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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

TUPE SMITH,

Petitioner,

v.

STATE OF ALASKA,

Respondent.

Court of Appeals No. A-14529
Trial Court No. 3AN-23-08873 CR

O P I N I O N

No. 2832 — September 4, 2026

Petition for Review from the Superior Court, Third Judicial District, Anchorage, Peter R. Ramgren, Judge.

Appearances: Jesslin Wooliver, Assistant Public Defender and Terrence Haas, Public Defender, Anchorage (petition), James E. Torgerson, Whitney A. Brown, (oral argument), and Jacob B. Gerrish, Stoel Rives, LLP, Anchorage, and Neil C. Weare, *pro hac vice*, Right to Democracy Project, Washington, D.C., for the Petitioner. Kayla H. Doyle, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Respondent. Adriel I. Cepeda Derieux, Victoria Ochoa, Ethan Herenstein, Alejandro Ortiz, and Sophia Lin Lakin, American Civil Liberties Union Foundation, Washington, D.C., and Susan Orlansky and Katherine Wagner, American Civil Liberties Union of Alaska, Anchorage, as *amici curiae*.

Before: Allard, Chief Judge, and Harbison and Terrell, Judges.

Judge ALLARD.

In this petition, we are asked to interpret the meaning of “intentionally . . . swears falsely” for purposes of AS 15.56.040(a)(3) in the first-degree voter misconduct statute. For the reasons explained in this opinion, we hold that the statutory language requires the State to prove that the defendant acted with a consciousness of wrongdoing in purposely or deliberately making a false statement under an oath required by Title 15.

Factual background and prior proceedings

The defendant in the current case, Tupe Smith, was born in American Samoa but now lives in Whittier, Alaska with her family. In 2023, the State of Alaska’s Division of Elections noticed a discrepancy in government forms that Smith had filled out. In her application for the Permanent Fund Dividend, Smith had identified herself as a U.S. national. On her voter registration paperwork, however, where there was no box to check for “U.S. national,” Smith had checked the box for “citizen of the United States.”

In November 2023, two Alaska State Troopers went to Smith’s home to investigate the discrepancies. After waiving her *Miranda* rights and agreeing to speak with the troopers, Smith confirmed that she was a U.S. national and not a U.S. citizen. When asked about the voter paperwork where she had identified herself as a U.S. citizen, Smith explained that, when she went to vote in Whittier, elections officials had told her to check the box for U.S. citizen because there was no box for U.S. nationals. Smith told the troopers that she would not have voted if she had known that she was not eligible to vote as a U.S. national. She said that she knew from her employment in California that U.S. nationals could not vote for the President, but that she was unaware that there were any other restrictions to their voting rights. She also explained that she had run for the Whittier school board (in 2022) and only discovered after she had won the election that she was ineligible to serve on the school board as a U.S. national.

Toward the end of the interview, one of the troopers asked a long compound question that implied that Smith actually knew she was not eligible to vote

at the time she completed the forms but that she wanted to be involved in the school board. When Smith initially failed to respond, the other trooper clarified, “He’s asking you,” and the first trooper again presented a lengthy and complex statement containing four individual questions. To this multi-part question, Smith (whose native language is not English) answered, “Yes.”

Smith was subsequently arrested and charged with multiple counts of first-degree voter misconduct, a class C felony.¹ Alaska Statute 15.56.040(a)(3) provides that “[a] person commits the crime of voter misconduct in the first degree if the person . . . intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title.”

Two witnesses testified at the grand jury hearing. The first witness was an operations manager for the Division of Elections, who testified to the procedures required to register to vote and the fact that only U.S. citizens were entitled to vote. The second witness was one of the troopers who had interviewed Smith. The trooper did not play the recorded interview with Smith for the grand jury. Instead, the trooper testified to his recall of what was said. The trooper testified that Smith admitted to being a U.S. national and not a U.S. citizen, but that she reported being told by Whittier elections officials to check the box for U.S. citizen. The trooper also testified, however, that Smith had “acknowledged” to him that “she probably knew that she shouldn’t have voted.”

