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STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

For Immediate Release
October 12, 2016

**Response to Alaska Supreme Court's Reversal of the Superior Court's ruling in
Nageak v. Mallott & Bahnke**

Today the Alaska Supreme Court ruled in favor of the Division of Elections, holding that the House District 40 election should stand as certified. In doing so, the Supreme Court reversed the Superior Court, which had ruled, in part, for plaintiffs bringing an election contest and a recount appeal in the closely-contested race.

“The primary task of the Division of Elections is to run fair, impartial, and efficient elections in which every qualified voter is permitted to cast a ballot and know that their vote will count,” said Elections Director Josie Bahnke. “The Division is pleased that the Supreme Court agreed that the election result as certified by the Division should stand. Absentee ballots will go out tomorrow.”

“I want to thank Alaska Division of Elections Director Josie Bahnke and all election workers for their hard work in the Primary,” said Lt. Gov. Mallott. “And I also want to thank the Alaska Department of Law attorneys who worked tirelessly on this expedited case.”

In the Supreme Court of the State of Alaska

In the Matter of the)
) Supreme Court Nos. **S-16462,**
) **S-16492, and S-16494**
) **(consolidated)**
2016 State House District 40)
Primary Election) **Order**
)
)
)
) **Date of Order: 10/12/16**

Division of Elections Recount;
3AN-16-09015CI

Before: Stowers, Chief Justice, and Winfree, Maassen, Bolger, and Carney,
Justices

Before the court are consolidated appeals: S-16462 is an election recount appeal from the August 16, 2016 primary election, filed by Benjamin N. Nageak; S-16492 is Lt. Governor Byron Mallott's appeal from the superior court's Findings of Fact and Conclusions of Law dated October 6, 2016 (Decision and Order) following its trial on Mr. Nageak's election contest action also arising from the August 16 primary; S-16494 is Dean Westlake's appeal from the superior court's Decision and Order in the election contest case. This court has considered the briefs of the parties and the record from the superior court, and conducted oral argument on October 12, 2016.

IT IS ORDERED that the superior court's Decision and Order to the Division of Elections to retabulate the vote total from the Shungnak precinct and certify Mr. Nageak as the winner of the Democratic primary in House District 40 is **REVERSED**. The Division of Elections' certification of Mr. Westlake as the winner of the House District 40 Democratic primary is **REINSTATED**. The superior court's Decision and Order is otherwise **AFFIRMED**.*

* This affirmance includes the superior court's Decision and Order concluding that the Division of Elections Director's determination to count seven questioned ballots in Kivalina was erroneous. The superior court correctly ordered that the seven questioned ballots must be disregarded; because two of the questioned ballots were on the combined Alaska Independent-Democrat-Libertarian ballot with one vote for each candidate, the superior court also correctly directed the Director to deduct one vote from each candidate.

In the Matter of the 2016 State House District 40 Primary Election
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A written opinion explaining this court's Order will be forthcoming.

Entered at the direction of the court.

Clerk of the Appellate Courts


Marilyn May

WINFREE, Justice, concurring in part and dissenting in part.

I agree with the court that — as Mr. Nageak's counsel conceded during oral argument — the superior court's order directing the Division of Elections to certify Mr. Nageak as the winner of the Alaska Democratic Party primary election in House District 40 was legal error and must be reversed. But in my view the superior court correctly determined that — as to the primary election in the Shungnak precinct — the Division of Elections committed malconduct that could have affected the election result between Mr. Nageak and Mr. Westlake. Accordingly I would declare the election void and direct the Division of Elections to hold a new election.

cc: Supreme Court Justices
Judge Guidi

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