communications before Armstrong’s trip “became romantic,” and that he hoped “to ‘showcase’ Alaska so that Armstrong might choose to live” with him in Alaska. [Ae. Exc. 157] Although Kellie testified that “he wanted a committed relationship with Armstrong,” he had also indicated to her that “he never intended to make a home anywhere but [in] Alaska.” [Ae. Exc. 158]

Consistent with Armstrong’s testimony, Kellie testified about their trip throughout Alaska from May 10-20, 2019. [Audio at 12:07-12:17; *see* Ae. Exc. 158] Kellie testified that he “asked Armstrong to move in with him and live in Anchorage” when they were in Seward on May 18, 2019. [Ae. Exc. 158] He also testified that, on May 20, 2019, “Armstrong vocalized her intent to live with him.” [Ae. Exc. 158] Kellie recalled that Armstrong left some clothes and personal items behind at their home in Alaska when she left on May 20, 2019. [Audio at 12:17; Ae. Exc. 147] He also testified that he had, at a later date, told Armstrong to be “conservative” and “better safe than sorry” when filling out her fishing licenses. [Audio at 12:24-12:25]

Finally, Kellie testified that he drafted and sent a text message to both Armstrong and a friend on January 15, 2020, where he stated that Armstrong “moved up here last May.” [Ae. Exc. 158; *see* Ae. Exc. 124]

iii. Congdon’s testimony

Congdon, the regional supervisor for the region that includes House District 16, testified that he processed Armstrong’s declaration of candidacy on June 1, 2022. [Ae. Exc. 152; *see also* Ae. Exc. 119] He confirmed that “the length of [an] applicant’s residency is not verified” by the Division. [Ae. Exc. 153] Congdon also testified that the information listed by an applicant on his or her declaration of candidacy “is ‘taken at face value’ because the form is a sworn declaration.” [Ae. Exc. 153] Finally, Congdon testified that it is the Division’s policy to apply Title 15 of the Alaska Statutes — and not Title 1 — when determining whether a candidate is eligible. [Audio at 8:57-8:58]

B. The superior court’s findings of fact and conclusions of law

On January 9, 2023, the superior court issued findings of fact and conclusions of law. [Ae. Exc. 151-169] The court first made preliminary findings of fact based on the testimony provided at the evidentiary hearing, [Ae. Exc. 152-158] and later cited some of the additional objective and subjective evidence supporting Armstrong’s sworn declaration of candidacy that she became a resident of Alaska on May 20, 2019. [Ae. Exc. 164-168]

The superior court also determined that “Title 15 controls the analysis for qualification of candidates,” [Ae. Exc. 159] and that AS 15.05.020 and AS 15.25.043 were applicable for determining the “residency of a candidate for the purpose of abiding by” article II, section 2 of the Alaska Constitution. [Ae. Exc. 160] More specifically, the court

determined that this Court’s decision in *Oberlatz* applied, [Ae. Exc. 161] and that — consistent with that decision — it would “consider[] subjective evidence of residency that is supported by sufficient objective evidence.”⁹ [Ae. Exc. 161] The court also considered factors outlined by the Montana Supreme Court for determining “what constitutes ‘removal’ for purposes of residency” for voters,¹⁰ and concluded that “some affirmative act, . . . coupled with the intent to make that place a home[,] may constitute a sufficient act of removal.” [Ae. Exc. 162-163]. The court also explained that Vazquez had “the burden to prove that Armstrong is not a resident of Alaska pursuant to AS 15.20.540,” [Ae. Exc. 163] and that the question before the court was whether Armstrong “became a resident [of Alaska] on or before June 1, 2019.” [Ae. Exc. 164; *see also* Ae. Exc. 163-164]

After considering the relevant facts and evidence presented at the evidentiary hearing, the superior court found “that Armstrong became a resident of Alaska on May 20, 2019.” [Ae. Exc. 169] This finding was based on:

- Armstrong searching for flights to return home to Alaska immediately after leaving for her prior obligations; [Ae. Exc. 164-165; *see also* Ae. Exc. 120]
- Armstrong purchasing tickets to return to Alaska after her “temporary” absence; [Ae. Exc. 164-165; *see also* Ae. Exc. 121]

⁹ *See Oberlatz*, 329 P.3d at 222 (“Absent any indicia of fraud or unreasonableness or implausibility, the court should accept the statements of the voter as to their intended residence if supported by sufficient indicia of residency.” (emphasis omitted)).

