# KEYNOTE ADDRESS

# ALASKAN ELECTION LAW IN 2020

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As we face the momentous 2020 elections, this is an incredibly timely moment to be discussing election law in general and Alaska election law in particular. In my talk this morning, I will focus on three questions. First, what is the approach of the United States Supreme Court this year towards election law issues? Second, what historically was the approach to Alaska election issues? And third, what are some of the most important current issues with regard to Alaska election law?

On the first question, it is important to discuss election law in the context of this moment in the midst of a 2020 national election—an election unlike any other in our history. There is clearly a political context to this question. Let me try to state it as fairly as I can in terms of the competing world view positions. The competing positions have never been as sharply drawn.

The Republican position is that voter fraud is a major problem in the United States and that absentee ballots risk great voter fraud. Politically, Republicans perceive fewer absentee ballots being cast to be to their party's benefit. They see absentee ballots as much more likely to favor Democrats than Republicans. So, in litigation going on all over the country, Republicans are trying to limit the ability of people to cast absentee ballots and limit the time period within which those ballots must be received in order to be counted. And we have none other than the President of the United States and the Attorney General of the United States articulating these themes.

There is a very different perspective articulated by Democrats. Democrats believe that voter disenfranchisement is a major problem in our election system, especially for voters of color. They believe that absentee ballots are particularly important in the midst of the COVID-19



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pandemic. Often in dissenting opinions, we have heard Justice Ginsburg and more recently Justice Sotomayor talking about how people should not have to choose between voting and risking their health. Politically, progressives agree with the Republicans that more absentee ballots are good for the Democratic party. So, the Democrat goal is to expand the availability of absentee ballots and expand the time for counting ballots.

What is most surprising to me is the extent to which judges and justices are paralleling the positions taken by the parties of the presidents who appointed them. Accordingly, the Justices on the Supreme Court – as well as many of the judges on the lower courts – appointed by Republican presidents are articulating just the themes that being heard from President Trump and Attorney General Barr. And the Justices appointed by Democratic presidents and the judges appointed by Democratic presidents are articulating the themes we are hearing from Democratic nominees Joe Biden and Kamala Harris.

It does not have to be that way, but it certainly is how it is playing out in the courts. How is it manifesting itself? What have we seen during this election season?

One thing we have seen is that the Supreme Court has significantly limited the ability of the *federal* judiciary to change the rules of the election to protect the right to vote. Throughout the 2020 election season, there were all sorts of requests made to federal courts to protect the right to vote by changing election rules. Many states are very restrictive as to who can cast an absentee ballot. In Texas, for example, you have to be over sixty-five, have a disability that keeps you from going to the polls, or be out of the jurisdiction at the time of the election to be entitled to vote by absentee ballot. A federal district court ordered a significant expansion of eligibility rules for absentee ballots, but the Supreme Court – divided along ideological lines – reversed the decision. Some states, like Alabama, have specific requirements in terms of notarizing or witnessing absentee ballots. A federal district court suspended these restrictions given the COVID-19 pandemic and said that even improperly witnessed or notarized absentee ballots should be opened. The Supreme Court reversed in a 5-4 decision.

The most dramatic instance of this occurred in April 2020 in *Republican National Committee v. Democratic National Committee*. Wisconsin law said that in order to be counted, an absentee ballot had to be received by April 7, the date of the actual primary. A federal district court judge in Wisconsin noted that there was a flood of absentee ballots because of the COVID-19 pandemic. The court ruled that as long as the ballots were received by Monday, April 13, the ballots should be counted. But the Supreme Court, in a 5-4 *per curiam* opinion, reversed and said that that

federal district order was impermissible.[1]

What was the reasoning of the conservative justices in this and other similar cases? The Court cited its *per curiam* opinion in *Purcell v. Gonzalez*.[2] In fact, this has come to be called the *Purcell* principle—that federal courts should not intervene and change the rules of the election soon before the election date.

Democrats and the more liberal justices and judges dispute that there is any such thing as the *Purcell* principle. They point out that *Purcell* was not a case decided after briefing and oral argument. Also, *Purcell* stated only that not having federal courts change the rules of the election before the election should be considered as one factor among several. But as the conservative justices and lower court judges have interpreted *Purcell*, it has become a bright-line rule. So again, in October 2020, a federal district court judge in Wisconsin wanted to extend the time for receipt of absentee ballots. And again, the Supreme Court reversed in a 5-3 decision (with Justice Barrett not participating).[3]

Going forward, it is quite likely that if a federal court tries to change state election laws by extending the hours of the polling place, extending the time by which absentee ballots have to be received, or lessen the requirements for absentee ballots, you will see the conservative Supreme Court applying the "bright line" rule from *Purcell* and prohibiting such changes regardless of the purported justification.