The grand jury struggled with the question of whether to indict. At one point, one of the grand jurors questioned whether it would still be a felony if Smith had done this “by accident.” The foreperson similarly noted that “we’re not quite sure if she understood prior to being charged with this.” The State instructed the jurors that “a person acts intentionally with respect to a result . . . when the person’s conscious objective is to cause that result.” Ultimately, the grand jury indicted on the two counts

¹ AS 15.56.040.

of voter misconduct that specifically related to Smith identifying herself as a U.S. citizen in the voter registration forms. But the grand jury returned a “no true bill” on the other counts related to Smith’s declaration of candidacy and absentee in person ballot forms.²

Smith filed a motion to dismiss the indictment, arguing, *inter alia*, that the trooper had provided incomplete and misleading testimony when he testified that Smith was aware that she could not vote. According to Smith, the State had failed to present key evidence that she was confused about the voting requirements and that she did not speak English as a first language.

The superior court agreed with Smith that the trooper’s testimony had been “misleading” but ultimately ruled that the error did not prejudice Smith. The court reasoned that there was no prejudice because the grand jury had only indicted Smith on the counts related to her falsely swearing that she was a U.S. citizen and had not indicted Smith on the counts related to her swearing that she was a qualified voter. The court therefore issued an order denying the motion to dismiss the indictment.

Smith petitioned this Court to review the superior court’s ruling. In her petition, Smith argued that the superior court had erroneously equated the *mens rea* of “intentionally” with “knowingly” and that this error pervaded the court’s analysis. In response, the State argued that, in the context of the voter misconduct statute, “intentionally” meant essentially “knowingly.”

We granted the petition and directed the parties to address, in addition to any other argument, the elements of first-degree voter misconduct and the correct interpretation of “intentionally” in AS 15.56.040(a)(3).

The parties filed their briefs, and we held oral argument on this matter. For the reasons explained here, we now hold that “intentionally” for purposes of the voter misconduct statute means something different than “knowingly,” and the statute

² AS 15.56.040.

therefore requires the State to prove that the defendant acted with a consciousness of wrongdoing in purposely or deliberately making a false statement under an oath required by Title 15.

Our analysis of the first-degree voter misconduct statute

The majority of criminal offenses in Alaska are codified in Title 11 of the Alaska Statutes. However, crimes related to elections are codified separately in chapter 56 of Title 15 (“Election Offenses, Corrupt Practices, and Penalties”).³

Alaska Statute 15.56.040 defines the offense of voter misconduct in the first degree. It provides,

(a) A person commits the crime of voter misconduct in the first degree if the person

(1) votes or attempts to vote in the name of another person or in a name other than the person’s own;

(2) votes or attempts to vote more than once at the same election with the intent that the person’s vote be counted more than once;

(3) intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title;

(4) knowingly votes or solicits a person to vote after the polls are closed with the intent that the vote be counted.

(b) Voter misconduct in the first degree is a class C felony.

In the current case, we are required to construe the meaning of AS 15.56.040(a)(3), which criminalizes, *inter alia*, “intentionally . . . swear[ing] falsely.” In particular, we are required to construe the meaning of the *mens rea* “intentionally” as used in the statute and to decide whether its meaning, for purposes of Title 15, is distinct from the definitions of “intentionally” and “knowingly” contained in Title 11.

³ See AS 15.56.

The proper interpretation of a statute is a question of law that we review *de novo*.⁴ As a general matter, we apply our independent judgment to the interpretation of a statute, adopting “the rule of law that is most persuasive in light of precedent, reason[,] and policy.”⁵ “The objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others.”⁶ Alaska courts interpret statutes “according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.”⁷ Alaska courts follow a “sliding scale approach to statutory interpretation” under which “[t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.”⁸

We begin with the plain language of the statute: “intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title.”⁹ Alaska Statute 01.10.040(a) provides that

Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those that have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and appropriate meaning.

⁴ *In re Est. of Abad*, 540 P.3d 244, 247 (Alaska 2023).

⁵ *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 189 (Alaska 2007) (quoting *Alaska Gen. Alarm, Inc. v. Grinnell*, 1 P.3d 98, 100 (Alaska 2000)).

⁶ *In re Est. of Bentley*, 556 P.3d 244, 247 (Alaska 2024) (quoting *State, Dep’t of Fam. & Cmty. Servs., Off. of Child.’s Servs. v. Karlie T.*, 538 P.3d 723, 729 (Alaska 2023)).