¹⁰ *See Carwile v. Jones*, 101 P. 153, 157-59 (Mont. 1909); AS 15.05.020(3) (“A change in residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.”).

- Armstrong leaving “some personal belongings in Alaska when she departed on May 20, 2019”; [Ae. Exc. 165; *see also* Ae. Exc. 147]
- Armstrong and Kellie sending text messages to third parties, long before she considered running for office, confirming that she moved to Alaska in May 2019; [Ae. Exc. 167; *see also* Ae. Exc. 122-124]
- “Armstrong’s intent” to become “an Alaska resident on May 20, 2019,” [Ae. Exc. 167] which was verbalized by her to Kellie before leaving for the airport; and
- Armstrong’s “emotional and physical connection” to Alaska after “she fell in love” with Kellie. [Ae. Exc. 168]

The superior court also considered and rejected Vazquez’s arguments that Armstrong did not become a resident of Alaska on May 20, 2019. [See Ae. Exc. 164-167] Specifically, the court found that it was “immaterial” “that Armstrong delivered or had delivered a significant number of personal items [to Alaska] at a later date.” [Ae. Exc. 165] The court also found “that voter registration and the issue date of a driver’s license are not dispositive of the exact date of residency,” [Ae. Exc. 166] and that Armstrong’s testimony explaining the residency dates on her fishing licenses was “credible.” [Ae. Exc. 166-167] By not mentioning Vazquez’s interpretation of Armstrong’s Instagram posts in its findings of facts or conclusions of law, the court presumably did not find Vazquez’s theory credible or reliable. [Ae. Exc. 151-169]

Vazquez appeals.

ARGUMENT

I. To Succeed In Her Election Contest, Vazquez Bears The Burden Of Proving That Armstrong Was Not A Resident Of Alaska On Or Before June 1, 2019.

At the outset, consistent with this Court’s prior decisions, it is important to emphasize that Vazquez bears the burden of proving that Armstrong was not a resident of Alaska prior to June 1, 2019.¹¹ If Vazquez cannot meet her burden — and the superior court correctly concluded that she had not [Ae. Exc. 151-169] — then her election contest brought pursuant to AS 15.20.540(2) must fail as a matter of law.¹²

Vazquez challenges Armstrong’s date of residency in Alaska, and this Court has provided further guidance as to what Vazquez must prove to succeed in her contest. In *Lake & Peninsula Borough Assembly v. Oberlatz*, this Court held that a voter’s place of residency is determined by that voter’s intent.¹³ This Court explained that “[a] voter’s residency intent is a question of fact determined by the superior court after sifting and weighing evidence,”¹⁴ and that “[t]he burden of [contesting residency] . . . is on the challenger.”¹⁵ Moreover, this Court held that, “[a]bsent any indicia of fraud or

¹¹ See *Gilbert v. State*, 526 P.2d 1131, 1134 (Alaska 1974) (affirming the constitutionality of the Alaska Constitution’s residency requirements for candidates).

¹² See *Pruitt v. State*, 498 P.3d 591, 600 (Alaska 2021) (reiterating that a candidate who brings an election contest “must allege *and prove* the necessary elements of an election contest claim” (emphasis in original) (quoting *Miller v. Treadwell*, 245 P.3d 867, 877 (Alaska 2010))); see also AS 15.20.540 (“A defeated candidate . . . may contest the . . . election of any person . . . (2) when the person certified as elected . . . is not qualified as required by law[.]”).

¹³ 329 P.3d at 222-23.