That leads to the important next question: How will the Supreme Court deal with efforts by *state* courts to use *state* constitutions to protect the right to vote? An excellent example is what happened in October 2020 in the midst of the election campaign in Pennsylvania. The Pennsylvania Supreme Court, interpreting the Pennsylvania Constitution, expanded the available use of absentee ballots. It is important to note that this decision was not a federal court ruling based on the United States Constitution, but rather a state court decision interpreting the right to vote under its own state constitution.

My initial instinct would be that such decisions would be up to the states. Earlier in 2020, the Supreme Court had allowed states to change its rules of the election with regard to absentee ballots. For example, Rhode Island election officials – well before the election – made it easier for voters to cast absentee ballots. The Supreme Court denied review. The idea seemed to be that the *Purcell* principle applies because this isn't the federal court acting; it is a state's own election officials. But in an appeal

1. Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S.Ct. 1205, 1206–08 (2020) (per curiam).
2. 549 U.S. 1 (2006).
3. Democratic Nat'l Comm. v. Wis. State Leg., 208 L. Ed. 2d 247 (2020).

of a similar Pennsylvania change to allow easier absentee voting, the Supreme Court split 4-4 on whether to reverse the Pennsylvania Supreme Court's interpretation of its state constitution. Only eight Justices participated because Justice Ginsburg had passed away and Justice Barrett had not yet been confirmed. One wonders, where will Justice Barrett come out on this issue should it arise in the future?

What is the argument that state courts cannot do this? The argument was made by Justice Kavanaugh relying on Chief Justice Rehnquist's concurring opinion from *Bush v. Gore*.[4] In *Bush v. Gore*, the Florida Supreme Court said that under Florida law, all the uncounted ballots should be counted, and established a strict deadline for it. The recount of all ballots was to be done between Friday, December 8 and Sunday, December 10. But the Supreme Court of the United States, in a *per curiam* opinion, said counting the uncounted ballots without preset standards violated equal protection.

Chief Justice Rehnquist wrote a concurring opinion, joined by Justices Scalia and Thomas. At the time, Rehnquist's concurring opinion received little attention because the overall impact of the Court's decision ended the 2000 presidential election in favor of Bush. Rehnquist's opinion said that Article I of the Constitution makes clear that it is the state "legislatures" that are to determine the rules with regard to presidential elections. That means state courts cannot interpret even their own state constitutions to impact or change the election procedures.

I was dubious of this point when I first read Rehnquist's concurring opinion in 2000. Why cannot state courts use their state constitutions to protect the right to vote? State constitutions always trump state statutes. This seemed to be the majority view in *Arizona State Legislature v. Arizona Independent Redistricting Commission*,[5] where a majority of the Supreme Court said the word "legislature" does not literally mean just the state legislature. Rather, it refers to processes the state has for deciding how votes will be cast and counted.

But in the 2020 Pennsylvania case, the Supreme Court's four conservative members—Justices Thomas, Alito, Gorsuch, and Kavanaugh—have revived that theory and said state courts cannot interpret state constitutions to protect the right to vote. They can interpret state statutes—as opposed to state constitutions—because that is based on an action impacting the election made by the legislature. Justice Kavanaugh's citation to Rehnquist's concurring opinion from *Bush v. Gore* is virtually the only instance in which any Supreme Court opinion has cited that opinion since the case was initially decided. And again, one

4. 531 U.S. 98, 111–22 (Rehnquist, C.J., concurring).
5. 576 U.S. 787 (2015).

wonders whether the newly confirmed Justice Barrett will join with the other conservatives on this point.

So, it remains unclear whether the Supreme Court will limit the ability of state courts to use state constitutions to protect the right to vote. My position is that state courts are empowered to apply state constitutional provisions to protect the right to vote. I would also think that conservative justices, who generally believe in federalism and states' rights, would also want to encourage development of state constitutional law in this fashion. But that is yet to be seen and promises to be an important future issue.

