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PLAINTIFF'S PROBLEM: CONSTITUTIONAL CONCERNS WITH SERVICE OF PROCESS UNDER ALASKA RULE OF CIVIL PROCEDURE 4(D)(7)–(8)

Casey Sawyer*

People who live outside the forest need not in future appear before
the royal justices of the forest in answer to general summonses.[†]

ABSTRACT

Rule 4 of Alaska's Rules of Civil Procedure prescribes how service of process must be completed for a civil lawsuit, much like Rule 4 of the Federal Rules of Civil Procedure. When filing suit against the State of Alaska or one of its agencies or officers, Alaska Civil Rule 4(d)(7)–(8) require that service of process be delivered to multiple locations. The plaintiff will usually have to serve the Attorney General's office in the district of filing (either Anchorage or Fairbanks) and also must deliver service of process to the Attorney General's office in Alaska's capital city of Juneau. If they are suing a state officer or state agency, the officer or agency must be served as well, meaning that certain defendants can require a minimum of three services of process.

This provision, which creates a situation where service must be delivered to Juneau for a case taking place in Anchorage or Fairbanks, may amount to an unconstitutional burden on due process rights by arbitrarily increasing the difficulty of perfecting service. Serving process in Juneau presents multiple challenges for a plaintiff, some of which have been further exacerbated by the COVID-19 pandemic.¹ Furthermore, Rule 4(d)(7) may burden a plaintiff's First Amendment rights by placing restraints on a "right to sue" that some scholars and judges believe is contained within the right to petition the government for a redress of grievances.

INTRODUCTION

Alaska is a large state which stretches the justice system thin, and forces the judicial system to adapt to an environment the Founding Fathers had no idea even

* William & Mary Law School Class of 2023. I would like to thank the William & Mary Law School Public Service Fund, as well as the members of the *William & Mary Bill of Rights Journal*.

[†] MAGNA CARTA (1215), ¶ 44.

¹ *COVID-19: Stricter Rules for Foreign Nationals Transiting Through Canada to Alaska*, GOV'T OF CAN. (July 30, 2020), <https://www.canada.ca/en/border-services-agency/news/2020/07/covid-19-stricter-rules-for-foreign-nationals-transiting-through-canada-to-alaska.html> [<https://perma.cc/4ESQ-F5LQ>].

existed.² The majority of this frontier state is policed by the Alaska State Troopers, and they are often the only law enforcement available for hundreds of miles of tundra, mountains, glaciers, and forests.³ The State Troopers themselves are not without their issues,⁴ and there may arise an instance where someone wishes to file a civil lawsuit against a State Trooper or another officer of the State, an Alaskan state agency, or even the State of Alaska itself. While the “Fairbanks Four” incident happened within the jurisdiction of a municipal police force, incidents like that case show that abuse by law enforcement and government officials can absolutely occur in rural Alaska, where it may disproportionately affect the Alaska Native population.⁵ If someone in Bethel wants to bring a lawsuit against the State of Alaska or a state employee, such as an Alaska State Trooper, they will have to first tackle the issue of deciding whether to find a lawyer or file *pro se*.⁶ After filing their lawsuit, they will then have to serve process under Rule 4 of the Alaska Rules of Civil Procedure.⁷ Here they will encounter Rule 4(d)(7). Under Rule 4(d)(7), this would-be plaintiff will have to serve the Attorney General’s office for the Fourth Judicial District in Fairbanks.⁸ Then, the would-be plaintiff must serve the Attorney General of office in Juneau in order to be in compliance with Rule 4(d)(7).⁹ Finally, they will also have to serve the State Trooper, whose actions prompted the underlying complaint.¹⁰ There are no roads connecting Bethel to Fairbanks or Juneau; there is no complete roadway connecting Fairbanks to Juneau unless a ferry is taken.¹¹ Bethel

² JUSTICE CENTER, UNIV. ALASKA ANCHORAGE, ALASKA RURAL JUSTICE ISSUES: A SELECTED BIBLIOGRAPHY 1, 2–14 (2006); *see also* Kyle Hopkins & Nat Herz, *Judge: Alaska’s Justice System Is Failing in the Case of Slain Mountain Village Woman*, KTOO (Sept. 19, 2019), <https://www.ktoo.org/2019/09/19/judge-alaskas-justice-system-is-failing-in-the-case-of-slain-mountain-village-woman/> [<https://perma.cc/Y6HA-V7RT>].

³ *See* JUSTICE CENTER, *supra* note 2, at 5–6 (graphs of law enforcement presence in Alaska).

⁴ *See Alaska State Troopers, Judges & Law Enforcement*, ALASKA STATE OF CORRUPTION, https://alaskastateofcorruption.com/Alaska_Trooper_Stories.htm [<https://perma.cc/H5HH-3CUK>] (last visited May 8, 2023).

⁵ VICE, *2 Decades Behind Bars for Wrongful Murder Conviction: The Fairbanks Four*, YOUTUBE (Feb. 1, 2018), <https://www.youtube.com/watch?v=itChf2LJ7HE> [<https://perma.cc/93MD-VD87>].

⁶ *See* ACCESS TO CIVIL JUSTICE TASK FORCE: REPORT AND RECOMMENDATIONS, 2, 38 <https://web.archive.org/web/20210409231446/https://public.courts.alaska.gov/web/appellate/docs/civjust.pdf> (last accessed Apr. 23, 2021); *see also* Matt Miller, *Governor’s Veto Leaves Many Alaskans Without Access to Free Legal Help*, KTOO (Aug. 3, 2021), <https://www.alaskapublic.org/2021/08/03/governors-veto-leaves-many-alaskans-without-access-to-free-legal-help/> [<https://perma.cc/K67F-A3CN>].

⁷ *See* Alaska R. Civ. P. 4.

⁸ *See* Alaska R. Civ. P. 4(d)(7); *Bethel Borough, Alaska (Judicial)*, BALLOTPEdia, [https://ballotpedia.org/Bethel_Borough,_Alaska_\(Judicial\)](https://ballotpedia.org/Bethel_Borough,_Alaska_(Judicial)) [<https://perma.cc/LTY2-H7RN>] (last visited May 8, 2023).

⁹ Alaska R. Civ. P. 4(d)(7).

¹⁰ Alaska R. Civ. P. 4(d)(8).

¹¹ Driving Directions from Juneau, AK to Fairbanks, AK, GOOGLE MAPS, <https://www>

is over five hundred miles away from Fairbanks, and just under a thousand miles away from Juneau.¹² This Note will discuss how this burden on a would-be plaintiff may violate both due process and First Amendment rights, and ultimately amounts to an issue of procedural justice.

I. ALASKA RULE OF CIVIL PROCEDURE 4(D)(7)–(8)

The text of Rule 4(d)(7), which details how to serve process on the State of Alaska, is as follows:

(7) *State of Alaska*. Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and (A) to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or (B) to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.¹³

Rule 4(d)(8) articulates the process of serving an agent or officer of the Alaskan government:

(8) *Officer or Agency of State*. Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons

.google.com/maps (search with the starting point field for "Juneau, Alaska" and search destination field for "Fairbanks, Alaska") (utilizing the measure distance tool to find approximate distances); see Driving Directions from Juneau, AK to Bethel, AK, GOOGLE MAPS, <https://www.google.com/maps> (search with the starting point field for "Juneau, Alaska" and search destination field for "Bethel, Alaska") (utilizing the measure distance tool to find approximate distances); see also *Alaska Marine Highway System*, ALASKA.GOV, <https://dot.alaska.gov/amhs/index.shtml> [<https://perma.cc/5VXC-QWKM>] (last visited May 8, 2023) (ferry schedules to and from Juneau); Jennifer Pemberton, *The Year in KTOO News: Spotlight on the State Government*, KTOO (Dec. 29, 2021), <https://www.ktoo.org/2021/12/29/2021-alaska-legislature-news/> [<https://perma.cc/TAQ3-MUFV>] (A state senator "was later prohibited from flying on Alaska Airlines for refusing to observe the company's mask mandate and had to find another way to get to work in Juneau after going home to Eagle River. She ended up driving 700 miles and catching the ferry in Haines."); *Travel to Juneau by Ferry*, TRAVEL JUNEAU, <https://www.traveljuneau.com/plan-your-trip/getting-here-and-around/travel-to-juneau-by-ferry/> [<https://perma.cc/35XU-VVY7>] (last visited May 8, 2023).

¹² See Driving Directions from Juneau, AK to Bethel, AK, GOOGLE MAPS, <https://www.google.com/maps> (search with the starting point field for "Juneau, Alaska" and search destination field for "Bethel, Alaska") (utilizing the measure distance tool to find approximate distances).

¹³ Alaska R. Civ. P. 4(d)(7).

and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.¹⁴

II. OVERVIEW OF CIVIL LAWSUITS AND JUDICIAL DISTRICTS IN ALASKA

The State of Alaska is divided into four judicial districts.¹⁵ The first judicial district includes the “Southeast” region and the state capital of Juneau, Alaska.¹⁶ The second judicial district incorporates the northern and northwestern regions of Alaska, which includes some of the most remote towns in the United States, such as Nome, Kotzebue, and Utqiagvik (formerly known as Barrow), as well as the North Slope oilfields.¹⁷ The third judicial district is the largest, by population and court activity, and includes Anchorage, the largest city in the state,¹⁸ as well as all of the Kenai Peninsula and the Aleutian Islands.¹⁹ Finally, the fourth judicial district occupies the middle slice of the state, extending from the Canadian border to the Bering Strait, and includes the cities of Fairbanks and Bethel.²⁰ At the federal level, there is only one federal district for all of Alaska: The District of Alaska, with courthouses in Anchorage, Fairbanks, Juneau, Ketchikan, and Nome.²¹

III. WHY THIS MATTERS

In an era of heightened tensions around law enforcement lawsuits and police accountability, Rule 4(d)(7)–(8) can impede the ability to sue Alaska State Troopers as well as other parts of the State. Alaska State Troopers are the primary—and sometimes the only—law enforcement body for most of the state.²² Access to justice

¹⁴ Alaska R. Civ. P. 4(d)(8).