¹⁴ See *id.* at 222 (citations omitted).

¹⁵ See *id.* (quoting *Edgmon v. State*, 152 P.3d 1154, 1159 (Alaska 2007)).

unreasonableness or implausibility, the court should accept the statements of the voter as to their intended residence if supported by sufficient indicia of residency.”¹⁶ Indeed, this Court reiterated that “even a park bench will be sufficient” as a location to establish residency,¹⁷ and recognized that leaving personal property at a residence may be evidence to support residency.¹⁸ Vazquez therefore can only succeed if she contests Armstrong’s stated residency date by presenting credible evidence of fraud, unreasonableness, or implausibility.¹⁹ She did not.

Finally, because the Division certified Armstrong’s candidacy, its interpretation of Alaska’s residency requirements should be afforded deference by this Court and analyzed under the reasonable basis standard of review.²⁰ This is because, “[f]or ‘questions of law involving “agency expertise or the determination of fundamental policies within the scope of the agency’s statutory functions,” ’ [this Court] evaluate[s] ‘whether the agency’s decision is supported by the facts and has a reasonable basis in law, even if [this Court] may not agree with the agency’s ultimate determination.’ ”²¹ This Court should therefore

¹⁶ See *id.* (emphasis omitted).

¹⁷ See *id.* at 223 n.25 (citing *Fischer v. Stout*, 741 P.2d 217, 221 (Alaska 1987)).

¹⁸ See *id.* (citing *Maksym v. Bd. of Election Comm’rs of Chi.*, 950 N.E.2d 1051, 1065-66 (Ill. 2011)).

¹⁹ See *id.* at 222.

²⁰ See *N. Slope Borough v. State*, 484 P.3d 106, 113 (Alaska 2021) (quoting *Nicolos v. N. Slope Borough*, 424 P.3d 318, 325 (Alaska 2018)).

²¹ See *id.* (quoting *Nicolos*, 424 P.3d at 325).

grant deference to the Division’s correct decision to apply AS 15.05.020 and AS 15.25.043 to Armstrong’s (and all other candidates’) residency determinations.

II. The Legal Standard For Determining The Date Of A Candidate’s Residency In Alaska Is Based On Intent, Consistent With Title 15’s Applicable Statutes.

This Court and the Division have previously applied AS 15.05.020 and AS 15.25.043 to determine residency for voters and candidates. Vazquez nevertheless asks this Court to ignore precedent and the Division’s longstanding practice to conclude that the general residency statute contained in AS 01.10.055 must be used to determine whether a candidate has been a resident of Alaska for three years prior to filing for office. This Court should reject Vazquez’s invitation to “reinvent the wheel” and create a brand-new test for determining residency that would only apply to the Alaska Constitution’s three-year residency requirement for candidates.²² Doing so would be changing the rules of an election long after it is over.

Alaska’s election laws already have two statutes — AS 15.05.020 and AS 15.25.043 — that define residency for voters and candidates. In *Oberlatz*, when applying AS 15.05.020, this Court held that a voter’s intent alone can be dispositive for determining

²² This Court reviews legal questions “de novo, and . . . will adopt the rule of law that is most persuasive in light of precedent, reason, and policy.” *See Oberlatz*, 329 P.3d at 221 (quoting *Soules v. Ramstack*, 95 P.3d 933, 936-37 (Alaska 2004)). But this Court applies “the reasonable basis standard of review” when determining “questions of law involving ‘agency expertise or the determination of fundamental policies within the scope of an agency’s statutory functions.’ ” *See N. Slope Borough*, 484 P.3d at 113, 117 (quotations omitted).

the residency of a voter.²³ Because article II, section 2 of the Alaska Constitution specifically ties residency for purposes of one’s candidacy to whether a person is a “qualified voter,”²⁴ there is no reason for this Court to conclude that a candidate could be considered a resident for purposes of *voting* under AS 15.05.020, but somehow not also qualify as a resident for purposes of being a *candidate*. There is absolutely no basis in the constitution, statutes, or case law for applying a more stringent “super” residency test only to candidates.

