



April 10, 2012

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The Honorable Debbie Ossiander  
Chair, Municipality of Anchorage Assembly  
City Hall  
632 West 6th Avenue, Suite 250  
Anchorage, AK 99501

**Re: Presentation of Supporting Affidavits**  
**Prior Request for Appointment of Special Counsel**

Chair Ossiander:

As we have discussed, the ACLU of Alaska has been following the operation of the April 3, 2012 election, and multiple complaints from voters who were unable to cast ballots in the election. We are greatly concerned by the apparently substantial levels of disenfranchisement.

In seeking to aid the Assembly in determining whether an Independent Special Counsel should be appointed to evaluate the proceedings of the April 2012 election, we are presenting the attached affidavits, which are an initial sample of those we are working on, based on nearly 140 calls and 20 emails we have received to date regarding disenfranchisement and systemic difficulties at the polls on April 3.

**Whether the problems at the polls and the systematic disenfranchisement of voters on April 3 require a new election is not a question that can be answered right now.** However, regardless of the scope of disenfranchisement or the margin of victory in any individual race, **the Assembly should appoint a special counsel to review the proceedings to determine what happened and make recommendations to prevent problems in future elections.**

### **Updated Facts Regarding the April 3, 2012 Election**

To sum up recent events and reports, the Clerk's office recently apologized for the ballot shortage and for retaining large numbers of ballots at the downtown office of the clerk rather than distributing them to the precincts. It further announced that roughly 40% of all Anchorage precincts ran low on ballots at some point on April 3. Based on the more than 140,000 ballots which should have been printed, the fact that roughly 70,000 votes were cast, and the widespread shortages of ballots, a rough estimate would suggest that about 60,000 ballots were kept downtown and were not distributed to precincts before the polls opened. Thus far, the Clerk's office has not confirmed exactly how many ballots were kept downtown on the morning of April 3.

**Based on preliminary reports, the precincts that ran out of ballots virtually all ran out between 5:30 pm and 8:00 pm, a period usually known as the evening rush.** The reason for the rush at that hour relates to the large number of people who vote after leaving work around 5 pm. **It is very difficult to assess at this point how many people were denied the opportunity to vote, because no one kept track of how many people were turned away from the polls.**

What is clear is that many polling stations began reporting ballot shortages in the late afternoon and early evening. As polls began running low on regular ballots, **voters in many precincts began to vote using questioned ballots, even where there was no cause to question the voter's identity.** Voting a questioned ballot requires filling out a lengthy cover sheet, which delayed the processing of ballots. Accounts from numerous precincts report lines stretching out the door, with 50 or 60 voters waiting in lines.

Other voters report being turned away from their polling site and told to go to another nearby polling site. **Reports from the Klatt Elementary School site indicate that the poll simply closed at 7:30 pm, 30 minutes before the designated closing time.** Some voters reported being directed from one site to another, only to be turned away at three different precincts. Some of these voters reported spending hours waiting in line and driving from poll to poll until eight o'clock came.

**We present an initial sample of affidavits from voters and polls workers that we are preparing attesting to the fact that voters were disenfranchised.**

### **The Municipal Attorney's April 9 Opinion Correctly Stated Certain Legal Standards But Lacked Essential Factual Analysis**

To the extent that the Municipal Attorney intended to present merely a statement of legal standards, his opinion may have been correct. **However, his comments that invalidation of election results appear "unlikely" seem premature.** For instance, the most recent unofficial results of the School Board Seat G election on the clerk's website show a gap of 6,220 votes

between the leading candidate and her nearest competitor. Proposition Five's unofficial results show a gap of 8,997 between the "yes" and "no" votes. However, up to approximately 16,000 votes remain to be counted. **Thus, it is impossible to say what the gap in the final vote tallies in those contests will be.**

**More importantly, the Municipal Attorney did not explain how, if at all, he had assessed the impact of the disenfranchisement.** Were 50, 500, or 5,000 voters disenfranchised? **Obviously, the requirement for any new election would depend in large part on the degree of disenfranchisement.** If the Municipal Attorney sought to assess the scope of disenfranchisement, he failed to explain how he did so. If he did not, his preliminary opinion is nothing more than a guess.