¹⁵ ALASKA CT. SYS., ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, at ii (2020), <https://courts.alaska.gov/admin/docs/fy20-narratives.pdf> [<https://perma.cc/W8XP-77MS>] (displaying a map of Alaska’s judicial districts and respective courts).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *About Anchorage*, VISIT ANCHORAGE ALASKA, <https://www.anchorage.net/plan-your-trip/about-anchorage/> [<https://perma.cc/6BBT-BRWV>] (last visited May 8, 2023).

¹⁹ ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15, at ii (displaying a map of Alaska’s judicial districts and respective courts); *Aleutians West Borough, Alaska (Judicial)*, BALLOTPEdia, [https://ballotpedia.org/Aleutians_West_Borough_Alaska_\(Judicial\)#:~:text=It%20is%20located%20within%20the,in%20the%20Aleutians%20West%20Borough](https://ballotpedia.org/Aleutians_West_Borough_Alaska_(Judicial)#:~:text=It%20is%20located%20within%20the,in%20the%20Aleutians%20West%20Borough) [<https://perma.cc/CG37-3CMT>] (last visited May 8, 2023).

²⁰ ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15, at ii (displaying a map of Alaska’s judicial districts and respective courts).

²¹ *Court Locations*, U.S. D. CT. D. ALASKA, <https://www.akd.uscourts.gov/court-info/court-locations> [<https://perma.cc/RG2E-Y2N3>] (last visited May 8, 2023).

²² *See Alaska State Troopers*, GREAT STATE OF ALASKA, <https://dps.alaska.gov/AST/Home> [<https://perma.cc/C53K-96SR>] (last visited May 8, 2023).

is a problem in Alaska for many residents, especially rural inhabitants and the incarcerated.²³ These groups, as well as indigent and pro se plaintiffs, already face a litany of issues in accessing the justice system.²⁴ Rule 4(d)(7) adds yet another burden to these peoples' legal plights.²⁵

IV. RULE 4(D)(7)–(8) IN ACTION

There is only a smattering of case law involving Rule 4(d)(7),²⁶ likely because service of process takes place at the beginning of a case,²⁷ which may allow the tediousness of service of process to dissuade a claimant from attempting to file a lawsuit.²⁸ Additionally, the lack of case law may be because the total number of civil lawsuits in Alaska is quite low and spread over a large geographic area.²⁹

State Department of Corrections v. Kila, Inc. is a procedure case where Rule 4(d)(7)–(8) played an important role in voiding a default judgment.³⁰ In this case, the Alaska Supreme Court ruled that Kila's service of process on the Alaska Department of Corrections—a state agency for the purposes of Rule 4(d)(7)–(8)—was done incorrectly and did not establish personal jurisdiction.³¹ In addition to a precept violated by Kila's lawyer,³² the service of process was out of compliance with Rule

²³ STATE JUST. INST., ALASKA CT. SYS., REPORT OF THE ALASKA SUPREME COURT ADVISORY ON FAIRNESS AND ACCESS 3–5, 10–11, 14 (1997).

²⁴ *See id.* at 16, 46.

²⁵ *See* Alaska R. Civ. P. 4(d)(7).

²⁶ *See, e.g.*, Alaska State-Operated Sch. Sys. v. Mueller, 536 P.2d 99, 100 (Alaska 1975); *see* Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707, 711 (Alaska 1986); Arcticorp v. C Care Servs., LLC, 424 P.3d 365, 366 n.3 (Alaska 2018).

²⁷ *See Service of Process*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/service_of_process [<https://perma.cc/J7ZM-DFRR>] (last accessed Mar. 2, 2023).

²⁸ *See also* Gary Wickert, *Beating the Statute of Limitations: Filing Suit is Only Half the Battle*, CLAIMS J. (Dec. 10, 2019), <https://www.claimsjournal.com/columns/road-to-recovery/2019/12/10/294462.htm> [<https://perma.cc/RC27-PHW3>] (discussing instances where service of process becomes a significant obstacle for a would-be plaintiff).

²⁹ *Compare* ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15, at 19, 27, with *PLN—GCMS 10.01 Caseload Statistics of the General District Courts*, VIRGINIA'S JUD. SYS., https://www.vacourts.gov/courtadmin/aoc/judpln/csi/stats/district/cms/2021/gcms1001_dec.pdf [<https://perma.cc/7RHS-7XSK>] (last visited May 8, 2023) (comparing the statistical reports on civil case filings between Virginia and Alaska).

³⁰ *See* 884 P.2d 661, 661–62 (Alaska 1994); *see also* Laura Fahey et al., *Year in Review, Alaska Supreme Court and Court of Appeals Year in Review 1994*, 12 ALASKA L. REV. 139, 245 (1995) (classifying the case, in the appendix, under cases, which were omitted from the year in review, regarding procedure).

³¹ *State Dep't of Corr.*, 884 P.2d at 661–62.

³² *Id.* (stating that Kila's lawyer violated a precept by taking advantage of opposing counsel by causing a default judgment, when he did not know if the opposing counsel would want to proceed; the Court mentioned that even if service had been perfected, this violation would still have likely sunken the case on appeal).

4(d)(7) and Rule 4(d)(8). Service did not comply with Rule 4(d)(7) because the summons mailed to the Juneau Attorney General's office was addressed to the Assistant Attorney General who was handling the case, and not specifically to the Attorney General, who at the time was either Charles E. Cole or Bruce M. Botelho.³³ Furthermore, the plaintiff's letter to the Fairbanks office did not comply with Rule 4(d)(7) because that letter (containing the service of process) was addressed to the "Attorney General's Office" and not to the Chief of the Attorney General's Office in Fairbanks by name.³⁴ While the name of the current Attorney General of Alaska is easily accessible online, it should be noted that the position has had a somewhat high turnover rate in the past few years, which may befuddle the seemingly simple task of addressing a letter.³⁵ As for Rule 4(d)(8), Kila was out of compliance because "the summons and complaint was not delivered to an officer, managing or general agent, or other agent authorized . . . to receive service of process on behalf of the Department of Corrections."³⁶ Westlaw has only limited information available about the service of process sent to the Department of Corrections by Kila and it is unclear if the mail was simply wrongly addressed, à la the previous two summons, or if it had other issues.³⁷ Nevertheless, these small issues show the frustration that Rule 4(d)(7)–(8) can cause, even to someone who is aware of them.³⁸

Kila is a case where the Plaintiff was aware of the rules, was able to afford service of process for three different locations, and seemingly knew which offices and parties had to be served.³⁹ Nonetheless, they were still unable to complete service due to the arbitrary nature of Rule 4(d)(7)–(8).⁴⁰ *Kila* also shows an issue with a service of process scheme that relies heavily on certified mail. Small semantic discrepancies and errors doomed these mail-based pleadings, and while it is difficult to determine what the situation was in 1994, there were likely few, if any, alternatives

³³ *Id.* at 661; *Attorneys General of Alaska*, ALASKA DEP'T OF L., https://www.law.alaska.gov/department/ag_past.html [<https://perma.cc/PNM8-UPPY>] (last visited May 8, 2023).

³⁴ *State Dep't of Corr.*, 884 P.2d at 661.

³⁵ *See Attorneys General of Alaska*, *supra* note 33. *See generally* Kyle Hopkins, *Sexual Misconduct Allegations Prompt Another Alaska Attorney General to Resign*, PROPUBLICA (Jan. 30, 2021, 8:45 PM), <https://www.propublica.org/article/sexual-misconduct-allegations-prompt-another-alaska-attorney-general-to-resign> [<https://perma.cc/ECF4-H9NZ>]; *see also* Kyle Hopkins, *Alaska Attorney General Resigns Following Report That He Sent Hundreds of Texts to State Employee*, ANCHORAGE DAILY NEWS (Feb. 5, 2021), <https://www.adn.com/politics/2020/08/25/attorney-general-resigns-after-disclosure-of-text-messages/> [<https://perma.cc/RH38-SHSR>].

³⁶ *Kila*, 884 P.2d at 661–62.

³⁷ *Id.* at 662.

³⁸ Remember, the rules require that, depending on district of filing, service of process be sent by mail to the Attorney General's office in Juneau, then Fairbanks or Anchorage, and then to the officer or agency being sued—totaling three separate services of process spread across the largest state in the United States. *See Alaska R. Civ. P. 4(d)(7)–(8)*.

³⁹ 884 P.2d at 661–62.

⁴⁰ *See id.*

available to Kila. The most obvious alternative would be to use process servers in all three different locations, which could bring added costs and logistical issues.⁴¹ But that might be beside the point because Rule 4(d)(7) specifically states that service of process on the State is to be done by “registered or certified mail.”⁴²

V. FIRST AMENDMENT: THE RIGHT TO PETITION AND THE RIGHT TO SUE

The First Amendment right to petition guarantees the right “to petition the Government for a redress of grievances.”⁴³ The Merriam-Webster dictionary defines petition as “a cause of distress . . . felt to afford reason for complaint or resistance.”⁴⁴ The literal manifestation of petitioning the government for a redress of a grievance is suing a government agency, officer, or official for a wrong they have committed, for example, excessive force by a law enforcement officer or the reimbursement of travel expenses for a public school teacher.⁴⁵ This Note asserts that Rule 4(d)(7)–(8) constitutes an unconstitutional burden on the right to petition. As discussed in a 2017 law review article by Benjamin Clover, which analyzes the textual and common law history of the right to petition, the First Amendment right to petition has been interpreted to include the right to access a court.⁴⁶ Rule 4(d)(7)–(8)’s arbitrary requirement that service of process is served on the State of Alaska in multiple far-away and hard-to-reach locations impedes a plaintiff’s ability to petition the State of Alaska to redress a grievance.⁴⁷ The cases discussed below further expand on this idea.