Relatedly, AS 15.25.043 outlines residency requirements for candidates “for the purposes of compliance with art. II, sec. 2” of the Alaska Constitution.²⁵ That statute not only specifically incorporates AS 15.05.020 by reference, but also details how a candidate “establishes residence within a [specific] house district.”²⁶ Such statutory direction is consistent with the Alaska Constitution’s requirement that a candidate reside in “the district from which elected for at least one year” before “filing for office.”²⁷

Alaska Statute 15.05.020, along with this Court’s interpretation of that statute in *Oberlatz*, defines residency for voters. And AS 15.25.043 builds on that definition by adding the Alaska Constitution’s durational residency requirements. This Court need not

²³ See *Oberlatz*, 329 P.3d at 221-222.

²⁴ See Alaska Const. art. II, § 2 (“*A member of the legislature shall be a qualified 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.*” (emphasis added)).

²⁵ AS 15.25.043.

²⁶ See AS 15.25.043(1).

²⁷ See Alaska Const. art. II, § 2.

deviate from the Division’s well-tread Title 15 framework and adopt a brand-new test that Vazquez argues somehow only applies to the Alaska Constitution’s three-year residency requirement for candidates, but would not apply to the one-year in-district requirement for the same candidates. Under any standard of review, this Court should conclude that AS 15.05.020 and AS 15.25.043 together determine whether a candidate is eligible to run for office pursuant to article II, section 2 of the Alaska Constitution.

Vazquez has vaguely argued that the general residency statute contained in AS 01.10.055 should be used to determine a candidate’s Alaska residency (but not in-district residency) instead of AS 15.05.020 and AS 15.25.043, and that this general statute somehow requires much more than a candidate’s subjective intent.²⁸ [Ae. Exc. 83-92] Not only should this Court reject Vazquez’s novel concept of residency, but because the intent of a person still controls under AS 01.10.055, it would not lead to a different outcome here.

As the superior court correctly concluded, AS 01.10.055 is “broad by design” because it is a general definition that is only “meant to apply” in limited circumstances. [Ae. Exc. 159-160] There is no reason for this Court to find that the general residency statute, which was enacted in 1983,²⁹ should somehow supplant the specifically-enacted language pertaining to elections in AS 15.05.020; after all, the latter statute was first

²⁸ Because Vazquez never clearly articulated her argument before the superior court, this Court should deem Vazquez’s argument on this point waived. *See Adamson v. Univ. of Alaska*, 819 P.2d 886, 889 n.3 (Alaska 1991) (“[W]here a point is given only a cursory statement in the argument portion of a brief, the point will not be considered on appeal.” (citing *State v. O’Neill Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980); *Fairview Dev., Inc. v. City of Fairbanks*, 475 P.2d 35, 36 (Alaska 1970))).

²⁹ Ch. 67, §1, SLA 1983.

enacted in 1960,³⁰ has applied ever since, and has been amended many times, including as recently as 2005.³¹

Fatal to Vazquez's arguments is that application of AS 01.10.055 would not lead to a different outcome in this case. All of the residency statutes cited by the parties look to a person's intent to reside in Alaska. Alaska Statute 01.10.055 provides, in full:

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

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

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

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

(c) **A person who establishes residency in the state remains a resident during an absence from the state** unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.^[32]

³⁰ Ch. 83, §1.02, SLA 1960.

³¹ Ch. 59, §2, FSSLA 2005.

³² AS 01.10.055 (emphasis added).

In other words, the same fundamental question — whether a person intends to reside in Alaska — is determinative under both AS 01.10.055 and under Title 15’s residency statutes for voters and candidates.

The fact that AS 01.10.055 gives examples of what “may” either establish or defeat a person’s intent to reside in Alaska does not lead to a different outcome from the proper analysis of a person’s intent consistent with *Oberlatz* and AS 15.05.020. That is because under both statutes, the question is whether a person: (1) intended to reside in Alaska indefinitely; and (2) made this decision while they were in Alaska, excluding any person who (3) subsequently establishes residency in any other state.³³ Alaska’s general residency statute simply does not require additional objective evidence as Vazquez wishes it did.