## THE HISTORY OF THE RIGHT TO VOTE IN ALASKA

Obviously, in the over sixty years that Alaska has been a state, there have been many issues with regard to voting rights in Alaska. I thought that I would focus on three that seem particularly important.

The first concerns Alaska Native voting rights. We are in the midst of a national reckoning with regard to racism. It is important to talk about the history of racism in Alaska directed at Alaska Natives, and particularly with regard to the right to vote.

Alaska has the largest percentage of indigenous residents in the United States. These individuals have long faced discrimination at polls and have often been overlooked in national enfranchisement efforts. Discrimination against Native Alaskans in the context of voting goes back to at least 1915 when a pre-registration process was established by law for Native Americans who were trying to gain citizenship status.

The law was superseded by the Indian Citizenship Act of 1924. In response, the territorial legislature enacted literacy tests. There were strict restrictions on the ability of Native Americans to vote in Alaska. In fact, until 1970, Article 5, Section 1 of the Alaska Constitution required that qualified voters be able to read or speak English. Due to often-segregated educational systems in the territory, many Alaska Natives had limited English language proficiency. As a result, the literacy requirements were an effective barrier to participation in the electoral process. This, of course, parallels the history in many Southern states, where literacy tests were used to disenfranchise Black voters.

Section 203 and Section 5 of the Voting Rights Act meant that Alaska and all of its political subdivisions were required to provide all voting materials in Alaskan Native languages. And once initiated, none of this assistance could be removed without preclearance from the Department of Justice. Alaska was a jurisdiction that had to get preclearance under Section 5 of the Voting Rights Act, because it did have a history of race discrimination in voting.

There have been a couple of lawsuits in Alaska that were brought under Section 203.[6] Both cases involved the failure of Alaska's Division of Elections to provide complete, clear, and accurate translations of all voting materials to Native voters. Both cases ultimately settled in favor of the plaintiffs.

Many have said that the consent decree that was issued in the *Toyukak* case transformed Alaska "from a model of poor practices to what could be seen as a model of best practices for language assistance." There have also been studies that have been done that show that the preclearance requirement mattered in Alaska, as the preclearance requirement mattered in other states.

Unfortunately, the United States Supreme Court, in *Shelby County v. Holder* effectively declared preclearance requirement unconstitutional. Nonetheless, a study that was done in Alaska in 2016 shows a dramatic improvement in the availability of bilingual poll workers, voting materials, and signage. But there are also indications in some areas of work still to be done to ensure the availability of Native Alaskans to exercise their right to vote.

The language barriers addressed by the Voting Rights Act in recent litigation are only one kind of obstacle that Alaska Natives have to overcome in order to vote. Some villages have been denied polling places altogether. The unique environment of rural Alaska, where sometimes a single polling machine must travel by boat and four-wheeler to reach voters, makes casting a ballot even more difficult.

Early voting has been offered in Alaska, as you know, but predominantly it has been in non-Native urban communities. Voting by mail also poses a challenge because the mail system in rural Alaska has already been very slow, not even accounting for what has gone on with regard to Postal Service budget cuts during the pandemic and in recent years.

The second issue that I wanted to talk about with regard to voting in Alaska concerns the initiative process. Like many Western states, Alaska has the possibility of adopting laws through the initiative process. This was seen as a progressive reform. And it began in the nineteenth century, predominantly in Western states, and then carried over into the twentieth century.

I grew up in Chicago. I moved from Chicago in 1983 to California, to take a job at the University of Southern California. And I was surprised,

6. Consent Decree And Settlement Agreement As To Plaintiffs and Bethel Defendants at 2, Nick v. Bethel, No. 3:07-cv-00098 (D. Alaska 2010), https://www.acluak.org/sites/default/files/nick_v._bethel_settlement.pdf; Toyukak v. Mallot et al., No. 3:13-cv-00137-SLG (D. Alaska July 22, 2013).

in the fall of 1984, to get a phone book size pamphlet from the state. And I realize that just as my students may not remember *Bush v. Gore*, nor may they remember phone books.

But imagine something really thick coming in the mail. It was all of the initiatives that were on the ballot and a description of them. It was so foreign to me to adopt laws through the initiative process. We certainly could have a discussion of whether the initiative process is a desirable way to adopt laws.