A. *Bill Johnson’s Restaurants, Inc. v. National Labor Relations Board* and *BE & K Construction Co. v. National Labor Relations Board*

Bill Johnson’s Restaurants, Inc. v. National Labor Relations Board is a 1983 Supreme Court antitrust case which held that “the right of access to the courts is an

⁴¹ See *Civilian Process Server Licensing*, ALASKA: DEP’T PUB. SAFETY (May 12, 2021), <https://web.archive.org/web/20211127034315/https://dps.alaska.gov/getmedia/db40a70c-654c-4549-a121-e6bc71d83137/Civilian-Process-Server-List.pdf> [<https://perma.cc/FG9T-X7U6>]; see also Google Flights search for a trip from Anchorage to Juneau, Alaska, GOOGLE FLIGHTS, <https://www.google.com/travel/flights/> (search with the starting point field for “Anchorage” and the destination field for “Juneau”, input estimated flying dates and round trip options as needed).

⁴² See Alaska R. Civ. P. 4(d)(7).

⁴³ U.S. CONST. amend. I.

⁴⁴ *Grievance*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/grievance> [<https://perma.cc/P6WL-DQQ8>] (last visited May 8, 2023).

⁴⁵ See generally *Alaska State-Operated Sch. Sys. v. Mueller*, 536 P.2d 99, 100 (Alaska 1975); *Arcticorp v. C Care Services, LLC*, 424 P.3d at 365, 366 n.3 (Alaska 2018); *Nieves v. Bartlett*, 139 S. Ct. 1715, 1728 (2019).

⁴⁶ Benjamin Plener Cover, *The First Amendment Right to a Remedy*, 50 U.C. DAVIS L. REV. 1741, 1741, 1745–46, 1748–49 (2017).

⁴⁷ See also U.S. CONST. amend. I.

aspect of the First Amendment right to petition the Government for a redress of grievances.”⁴⁸

Another case involving the National Labor Relations Board, *BE&K Construction Co. v. NLRB*, is a 2002 case upholding precedent that “‘the right to petition extends to all departments of the Government,’ and that ‘[t]he right of access to the courts is . . . but one aspect of the right of petition.’”⁴⁹ *BE&K* stemmed out of a decision by the National Labor Relations Board which restricted a party’s ability to bring further lawsuits.⁵⁰ *BE&K* is an antitrust case, and the Supreme Court’s assertion of the First Amendment right to petition was done to avoid interpretations of the Sherman Act that would restrict a party from attempting to “persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or a monopoly.”⁵¹

It should be noted that this is a factor distinguishing Rule 4(d)(7) from *Bill Johnson’s Restaurants, Inc.* and *BE&K*. Indigent plaintiffs attempting to sue the State of Alaska and its officers are not filing antitrust actions;⁵² common lawsuits against state troopers usually involve state or Section 1983 tort claims.⁵³

What this means for a would-be plaintiff in Alaska is that the Supreme Court of the United States has formally recognized, at least in some circumstances,⁵⁴ a would-be

⁴⁸ 461 U.S. 731, 741 (1983); *see also* *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961) (“[T]hat the people cannot freely inform the government of their wishes would impute to the Sherman Act a purpose to regulate. . . political activity, . . . such a construction of the Sherman Act would raise important constitutional questions. The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms.”). These aforementioned anti-trust cases were the building blocks for *BE&K Construction Co. v. NLRB* and stemmed out of similar worries that the Sherman Act might constrain the rights of organized labor groups.

⁴⁹ *See* 536 U.S. 516, 525 (2002); *see also* *Cal. Motor Transp. Co.*, 404 U.S. at 510.

⁵⁰ *See* 536 U.S. at 522.

⁵¹ *Id.* at 525 (quoting *Eastern R.R. Presidents Conf. v. Noer Motor Freight, Inc.*, 365 U.S. at 127); *see also* 15 U.S.C. § 1.

⁵² *See* ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15.

⁵³ *See also* Ben Evans, *The Office of Professional Standards Investigates Allegations of Trooper Misconduct and Provides Accountability*, ALASKA DEP’T OF PUB. SAFETY, <https://dps.alaska.gov/AST/PIO/Department-OP-EDs/The-Office-of-Professional-Standards-Investigates> [<https://perma.cc/LU8Y-XWFG>] (last visited May 8, 2023). *See generally* *Announcement: U.S. Supreme Court Rules in Favor of Alaska Troopers Lawful Actions*, ALASKA DEP’T OF L. (May 29, 2019), <http://www.law.state.ak.us/press/releases/2019/052919-Bartlett.html> [<https://perma.cc/U76P-QCLD>] (describing a suit where the Plaintiff sued for retaliatory arrest); *Bill Johnson’s Rests., Inc. v. NLRB*, 461 U.S. 731 (1983); Emily Hofstaedter, *Family of St. Mary’s Man Sues Trooper Who Shot Him*, ALASKA PUB. MEDIA (Feb. 28, 2019), <https://www.alaskapublic.org/2019/02/28/family-of-st-marys-man-sues-trooper-who-shot-him/> [<https://perma.cc/8H7G-YDS8>] (describing wrongful death lawsuit against an Alaska State Trooper); *Basey v. Dep’t of Pub. Safety*, 462 P.3d 529, 531 (Alaska 2020) (plaintiff filed a lawsuit “based on their actions during his investigation and arrest”).

⁵⁴ Yet again, it must be noted that something arising in an antitrust context may not

plaintiff's constitutional right to access the court system.⁵⁵ The text from *BE&K*, when referring to the State's role as the Government judicial entity, states that the right to redress a grievance "extends to all departments of the Government."⁵⁶ Thus, this right would undoubtedly apply to the Government of Alaska.

So, if there is an established right to sue the government to redress a grievance, then how is it violated by Rule 4(d)(7)–(8)? The previously mentioned antitrust cases concerned the Sherman Act potentially criminalizing an attempt to bring a lawsuit, a seemingly total blockage to bringing a grievance against the government, while Rule 4(d)(7)–(8) only creates roadblocks that are overcome by many Alaskan tort lawyers every year.⁵⁷

Well, the right to petition is but a leg of the beast that is the First Amendment, and that beast happens to live within the Bill of Rights.⁵⁸ When a statute attempts to burden the exercise of a First Amendment right, the statute must be as such to advance a "state interest of compelling importance."⁵⁹ Rule 4(d)(7), which is a statute, must therefore advance a state interest if it is to burden the First Amendment rights of a would-be plaintiff. The statute itself contains no explanation for why it exists.⁶⁰

necessarily ring true for the rest of the law, as few other areas of law have dealt so directly with the politically fraught issues of unions and changing economic theory. This is all to say that antitrust decisions may be influenced by ulterior motives, and we cannot always place full faith in the textual relevance of their decisions to other bodies of law. *See* Maurice E. Stucke & Ariel Ezrachi, *The Rise, Fall, and Rebirth of the U.S. Antitrust Movement*, HARV. BUS. REV. (Dec. 15, 2017), <https://hbr.org/2017/12/the-rise-fall-and-rebirth-of-the-u-s-antitrust-movement> [<https://perma.cc/UB9E-68KX>]; RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 269 (9th ed., 1986) ("Courts do not always have a clear understanding of what the economic objective of competition policy is; their touch seems less sure than in common law fields.").

⁵⁵ *See, e.g., Bill Johnson's Rests., Inc.*, 461 U.S. at 742; *BE&K Constr. Co.*, 536 U.S. at 525.

⁵⁶ 536 U.S. at 525.

⁵⁷ The Sherman Act imposes criminal punishments on violators, so a violation of the Sherman Act, as avoided in cases like *BE&K Construction Co.*, would have, in a sense, criminalized the exercising of the right to petition. *See* 15 U.S.C. § 1; *see also BE&K Constr. Co.*, 536 U.S. at 525; *see also* ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15, at 17 (showing how there are still lots of civil suits filed in Alaska).

⁵⁸ *See* U.S. CONST. amend. I.

⁵⁹ *See* *Free Libertarian Party, Inc. v. Spano*, 314 F. Supp. 3d 444, 456 (E.D.N.Y. 2018) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)); *Kraimer v. City of Schofield*, 342 F. Supp. 2d 807, 814 (W.D. Wis. 2004) ("To be constitutional, statutes that restrict or burden the exercise of First Amendment rights 'must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society.'"); *see also Speet v. Schuette*, 726 F.3d 867, 880 (6th Cir. 2013) ("[S]tatutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society."). *Speet* and *Kraimer* concern the First Amendment right to freedom of speech, but their principles nonetheless apply to the right to petition, even if the compelling interests may look different.

⁶⁰ *See* Alaska R. Civ. P. 4(d)(7).

If there is a case about the constitutionality of Rule 4(d)(7), intermediate scrutiny will likely be used to evaluate procedural burdens on the First Amendment right to petition.⁶¹ This is because the right to petition is being restricted in regards to its activity (the bringing of the petition or lawsuit) and is not being restricted in regards to its content, which would likely trigger a strict scrutiny analysis similar to free speech cases.⁶² Within free speech issues under the First Amendment, “regulations that do not ‘fit neatly into either the “content-based” or the “content-neutral” categories,’ but are aimed at addressing the ‘secondary effects of speech are subject to intermediate scrutiny.’”⁶³ A “regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.”⁶⁴ With the limited amount of case law directly dealing with the First Amendment right to petition, it seems apt, if not overcautious, to work within the existing First Amendment framework. Rule 4(d)(7) restricts the procedural ability to petition the government for any type of lawsuit that can be brought against the State of Alaska; it does not regulate the content of what types of petitions may be brought against the State.⁶⁵

While *NAACP v. Button* predates many of the cases that established the levels of scrutiny and content-based analysis under the First Amendment,⁶⁶ *Button* provides a possible example of a content-based restriction within the right to petition.⁶⁷ In *Button*, a Virginia law was amended to prohibit the solicitation of legal business in a manner that directly targeted the NAACP’s desegregation legal strategy.⁶⁸ The Supreme Court deemed the law unconstitutional under both the First and Fourteenth Amendments,⁶⁹ and appeared to use a standard of strict scrutiny, while also stating

⁶¹ See *Intermediate Scrutiny*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/intermediate_scrutiny [<https://perma.cc/3UHK-Q85A>] (last visited May 8, 2023).

⁶² See, e.g., *Ex parte Lee*, 617 S.W.3d 154, 161 (Tex. App. 2020) (“Whether the regulation is content neutral or content-based dictates the level of scrutiny . . . content-neutral regulations . . . must only satisfy intermediate scrutiny.”); see also *Martinez v. State*, 323 S.W.3d 493, 504–05 (Tex. Crim. App. 2010); *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 154 (2d Cir. 2013) (“[Plaintiffs] submit that the regime’s restrictions are content and speaker based, thus requiring strict scrutiny.”).