⁷ *Abad*, 540 P.3d at 247 (quoting *In re Est. of Rodman*, 498 P.3d 1054, 1062 (Alaska 2021)).

⁸ *Bentley*, 556 P.3d at 247 (quoting *Basey v. State, Dep’t of Pub. Safety, Div. of Alaska State Troopers, Bureau of Investigations*, 462 P.3d 529, 535 (Alaska 2020)).

⁹ AS 15.56.040(a)(3).

This statutory admonition is consistent with the canon of statutory construction that requires courts to construe the language of a statute “in accordance with its common usage, unless the word or phrase in question has acquired a peculiar meaning, by virtue of statutory definition or judicial construction.”¹⁰

Here, the legislature has provided a statutory definition for the word “intentionally,” but that definition is in Title 11, not Title 15. Alaska Statute 11.81.900(a)(1) provides:

- (a) For purposes of this title, unless the context requires otherwise,
 - (1) a person acts “intentionally” with respect to a result described by a provision of law defining an offense when the person’s conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person’s only objective.

This is the definition of “intentionally” that the State gave the grand jury in Smith’s case.

In its briefing on this petition, however, the State argues that this Title 11 statutory definition does not apply to the first-degree voter misconduct statute codified under Title 15. The State makes two arguments for why this statutory definition does not apply.

First, the State points out that, unlike the Title 11 definition of “knowingly,” the Title 11 definition of “intentionally” is not incorporated into AS 15.56, the chapter codifying various election-related crimes. Alaska Statute 15.56.199 states, in relevant part, that: “In this chapter . . . ‘knowingly’ has the meaning given in AS 11.81.900(a).” However, there is no similar provision defining “intentionally.” In other words, the legislature specifically incorporated the Title 11

¹⁰ *Marino v. State*, 577 P.3d 992, 1015-16 (Alaska App. 2025) (quoting *City of Valdez v. State*, 372 P.3d 240, 251 (Alaska 2016)).

statutory definition of “knowingly” into AS 15.56, the chapter codifying various election-related crimes. But the legislature did not incorporate the Title 11 definition of “intentionally” into AS 15.56.

The State argues that, under the principle of statutory construction referred to as *expressio unius est exclusio alterius*, the legislature’s omission of the Title 11 definition of “intentionally” should be given interpretative weight. This principle of statutory construction (translated as “to express one thing is to imply the exclusion of others”) “establishes the inference that, where certain things are designated in a statute ‘all omissions should be understood as exclusions.’”¹¹ Thus, under the principle of *expressio unius est exclusio alterius*, the legislature’s inclusion of the Title 11 definition of “knowingly” in AS 15.56 while excluding the Title 11 definition of “intentionally” should be interpreted as evidence that the Title 11 definition of “intentionally” does not apply to the first-degree voter misconduct statute or AS 15.56.

The State’s second argument for why the Title 11 definition of “intentionally” should not apply to the first-degree voter misconduct statute is based on the incompatibility of that definition when applied to the statutory language. As we have explained in prior cases, the Title 11 definition of “intentionally” expressly applies only to results; it does not apply to conduct or circumstances.¹² Title 11 crimes that use the *mens rea* “intentionally” are therefore always defined in terms of a result.

In contrast, the statutory provision at issue in this case — AS 15.56.040(a)(3) — does not include a result. The provision states: “A person commits the crime of voter misconduct in the first degree if the person . . . intentionally

¹¹ *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991) (quoting *Puller v. Municipality of Anchorage*, 574 P.2d 1285, 1287 (Alaska 1978)).

¹² See, e.g., *Nelson v. State*, 874 P.2d 298, 309 (Alaska App. 1994); *Neitzel v. State*, 655 P.2d 325, 332-34 (Alaska App. 1982); see also AS 11.81.900(a)(1) (providing “a person acts ‘intentionally’ with respect to a result”).

makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title.”¹³ There is no result specified in the definition of the crime. Instead, the *mens rea* of “intentionally” applies to the prohibited conduct — “intentionally . . . swears falsely” — an idiosyncratic use of the *mens rea* “intentionally” that is seemingly incompatible with the results-focused Title 11 statutory definition of the term.