On the one hand, it is democracy at its purest. It allows the voters to overrule the legislature or to act when the legislature fails to act. On the other hand, many of the safeguards that exist in the legislative process are not present in the initiative process. For a bill to be adopted by a legislature, it has to go through committees, and in a bicameral legislature through two houses, and then to be reviewed by a governor.

Problems with the law can be removed. Corrections can be made along the way. But when a law is adopted through an initiative process, so long as somebody has the resources to pay signature gatherers and get something on the ballot, it can be done. Voters are often asked to evaluate complex laws based on little information. If one just follows the commercials, it is often hard to tell what the initiative is even about and how it would change the law.

One of the key issues in Alaska, with regard to the initiative process, has been the single subject rule, that an initiative can be only about a single subject.

The key case in Alaska is *Gellert v. State*[7] in 1974. This was an initiative that dealt with both flood control and boat harbors. And the Alaska Supreme Court had to decide whether that is a single subject. The Court's reasoning and language from this decision is still followed to this day. The court articulated criteria and concluded that flood control and boat harbors were sufficiently related to be a single subject.

The Alaska Supreme Court had had to deal with this question recently in *Meyer v. Alaskans for Better Elections*.[8] And I want to mention it not only because what it says about the single subject rule, but because also what it says about the importance of initiatives in the Alaska form of government. The Alaska Supreme Court said that the Alaska Constitution provides that all political power is inherent in Alaska's people and, quote, "founded upon their will only." The court explained the people may exercise this political power in a number of ways. The people have the constitutional right to vote any state or local election, and that "it is basic to our democratic process that the people be afforded the opportunity for

7. 522 P.2d 1120 (Alaska 1974).
8. 465 P.3d 477 (Alaska 2020).

expressing their will on the multitudinous issues which confront them."[9]

The Alaska Supreme Court said that a check on elected officials is the initiative process. And it specifically said there is a constitutional right to reject legislative acts by referendum and to legislate directly through the initiative process. The Court said that this particular initiative concerned several different reforms of the criminal justice system.

Let me talk about a third issue with regard to Alaska election law that's gotten a great deal of attention, and that concerns to political primaries and who can vote in political primaries in Alaska. I would point your attention to, is the *State v. Green Party of Alaska*[10] in 2005.

Alaska statutes that govern primary elections require that each political party have its own primary ballot, on which only candidates of that party can appear. The Green Party of Alaska and the Republican Moderate Party of Alaska challenged that statute, arguing that by making it unlawful for them to present their candidates on a combined ballot, the statutes unconstitutionally violated their associational rights under the Alaska Constitution.

And the Alaska Supreme Court held that the statutes "substantially burden the political party's ability to determine who may participate in its primary." The C

The Court concluded that the state's justification for imposing that was insufficient and that those provisions of Alaska law violated the Alaska Constitution.

What I would emphasize about this is the Alaska Supreme Court stressing that the political party should be able to decide who participates in its primary elections. The Alaska Supreme Court said "the Alaska Constitution protects a political party's right to determine for itself who will participate in crystallizing the political party's political positions to acceptable candidates."

A more recent case about this was *State v. Alaska Democratic Party*[11] just two years ago in 2018. The Democratic Party in Alaska decided to allow registered independent voters to participate in the Democratic primary. They wouldn't have to change their registration to become registered Democratic voters.

Specifically, the Alaska Democratic Party amended its bylaws to allow independent voters to participate in Democratic primaries. They said that the goal was to expand the field of candidates and also nominate candidates who are most likely to prevail in the Alaska general elections.

9. Meyer v. Alaskans for Better Elections, 465 P.3d 477, 478–79 (Alaska 2020) (citing *Boucher v. Bomhoff*, 495 P.2d 77, 78 (Alaska 1972)).
10. 118 P.3d 1054 (Alaska 2005).
11. 426 P.3d 901 (Alaska 2018).

The Alaska Division of Elections refused to allow independent voters to be candidates on the Democratic Party ballot. They also refused to allow them to vote in the Democratic party unless they changed their registration and became registered Democrats. The Alaska Division of Elections said that the party affiliation rule had to govern who was on the ballot and who could vote in the primary.

The Alaska Supreme Court declared this unconstitutional. The Alaska Supreme Court said the party's right to choose its general election nominees, pursuant to the free association guarantee, included the right to allow independents to be candidates in the party's primary election. The Court said that the Alaska law as applied by the Division of Elections infringed freedom of association under the Alaska Constitution.