⁶³ *Ex parte Lee*, 617 S.W.3d at 161 (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47–50 (1986)).

⁶⁴ *Id.* at 162 (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

⁶⁵ Alaska R. Civ. P. 4(d)(7).

⁶⁶ 371 U.S. 415, 421–24 (1963); see also *City of Chicago v. Alexander*, 46 N.E.3d 1207, 1218 (Ill. App. Ct. 2015) (“A regulation is content-neutral so long as it is ‘justified without reference to the content of the regulated speech.’”); see also *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293–95 (1984) (upholding a content-neutral law that restricted First Amendment rights, and stating that “[e]xpression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions”).

⁶⁷ 371 U.S. at 421–22.

⁶⁸ *Id.*

⁶⁹ *Id.* at 420–22.

that a state may not ignore constitutional rights under the guise of regulating professional ethics.⁷⁰ The perceived use of a strict scrutiny standard, along with the specific type of petitioning targeted by the Virginia law, supports a theory that this case could be viewed as a content-based regulation on the right to petition that does justify strict scrutiny—in contrast to the regulations imposed by Rule 4(d)(7) which, being content-neutral, will likely be analyzed under intermediate scrutiny.⁷¹

B. Does Alaska's Rule 4(d)(7) Advance a State Interest that Meets the Requisite Burden?

As long as something less deferential than rational basis review applies, the Alaskan would-be plaintiff still has a chance here.⁷² Within the context of the First Amendment, “[a] regulation satisfies intermediate scrutiny if it promotes a significant governmental interest and does not burden substantially more speech than necessary to further that interest.”⁷³ For content-neutral laws, “time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication.”⁷⁴ Rule 4(d)(7) is content-neutral because it does not regulate the types of suits

⁷⁰ See *id.* at 421–22 (“The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State’s constitutional power to regulate can justify limited First Amendment freedoms.”).

⁷¹ See *supra* note 66 and accompanying text; see also *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys Government regulation of expressive activity is content neutral so long as it is ‘justified without reference to the content of the regulated speech.’”). When applying *Ward v. Rock Against Racism* to Rule 4(d)(7) an interesting hypothetical argument arises: if we place value in the wording from *Rock Against Racism* that “the principal inquiry. . . is whether the government has adopted a regulation of speech because of disagreement with the message conveys” and make the assumption that a lawsuit can constitute speech, then essentially Rule 4(d)(7) is regulating the content (lawsuits where the State of Alaska is being sued) of speech (the lawsuit) in regards to a disagreement that the message conveys (why else would the State oppose a lawsuit?). 491 U.S. at 791; *Hagan v. Quinn*, 84 F. Supp. 3d 826, 830 (C.D. Ill. 2015) (“[E]mployee’s lawsuit is protected speech if the employee is speaking ‘as a citizen on a matter of public concern.’” (citation omitted)).

⁷² Rational basis review is a very easy burden for the government to meet. See James M. McGoldrick Jr., *The Rational Basis Test and Why It Is So Irrational: An Eighty-Year Retrospective*, 55 SAN DIEGO L. REV. 751, 752 (2018) (“The rational basis test as applied by the Supreme Court is such a permissive level of review that it is effectively not judicial review.”).

⁷³ *Ex parte Lee*, 617 S.W.3d 154, 161 (Tex. App. 2020); see, e.g., *McCullen v. Coakley*, 573 U.S. 464, 486 (2014); *Ex parte Thompson*, 442 S.W.3d 325, 344 (Tex. Crim. App. 2014).

⁷⁴ *Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986); see *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 299 (1984); *Members of City Council of L.A. v. Taxpayers for*

filed against the State of Alaska; it simply imposes procedural barriers on a would-be plaintiffs ability to serve the State.⁷⁵ Before determining the severity and reasonableness of the limitations imposed by Rule 4(d)(7), it is crucial to define the Rule's purported governmental interest.

1. Judicial Efficiency

While this Note concerns both Rule 4(d)(7) and Rule 4(d)(8), Rule 4(d)(8), which outlines the process of serving an officer or agent of the State, incorporates the requirements of Rule 4(d)(7), which outlines the process of serving the State,⁷⁶ therefore, only Rule 4(d)(7) will be analyzed.

An obvious justification for Rule 4(d)(7) is judicial efficiency.⁷⁷ Defending lawsuits costs money,⁷⁸ and Alaska has an interest in reducing the amount of money they spend on litigation.⁷⁹ Erecting barriers to people wishing to sue the State may help to filter out suits that waste court resources.⁸⁰ Using Rule 4(d)(7) to screen out those unable to complete service in multiple locations may help to reduce the number

Vincent, 466 U.S. 789, 808 (1984); *see also* *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647–48 (1981).

⁷⁵ Alaska R. Civ. P. 4(d)(7)–(8).

⁷⁶ *See* Alaska R. Civ. P. 4(d)(8) (referring to Alaska R. Civ. P. 4(d)(7) by stating “as provided in the preceding paragraph of this rule”).

⁷⁷ *See* *Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536, 550 (2003) (discussing why First Amendment rights are limited to an intermediate or heightened scrutiny level in the public employment context “by a government’s need to function efficiently”).

⁷⁸ *See* STATE OF ALASKA: OFF. OF MGMT. & BUDGET, DEPARTMENT TOTALS—OPERATING BUDGET (1158), DEPARTMENT OF LAW (Dec. 14, 2018), https://omb.alaska.gov/ombfiles/20_budget/Law/Proposed/20depttotals_law.pdf [<https://perma.cc/7VQK-HKYT>]; *see also* COMPONENT SUMMARY (1078), DEPARTMENT OF LAW, STATE OF ALASKA: OFFICE OF MANAGEMENT AND BUDGET (Dec. 14, 2018), <https://omb.alaska.gov/html/budget-report/departments-table.html?dept=Law&fy=20&type=Proposed> [<https://perma.cc/8M23-BF6X>].

⁷⁹ Press Release, Sen. Lisa Murkowski, Senators Introduce Bill to Improve Access to Justice in the West, Create New Twelfth Circuit (Mar. 12, 2019), <https://www.murkowski.senate.gov/press/release/-senators-introduce-bill-to-improve-access-to-justice-in-the-west-create-new-twelfth-circuit> [<https://perma.cc/62VL-BTQR>]. However, concerns about judicial efficiency have not stopped Governor Dunleavy from going after the Court System’s budget. *See* Andrew Kitchenman, *Dunleavy’s Court System Vetoes Because of Abortion Funding Were Illegal, Judge Says*, ALASKA PUB. MEDIA (Oct. 16, 2020), <https://www.alaskapublic.org/2020/10/16/dunleavys-court-system-vetoes-because-of-abortion-funding-were-illegal-judge-says/> [<https://perma.cc/N6RJ-CWLK>].

⁸⁰ *See also* *Doe v. Dep’t of Corr.*, 878 N.W.2d 293, 316 (Mich. Ct. App. 2015) (“Several courts have already recognized that the preservation of scarce governmental resources from frivolous prisoner actions is a legitimate government interest.”); *Jae v. Good*, 946 A.2d 802, 809 (Pa. Commw. Ct. 2008) (acknowledging that “[t]here is a legitimate governmental interest in deterring frivolous law suits” when dealing with Pennsylvania Judicial Procedure rules that burden a prisoner plaintiff’s lawsuit).

of lawsuits from pro se and low-fund litigants who have little to lose in the way of fines, sanctions, or reputation.⁸¹

2. Comparison to Federal Rule of Civil Procedure 4

Perhaps owing to its youth as a state, Alaska Law and its Rules of Civil Procedure borrow heavily from existing federal law.⁸² Therefore, the government interests behind the analogous federal rule may aid in articulating the government interests of Rule 4(d)(7). The Federal Rule of Civil Procedure for serving the United States and its agencies and employees is Rule 4(i)(1)–(3).⁸³ Federal Rule 4(i)(1)(A) bears a striking resemblance to Alaska Civil Rule 4(d)(7)⁸⁴:

- (1) *United States*. To serve the United States, a party must:
 - (A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or
 - (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and
- (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.⁸⁵

Both Alaska Civil Rule 4(d)(7) and Federal Rule 4(i)(1)(A) require multiple services of process, and to relatively similar people and places.⁸⁶ Both statutes require service to the respective attorney generals, as well as service to the relevant district office in which the case has been filed.⁸⁷ Finally, both the Alaska and federal statutes specifically require service by “registered or certified mail.”⁸⁸

⁸¹ See, e.g., *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 278 (Alaska 2001) (“This bill is intended to ensure that offenders [desist from] endless ‘recreational’ litigation.”).

⁸² See Alaska R. Civ. P. 4 (“Note to SCO 1570: Civil Rule 4(d)(13), concerning service on individuals in a foreign country, parallels the language in Federal Rule of Civil Procedure 4(f).”).

⁸³ Fed. R. Civ. P. 4(i)(1)–(3).

⁸⁴ Compare Fed. R. Civ. P. 4(i)(1)(A)–(C), with Alaska R. Civ. P. 4(d)(7).

⁸⁵ Fed. R. Civ. P. 4(i)(1)(A)–(C).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

Kurzberg v. Ashcroft shows what happens when a plaintiff fails to meet the service of process under Federal Rule 4(i)(b), even after generous extensions.⁸⁹ Contained within the affirmation of dismissal for improper service is a governmental purpose behind Rule 4(i):

The existence of this requirement creates in the United States a procedural right to receive service in actions against federal officers or employees sued in their individual capacities, even when the United States is not a party to an action. Interpreting Rule 12(h)(1)(B) to allow a federal officer or employee defendant to waive service upon the United States without any indication of its consent would permit defendants to compromise government interests that Rule 4(i)'s service requirements were specifically designed to protect.⁹⁰

Therefore, at least one purpose of Federal Rule of Civil Procedure 4(i) is that proper service (and a prohibition on waiving said service) allows the Government to ensure that a lawsuit against a part of the state, such as an officer, does not compromise broader government interests.⁹¹ Looking at the similarities between the contents of Federal Rule 4(i) and Alaska Civil Rule 4(d)(7), the purpose of the Federal Rule can be applied to Alaska Civil Rule 4(d)(7); Alaska may also face instances where a broader governmental interest could be involved in a legal dispute.⁹² However, the federal government is quite a bit larger than the Alaskan government, and what is required to run the federal government efficiently may be overzealous in a smaller setting. As demonstrated below, other states do not follow the federal model of Federal Rule 4(i) on this issue.⁹³

⁸⁹ See No. 04-CV-3950, 2006 U.S. Dist. LEXIS 90900, at *1, *4-5 (E.D.N.Y. 2006).