Despite this, Smith and the amici both focus on other provisions in the first-degree voter misconduct statute which do include a result. For example, AS 15.56.040(a)(2) prohibits “vot[ing] or attempt[ing] to vote more than once at the same election with the intent *that the person’s vote be counted more than once.*” Alaska Statute 15.56.040(a)(4) also prohibits “knowingly vot[ing] or solicit[ing] a person to vote after the polls are closed with the intent *that the vote be counted.*” Smith and the amici assert that AS 15.56.040(a)(3) should also be interpreted as prohibiting a result — namely, the voter misconduct contained in the statute’s title. Under their interpretation, a person would be guilty of first-degree voter misconduct only if they swore falsely with the “intent to mislead a public official for the purpose of unlawfully voting.” Smith and the amici argue that applying the *mens rea* “intentionally” to the prohibited result of unlawful voting helps ensure that people are not convicted for innocent mistakes. Amici also argue that their proposed interpretation is consistent with the statutory language used in other jurisdictions, some of which specifically require proof of an intent to deceive or evidence that the person is attempting to vote when they are aware that they are not qualified to do so.¹⁴

¹³ AS 15.56.040(a)(3).

¹⁴ See, e.g., Conn. Gen. Stat. § 9-359a(a) (2026) (“A person is guilty of false statement in absentee balloting when such person intentionally makes a false written statement . . . which such person does not believe to be true and which statement or signature is intended to mislead a public servant in the performance of such public servant’s official function.”); Ala. Code § 11-46-138(e) (2026) (“Any absentee voter who shall willfully make or

In response, the State argues that Smith and the amici are impermissibly asking this Court to rewrite the statute. The State points out that the section headings and the captions of statutes are not considered part of the law and therefore the fact that the statute is called first-degree voter misconduct does not mean that additional elements related to unlawful voting can be read into the statute.¹⁵ The State also points out that criminal offenses generally do not require a specific intent to break the law.¹⁶

We agree with the State that our role in interpreting statutes is a limited one. In the absence of constitutional concerns, our primary goal in interpreting a statute is to effectuate legislative intent.¹⁷ Here, Smith and the amici have not argued that due process requires that AS 15.56.040(a)(3) be read to require the person to intend a specific result — *i.e.*, unlawful voting. Nor do the canons of statutory construction suggest that “intentionally” should be understood only in terms of a specific result. Instead, the structure of the statute suggests that the legislature was fully aware of how

subscribe to an oath falsely in order to qualify himself to vote at a municipal election shall . . . be punished[.]”).

¹⁵ See *State v. Jouppi*, 397 P.3d 1026, 1032 (Alaska App. 2017) (“In Alaska, section headings and the captions of statutes are not part of the law. Thus, the fact that the word ‘importation’ is used in the title of the statute to *describe* this offense has no effect on the actual legal definition of the offense.” (footnote omitted)).

¹⁶ See, *e.g.*, *State v. Hazelwood*, 946 P.2d 875, 878-79 (Alaska 1997) (explaining that “criminal convictions must be predicated on criminal intent” but a defendant need not be aware they are breaking the law when committing the criminalized act); *United States v. Miranda-Enriquez*, 842 F.2d 1211, 1212 (10th Cir. 1988) (explaining that to convict a person of illegal entry, “[n]o intent to break the law — whether characterized as ‘specific intent’ or ‘general criminal intent’ — must be proved”).

¹⁷ See, *e.g.*, *Jouppi*, 397 P.3d at 1034 (“Although there are many rules of statutory construction, a court’s primary goal is to ascertain the intent of the legislature and, if that intent can reasonably be ascertained, to implement that legislative intent.”); *Dickie v. State*, 282 P.3d 382, 384 (Alaska App. 2012) (“Because these claims raise questions of statutory interpretation, our goal is to determine the intent of the legislature and to implement that intent.”).

to craft a specific intent to cause a result requirement, as it did in subsections (a)(2) and (a)(4), and the legislature did not intend “intentionally” in AS 15.56.040(a)(3) to refer to a specific result.

But if the Title 11 definition of “intentionally” is inapplicable to AS 15.56.040(a)(3), what definition of “intentionally” applies to that provision? That is, what does it mean to “intentionally . . . swear[] falsely . . . under an oath required by this title”?