Vazquez may also argue that Armstrong had to be a resident of Alaska as of May 1, 2019. [See Ae. Exc. 5] But the Alaska Constitution does not require a candidate to be a resident of Alaska for three years *plus* 30 days.³⁴ Such an interpretation would be contrary to the plain language of the Alaska Constitution which only requires candidates to be “a resident of Alaska for at least *three years*.”³⁵ Especially in light of history from Alaska’s constitutional convention,³⁶ this Court should not create a new, different, and more

³³ See AS 15.05.020; AS 01.10.055; *see also* AS 15.05.020(c) (requiring an act of removal).

³⁴ See AS 01.10.055(b)(1).

³⁵ See Alaska Const. art. II, § 2 (emphasis added).

³⁶ See Alaska Constitutional Convention, Commentary to Committee Proposal 5, at 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.”).

stringent “super” residency test for candidates based on a general statute that is not specific to elections.³⁷ And this Court certainly should not do so retroactively to prevent a popularly-elected candidate from serving in the Alaska State Legislature after winning her election by a wide margin. [Ae. Exc. 20]

III. The Superior Court Did Not Clearly Err When It Found That Armstrong Became An Alaska Resident On May 20, 2019.

Vazquez claims that the superior court clearly erred when it found that Armstrong became a resident of Alaska on May 20, 2019, and that Vazquez had failed to meet her burden of showing fraud, unreasonableness, or implausibility as to that date. But this Court can easily conclude that the superior court did not clearly err based on the evidence presented by the parties.

A superior court’s factual findings are reviewed for clear error.³⁸ “To reverse for clear error, [this Court] must be left with a definite and firm conviction on the entire record that a mistake has been made.”³⁹ And this Court “grant[s] especially great deference when

³⁷ See *Nelson v. Mun. of Anchorage*, 267 P.3d 636, 642 (Alaska 2011) (“If one statutory ‘section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; *but 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))).

³⁸ See *Oberlatz*, 329 P.3d at 221 (citing *Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 698 (Alaska 2010)).

³⁹ See *Grove v. Grove*, 400 P.3d 109, 112 (Alaska 2017) (quoting *Hansen v. Hansen*, 119 P.3d 1005, 1009 (Alaska 2005)).

the trial court’s factual findings require weighing the credibility of witnesses and conflicting oral testimony.”⁴⁰

In this election contest, the burden has always been on Vazquez to prove that Armstrong is ineligible to hold office.⁴¹ And given Armstrong’s sworn declaration of candidacy, [Ae. Exc. 119] and this Court’s direction from *Oberlatz*, Vazquez had to present credible evidence of fraud, unreasonableness, or implausibility to overcome the presumption that Armstrong became an Alaska resident on May 20, 2019.⁴² Vazquez utterly failed to do so.

The superior court heard sufficient evidence supporting Armstrong’s sworn declaration that she became a resident of Alaska on May 20, 2019. [Ae. Exc. 119] The court found it credible, based on the sworn testimony of both Armstrong and Kellie, that Armstrong moved in with Kellie on May 20, 2019. [Ae. Exc. 154, 158] The court found that Armstrong left “some personal belongings in Alaska when she departed on” that day. [Ae. Exc. 165; *see also* Ae. Exc. 147] The court further found that Armstrong searched for flights to return to Alaska on that same day, [Ae. Exc. 164-165; *see also* Ae. Exc. 120] and actually did purchase flights to return soon after she left for her prior out-of-state commitments. [Ae. Exc. 164-165; *see also* Ae. Exc. 121] The court also considered text messages from Armstrong and Kellie — sent long before Armstrong ever considered

⁴⁰ *See Morris v. Morris*, 506 P.3d 8, 16 (Alaska 2022) (quoting *Stanhope v. Stanhope*, 306 P.3d 1282, 1287 (Alaska 2013)).