⁹⁰ See *id.* at *7.

⁹¹ *Id.*

⁹² No examples are given for exactly what broader governmental interests are being protected by this ruling. *Kurzberg* cites *Zedner v. United States* which had a similar holding that held in favor of an ambiguous and non-specific "public interest." *Id.* at 72; see *Zedner v. United States*, 547 U.S. 489, 501 (2006). However, Alaska also runs a bureaucratic government and legal department which structurally mirrors the bureaucratic systems of the respective Federal Government departments, and a similarity in structure points toward a similar set of problems faced by both departments. *Compare Civil Division*, STATE OF ALASKA: DEP'T OF L., <http://law.alaska.gov/departments/civil/civil.html> [<https://perma.cc/V62N-QHQY>] (last visited May 8, 2023), with *Our Agency: Civil Division*, U.S. DEP'T OF JUST., <https://www.justice.gov/civil/civil-division-organization-chart> [<https://perma.cc/J9M3-KREY>] (last visited May 8, 2023) (civil divisions for both agencies are split up into multiple sections, employees are demarcated by variations to the title of Attorney General).

⁹³ See *infra* Section V.B.3.

3. Comparing Rule 4(d)(7) to Other States' Rules on Service of Process in Lawsuits Against the State or Its Agents and Agencies

The arbitrariness of Alaska Civil Rule 4(d)(7) can be further understood by looking at the comparative laws in other states' rules of civil procedure. Alaska was the forty-ninth state to join the United States,⁹⁴ while Hawaii was the fiftieth.⁹⁵ Nevertheless, the two states have differing rules of civil procedure on service of process for lawsuits against the state, state agencies, and state officers.⁹⁶ Hawaii allows service upon the State by serving the attorney general, an assistant attorney general, or someone appointed by the attorney general—meaning only one service of process is required.⁹⁷ Serving a state agency requires service to both the State and the agency—meaning two services of process are required—but this is still less than the three services of process required under Rule 4(d)(7), which may require service on two Attorney General's offices, as well as to the State agency being sued.⁹⁸ While Hawaii is not as large as Alaska, it is the only other state where the state capital is inaccessible by road from the contiguous forty-eight states.⁹⁹

Texas, the second-largest state by landmass in the United States after Alaska, has different rules as well.¹⁰⁰ Texas Rules of Civil Procedure do not have any special provisions for service of process on the State, so service of process on the State will follow the same rules as any other civil suit in Texas—meaning would-be plaintiffs are not constrained to reliance on certified mail.¹⁰¹ If these other states, with larger populations than Alaska,¹⁰² can make do with less onerous rules for service of

⁹⁴ *Alaska Admitted into Union*, HISTORY (Feb. 9, 2010), <https://www.history.com/this-day-in-history/alaska-admitted-into-union> [https://perma.cc/V5C6-862Y].

⁹⁵ *Hawaii Becomes 50th State*, HISTORY (Nov. 24, 2009), <https://www.history.com/this-day-in-history/hawaii-becomes-50th-state> [https://perma.cc/5E54-9N2P].

⁹⁶ *Compare* Alaska R. Civ. P. 4(d)(7)–(8), *with* Haw. R. Civ. P. 4(d)(5)–(6).

⁹⁷ *See* Haw. R. Civ. P. 4(d)(4) (the key word here is “or”).

⁹⁸ *See* Alaska R. Civ. P. 4(d)(5).

⁹⁹ *See* Driving Directions from Juneau, AK to Honolulu, Haw., GOOGLE MAPS, <https://www.google.com/maps> (search with the starting point field for “Juneau, Alaska” and search destination field for “Honolulu, Hawaii”).

¹⁰⁰ *Size of States*, STATE SYMBOLS USA, <https://statesymbolsusa.org/symbol-official-item/national-us/uncategorized/states-size> [https://perma.cc/SPG5-P2QF] (last visited May 8, 2023); *see also* Tex. R. Civ. P. 21a(a)(1)–(2).

¹⁰¹ *See* Tex. R. Civ. P. 21a(a)(1)–(2). Although the State itself has few parallels with Alaska, Tennessee's provision for serving the State and its agencies should be held as the gold standard: “Upon the state of Tennessee or any agency thereof, by delivering a copy of the summons and of the complaint to the attorney general of the state or to any assistant attorney general.” Tenn. R. Civ. P. 4.04(6). This rule is simple, short, easy to understand, and allows for flexibility in whom and how you serve; it might be the best thing out of Tennessee since Jack Daniel's Tennessee Whiskey.

¹⁰² *See U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> [https://perma.cc/ZW27-KPMQ] (last visited May 8, 2023).

process, what governmental purpose or interest is so unique to Alaska as to require Rule 4(d)(7) to be so restrictive?

4. The Actual Purpose?

There is no explicit governmental interest given within the text or notes of Rule 4(d)(7).¹⁰³ However, a 1977 opinion letter from the Attorney General of Alaska stated that the purpose of Rules 4(d)(7)–(8) are to “enable the state government to deal effectively and consistently with the pleadings and other papers served on the state in the course of a legal proceeding.”¹⁰⁴ This appears similar to a judicial efficiency purpose—reducing the workload on the court system. However, this justification is concerned with the burden on the state government as defendant, rather than the court system. While the phrase “enable the state government to deal effectively and consistently with the pleadings”¹⁰⁵ could be argued to apply to both the attorneys that argue them and the courts who hear them, the latter half of the phrase “pleadings and other papers served on the state in the course of a legal proceedings” implies that the purpose is to aid those who handle lawsuits filed against the state—namely the State of Alaska’s lawyers;¹⁰⁶ however, one can argue that because both the courts and Alaska’s lawyers are involved with lawsuits against the State, the courts’ interest in judicial efficiency would not only be limited solely to lawsuits against Alaska. So, it is no stretch to assume that the purpose was purely focused on helping the State of Alaska’s lawyers stay organized.¹⁰⁷ If the intention was to improve the efficiency of the entire court system, why limit it only to cases against the State?

C. *Wrapping up Intermediate Scrutiny*

Now that at least one possible governmental purpose for Rule 4(d)(7) has been established, it is next necessary, under intermediate scrutiny analysis, to assess the reasonableness and severity of the burdens that Rule 4(d)(7) places on a plaintiff’s right to petition.¹⁰⁸ To restate the burdens that are imposed by the Alaskan rule: under Rule 4(d)(7), service of process on the State, a state agency, or an officer or agent of the state requires that service of process occur on both the party in question

¹⁰³ See Alaska R. Civ. P. 4(d)(7).

¹⁰⁴ Letter from Avrum M. Gross & G. Thomas Koester, Attorney General and Assistant, State of Alaska, to B.B. Alle, Commissioner, Dep’t of Admin. (Mar. 31, 1977) (1977 WL 21953 (Alaska A.G.)) [hereinafter Letter from Avrum M. Gross].

¹⁰⁵ *Id.*

¹⁰⁶ See *id.*

¹⁰⁷ *Id.*

¹⁰⁸ See *supra* Section V.A, notes 60–75 and accompanying text; *Ex parte Lee*, 617 S.W.3d 154, 161 (Tex. App. 2020); *Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986).

(if it is an agency or an officer) as well as the Attorney General's office in Juneau.¹⁰⁹ If the case is filed in the third or fourth judicial district, then there must be additional service on either the Anchorage or Fairbanks Attorney General's office.¹¹⁰ The Rule also prescribes that service of process on said parties can only be done via certified mail—an issue which will be discussed later on in this Note.¹¹¹

Rule 4(d)(7) fails to meet the intermediate standard of scrutiny because it is overinclusive in its pursuit of the State's governmental interest and unreasonably limits viable alternative options by which service of process could be completed.¹¹² As outlined by the Attorney General of Alaska, the explicit government purpose for Rule 4(d)(7) is to “enable the state government to deal effectively and consistently with the pleadings and other papers served on the state in the course of a legal proceeding.”¹¹³ This was in 1977, over forty-five years ago.¹¹⁴ Technological advances over the last forty-five years have vastly improved the ability to manage pleadings, cases, and legal documents between offices and over long distances.¹¹⁵ What was required to organize pleadings and other papers in 1977 is not what is required today; even if the legal profession is notorious for being resistant to change, lawyers have embraced email, word processing software, and digitized documents—tools either unavailable, or not widely available, in 1977.¹¹⁶ Cases dealing with intermediate scrutiny issues have previously overruled past cases based on outdated misconceptions.¹¹⁷ Likewise, the assumption that Rule 4(d)(7) is necessary

¹⁰⁹ See Alaska R. Civ. P. 4(d)(7)–(8).

¹¹⁰ *Id.*

¹¹¹ *Id.* (Serve “the complaint by registered or certified mail”); see *infra* Section VI.C.

¹¹² Rule 4(d)(8) relies on Rule 4(d)(7), so only Rule 4(d)(7) will be addressed hereafter. *Id.*

¹¹³ See Letter from Avrum M. Gross, *supra* note 104 (stating that the Attorney General was quite confident in this opinion, stating that “[t]here is no rational or statutory reason to believe that the legislature intended anything different when it enacted the provisions” of Rules 4(d)(7)–(8)).