Relying on a concurrence in an unpublished opinion, the State argues that “intentionally” should be interpreted as akin to “knowingly.” In *Stoner v. State*, Chief Judge Mannheimer noted in a concurrence that “[i]n everyday English, we often speak of a person ‘intentionally’ engaging in conduct — by which we mean that the person engaged in the conduct deliberately or wittingly, as opposed to accidentally or unwittingly.”¹⁸ Judge Mannheimer then explained that our criminal code — *i.e.*, Title 11 — does not use “intentionally” in this way:

As defined in AS 11.81.900(a)(1), the culpable mental state “intentionally” refers only to a person’s conscious desire to achieve a particular *result*. It does not refer to whether a person’s conduct was deliberate or witting. Rather, our criminal code uses the word “knowingly” to describe witting, non-accidental conduct. In fact, of the four culpable mental states defined in AS 11.81.900(a) — “intentionally,” “knowingly,” “recklessly,” and “with criminal negligence” — “knowingly” is the *only one* that applies to conduct.^[19]

¹⁸ *Stoner v. State*, 2016 WL 1394221, at *5 (Alaska App. Apr. 6, 2016) (Mannheimer, J., concurring) (unpublished).

¹⁹ *Id.*

Relying on this reasoning and *Neitzel v. State*, the State argues that we should interpret “intentionally” for purposes of AS 15.56.040(a)(3) as no different than the Title 11 definition for “knowingly.”²⁰

But there is a clear problem with the State’s argument. One central tenet of statutory construction is that courts must presume “that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.”²¹ This presumption flows from the foundational idea that the legislature does not use words idly — each term is assumed to carry independent meaning.²² Another companion principle of statutory construction — the whole statute canon — requires that courts interpret statutes “in context with other pertinent provisions rather than in isolation.”²³ The Alaska Supreme Court has stated that, whenever possible, courts must “interpret each part or section of a statute with every other part or section, so as to create a harmonious whole.”²⁴

The problem with the State’s argument that “intentionally” means “knowingly” is therefore that the first-degree and second-degree voter misconduct statutes use each term distinctly. For example, Alaska Statute 15.56.040(a)(3) prohibits “intentionally . . . swear[ing] falsely . . . under an oath required by this title.” In contrast,

²⁰ See *id.* (quoting *Neitzel v. State*, 655 P.2d 325, 326-30 (Alaska App. 1982)).

²¹ *Medicine Crow v. Beecher*, 570 P.3d 452, 458 (Alaska 2025) (quoting *Vasquez v. State, Off. of Lieutenant Governor, Div. of Elections*, 544 P.3d 1178, 1187 (Alaska 2024)).

²² *Id.*

²³ *Id.* (quoting *Blythe P. v. State, Dep’t of Health & Soc. Servs., Off. of Child.’s Servs.*, 524 P.3d 238, 246 (Alaska 2023)).

²⁴ *State, Dep’t of Com., Cmty. & Econ. Dev., Div. of Ins. v. Progressive Cas. Ins. Co.*, 165 P.3d 624, 629 (Alaska 2007) (quoting *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1991)); see also *Rivera v. Dep’t of Admin., Div. of Motor Vehicles*, 564 P.3d 1040, 1046 (Alaska 2025) (explaining that courts “do not read statutory provisions in strict isolation”).

AS 15.56.050(a)(2), the second-degree voter misconduct statute, prohibits “knowingly mak[ing] a material false statement while applying for voter registration.” As the State points out, one difference between AS 15.56.040(a)(3) (a felony) and AS 15.56.050(a)(2) (a misdemeanor) is that the false statement must be under oath to qualify as first-degree voter misconduct. But another difference is the applicable mental state: the legislature specifically chose to use “intentionally” swearing falsely with regard to the felony and “knowingly” making a material false statement with regard to the misdemeanor.

The legislature also distinguished between “intentionally” and “knowingly” in other parts of Title 15. Thus, AS 15.56.040(a)(4) prohibits “knowingly vot[ing] or solicit[ing] a person to vote after the polls are closed with the intent that the vote be counted.” Alaska Statute 15.56.070(a)(1) provides that “[a] person commits the crime of election official misconduct in the first degree if[,] while an election official, the person . . . intentionally fails to perform an election duty or knowingly does an unauthorized act with the intent to affect an election or its results.” Subsection (a)(2) of the same statute criminalizes “knowingly permit[ing] or mak[ing] or attempt[ing] to make a false count of election returns.” And subsection (a)(3) prohibits “intentionally conceal[ing], withhold[ing], destroy[ing], or attempt[ing] to conceal, withhold, or destroy election returns.” The fact that the legislature distinguished between “intentionally” and “knowingly” in the same statute and within the same statutory scheme strongly indicates that the legislature intended these terms to mean different things.