⁴¹ *See* AS 15.20.540(2); *see also Pruitt*, 498 P.3d at 600.

⁴² *See Oberlatz*, 329 P.3d at 221-22.

running for office — which indicated to third parties that Armstrong moved to Alaska in May 2019.⁴³ [Ae. Exc. 167; *see also* Ae. Exc. 122-124] In sum, the court found Armstrong’s and Kellie’s story of falling in love credible, and found no evidence of fraud, unreasonableness, or implausibility. [See Ae. Exc. 164-169] And in doing so, the court relied on several pieces of strong objective evidence to further confirm Armstrong’s date of residency. [Ae. Exc. 119-124, 147]

Vazquez claims that the superior court did not rely on sufficient “objective” evidence to support that Armstrong became a resident of Alaska of May 20, 2019. But not only *did* the court make factual findings based on many additional pieces of objective evidence, [See Ae. Exc. 164-167; *see also* Ae. Exc. 119-124, 147] the court did not even need to do so according to *Oberlatz*.

In *Oberlatz*, this Court explicitly considered and rejected an argument that a superior court’s determination of a voter’s residency must be based on more than a voter’s subjective intent.⁴⁴ Indeed, this Court held that the “argument that the court erred by basing its determination solely on the voters’ subjective statements without considering objective evidence *has no merit*.”⁴⁵ The court in this case actually went much further than *Oberlatz* requires, citing a number of pieces of objective evidence which supported and confirmed

⁴³ Perhaps tellingly, counsel for Vazquez did not ask Armstrong a single question about those text messages during the hearing.

⁴⁴ *See Oberlatz*, 329 P.3d at 222.

⁴⁵ *See id.* (emphasis added).

Armstrong’s residency date.⁴⁶ [Ae. Exc. 119-124, 147] The court did not clearly err in doing so.

It is not this Court’s role to second guess a superior court’s credibility determination.⁴⁷ And the superior court, who observed Armstrong’s and Kellie’s sworn testimony, found their testimony credible. There is no clear error to justify this Court disturbing those factual findings.

On the other side of the coin, the superior court did not find any of Vazquez’s arguments credible. [Ae. Exc. 164-167] The court did not find any fraud or unreasonableness with respect to Armstrong’s explanation for her fishing licenses. [Ae. Exc. 166-167] The court similarly did not think it was unreasonable for Armstrong to register to vote and obtain her driver’s license at a later date, or to finish moving some of her personal belongings at a later date. [Ae. Exc. 165] Simply put, the superior court did not clearly err by finding that Vazquez failed to present *any* indicia of fraud, unreasonableness, or implausibility. [Ae. Exc. 164-167]

Armstrong’s last-minute decision to run for office in May 2022 was not the final step in an elaborate “long-con” — years in the making — by either her or Kellie for her to become a member of the legislature. After conditionally deciding to run for office,

⁴⁶ Indeed, it is utterly implausible that — many years before ever considering a run for office — both Armstrong and Kellie would text third parties that she moved to Alaska in May 2019 unless they were telling the truth. [Ae. Exc. 122-124]

⁴⁷ *See id.* at 223 n.22 (“We give ‘particular deference’ to the trial court’s factual findings when they are based primarily on oral testimony, because the trial court, not this court, performs the function of judging the credibility of witnesses and weighing conflicting evidence.” (quoting *Ebertz v. Ebertz*, 113 P.3d 643, 646 (Alaska 2005))).

Armstrong determined that she was eligible to run for office after pinpointing the specific day that she became an Alaska resident. Vazquez failed to convince the superior court that there was anything fraudulent, unreasonable, or implausible about Armstrong becoming an Alaska resident on May 20, 2019. Because the superior court did not clearly err in its factual findings, this Court should affirm.