¹¹⁴ See *id.*

¹¹⁵ Legal practice management software developed in the early 2000s brought cloud-based technology to the legal profession, and allows for the efficient sharing, saving, and distribution of communications and documents in legal proceeding. See *What is ProLaw Software? Legal Case Management Application*, FORUM INFO-TECH, <https://foruminfotech.net/what-is-prolaw/> [<https://perma.cc/XP79-25DX>] (last updated Feb. 1, 2022). Alaska itself only experienced a widespread expansion of internet access in 1999, further supporting the notion that Rule 4(d)(7) is outdated in its application to a governmental purpose of organizing pleadings and papers. See MTA, *Where Does Alaska's Internet Come From?*, ANCHORAGE DAILY NEWS, <https://www.adn.com/sponsored-content/2021/05/06/where-does-alaskas-internet-come-from/> [<https://perma.cc/5YCR-C5G7>] (last visited May 8, 2023).

¹¹⁶ See *A Short History of the Internet*, SCI. & MEDIA MUSEUM (Dec. 3, 2020), <https://www.scienceandmediamuseum.org.uk/objects-and-stories/short-history-internet> [<https://perma.cc/H538-UF29>].

¹¹⁷ See *Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 799 (10th Cir. 2019) (“Yet *Parham*. . . is outdated in light of the Court’s more modern equal-protection jurisprudence . . . the Court has . . . recognized that statutes supposedly based on ‘reasonable

to organize pleadings and papers is an outdated misconception. In *Free Speech Coalition, Inc. v. Sessions*, an outdated First Amendment burden was deemed to be overinclusive and unconstitutional.¹¹⁸ Although it was ultimately decided under strict scrutiny, the Court’s discussion of the lower court’s intermediate scrutiny analysis summarized that a First Amendment burden would fail intermediate scrutiny if a substantial portion of the burden “does not serve to advance [the Government’s] goals.”¹¹⁹ The burden imposed by Rule 4(d)(7) on prospective plaintiffs—of costly, capricious, and uncertain service of process—is not substantially related to a governmental purpose of organizing legal claims.

In summation, advancements in technology and infrastructure have rendered Rule 4(d)(7) outdated and overinclusive in regard to its burden on First Amendment rights and the Rule could potentially fail under an intermediate scrutiny analysis.

VI. DUE PROCESS CONCERNS

The Fifth and Fourteenth Amendments of the Constitution contain due process clauses that ensure the fair and just application of laws.¹²⁰ Due process claims asserting that a government process constitutes an unjust denial of life, liberty, or property are procedural due process claims.¹²¹ In this Part of the Note, the procedural due process issues of Rule 4(d)(7)–(8) will be discussed. Rule 4(d)(7)–(8) precludes would-be plaintiffs from having a chance to be heard when they are unable to perfect process in a suit upon the State and that this preclusion is a violation of due process.¹²²

A. *Boddie v. Connecticut*

Boddie v. Connecticut is a Supreme Court case about the ability of an indigent party seeking a divorce to access the judicial system.¹²³ The suit arose from the appellant’s inability to pay the roughly sixty-dollar fee required to bring an action for divorce in Connecticut,¹²⁴ as well as potential additional fees for service of process and notice.¹²⁵ The initial filing in *Boddie* claimed that the requirement to pay “court

considerations’ may in fact reflect . . . ‘outdated misconceptions concerning the role of females.’”); *Free Speech Coal., Inc. v. Sessions*, 314 F. Supp. 3d 678, 713 (E.D.P.A. 2018) (discussing how a statutory record-keeping requirement was outdated and overinclusive); see also *Yanakos v. UPMC*, 218 A.3d 1214, 1233 n.8 (Pa. 2019).

¹¹⁸ 314 F. Supp. 3d at 713.

¹¹⁹ *Id.*

¹²⁰ U.S. CONST. amend. V, XIV.

¹²¹ *Id.*; see also *Procedural Due Process*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/procedural_due_process [<https://perma.cc/7KTP-HR88>] (last visited May 8, 2023).

¹²² Alaska R. Civ. P. 4(d)(7)–(8).

¹²³ 401 U.S. 371, 372 (1971).

¹²⁴ *Id.*

¹²⁵ *Id.*

fees and expenses as a condition precedent to obtaining court relief is unconstitutional [as] applied to these indigent [appellants] and all other members of the class which they represent.”¹²⁶ The claim also asked for injunctive relief to permit the would-be divorcee to “proceed with their divorce actions without payment of fees and costs.”¹²⁷ The opinion noted that due process rights for procedure and court access usually involve the defendant’s rights, and that this case is novel because it is a “[person] seeking access to the judicial process in the first instance,”¹²⁸ and because “this Court has seldom been asked to view access to the courts as an element of due process.”¹²⁹ The Court then explained that these types of suits were rarely seen by the Court because American society has been structured so that courts are “not usually the only available, legitimate means of resolving private disputes.”¹³⁰ The Court in *Boddie* points out that there are some cases, such as this divorce case, where the courts become the only legitimate means of resolving a dispute. Likewise, a dispute with a state itself, such as a lawsuit against a state trooper, is likely such an instance.¹³¹ Part of the Court’s justification for its decision relies on marriage as a “basic importance in our society.”¹³² While it is possible that the lawsuits impeded by Rule 4(d)(7) and Rule 4(d)(8) could tangentially relate to divorce or marriage, these cases will more likely than not involve completely unrelated legal issues, distinguishing *Boddie v. Connecticut*.¹³³ However, plaintiffs holding state officials accountable, such as by bringing suit against a state trooper for use of excessive force, likewise plays a basic importance in American society.¹³⁴ In the same way that it is impossible to divorce without use of the State’s “judicial machinery,” it is impossible for an Alaskan plaintiff to resolve a dispute with a state government agency without that same “machinery.”¹³⁵

In the absence of an overriding and significant state interest, due process requires that “persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.”¹³⁶ While a

¹²⁶ *Id.* at 373. Alaska does have reduced filing fees for at least some special groups. See Alaska R. Admin. P. 9(f)(1).

¹²⁷ *Boddie*, 401 U.S. at 373.

¹²⁸ *Id.* at 375.

¹²⁹ *Id.*

¹³⁰ *Id.* The main difference between *Boddie* and the purpose of this Note is that lawsuits against the State of Alaska are not private disputes, however, similar financial barriers still exist to indigent plaintiffs.

¹³¹ See *id.* at 375–76.

¹³² See *id.* at 376 (citing *Loving v. Virginia*, 388 U.S. 1 (1967)).

¹³³ See *id.* at 374–77.

¹³⁴ But see *Evans*, *supra* note 53. There is a way for civilians to file complaints against Alaska State Troopers, and while this may result in an investigation, it does not appear to award any benefits to the complainant, making it a lackluster, if not insulting, substitute for a would-be plaintiff.

¹³⁵ See *Boddie*, 401 U.S. at 376.

¹³⁶ See, e.g., *id.* at 377.

plaintiff whose case was later thrown out or dismissed for improper service of process under Rule 4(d)(7) or Rule 4(d)(8) was able, arguably, to *access* the justice system (or at least knock on the front door), they did not have a chance to argue their case in full.¹³⁷

However, *Boddie v. Connecticut* acknowledges that due process requirements can be determined on an ad hoc basis where there are circumstances, such as a cost requirement (service of process costs money too!), that “may offend due process because it operates to foreclose a particular party’s opportunity to be heard.”¹³⁸

The state interest opposing the would-be divorcee in *Boddie* was the prevention of frivolous litigation.¹³⁹ It should be noted that tort suits against the oil-driven state government of Alaska likely carry a higher risk of being frivolous than divorce cases like in *Boddie*.¹⁴⁰

Interestingly enough, *Boddie* mentions service of process as a procedure where there exists “reliable alternatives” in cases where the State is unwilling to assume the cost of official service.¹⁴¹ However, that is precisely the issue with Rule 4(d)(7) and Rule 4(d)(8); it narrows the method by which process can be served to only mail-based service, while also increasing the scope of what the service itself must accomplish.¹⁴² There is also limited state reimbursement for service costs; currently, the official Alaska Court system website only hints at State-paid service of process for domestic violence suits.¹⁴³

¹³⁷ See Alaska R. Civ. P. 12(b)(4)–(5) (listing the motions for insufficiency of process and insufficiency of service of process). *But see* Alaska Stat. § 09.10.240 (2021) (allowing, in some situations, a plaintiff whose claim was dismissed to refile the claim within a one-year period—effectively giving a plaintiff a second chance to perfect service).

¹³⁸ 401 U.S. at 380 (“Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party’s opportunity to be heard.”).

¹³⁹ *Id.* at 381.

¹⁴⁰ See DIV. OF RISK MGMT., ALASKA DEPT. OF ADMIN., FISCAL YEAR 2021 REPORT 9–10, <https://doa.alaska.gov/drm/pdf/AnnualReport2021.pdf> [<https://perma.cc/W393-BTK4>] (last visited May 8, 2023) (showing the hundreds of thousands of dollars in estimated losses from legal claims for the fiscal year); see ALASKA COURT SYSTEM STATISTICAL REPORT FY 2020, *supra* note 15, at 41 (displaying that there were 1,705 divorce filings in 2020); see also *Cost of Risk Allocation*, DIV. OF RISK MGMT., ALASKA DEPT. OF ADMIN, <https://doa.alaska.gov/drm/costofriskallocation.html> [<https://perma.cc/US7Y-QZRC>] (last visited May 8, 2023).

¹⁴¹ 401 U.S. at 382.

¹⁴² See Alaska R. Civ. P. 4(d)(7)–(8) (stating that service of process by registered or certified mail is the only permissible method of process for these types of lawsuits); see also *Dep’t. of Corr. v. Kila, Inc.*, 884 P.2d 661, 661–62 (Alaska 1994) (stating that service to an Assistant Attorney General working on the case was improper and should have been addressed to the Attorney General directly).