The Court said that the political party affiliation rule did not advance any compelling state interest. It did not advance the state's interest in ensuring public support for recognized political parties. Also, the party affiliation rule was not, in the eyes of the Alaska Supreme Court, sufficiently narrowly tailored to meet constitutional muster.

There is something that's implicit in what I have said about Alaska law, but it's worth making it explicit. And it certainly was the focus of what I talked about a couple of years ago. There is a strong tradition in Alaska of using the Alaska Constitution to protect rights, often to protect rights different than the United States Constitution.

You see this in specific areas. The right to privacy is protected by the Alaska Constitution in its text and by its courts in a much more robust way than in the United States Constitution. When I teach criminal procedure, I often contrast what the Supreme Court of the United States has said to what the Alaska Court of Appeals and the Alaska Supreme Court have done.

This is one of the benefits of having talked about the Alaska decisions over the last fifteen years. The Supreme Court has said a person has no right to privacy when it comes to garbage they placed on the curb. The police can search it without a warrant. But the Alaska Supreme Court has said that that does constitute an invasion of privacy. It requires a warrant.

The Alaska Supreme Court does not use the levels of scrutiny that are so familiar under the U.S. Constitution. Rather, it has developed its own balancing test when it comes to competing interests. This approach has been applied specifically regarding the right to vote and the right to political association.

As the United States Supreme Court has become much more conservative in recent months and in recent years, less likely to protect rights and advance equality, I think that generally there is going to be much more of a turning to state constitutions and state courts. Alaska is already one of the leaders in this regard. But that also, then, ties back to

my remarks at the beginning, in terms of—will the United States Supreme Court allow state courts to use state constitutions to protect the right to vote, or does it have to come only from state legislatures?

*Recent U.S. Supreme Court Election Cases and Partisan Alignment on the Court*

It is stunning that all four of the most significant election law cases of the twenty-first century—*Bush v. Gore*,[12] *Citizens United*,[13] *Shelby County*,[14] and *Rucho v. Common Cause*,[15] were divided 5-4 along ideological lines. And it greatly troubling that what the Justices did was vote what would be best for the political chances of the party that appointed them. For example, in *Citizens United*, corporations outspend unions by as much as fifteen to one. Unleashing the ability of corporations to spend unlimited amounts of money in election campaigns is what *Citizens United* has been about. Although that may not be an issue in presidential elections because both candidates can raise enormous sums of money, it is a major concern in local elections, where spending is linked to name recognition or where the ability to just drown out other voices is much more possible.

The preclearance requirement with regard to the Voting Rights Act made a difference in elections. There were hundreds of instances where the Attorney General denied preclearance. There were instances where election practices that had been blocked for lack of that preclearance came to immediately implemented after the Supreme Court's decision. This was true in your state, in North Carolina, in Texas, in other places.

In *Rucho v. Common Cause*—at the time the Supreme Court decided it, more state legislatures were controlled by Republicans than controlled by Democrats. Leaving the gerrymandering to the legislative process seemed a good thing from a Republican perspective.

The result in each of these cases are bad for democracy: *Citizens United* in giving corporations so much ability to influence elections; *Shelby County* in taking away a key remedy that had worked so well with regard to protecting minority voters; and *Rucho* in allowing partisan gerrymandering through computers that really does mean that elected officials choose their voters, rather than voters choosing their elected officials.

There is a troubling pattern at the lower court level with the political party of the president who appointed the judge seemingly impacting the result. So, in Florida, a federal district court judge appointed by a Democrat said the State could not require ex-felons to pay their fines and

12. 531 U.S. 98 (2000).
13. 558 U.S. 310 (2009).
14. 570 U.S. 5529 (2013).
15. 139 S. Ct. 2484 (2019).

fees in order to vote. The Eleventh Circuit reversed in an *en banc* decision where every Eleventh Circuit judge appointed by a Republican president voted to allow Florida to disenfranchise ex-felons, while every Eleventh Circuit judge appointed by a Democratic president dissented. It certainly appears that the courts look like arms of the political parties of the presidents who appointed them. That is a frightening development.

## PRESSING ISSUES FOR TODAY

This brings me to the third and final part of my remarks. What are the pressing issues now? Certainly, Ballot Measure 2—the "Better Elections" Initiative—is potentially quite important. The Measure would accomplish several significant changes relating to Alaska elections—which is one of the reasons why it was challenged as violating the single-subject rule under the Alaska Constitution. That is also what led the Alaska Supreme Court to say it is all about better elections —so that it is appropriately considered as a single subject.