**Last, the Municipal Attorney's statement that any remedy from a court would merely involve adding votes to a precinct's totals in line with the votes already cast in the precincts is false, where the effect of disenfranchisement is not merely random in its effect.** The disenfranchisement of voters voting between 5:30 pm and 8 pm is not "random." The whole nature of the evening rush at the polls stems from voters *coming from work*, and thus includes a disproportionate number of young, employed professional voters. With regard to the two ballot items highlighted above, young, employed professional voters may not vote in line with other voters, such as elderly, retired voters.

For instance, in school board elections, one candidate typically runs on a platform favoring cost control, while the other typically runs on a platform more favoring improvements in school quality. A young, professional voter is more likely to have children and thus an incentive to vote for a candidate favoring the improvement of school quality. An older, retired voter will be less likely to have children and more likely to want to control property taxes rather than increase school spending. Because late afternoon-evening voters will be more likely to favor certain School Board candidates than those voting in the morning and early afternoon, the effect of disenfranchisement of evening voters will not be random in its effect.

With regard to Proposition Five, young people are far more likely to know openly LGBT people and to favor gay rights. Older people are more likely to harbor traditional sentiments regarding gay people. **Thus, election errors disproportionately disenfranchising evening voters – who will likely be younger – will not affect the vote totals in a random fashion. Merely redistributing votes in proportion to the morning and early-afternoon vote would not be an appropriate remedy.** The pattern of vote denial in the present election will not have a purely random effect on the vote totals.

As stated in our prior letter, the Municipal Attorney is not the proper party to evaluate and advise the Assembly on these issues. **His early statement that a new election would not likely be required represents a rush to judgment.** The Assembly should retain an Independent Special Counsel, free of conflicts of interest and ethical entanglements, to evaluate the facts and advise them.

**The Proper Step at This Point is Not to Rush to Judgment, But to Appoint an Independent Investigator to Review the Facts and Assist the Assembly**

**Prior to the final tally of the votes and prior to a meaningful assessment of the scope of disenfranchisement, it is too early to discuss whether a new election must be held. What is clear at this point is that substantial voter disenfranchisement occurred and that the Municipal standards for elections must be revisited to prevent such disenfranchisement from occurring in the future. Moreover, in order to evaluate whether the election should be certified, the Assembly must have a clear, independent assessment of the scope of voter disenfranchisement, if any such assessment is possible.**

“Every citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election.” Alaska Const., Art. V, Sec. 1. This right is among the most important rights of the citizens of Alaska. The denial of this right to voters all over Anchorage should not be casually dismissed simply because that denial might not have changed the outcome of an election. The Assembly should take the denial of this right very seriously and ensure that it never recurs.

The citation of the 1989 Municipal Attorney’s opinion illustrates the problems with limiting the scope of any review of an election to simply whether a new election is required. In 2012, history is repeating itself. The Municipality did not take adequate steps after the 1989 controversy to ensure that adequate ballots would be provided to the public. A 1989 Anchorage Daily News article – attached to this letter – could have been written yesterday, with a few changes in names.

Ensuring that all qualified, registered voters may vote in future elections is at least as important, as determining whether to certify this election. **Focusing only on whether this election was “good enough to certify,”** rather than working to ensure that everyone can vote in the future, will likely mean that history will continue to repeat itself.

We look forward to working with you and the Assembly in ensuring that the right of *every* Anchorage voter to have her or his vote be counted.

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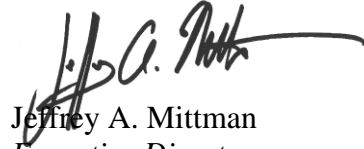
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We are happy to meet with you or representatives of the Assembly at your earliest convenience. As you know, you may reach the ACLU anytime at (907) 258-0044, or contact me via email at [jmittman@acklu.org](mailto:jmittman@acklu.org).

Chair Debbie Ossiander  
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Sincerely,

A handwritten signature in black ink, appearing to read "J.A. Mittman", with a long horizontal flourish extending to the right.

Jeffrey A. Mittman  
*Executive Director*  
ACLU of Alaska Foundation

cc: Daniel Sullivan, Mayor of Anchorage  
Dennis Wheeler, Law Dept., Municipality of Anchorage  
Members of the Municipal Assembly  
Julia Tucker, Assembly Counsel, Municipality of Anchorage  
Barbara Gruenberg, Municipal Clerk