¹⁴³ See *Serving the Other Side*, SELF-HELP CTR.: FAM. L., ALASKA CT. SYS., <http://www.courts.alaska.gov/shc/family/serve.htm> [<https://perma.cc/7MSY-HTM8>] (last visited May 8,

B. *Mullane v. Central Hanover Bank & Trust Co.*

Mullane v. Central Hanover Bank & Trust Co. is a Supreme Court case concerning the sufficiency of service of process in relation to the intersection of due process rights and obstacles presented in procedural rules.¹⁴⁴ The case itself is about notice for trustees of a common trust fund under bankruptcy law; however, the constitutional holdings about due process and sufficiency of notice are still relevant.¹⁴⁵ The Court's concerns about due process arose because of the possibility that the legal proceeding "does or may deprive beneficiaries of property."¹⁴⁶ While lawsuits against the State of Alaska and its agents and agencies might involve a range of claims, property-related claims are undoubtedly possible; Alaska maintains civil forfeiture laws that have drawn harsh criticism for their bias towards the government.¹⁴⁷ Therefore, in at least some circumstances, *Mullane's* property-focused opinion is clearly relevant, as the State of Alaska can absolutely deprive a person of their property.¹⁴⁸ Justice Jackson writes that the Fourteenth Amendment seeks to protect the "holding that '[t]he fundamental requisite of due process of law is the opportunity to be heard.'"¹⁴⁹ Moreover, while *Mullane* is not about a plaintiff's rights in service of process, the opportunity to be heard persists.¹⁵⁰

C. *Issues with Certified Mail and Service of Process*

Rule 4(d)(7) and Rule 4(d)(8) specify that registered or certified mail is the proper method to serve process on the State of Alaska,¹⁵¹ officers, and agencies of the State.¹⁵² While Rule 4(e) provides for other methods of service "when it shall appear by affidavit of a person having knowledge of the facts . . . that after diligent inquiry a party cannot be served with process,"¹⁵³ it does not seem to be intended for

2023) (answering a question about serving the opposing party when there is a protective order). For an idea on how much service of process via certified mail may cost, see *Mailing & Shipping Prices*, U.S. POSTAL SERV., <https://www.usps.com/business/prices.htm> [<https://perma.cc/D6RC-5E7W>] (last visited May 8, 2023).

¹⁴⁴ 339 U.S. 306, 313–14 (1950) ("A construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified."); U.S. CONST. amend. XIV, § 1.

¹⁴⁵ *Mullane*, 339 U.S. at 306.

¹⁴⁶ *Id.* at 313.

¹⁴⁷ See *Policing for Profit: The Abuse of Civil Asset Forfeiture; Alaska*, INST. FOR JUST., <https://ij.org/pfp-state-pages/pfp-alaska/> [<https://perma.cc/86Z7-3WQA>] (last visited May 8, 2023).

¹⁴⁸ *Id.*

¹⁴⁹ *Mullane*, 339 U.S. at 314.

¹⁵⁰ See *id.*

¹⁵¹ Alaska R. Civ. P. 4(d)(7).

¹⁵² Alaska R. Civ. P. 4(d)(8).

¹⁵³ Alaska R. Civ. P. 4(e). A party able to make the effort to meet the diligent inquiry

use in serving the State itself.¹⁵⁴ This leaves our would-be plaintiff with the option of using registered or certified mail to complete their services of process.¹⁵⁵ Registered mail is essentially a more secure version of certified mail, and both registered mail and certified mail share the important aspect of requiring the recipient's signature for delivery; therefore, this Note will only discuss certified mail hereafter.¹⁵⁶ The constitutionality of service of process by certified mail has previously been challenged under the Due Process Clause of the Fifth Amendment in the case of *In re Park Nursing Center, Inc., v. Samuels*, where, much to the Plaintiff's dismay, the Sixth Circuit upheld certified mail as a valid means of process.¹⁵⁷ Relying on the Supreme Court's analysis from *Mullane v. Central Hanover Bank & Trust Company*,¹⁵⁸ the Sixth Circuit concluded that "[w]hat is needed . . . is a form of notice which is likely to achieve actual notice in a large volume of cases but is not overly expensive or time consuming."¹⁵⁹ However, the opinion explicitly stated that there would be a strong argument for a violation of procedural due process rights "if [the] first class mail fails to give [the plaintiff] actual notice through no fault of his own, and if the default judgment entered against him were automatically irrevocable."¹⁶⁰

Two questions remain to be analyzed: How and when can certified mail fail to give notice to a plaintiff in Alaska, and are default judgments for improper service "automatically irrevocable" in Alaska? The answer to the latter question is ambiguous; Alaska does, at times, give plaintiffs additional opportunities to perfect service after dismissal for failure to serve process,¹⁶¹ but a failure to make timely amends to improper service can still ultimately result in dismissal under Alaska Rule of Civil Procedure 4(j).¹⁶² As for notice, Alaska, with its geographic and logistical differences, might present unique ways in which certified mail could fail to give notice to a plaintiff, either by delay or outright loss. Rural Alaska functions on a unique

standard likely would not encounter hardships in completing mail-based service of process on the State in the first place, Rule 4(e) is a poor remedy for someone who is already unable to afford and, or access mail-based service.

¹⁵⁴ The initial method of other service that can be done after a diligent inquiry is the posting of legal notice on the Alaska Court System's website, and then in print or online newspapers. While this might give notice to Alaska, it shows that the Rule 4(e) was written with an outward facing intention, presumably to allow members of the public to see notice postings. Alaska R. Civ. P. 4(e).

¹⁵⁵ See Alaska R. Civ. P. 4(d)(7).

¹⁵⁶ See *Registered vs. Certified Mail*, U.S. GLOB. MAIL, <https://www.usglobalmail.com/registered-vs-certified-mail/> [<https://perma.cc/423S-2Q8X>] (last visited May 8, 2023).

¹⁵⁷ 766 F.2d 261, 262 (6th Cir. 1985).

¹⁵⁸ *Id.* at 263 (citing *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950)).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See *Gilbert v. Nina Plaza Condo Ass'n*, 64 P.3d 126, 130–31 (Alaska 2003); *Mulligan v. HMS Host Int'l*, No. S-17601, 2021 WL 1017250, at *1–2 (Alaska 2021); see also Alaska Stat. § 09.10.240 (2021).

¹⁶² Alaska R. Civ. P. 4(j).

system of the United States Postal Service called Bypass Mailing, which is an expensive but vital system that allows the postal service to regularly deliver mail to bush communities cut off from the road system.¹⁶³ Despite making the best of an unconventional situation, this airplane-based mail system can often result in late, lost, and damaged mail,¹⁶⁴ none of which are ideal for a would-be plaintiff trying to navigate a mail-based service of process system. When this is combined with the United States Postal Service's nationwide issues and politics,¹⁶⁵ and when the difference between proper and improper service can rest on a difference as slight as writing the Assistant Attorney General handling the case's name on the envelope instead of the Attorney General's name,¹⁶⁶ any small mistake in the mail system can spell doom for a lawsuit.¹⁶⁷ This is doubly so for those who may not have the means or liberty to follow up a mailed service of process, such as incarcerated individuals.

¹⁶³ See Yereth Rosen, *U.S. Postal Service Controversy Threatens Alaska's Bypass Mail Program*, ARCTICTODAY (Aug. 31, 2020), <https://www.arctictoday.com/u-s-postal-service-controversy-threatens-alaskas-bypass-mail-program/> [<https://perma.cc/5GWL-RJQA>].

¹⁶⁴ Margaret Bauman, *In Rural Alaska Communities, Postal Delivery Varies Greatly*, ANCHORAGE DAILY NEWS (Sept. 30, 2016), <https://www.adn.com/bush-pilot/article/rural-alaska-communities-postal-delivery-varies-greatly/2011/03/08/> [<https://perma.cc/C48A-2YZ2>] (“It can be very quick, except if the package goes to the wrong location, and then it can take three extra days, she said. The worst service is express mail, which often arrives ‘very abused and beat up.’”); see also Debra Dolan, *It Could Take Longer for Your Mail to Arrive Starting This Fall*, ALASKA'S NEWS SOURCE (Aug. 9, 2021), <https://www.alaskasnewsresource.com/2021/08/09/it-could-take-longer-your-mail-arrive-starting-this-fall/> [<https://perma.cc/W5C3-XG6H>].

¹⁶⁵ See Jacob Bogage & Kevin Schaul, *Postal Service Strategic Plan Will Slow Mail Service in Many Places*, BOS. GLOBE (June 24, 2021), <https://www.adn.com/nation-world/2021/06/26/postal-services-strategic-plan-will-slow-mail-service-in-many-places/> [<https://perma.cc/QP8J-GVZD>]; see also Michael D. Shear et al., *Mail Delays Fuel Concern Trump Is Undercutting Postal System Ahead of Voting*, N.Y. TIMES (Nov. 4, 2020), <https://www.nytimes.com/2020/07/31/us/politics/trump-usps-mail-delays.html> [<https://perma.cc/2RQS-YSQ3>]; Brian Naylor, *Trump Appointees Oversee The U.S. Postal Service. Will Biden Change That?*, NPR (Jan. 28, 2021, 4:05 PM), <https://www.npr.org/2021/01/28/961722496/trump-appointees-oversee-the-u-s-postal-service-will-biden-change-that> [<https://perma.cc/JAQ3-AWMU>]; Monique Welch, *Houston Postal Worker Accused of Stealing Checks from Mail and Depositing Them in a Personal Account, Records Show*, HOUS. CHRON. (Feb. 22, 2022), <https://12ft.io/proxy?q=https://www.houstonchronicle.com/news/houston-texas/crime/article/Houston-USPS-mail-theft-employee-arrest-fraud-16938495.php> [<https://perma.cc/JK3G-2MP3>] (highlighting other possible problems with the postal service); *University of Baltimore To Host Congressional Hearing On Postal Service Problems*, CBSBALT. (Feb. 10, 2022, 2:21 PM), <https://baltimore.cbslocal.com/2022/02/10/university-of-baltimore-to-host-congressional-hearing-on-postal-service-problems/> [<https://perma.cc/VN5R-GZEM>] (exemplifying the nationwide issues faced by the United States Postal Service such as understaffing, bad equipment, lack of management, and an increase in overtime hours).

¹⁶⁶ See *Dep't. of Corr. v. Kila, Inc.*, 884 P.2d 661, 661 (Alaska 1994).

¹⁶⁷ See *id.* at 661–62.

