

## NOTE FROM THE EDITOR

The *Alaska Law Review* is pleased to present our December 2020 issue, the second in our thirty-eighth volume. While the world has been confronted with unprecedented challenges and circumstances over the last several months, I am proud of the work our staff has done and excited to share our fourth biennial Symposium issue.

This year's Symposium, entitled "Voting in the Last Frontier: A Discussion on Alaskan Election Law," tackled timely issues within the ambit of state election law. Alongside our co-sponsor, the University of Alaska Anchorage, our speakers and published authors provided insights into challenges on citizen participation in the democratic process. Due to the Covid-19 pandemic, this year's conference was fully virtual. While we had hoped to engage with the Alaskan legal community in Anchorage, the Journal was pleased to be able to welcome a larger audience from across the state (and nation) to join this year's discussions. This issue features an excerpt from the Keynote Address presented at the Symposium, one Article, one Essay, two student Notes, two student Comments, and two student Primers on election-related issues discussed at the Symposium.

The Keynote Address was delivered by Erwin Chemerinsky, the thirteenth Dean of University of California, Berkeley School of Law. Dean Chemerinsky opened this year's Symposium with a timely discussion of recent United States and Alaska Supreme Court opinions pertaining to access to the ballot box and ongoing concerns surrounding the 2020 United States election. Additionally, Dean Chemerinsky provided insights on the citizen referendum process inside Alaska, the debate surrounding Ballot Measure 2—which would adopt a ranked choice voting system and strip away partisan primaries—as well as future challenges facing the United States election system. Dean Chemerinsky maintains a close relationship with the Alaskan legal community and has collaborated with the *Alaska Law Review* in the past; we greatly appreciate his continued contribution to the Journal through this year's Keynote Address.

Our Article by former Senior Assistant Attorney General Elizabeth Bakalar, titled *Alaska's Ballot Initiative Today: History, Practice, and Process*, provides the definitive account of the Alaskan state ballot initiative process. Buoyed by her time with the Department of Law, Ms. Bakalar has become one of the foremost experts on Alaska's ballot initiative

process. Her Article offers thoughtful insight into the history of the ballot initiative, ongoing debates and recent case law on the initiative process, and valuable background information about the process for academics and practitioners alike. Ms. Bakalar also participated in the Symposium's panel titled "Engaging in Alaskan Democracy," alongside Professor Chad Flanders, where they discussed relevant themes of their respective pieces to the wider conversation on state election law.

In *Alaskan Exceptionalism in Campaign Finance*, Saint Louis University Law Professor Chad Flanders has written another piece for the *Alaska Law Review*, this time engaging the philosophy of Alaskan Exceptionalism as it pertains to state campaign finance law. With the recent United States Supreme Court case *Thompson v. Hebdon* altering the state's status quo for campaign finance, Professor Flanders analyzes *Thompson's* consequences and the further financial domination of Alaskan politics by the oil and gas industry. Professor Flanders discussed these concerns alongside Ms. Bakalar in their wider panel discussion of engaging in the state democratic process.

The second panel discussion at our Symposium conference was an exciting new development for the Journal. Dedicated to providing value to practicing attorneys across Alaska and informing the legal community of topical issues in response to valuable feedback we have been given by the Alaska legal community, the *Alaska Law Review* hosted a debate on Ballot Measure 2. Moderated by reporter James Brooks of *Anchorage Daily News*, our three panel discussed and debated the merits of adopting ranked choice voting and moving away from partisan primaries. The University of Alaska Anchorage Justice Center's Professor Ryan Fortson provided an academic perspective on the Ballot Measure 2 debate, and was accompanied by Mr. Scott Kendall of Alaskans for Better Elections representing the pro-Ballot Measure 2 perspective and former Attorney General Craig Richards who addressed concerns with adopting the Measure. While Ballot Measure 2 ultimately was voted down by the state's electorate, this panel proved to be a timely discussion for Alaskan attorneys as they decided for themselves the efficacy of this measure.

Our first student Note, *Retaining Judicial Independence: Solutions to Increasing Threats to Alaska's Judicial Merit System*, examines ongoing threats to the state's judicial merit system. Ryan Kuchinski looks at challenges to preserving judicial independence in a retention election system, urging Alaska to steer clear from transforming judicial retention elections into competitive judicial races, and the potential value of transitioning to a new judicial selection process.

