

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

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ALASKA DEMOCRATIC PARTY,)
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Plaintiff,)
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v.)
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STATE OF ALASKA,)
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Defendant.)
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ATB

Case No.: 1JU-17-00563CI

**STATE OF ALASKA'S REPLY IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

I. Introduction

The fatal weakness of the ADP's complaint—both for purposes of standing and ripeness—is that it fails to allege the current existence of any candidate who wishes to run as an independent in a Democratic primary election. Without a willing candidate, the Party cannot establish any harm or threat of harm to its associational rights sufficient to confer standing, nor can it demonstrate that any challenge to Alaska's candidate eligibility statute is ripe for decision.

But even if this Court had subject matter jurisdiction, it should uphold the constitutionality of Alaska's candidate eligibility statute just as the federal courts have routinely upheld similar candidate affiliation statutes in other states. The Party's associational right to allow independent candidates to run in its primary is tenuous at best and only minimally burdened by the party-membership requirement, which is justified by the State's interests in protecting the party system and fairly and effectively

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1 administering elections.

2 **II. The Party lacks standing to challenge AS 15.25.030(a).**

3 The Party asserts that it has standing under two theories—first, that the division’s
4 denial of “approval” of its rule change under AS 15.25.014 is an injury sufficient to
5 establish standing; and second, that AS 15.25.030(a)(16) harms its associational
6 interests by conflicting with its rule change. Neither theory has merit.
7

8 **A. The division’s statement that it will apply the eligibility requirements in**
9 **AS 15.25.030(a) if an independent candidate files an application to run in**
10 **the Democratic primary does not constitute an injury to the Party**
11 **sufficient to confer standing.**

12 The Party suggests that it has standing because AS 15.25.014—a notice
13 provision for changes to party primary rules—“require[s]” it “to submit changes to its
14 rules regarding participation in its primary elections *for approval* by the Division of
15 Elections,” and the division denied “permission” for the rule change. [Party’s Opp. at 4,
16 emphasis added] But the Party’s attempt to manufacture an injury without an
17 independent candidate who wishes to run on its ticket mischaracterizes the purpose and
18 significance of AS 15.25.014. And the Party’s contention that the superior court
19 dismissed its previous complaint because the Party had not met the statutory deadline in
20 AS 15.25.014 is flatly incorrect. [Party’s Opp. at 5]

21 The Party’s arguments regarding AS 15.25.014(a) collapse when the statute is
22 properly understood. First, AS 15.25.014(a) is a notice statute; it requires a political
23 party to notify the State of changes to its rules so that the division may prepare for
24 primary elections consistent with Party rules and state statutes. Nothing in the statute
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1 provides for division "approval" of the Party's rule change. Nor can the division prevent
2 the Party from changing its rules by withholding or denying "permission," as the Party
3 contends.

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5 Neither the Party's notice to the division of its rule change nor the division's
6 response injured the Party in any way. The division's response merely explained that the
7 Party's request that the State adopt the rule in regulation was illegal under existing state
8 law because it is "subordinate to a conflicting state statute, AS 15.25.030(a)(16)," a fact
9 already known to the Party. [Party's Opp. Exh. 3] It gave an overview of the pertinent
10 statutory framework and explained that the State would continue to defend and enforce
11 the provision "as duly enacted by the legislature." [Party's Opp. Exh. 3] The response
12 thus left the Party in precisely the same situation it had been before it informed the
13 division of its rule change: still waiting for some unknown independent candidate to
14 appear from the ether. Nothing in the division's response altered the Party's status or
15 suddenly conferred standing upon it to challenge a statute that was not even being
16 enforced against it or anyone else, and thus AS 15.25.014(a) is irrelevant to the Court's
17 subject matter jurisdiction inquiry. [Party's Opp. Exh. 3]

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20 Second, the court dismissed the Party's previous lawsuit as unripe because the
21 Party filed it before it had even adopted the rule, not because the Party had missed the
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1 AS 15.25.014 deadline for the 2016 primary.¹ The court's decision explicitly recognized
2 three contingencies underlying its ripeness analysis. It noted that it had "no way of
3 knowing [1] if ADP will pass and implement the proposed rule change, [2] if the State
4 will choose to enforce AS 15.25.030(a)(16) at that point in time, or [3] if any aggrieved
5 party will exist and be unable to run under changed ADP rules." [Order at 6] It was the
6 speculative character of those events, not the Party's failure to seek "permission" from
7 the State as it suggests it must do, that rendered the Party's case unripe.
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9 Nor has the State taken the position, as the Party asserts, that AS 15.25.030
10 "restricts the ADP." [Party's Opp. at 3] To the contrary, the State expressly stated that
11 this statute—which sets out the requirements for declarations of candidacy—applies to
12 *candidates*, not to the Party. [State's MSJ at 1-2] The division's role is to act as a
13 gatekeeper for candidates filing to run in the primary election; it reviews declarations of
14 candidacy to assure that the candidates have included all requisite information,
15 including stating "that the candidate is registered to vote as a member of the political
16 party whose nomination is being sought."² The law thus requires candidates to be
17 registered to vote as a member of the party whose nomination is sought. But the division
18 will enforce this requirement *only* if it receives a declaration of candidacy from
19 someone who is not so registered. A plaintiff cannot manufacture standing by trying to
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23 ¹ In a footnote, the superior court noted that it found the Party's argument that AS
24 15.25.014 applied only to rule changes involving who may vote in the primary "not well
25 taken." [Order at 5, n.13] But this determination was not the basis for the Court's
26 decision.