To determine what the legislature may have meant by using “intentionally” rather than “knowingly” in AS 15.56.040(a)(3), we look to the legislative history of this statutory provision. The current first-degree voter misconduct statute was enacted in 1980 as part of a general overhaul of Title 15.²⁵ The legislative

²⁵ SLA 1980, ch. 100.

history accompanying the 1980 legislation indicates that the current first-degree voter misconduct statute was derived from the prior voter misconduct statute that addressed “[f]alse swearing.”²⁶ The prior statute, which was originally enacted in 1960, provided:

Any person who wilfully makes a false affidavit or swears falsely under any oath required by the election code, or who wilfully swears or affirms falsely under an oath required by the election code, shall be guilty of a felony.^[27]

This language was then amended in 1980 to the current language under AS 15.56.040(a)(3), which provides that “[a] person commits the crime of voter misconduct in the first degree if the person . . . intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title.”

In other words, the statutory language remained essentially the same, except the legislature substituted the term “intentionally” for the term “wilfully.” In explaining the proposed changes to Title 15, the Election Review Committee made clear that it had made few substantive changes to the existing statutes, and AS 15.56.040(a)(3) was not identified as an area of substantive change.²⁸ Instead, the purpose of the revisions was to “bring [the chapter addressing elections offenses] into conformity with the revised criminal code which will become effective January 1, 1980.”²⁹

²⁶ SLA 1960, ch. 83, § 11.18.

²⁷ Former AS 15.55.170 (1979); *see also* SLA 1960, ch. 83, § 11.18.

²⁸ *See* Letter from the Election Review Committee, to Governor Jay S. Hammond regarding S.B. 312 Proposed Revisions to Title 15 (Sept. 18, 1979), at 28-29 (contained in the Senate Finance Committee bill file for S.B. 312).

²⁹ *Id.* at 28; *see also* Commentary and Sectional Analysis for F.C.C.S. H.B. 3, prepared by the Special Committee on Electoral Reform (April 23, 1980), at 22 (contained in the Senate Finance Committee bill file for S.B. 312) (explaining chapter 56 “has been rewritten to conform with the New Criminal Code.”).

Because the legislature did not intend to make substantive changes to AS 15.56.040(a)(3), it is worth exploring what the legislature originally meant by “wilfully . . . swears falsely” to determine if that provides any insight into the meaning of “intentionally . . . swears falsely.”

As the Alaska Supreme Court recognized in *Hentzner v. State*, the term “wilfully” is susceptible to multiple meanings.³⁰ “Wilfully” can mean essentially “knowingly” in the sense that the defendant “is aware of what he is doing.”³¹ But it can also mean “that the defendant must be aware that what he is doing is illegal.”³² And there is a third possibility, which is that “the defendant must know that what he is doing is wrong.”³³

The United States Supreme Court has likewise held that, “[a]s a general matter, when used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’”³⁴ Thus, proof that a defendant was aware that their conduct was illegal is generally sufficient to establish that the defendant acted willfully.³⁵ However, proof that the defendant knew they were acting illegally is not the only way to establish that the

³⁰ *Hentzner v. State*, 613 P.2d 821, 825 (Alaska 1980); see also “Willful,” Black’s Law Dictionary (5th ed. 1979) (“Willful is a word of many meanings, its construction often influenced by its context.”).

³¹ *Hentzner*, 613 P.2d at 825.

³² *Id.*

³³ *Id.*

³⁴ *Bryan v. United States*, 524 U.S. 184, 191 (1998); see also “Willful,” Black’s Law Dictionary (5th ed. 1979) (defining “willful” as, *inter alia*, “Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification”).