The second student Note in this edition, authored by Zack Kaplan, is titled *Unlocking the Ballot: The Past, Present, and Future of Alaska Native Voting Rights*. Looking to issues of historical disenfranchisement of racial

minorities across the country, Mr. Kaplan turns to the Alaska Native communities and the ongoing challenges to have their voices heard at the ballot box. From ongoing debates around proper translations of ballots into Alaska Native languages, unparalleled geographic challenges, to other challenges, this Note confronts ongoing issues of systemic racism as it pertains to the electoral process for Alaska Natives.

Kristen Renberg's Comment, *Goodbye Yellow Brick Road: Enfranchisement Among Native American Voters and Nick v. Bethel*, also tackles ongoing voting challenges faced by Alaska Natives, specifically after the United States Supreme Court's decision in *Shelby County v. Holder*. In this Comment, Dr. Renberg looks to the United States District Court for the District of Alaska's decision in *Nick v Bethel* and the complexities around the Voting Rights Act's "historically unwritten" exemption. This Comment calls for new federal and state policy to bridge the gap for Alaska Natives to participate in the democratic process through the further removal of barriers surrounding geography and language.

In *When Misrepresentation Becomes Deceptive: Analyzing Petition-Signer Inadvertence Post-Cambell*, Melissa English and Daisy Gray assess the Alaska Supreme Court's holding in *Planned Parenthood v. Campbell* and the need for a clearer analysis of petition-signer inadvertence. As Alaskans continues to actively pursue policy change through ballot initiatives, Ms. English and Ms. Gray advocate for more well-defined case law surrounding deficient petition summaries, the need for recirculation of signatures to place an initiative on the ballot, and the need for petition signatures to be a proxy for public support of anticipated ballot initiatives.

In addition to our student Notes and Comments, the *Alaska Law Review* is publishing a new form of writing, student Primers. To advance our aim of being a practical resource for the state legal community, two of our editors have written Primers surrounding the Ballot Measure 2 debate. Angela Sbano explored the debate on ranked choice voting in *How Should Alaskans Choose?: The debate Over Ranked Choice Voting*. Ms. Sbano looks to other jurisdictions that have adopted ranked choice voting, alongside policy discussions in favor and against the ranked choice system. In *The Top-Four Primary and Alaska Ballot Measure 2*, Brendan McGuire studies the consequences of stripping Alaska's partisan primary system away in favor of a top-four process. Studying Ballot Measure 2, Mr. McGuire looks to jurisdictions from around the nation that have move away from partisan primaries as guidance for what Alaskans may expect in this alternative format.

This issue of the *Alaska Law Review*, in addition to all our previous issues, is available on our website, [alr.law.duke.edu](http://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 our Journal as we strive to provide the most useful information to the Alaska legal community. Please reach out to us with your comments, responses, and feedback at [alr@law.duke.edu](mailto:alr@law.duke.edu).

The *Alaska Law Review* is particularly proud of this edition due to the unprecedented challenges we have faced during editing/publication/etc. Because of the pandemic, our staff has been unable to meet in-person since March 2020. Despite Covid-19 infecting our editorial staff and taking away our ability to interact outside of a computer screen, we are proud that our editing process has neither been delayed nor diminished in quality. Instead, we have hosted a successful Symposium conference, bringing together attorneys from around the state to discuss timely election-related challenges within Alaska and celebrate our published authors. While we hope for a quick end to social distancing and pandemic-related precautions, the *Alaska Law Review* is prepared for continued success regardless of the conditions imposed on us.

On behalf of the editorial staff at the *Alaska Law Review*, I hope you find this issue informative, interesting, and useful. We are grateful to the Alaska Bar Association for the privilege of publishing the *Alaska Law Review* and its confidence in our work. We also want to thank Duke University School of Law for its institutional support. Additionally, we would like to extend our appreciation to our co-sponsor for the Symposium, the University of Alaska Anchorage, whose continued support and assistance made our conference a success. And most importantly, thank you to you, the reader, for your interest in the scholarship of our published authors. We look forward to future collaboration and service with the Alaskan legal community.

*Cormac Bloomfield*  
*Editor-in-Chief, 2020–2021*