² AS 15.25.030(a)(16).

1 draw a foul in the manner the Party suggests. The Party did nothing more than ask the
2 State whether it will, as an abstract proposition, enforce a law against some hypothetical
3 individual at some future point in time. But if asking that question could satisfy subject
4 matter jurisdiction, standing would become meaningless, and courts would routinely
5 issue advisory decisions and prematurely decide the constitutionality of statutes
6 regardless of whether a litigant had a direct interest in the statute and regardless of
7 whether the statute was likely to be applied.
8

9 **B. The Party's associational rights are not injured or burdened absent a**
10 **candidate who wishes to associate with the Party.**

11 The Party's second standing theory is that because the statute prohibits
12 independent candidates from running in the primary "despite [the Party's] associational
13 decision ... to allow such candidates," the Party is sufficiently injured to have standing
14 to challenge the law. But associational rights depend on people seeking to associate *with*
15 *each other*. An individual's interest in associating with others necessarily presumes that
16 others also wish to associate with the individual. That is doubtless why many freedom
17 of association cases involve parties who do *not* wish to associate with specific people.³
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19 In this case, any "right" to associate with independent candidates cannot exist
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23 ³ See e.g., *California Democratic Party v. Jones*, 530 U.S. 567 (2000) (holding
24 that California's blanket primary system in which voters could vote for any candidate
25 regardless of voter's or candidate's party affiliation violated parties' First Amendment
26 associational rights); *Boy Scouts of America et al v. Dale*, 530 U.S. 640 (2000) (holding
that Boy Scouts had First Amendment associational right to expel scoutmaster after he
came out as homosexual).

1 absent an independent candidate who wishes to associate with the Party.⁴ And that right
2 will not be infringed unless that independent candidate wishes to “associate” with the
3 Party in a very particular way: by running in the Democratic primary without registering
4 as a Democrat. Without a candidate who seeks to associate with the Democratic Party in
5 this unique manner, AS 15.25.030(a)(16) does not even come into play, let alone injure
6 the Party. Nor does the Party’s prior identification of a single candidate in the 2016
7 election perpetually preserve the Party’s ability to establish standing for purposes of
8 future challenges to the candidate eligibility statute. [See Party’s Opp. at 6] To the
9 contrary, it highlights the deficiency of the Party’s present complaint, unsupported by
10 even a bare allegation that such a candidate exists.
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13 The Party’s reliance on *Kanuk* and *Planned Parenthood* for the proposition that it
14 has been injured by AS 15.25.016 is also misplaced. [Party’s Opp. at 7-9] In *Kanuk* the
15 Alaska Supreme Court held that the minors had standing to sue the State for failure to
16 protect the atmosphere because they “alleged injuries from climate change that were
17 both *specific and personal*.”⁵ The decision quotes paragraphs of the complaint
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20 ⁴ The Party’s arguments about the alleged harm to its associational interest
21 expands protected party affiliation rights well beyond their recognized borders.
22 Regardless of AS 15.25.030(a)(16), the Party remains free to “associate” with an
23 independent candidate by, for example, supporting or advocating for that candidate
24 generally or encouraging Democratic party voters to vote for that candidate in the
25 general election. And as discussed at length in the State’s motion for summary
26 judgment, no Court has ever held that a political party has an unrestricted right to place
any candidate of its choosing on a party primary ballot, which is precisely what the
Party seeks here.

⁵ *Kanuk ex rel. Kanuk v. State, Dep’t of Natural Resources*, 335 P.3d 1088, 1092
(Alaska 2014) (emphasis added).