³⁵ *United States v. Robertson*, 709 F.3d 741, 745 (8th Cir. 2013).

defendant acted willfully; willfulness may also be established by proof that the defendant knew their conduct was “unauthorized, or unjustifiable or wrongful.”³⁶

Here, the scant legislative history that exists suggests that the legislature intended “wilfully . . . swears falsely” to require purposeful or deliberate action that includes a specific consciousness of wrongdoing. The 1960 elections-related false swearing statute was part of a larger house bill (House Bill 252) that was amended a number of times.³⁷ In its report to the legislature discussing these changes, the House Judiciary Committee specifically stated that “[p]enalties are made dependent on consciousness of wrongdoing not just the doing of an act.”³⁸ In other words, “wilfully” in the 1960 predecessor to AS 15.56.040(a)(3) was intended to capture a consciousness of wrongdoing that is more than just an awareness of the act itself.

Thus, when the legislature replaced the word “wilfully” in the 1960 predecessor to AS 15.56.040(a)(3) with the word “intentionally,” the legislature appears to have retained the requirement of a specific consciousness of wrongdoing that is distinguishable from mere knowing conduct.

Ultimately, “[t]he objective of statutory construction is to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others.”³⁹ Here, as already explained, there is demonstrated legislative intent to treat “intentionally” as distinguishable from “knowingly” for purposes of first-degree voter misconduct. There is also legislative history showing that the *mens rea* of

³⁶ *Id.*

³⁷ SLA 1960, ch. 83; *see, e.g., Second Reading of House Bills*, 1960 House Journal 131-38.

³⁸ *Report of the Committee on the Judiciary*, 1960 House Journal 139.

³⁹ *In re Est. of Bentley*, 556 P.3d 244, 247 (Alaska 2024) (quoting *State, Dep’t of Fam. & Cmty. Servs., Off. of Child.’s Servs. v. Karlie T.*, 538 P.3d 723, 729 (Alaska 2023)).

“intentionally,” which was derived from the former statute’s *mens rea* “wilfully,” was intended to require a consciousness of wrongdoing.

For these reasons, we reject the State’s argument that “intentionally . . . swears falsely” was intended to mean nothing more than “knowingly . . . swears falsely” and instead, we hold that AS 15.56.040(a)(3) requires the State to prove that the defendant acted with a consciousness of wrongdoing in purposely or deliberately making a false sworn statement under an oath required by Title 15.⁴⁰

Applying this statutory interpretation to the current case

The question before us in this petition is whether the superior court erred when it denied Smith’s motion to dismiss the indictment. In its order denying Smith’s motion to dismiss the indictment, the superior court agreed with Smith that the trooper had given misleading testimony about whether Smith knew that she could not vote but the court ruled that the misleading testimony did not prejudice Smith.

⁴⁰ We acknowledge that the *mens rea* for AS 15.56.040(a)(3), a class C felony, is different than the *mens rea* for perjury, a class B felony. See AS 11.56.200(a). But, as just explained, the plain language and legislative history of AS 15.56.040(a)(3) indicates that the legislature specifically intended this difference. We therefore reject the State’s argument that the two statutes must be interpreted identically. We also note that the State’s argument is predicated on its belief that the State could potentially charge Smith with both first-degree voter misconduct *and* perjury, notwithstanding the fact that the legislature has chosen to enact a specialized voter misconduct statute in Title 15 with different requirements than the general perjury statute in Title 11. *But see State v. Salinas*, 982 S.W.2d 9, 12 (Tex. App. 1997) (holding that the government could not proceed under the general perjury statute when there was a specialized election code statute); *Commonwealth v. Brown*, 29 A.2d 793, 796-97 (Pa. 1943) (explaining in construing statutes that it “is the policy of the law not to permit prosecutions under the general provisions of a penal code when there are applicable special penal provisions available”); *cf. Waiste v. State*, 808 P.2d 286, 289 (Alaska App. 1991) (citing *Matter of Hutchinson Estate*, 577 P.2d 1074, 1075 (Alaska 1978)) (recognizing the established principle of statutory construction that if there is any conflict between a general statute and a specific statute dealing with a subject, the specific statute prevails). Because this issue has not been briefed to us, we express no opinion on its resolution.

To recap, in her interview with the troopers, Smith stated that she knew that U.S. nationals could not vote for president but she thought they were otherwise allowed to vote. Smith thought that she had sometimes voted on forms where she could check non-citizen or U.S. national, and she stated that she had been told by Whittier election officials that if there was not a box to check for U.S. national, she should check the box for U.S. citizen.