IV. Even If This Court Were To Conclude That The Superior Court Clearly Erred And That Armstrong Is Ineligible To Serve — Which It Cannot — This Court Should Not Declare Vazquez The Winner Of The Election.

Armstrong firmly believes that this Court should conclude that the superior court did not err in reaffirming that Armstrong is “the certified winner” of the election for House District 16. [Ae. Exc. 169] But even assuming *arguendo* that this Court ultimately concludes that the superior court clearly erred in its factual findings *and* materially misapplied the law, Vazquez’s proposed anti-democratic “solution” of having *her* represent House District 16 should be swiftly rejected. [Ae. Exc. 7, 92-94]

This Court has already considered and rejected the type of self-serving “remedy” Vazquez seeks. In *Nageak v. Mallott*, this Court unanimously agreed that completely “changing an election result . . . is *unprecedented* in Alaska law and is an even *more* ‘extreme remedy’ than ordering a new election.”⁴⁸ Vazquez’s request to impose a “more ‘extreme remedy’ ” would effectively overturn the will of the voters in House District 16 — who rejected her as a candidate by over a ten point margin [Ae. Exc. 20] — thereby

⁴⁸ See 426 P.3d 930, 950 n.91 (Alaska 2018) (emphasis added) (quoting *Fischer v. Stout*, 741 P.2d 217, 226 (Alaska 1987)); see also *id.* at 951 (Winfrey, J., dissenting) (“I agree with the [C]ourt that . . . the superior court’s order directing the Division . . . to certify [a new] . . . winner . . . was legal error and must be reversed.”).

undermining the electorate’s faith in the democratic process.⁴⁹ This Court should not seriously consider Vazquez’s proposed “remedy.”

In the extremely unlikely event this Court determines that Armstrong does not meet Alaska’s residency requirements contained in article II, section 2 of the Alaska Constitution, it should instead order the Governor to fill any vacancy. The Alaska Constitution provides that the Governor “shall fill [a] vacancy by appointment,”⁵⁰ and AS 15.40.320 requires that the Governor select someone to fill a vacancy within 30 days.⁵¹ The person to fill any vacancy must “be a member of the same political party,” and must be “subject to confirmation by a majority of the members of the legislature who are members of the same political party . . . and of the same house.”⁵² If an appointee is rejected, the Governor then has 10 more days to appoint another qualified person.⁵³

In the unlikely event it has to reach this issue, it would be reasonable for this Court to order this remedy. In fact, that is precisely what happened when the Governor appointed a replacement for Nancy Dahlstrom after she was elected in 2018 but became ineligible to serve prior to being sworn in. [Ae. Exc. 72; *see also* Ae. Exc. 36] The other alternative with a basis in Alaska law — “set[ting] aside” a “contested election” and “ordering a new

⁴⁹ *See id.* at 950 n.91.

⁵⁰ Alaska Const. art. II, § 4.

⁵¹ AS 15.40.320.

⁵² *See* AS 15.40.330(a).

⁵³ *See* AS 15.40.350.

election”⁵⁴ — is less preferable.⁵⁵ But at least this alternative would be less extreme than completely reversing the outcome as Vazquez requests.

CONCLUSION

This Court should AFFIRM the superior court’s decision accepting the results of the November 2022 election, where the Division declared Armstrong eligible to serve and the winner of the election for House District 16.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 11th day of January, 2023.

CASHION GILMORE & LINDEMUTH

By: 

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⁵⁴ See AS 15.20.560; see also *Nageak*, 426 P.3d at 947 n.73 (quoting *Hammond v. Hickel*, 588 P.2d 256, 259 (Alaska 1978)).

⁵⁵ Such a remedy is less preferable because it would likely leave the residents of House District 16 without representation in the Alaska State House for a substantial period of time. It would also be costly to hold a special election in House District 16. Finally, the results of a new election would be unlikely to change the outcome of the past election; if a new election were to occur, even under Vazquez’s improper interpretation of the facts and the law, Armstrong will have been a resident of Alaska for at least three years by the time a special election is held, which would make her eligible to file for office.