1 describing how the plaintiffs had personally observed and been adversely affected by
2 the consequences of climate change on their natural environment, including plaintiffs
3 who alleged they had been evacuated from their homes due to flooding and had
4 witnessed declining salmon stocks.⁶ The court held that because “the complaint shows
5 *direct injury* to a range of recognizable interests,” the plaintiffs had standing to sue the
6 State for violating its public trust obligation under Article VIII of the Alaska
7 Constitution.⁷ But here, the Party alleges no such concrete or direct injury. Unless and
8 until a candidate appears who wishes to run as an independent in the Party’s primary,
9 the Party is not harmed.⁸

11
12 Similarly, in *State v. Planned Parenthood* the court found that Planned
13 Parenthood and the plaintiff physicians had standing to challenge a parental consent
14 requirement for minors seeking abortions. The doctors, who alleged that they regularly
15 performed abortions for minors, had a “strong and *direct* interest in the challenged
16 statute,” as the law “would require both doctors to change their current practices and
17 would expose them to civil and criminal liability if they failed to comply.”⁹ The statute
18 at issue here does not currently harm the Party at all, let alone curtail the Party’s
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21 ⁶ *Id.*

22 ⁷ *Id.* at 1092-93 (emphasis added).

23 ⁸ Even if a candidate appears and the State ultimately enforces the statute, the
24 candidate—not the Party—would be the more appropriate party to bring suit. This is
25 because the statute applies to candidates, not parties, and regardless of the validity or
26 application of AS 15.25.030, the Party remains free to throw its support to any
candidate of its choosing, as it did in the 2014 gubernatorial election.

⁹ *State v. Planned Parenthood*, 35 P.3d 30, 34 (Alaska 2001) (emphasis added).

1 conduct in the way the parental consent requirement did for the plaintiffs in *Planned*
2 *Parenthood*. The Party's interests in having the statute invalidated will be served only if
3 a candidate wishes to take advantage of the Party's new rule. And neither *Kanuk* nor
4 *Planned Parenthood* supports the Party's claim that standing can be based on an
5 entirely hypothetical injury. Without a potential candidate, the Party has no one to
6 associate with and thus the statute inflicts no injury to the Party's rights.

8 Finally, the Party suggests that because the Court in *Tashjian* did not sua sponte
9 raise the issue of the Republican Party's standing to challenge a statutory limitation on
10 who could vote in its primary election, the Party must have standing in this case. The
11 Party reasons that the conflict between the Republican Party rule in *Tashjian*, which
12 permitted independents to vote in its primary, and the Connecticut statute limiting
13 primary participation to party members, was determined to be sufficient to confer
14 standing on the party in that case, and that by analogy the same reasoning applies here.
15 [Party's Opp. at 9-11] But the Party's argument makes a leap of logic and infers a
16 reasoning where none exists.

18 The Party effectively asks this Court to infer a judicial determination on standing
19 from a different court in a different case involving different plaintiffs challenging a
20 fundamentally different law with different facts. It then suggests that this inference
21 should guide the Court's standing inquiry on the sufficiency of the Party's alleged
22 interests and claimed harm. But the lack of a holding on standing in *Tashjian* is not
23 controlling authority that standing was not a problem—either in that case or any other.
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1 *Tashjian* does not establish that there was *no evidence* that independent voters wanted to
2 vote in the Republican primary. And notably, the Party does not cite a single election
3 case in which a court has expressly held that a Party had standing to challenge voter
4 participation statutes, despite failing to produce any evidence of voters feeling
5 constrained by such statutes, much less one in which a court has held that a Party had
6 standing to challenge a candidate eligibility statute in the absence of a specific
7 candidate. Another court's failure to question standing in different circumstances simply
8 does not compel the conclusion that the Party has standing here.

10 **III. The Party's challenge to AS 15.25.030(a) is not ripe without an independent**
11 **candidate who wishes to run in the Democratic primary without registering**
12 **as a Democrat.**

13 Without an interested independent candidate, the Party's challenge to AS
14 15.25.030(a) is also unripe. As the Party acknowledges, ripeness "depends on 'whether
15 there is a substantial controversy, between parties having adverse legal interests, of
16 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'"¹⁰
17 [Party's Opp. at 12] But on its face, the Party's asserted controversy is neither of
18 sufficient immediacy or reality to warrant judicial intervention. Until a candidate
19 emerges who wishes to run as an independent in the Democratic primary, the Party's
20 new rule presents nothing more than a hypothetical "controversy." The Party thus fails
21 to establish any need for a court decision on the constitutionality of the statute.
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24 ¹⁰ *Alaska Commercial Fishermen's Memorial in Juneau v. City and Borough of*
25 *Juneau*, 357 P.3d 1172, 1176 (quoting *State v. American Civil Liberties Union of*
26 *Alaska*, 204 P.3d 364, 369 (Alaska 2009) (emphasis added)).