An additional issue with service of process by certified mail is that it necessitates cooperation from the intended defendant: if they do not sign for the certified mail, or if they do not return forms intended to show they have received the service, there is a chance the courts may find that there was not proper service.¹⁶⁸ While it is doubtful that Alaska's state government would refuse service of process,¹⁶⁹ it is nevertheless a possibility in a system that relies solely on a mail-based service of process scheme to handle cases against the State.

The argument here is not that service of process by certified mail is in of itself weak, unconstitutional, or wrong; the point is that there are flaws that may deny some plaintiffs their fair opportunity to pursue a lawsuit in situations where service by mail is the only available option.

Another indication that Rule 4(d)(7) may violate due process rights is the existence of Alaska Rule of Administrative Procedure 9(f)(1), which provides that “[n]o filing, writ, certifying, or copying fee will be charged to any person determined to be indigent under Administrative Rule 10.”¹⁷⁰

While the legislature may have created this statute out of pure altruism, it also does a handy job of avoiding the due process issue caused by court fees in *Boddie v. Connecticut*.¹⁷¹ If Alaska Rule of Administrative Procedure 9(f)(1) was created

¹⁶⁸ See *Armco, Inc., v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1087, 1088–90 (4th Cir. 1984).

¹⁶⁹ Recently, there have been strong allegations of a series of obtuse and seemingly intentional violations of law by elected officials in Alaska, some of which involve the Alaska Attorney General's office. See *Fired Anchorage City Manager Accuses Bronson Administration of Illegal, Unethical Behavior*, ANCHORAGE DAILY NEWS (Jan. 12, 2023), <https://www.adn.com/alaska-news/anchorage/2023/01/11/fired-anchorage-city-manager-accuses-bronson-administration-of-illegal-unethical-behavior/> [<https://perma.cc/5MWB-Q5EH>] (describing an ongoing lawsuit against Anchorage's mayor which alleges a multitude of violations in and around Anchorage's political and legal bodies); *ACLU of Alaska Sues Governor Dunleavy Over His Illegal, Politically Motivated Firing of State Employees*, ACLU (Jan. 10, 2019), <https://www.aclu.org/press-releases/aclu-alaska-sues-governor-dunleavy-over-his-illegal-politically-motivated-firing> [<https://perma.cc/V4KU-VJ7K>] (concerning in part, the illegal firing on an Assistant Attorney General for Alaska); see also Sean Maguire, *Gov. Dunleavy, ACLU of Alaska Defend State Paying \$495,000 Settlement to Sacked Psychiatrists*, ALASKA'S NEWS SOURCE (Feb 18, 2022, 8:39 PM), <https://www.alaskasnewsresource.com/2022/02/19/gov-dunleavy-aclu-alaska-defend-state-paying-495000-settlement-sacked-psychiatrists/> [<https://perma.cc/W7HT-6WQB>]; Emily Goodykoontz, *Mayor Bronson Temporarily Shut Off Fluoridation of Anchorage's Water Supply, Against City Code*, ANCHORAGE DAILY NEWS (Dec. 15, 2021), <https://www.adn.com/alaska-news/anchorage/2021/12/14/mayor-bronson-temporarily-shut-off-fluoridation-of-anchorage-water-supply-against-city-code/> [<https://perma.cc/65VZ-5P9X>].

¹⁷⁰ Alaska R. Admin. P. 9(f)(1); see also *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 273, 273 n.9 (Alaska 2001).

¹⁷¹ In *Boddie*, the indigent plaintiff's due process rights were violated when she was unable to afford the courts fees required to initiate divorce proceedings. 401 U.S. 371, 372, 382–83 (1971).

with the intention of placating due process rights, then it would support the notion that the burdens placed on plaintiffs by Rule 4(d)(7) can amount to due process issues as well.

CONCLUSION & SOLUTIONS

A straightforward way to solve issues with Alaska Rule of Civil Procedure 4(d)(7) is to simply change it to require service of process to only one of the main Attorney General's offices (Anchorage, Fairbanks, Juneau) and to allow other methods of service of process.¹⁷² The logical way to do this would be to mirror the current text of Federal Rule of Civil Procedure 4(d)(7)(i)–(ii) and have filings in the first and second judicial districts serve process on Juneau, filings in the third district serve process of Anchorage, and have filings in the fourth district serve process of Fairbanks.¹⁷³ Or, if there is absolute need to consolidate work to the small, isolated, and hard-to-reach state capital, then have all cases serve process on the Juneau office. Alternatively, have everything go through Anchorage, where most Alaskans work and live.

Another possibility, which requires fewer substantial changes to Rule 4 and could maintain the current benefits of multiple services, would be to embrace other forms of service such as electronic service of process.¹⁷⁴ While access to the internet is itself another challenge in Alaska,¹⁷⁵ which may render this solution moot, it still allows for service of process across long distances where travel is difficult.¹⁷⁶ There is a reason that electronic service of process is allowed for international service,¹⁷⁷

¹⁷² See Alaska R. Civ. P. 4(d)(7).

¹⁷³ See Alaska R. Civ. P. 4(d)(7); see also *Alaska Boroughs Map—Whole*, BALLOTPEDIA, https://ballotpedia.org/File:Alaska_Boroughs_Map-Whole.png [<https://perma.cc/S47Z-8T42>] (last visited May 8, 2023) (map of Alaska's judicial districts).

¹⁷⁴ *Electronic Process Service*, SERVE NOW, <https://www.serve-now.com/resources/electronic-process-service> [<https://perma.cc/YE6A-LDRX>] (last visited May 8, 2023).

¹⁷⁵ See *Rural Alaska Broadband Internet Access Program: Program Description*, REGUL. COMM'N OF ALASKA, http://rca.alaska.gov/RCAWeb/Documents/Broadband/Broadband_Grant_Description.pdf [<https://perma.cc/MN5D-J87J>] (last visited May 8, 2023); see also MTA, *Where Does Alaska's Internet Come From?*, ANCHORAGE DAILY NEWS, <https://www.adn.com/sponsored-content/2021/05/06/where-does-alaskas-internet-come-from/> [<https://perma.cc/MF9H-52M6>] (last visited May 8, 2023).

¹⁷⁶ See also Lauren Geiser & Amy Pritchard Williams, *To Serve and Be Served: Service of Process Issues in Light of COVID-19*, CONSUMER FIN. SERVS. L. MONITOR (Apr. 21, 2020), <https://www.consumerfinancialserviceslawmonitor.com/2020/04/to-serve-and-be-served-service-of-process-issues-in-light-of-covid-19/> [<https://perma.cc/XJ7X-FNY4>].

¹⁷⁷ See Alaska R. Civ. P. 4(d)(13)(A)–(C); see also *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, HAGUE SERV. CONVENTION, <https://assets.hcch.net/docs/f4ccc07b-55ed-4ea7-8fb9-8a2b28549e1d.pdf> [<https://perma.cc/4NFD-4QA2>] (last visited May 8, 2023); see also *Rio Props., Inc. v. Rion Int'l Interlink*, 284 F.3d 1007, 1018–19 (9th Cir. 2002).

and given the size and geography of Alaska, it may as well be a different country in terms of logistical difficulties.¹⁷⁸ Furthermore, the world is increasingly digital and, due to the COVID-19 pandemic, technologies that enable remote work are becoming increasingly prevalent;¹⁷⁹ electronic service of process can simply be viewed as a natural progression of this societal shift.¹⁸⁰

Alaska could also copy Tennessee Rule of Civil Procedure 4.04(6), a brilliant and plainly written statute that states “[service] [u]pon the state of Tennessee or any agency thereof, by delivering a copy of the summons and of the complaint to the attorney general of the state or to any Assistant Attorney General.”¹⁸¹ This simple statute allows for flexible methods of service with a greater variance in recipients, and would avoid the semantic pitfalls that befell the plaintiffs in *Dept. of Corrections v. Kila, Inc.*¹⁸²

In conclusion, Rule 4(d)(7) and its dependent partner Rule 4(d)(8) are needlessly strict and have the potential to violate constitutional rights by requiring the service of process to multiple offices that are separated by hundreds of miles of wilderness. The Rules may offend the First Amendment right to petition by erecting cost and effort barriers to lawsuits against the State from rural, indigent, and pro se plaintiffs, while also failing an intermediate scrutiny analysis because of an outdated and overinclusive solution to governmental organization. Simultaneously, the Rules’ stubborn reliance on certified mail, coupled with Alaska’s harsh environment, could lead to situations where plaintiffs are unable to effectuate process in a timely manner simply because they live in hard-to-reach areas, potentially violating plaintiffs’ due process rights by denying them an opportunity to be heard. Furthermore, plaintiffs’ due process rights may be violated by the cost and lack of alternatives associated with serving process on the State under Rule of Civil Procedure 4(d)(7)–(8).

¹⁷⁸ See *Alaska Geographic Facts, ALASKA RV & CAMPGROUNDS*, <https://rvalaska.com/campgrounds/alaska-geographic-facts/> [<https://perma.cc/8H38-MJN4>] (last visited May 8, 2023).

¹⁷⁹ Lydia Saad & Ben Wigert, *Remote Work Persisting and Trending Permanent*, GALLUP (Oct. 13, 2021), <https://news.gallup.com/poll/355907/remote-work-persisting-trending-permanent.aspx> [<https://perma.cc/69QH-9297>]; see also Steve Sawyer, *Guidance on Remote Working from Someone Who Avoids Giving Guidance*, SYRACUSE UNIV. SCH. OF INFO. STUD. (Apr. 16, 2020), <https://ischool.syr.edu/guidance-on-remote-work-from-someone-who-avoids-giving-guidance/> [<https://perma.cc/FD8S-BKDF>].

¹⁸⁰ See Emily D. Anderson, *The Changing Landscape of Electronic Service*, NAT’L L. REV. (Feb. 9, 2022), <https://www.natlawreview.com/article/changing-landscape-electronic-service> [<https://perma.cc/2SD5-9ERA>].

¹⁸¹ Tenn. R. Civ. P. 4.04(6).

¹⁸² *Id.*; see *Dept. of Corr. v. Kila, Inc.*, 884 P.2d 661, 661–62 (Alaska 1994); see also *Holmes v. Gonzalez*, No. 09-CV-259, 2010 WL 1408436, at *1, 3 (E.D. Tenn. 2010).