One thing the initiative would do is impose much greater restrictions with regard to disclosure as to campaign spending. The Initiative is trying to deal with what we commonly refer to as the problem of dark money, where money is spent on elections, but we do not know whose money it was. One might see the name of a committee that is responsible, but the information on what individuals actually donated to the committee is not disclosed.

Accordingly, a major result of Ballot Measure 2 would be to require groups to provide more public information about the source of money they donate to candidates. This measure would almost certainly be constitutional under the First Amendment. While in *Citizens United*, the Supreme Court struck down the limits on independent expenditures by corporations and unions, but it upheld the disclosure requirements of the McCain-Feingold Campaign Finance Reform Act in an 8-1 vote. In fact, this goes all the way back to *Buckley v. Valeo*,[16] the key touchstone case with regard to campaign finance, upholding disclosure requirements.[17]

The framework that the majority had in mind in *Buckley* and *Citizens United*—and I acknowledge the composition of the Court has changed, even since 2010—was to say that spending money is a constitutional right, including of corporations. But the antidote should be disclosure, and to

16. 424 U.S. 1 (1976).

17. The only exception to disclosure that the Court has recognized is that if contributions were to a minority party and the disclosures would somehow chill contributions or expenditures, then there could be secrecy. This is based on *Brown v. Socialist Worker's Party*, 459 U.S. 87 (1982), and it is the only case where a political donation disclosure law was found unconstitutional.

give legislators the ability for great disclosures.

So, I have studied Ballot Measure 2, and I do not want to preempt anything that will be said this afternoon, but my sense is the disclosure requirements there would be upheld under what the Supreme Court has said. And they really are trying to get at this problem of dark money.

Second, it would merge the State's two primary election ballots into one. Third, it would say that the top four vote-getters in the primary, regardless of party, would advance to a general election. And it would use ranked choice voting, having Alaskans rank their choice from first to fourth.

Other states in the country, like Maine, use some components of these. But no state, city, or county employs all three. Relatively few places employ ranked choice voting. As I say, there is going to be a lot more discussion of this this afternoon. But I do think it would make an enormous difference, with regard to how elections are conducted in Alaska.

## LOOKING TO THE FUTURE

Everyone remembers the Iowa Democratic caucuses this year where they simply had glitches with regard to the software and couldn't count. What if this happens on an election day? What if voting machines are not working in a polling place? Or what if the lines at the polling place are so long, and there is a judicial request to the courts to keep the polling places open longer because the voting machines broke, or the lines are so long?

Will the courts be there to protect the right to vote under that circumstance? What if we learn that the Postal Service has millions of undelivered absentee ballots? Will courts be willing to say those people voted on time so that their vote should be counted? Or will the courts say no, rigid deadlines have to be adhered to?

What probably concerns me the most looking ahead to the future are the risks that we do not know. If you would have talked to me a few days before the November 2000 election, I could have never imagined the problems with the butterfly ballot. I could have not foreseen the ensuing litigation that led up to the Court's *Bush v. Gore* decision.

With regards to the 2020 election, if the election is clear and there is a decisive winner, then it will not matter. But if an election comes down to one, two, or three states, and it closely contested, and it goes to the courts, the prospects are frightening. Pennsylvania would be a good example if the popular vote were to narrowly favor Joe Biden. Under the Constitution, the legislature could conceivably get involved and direct its electoral votes of the state go to Donald Trump. So, what if Joe Biden wins, as George W. Bush did in Florida, by 350 or 500 votes? And the

Republican Pennsylvania legislature says "No, we think there was so much voter fraud. We're going to give our electoral votes to Donald Trump." We have never seen anything like that in our history. If it were to happen, how will people react? What will the courts do? This is what scares me the most.

## CONCLUDING THOUGHTS

So that is the context for talking about elections this week. It is the context about talking about elections in Alaska. And as always, when I talk about Alaska law, I have to remark on how much Alaska has the chance to be a leader for the rest of the country.

In many areas of constitutional law, it has been that. Alaska, under its constitution, legalized possession of small amounts of marijuana before any other state did so. Alaska has provided protections under privacy more than any other state. Alaska has provided, as I said, protections with regard to policing more than any state. And I hope that Alaska, in what it is doing and may do, will be a model for the rest of the country.