Smith's interview with the trooper suggested that she was confused about her status and her eligibility to vote.⁴¹ A reasonable grand jury could therefore have concluded that Smith honestly and in good faith believed that checking yes for "citizen of the United States" was not wrong or even necessarily "false" because voting in local elections was one of the instances where U.S. nationals essentially qualified as U.S. citizens.⁴²

And indeed, the grand jury expressed concern that Smith had checked the U.S. citizen box "by accident" and that she had not realized she was doing anything wrong. The grand jury was correct that Smith would not be criminally liable if she did not realize that checking the U.S. citizen box was wrong because she would not have

⁴¹ As commentators have noted, such confusion is somewhat understandable given the *sui generis* legal status of persons born in American Samoa. See, e.g., Sean Morrison, *Foreign in a Domestic Sense: American Samoa and the Last U.S. Nationals*, 41 Hastings Const. L.Q. 71, 84-86 (2013) (explaining that unlike persons born in Puerto Rico, U.S. Virgin Islands, and Guam, persons born in American Samoa are not granted U.S. citizenship at birth although they enjoy many of the benefits of citizenship including a U.S. passport, U.S. military service, and permission to live and work in the U.S. without fear of being deported).

⁴² We note that Alaska law sometimes expressly treats U.S. nationals as U.S. citizens. See, e.g., 7 Alaska Administrative Code 45.215(g)(1) ("As used in this section, . . . 'United States citizen' means a citizen of one of the 50 states, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands; in addition, the department will consider . . . nationals from American Samoa or Swain's Island[] to be United States citizens for purposes of ATAP[.]"). The Alaska Temporary Assistance Program (ATAP) is a program that provides cash assistance and work support to low income families with children.

acted with the consciousness of wrongdoing that AS 15.56.040(a)(3) requires.⁴³ But the grand jury was not correctly instructed on what it meant to “intentionally . . . swear[] falsely . . . under an oath required by [Title 15].” Instead, they were instructed using the Title 11 definition of “intentionally” which does not apply to the first-degree voter misconduct statute under Title 15, as the State now concedes.

The grand jury was also potentially misled by the inaccurate testimony of the trooper who testified that Smith had “acknowledged” that she knew she was not eligible to vote at the time she filled out the voter paperwork. As the superior court found, this testimony did not accurately reflect what Smith told the trooper throughout the interview and was apparently based on the trooper’s final confusing multi-part question to which Smith (whose native language was not English) had answered, “Yes.”

The superior court nevertheless ruled that Smith was not prejudiced by the misleading testimony because (in the superior court’s view) it was irrelevant to the question of whether Smith “intentionally” falsely swore that she was a U.S. citizen. But, as just explained, Smith may have honestly and in good faith believed that it was not wrong for her to identify herself as a U.S. citizen given her stated understanding that there was no difference between being a U.S. national and a U.S. citizen for purposes of voting in a local election. We conclude that the misleading testimony and the incorrect instruction defining the meaning of “intentionally . . . swears falsely” in the first-degree voter misconduct statute had a substantial effect on the grand jury and that the grand jury would likely have declined to indict Smith if it had received correct instructions and a more complete description of what Smith told the troopers.⁴⁴ We

⁴³ We note that this *mens rea* defense that Smith did not act “intentionally” is distinct from the affirmative defense of mistake of law mentioned by the State in its briefing. See *Clark v. State*, 739 P.2d 777, 779 (Alaska App. 1987) (explaining that Alaska recognizes a limited mistake of law affirmative defense that the defendant must prove by a preponderance of the evidence).

⁴⁴ See *Zurlo v. State*, 506 P.3d 777, 787-88 (Alaska App. 2022) (reversing conviction where misleading grand jury testimony may have substantially affected the return of

therefore reverse the superior court's order denying the motion to dismiss the indictment and we remand this case to the superior court so that the State can seek reindictment of Smith under the applicable governing law, if it elects to do so.

Conclusion

The superior court's order denying the motion to dismiss the indictment is REVERSED and this case is REMANDED to the superior court for further proceedings consistent with the guidance provided by this opinion.

indictment); *see also Frink v. State*, 597 P.2d 154, 165-66 (Alaska 1979) (addressing a prosecutor's duty to disclose exculpatory evidence to the grand jury).