

NOTE FROM THE EDITOR

The *Alaska Law Review* is pleased to publish our December 2021 issue, the second in our thirty-eighth volume. This has been another challenging year, as we have tried to return to a new kind of normalcy despite the COVID-19 pandemic. Two classes of editors met in person for the first time and came together to publish a vibrant issue featuring one article, one essay, three student notes, and one case comment. These pieces discuss a wide variety of legal topics significant to Alaska, offering perspectives from practicing attorneys, scholars, and students.

Our first piece is an Article titled *The Ballot is Stronger Than the Bullet: Alaska's Superior Strict Scrutiny Approach to Ballot Access Laws*, in which judicial law clerk Ben Sheppard and Assistant Public Defender in Allegheny County, Pennsylvania Josh Guckert argue that Alaska's unique strict scrutiny approach to reviewing state ballot access laws is superior to the United States Supreme Court's comparable balancing test. The authors consider the history of this approach in Alaska and contend that it has helped foster Alaska's unique openness toward third-party candidacies. They view Alaska's approach as superior because it creates a predictable test and protects First Amendment associational freedoms.

In his Essay, *State Revenue Dedicated for Special Purposes: A Proposed Constitutional Amendment*, frequent ALR contributor Mark Andrews proposes a state constitutional amendment that would allow the dedication of taxes for specific purposes. Mr. Andrews outlines the history and current landscape of dedicated funds, and describes the effects this amendment would have on past decisions of the Alaska Supreme Court. He then proscribes a number of limits and restrictions that could be included in the proposed amendment to avoid potential problems.

Our first student Note, authored by Daisy Gray, is titled *Do You Know It When You See It? Using Alaska's Child Pornography Statute as a Nationwide Model for Proscribing Morphed Images*. In this Note, Ms. Gray explores the relationship between free speech jurisprudence and the harm that morphed images—images of actual children digitally doctored onto adult pornographic images—pose to children. She argues for the constitutionality of Alaska's child pornography statute, which bans morphed images, due to its intrinsic relation to child abuse. She then explores the outer limits of what Alaska's and other states' child pornography statutes proscribe, leaving the door open for a future ban on purely virtual child pornography—child pornography that is created

without the use of actual children.

Our second student Note, *Real Property, Real Problems: Expanding Alaska's Unfair Trade Practices and Consumer Protection Act*, written by Michael Keramidas, describes the danger in Alaska's Unfair and Deceptive Acts and Practices statute not applying to real property. Mr. Keramidas argues that the Alaska Supreme Court has misapplied precedent regarding the statute's application to real property transactions, and should reevaluate this these precedents in light of amendments to the statute. Mr. Keramidas warns that if this statute is not soon applied to real property, a significant portion of the Alaskan population could face adverse consequences when they fall victim to rising real estate scams.

Our final student Note, *Legalizing Local: Alaska's Unique Opportunity to Create an Equitable and Sustainable Seaweed Farming Industry*, written by UCLA Law School student Logan Miller, is a comprehensive blueprint for the equitable and sustainable development of the new seaweed farming industry in Alaska. Mr. Miller seeks to contribute to the creation of a sound policy framework for the responsible development of this industry by advancing both a theoretical framework as well as specific policy recommendations. Mr. Miller draws on his conversations with numerous Alaskans in the industry to suggest policies that could be used to promote the development of this industry in ways that benefit local, rural and Alaska Native populations.

Our final piece, a Comment titled *Ware v. Ware and the Presumption of Undue Influence in Confidential Relationships* by judicial law clerk Ian Fraser, identifies a misstatement of the law in a 2007 Alaska Supreme Court case. The Alaska Supreme Court has long held that a presumption of undue influence arises as a matter of law when a fiduciary benefits from a will in whose drafting he or she participated. In *Ware v. Ware*, the Alaska Supreme Court expanded this to apply to any confidential relationship in which the principal benefits from the relationship. Yet, by misreading one of its earlier decisions, the court misstated the law. Mr. Fraser argues that based on the court's analysis, precedents, and common sense, it is clear that the court meant to say that the presumption of undue influence arises as a matter of law when a *fiduciary* in a confidential relationship benefits from the relationship, not when a *principal* benefits.

This issue of the *Alaska Law Review*, in addition to all our previous issues, is available on our website, alr.law.duke.edu. There, anyone who is interested can access PDFs of our volumes, which are easily printable and searchable. We hope that you will visit our website and continue engaging with *ALR* as we strive to inform and educate the Alaska legal community. In the absence of our regularly-scheduled trips to Alaska as a journal due to the COVID-19 pandemic, we miss meeting with you –

our readers—to hear first-hand what legal issues are of concern to you. Now, more than ever, we welcome your comments, responses, and feedback at alr@law.duke.edu.

On behalf of the editorial staff, I hope you find this issue thought-provoking, useful, and enjoyable. We are grateful to the Alaska Bar Association for the privilege of publishing the *Alaska Law Review* and its continued support. We thank Duke University School of Law for its institutional support. Lastly, and most importantly, we thank you for your interest in the scholarship of our published authors. We look forward to future collaboration with the Alaska legal community in the months and years to come.

*Kate Goldberg,
Editor-in-Chief, 2021–22*