1 **A. The Party’s complaint is a pre-enforcement challenge to a candidate**
2 **eligibility statute.**

3 The Party asserts that this is not a pre-enforcement challenge because the
4 division denied its request for “permission to implement its rule change.” [Mot. at 13]
5 But as explained above, the Party does not need the State’s permission to change its
6 rules; the validity of the Party’s rule change is not even at issue in this case. And the
7 challenged statute that is at issue imposes requirements on *candidates*—not parties.
8 Until a candidate appears who wishes to run in the Democratic primary without
9 registering as a Democrat, the party-membership statute is not even triggered. In other
10 words, the division currently has nobody to enforce the statute against, and any dispute
11 as to its validity is therefore theoretical only. While the Party might prefer to have this
12 Court issue a directive now about the statute’s enforceability at some later date against
13 an unknown individual, ripeness demands more.

14 **B. Without a candidate, there is no need for a decision.**

15 The requirement of a “concrete factual situation”¹¹ guards against precisely these
16 types of premature and unnecessary judicial rulings. That the identity of an independent
17 candidate wanting to run in the Democratic primary might not “inform” the legal
18 analysis is irrelevant. [Party’s Opp. at 15-16] A candidate is necessary because without
19 one, the court has no need to offer a legal analysis at all.. A “concrete factual situation”
20 is one in which the plaintiff has established a genuine need for a judicial determination.
21 Courts ask whether an issue is ripe in the interest of judicial resources and comity, to
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26 ¹¹ *State v. ACLU of Alaska*, 204 P.3d at 368.

1 avoid the disrespect to a co-equal branch of government of a gratuitous determination of
2 the constitutionality of a statute. If this Court were to decide the merits of the Party's
3 claim now, the decision would be advisory only.

4
5 Nevertheless, the Party wants an advisory decision, claiming that it can then
6 attract potential candidates and allow "such candidates to plan for their participation."
7 [Party's Opp. at 14] But the ripeness requirement cannot be disregarded because a
8 plaintiff hopes that a decision might later benefit it. And the Party confuses the urgency
9 of its *desire* for a decision with a genuine *need* for a decision.

10
11 The Party suggests that AS 15.25.30 dissuades potential unaffiliated candidates
12 from attempting to run in the Democratic primary, but that is not self-evident. [Party's
13 Opp. at 17] Certainly, a candidate would not face the permanent and high-stakes risk
14 that the mining ordinance in *Jacko v. State et al.* presented to potential developers.¹² A
15 candidate who wishes to appear on the Democratic ballot but is unwilling to register as
16 a Democrat could both challenge the law—asserting the desire and intention to appear
17 on the Democratic ballot and seeking a declaration that this is permissible—and if
18 AS 15.25.030 is upheld, run as an independent. The candidate could seek a decision
19 before the June 1 deadline to file a declaration of candidacy for the Democratic
20 primary¹³ and still have more than two months to gather signatures for nomination by
21 petition.¹⁴ The Party might prefer not to locate a candidate before bringing suit, but its
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24 ¹² 353 P.3d 337 (Alaska 2015).

25 ¹³ See AS 15.25.040.

26 ¹⁴ See AS 15.25.150.

1 constitutional right to freely associate with others depends on the existence of others
2 who wish to associate with the Party, as explained above. Any need for a judicial
3 decision on AS 15.25.030 is contingent on the existence of a candidate willing to state
4 an interest. Unlike the potential investors in *Jacko*, then, who risked the loss of millions
5 of dollars before any permit denial would have occurred, in this case a candidate faces
6 no similar irrevocable loss if denied access to the Democratic ballot.

7
8 The State's expressed intention to apply the statute is also insufficient to make
9 the Party's challenge ripe. In the Party's view, this issue is fit for decision because the
10 State represented its general intention to follow a validly enacted statute, rather than to
11 ignore the statute and substitute its own judgment for that of the Legislature. But that is
12 not the law. If it were, the ripeness doctrine would be meaningless: plaintiffs would be
13 relieved of proving harm; courts would routinely decide cases involving uncertain
14 future events; and *any* pre-enforcement challenge would be heard merely because the
15 State declared its customary adherence to the law. But "[d]ue respect for the legislative
16 branch of government" requires a court to declare a statute unconstitutional only when
17 "squarely faced" with the need to do so,¹⁵ not whenever a plaintiff disagrees with that
18 law in the abstract or wants a hypothetical dispute resolved in its favor to help advance
19 its particular interests.
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22 **C. Relaxed standards of justiciability do not apply in this case.**

23 For many of the same reasons, this case does not warrant "a somewhat relaxed
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26 ¹⁵ *State v. ACLU of Alaska*, 204 P.3d at 373.

1 approach to justiciability,” a principle based on “special considerations traditionally
2 afforded speech rights.” [Party’s Opp. at 15] Contrary to the Party’s suggestion, not
3 every First Amendment claim invokes special justiciability standards. And this case has
4 none of the hallmarks that trigger special treatment.
5

6 The Supreme Court “has recognized that the harm suffered by a party who
7 restricts allegedly protected speech in order to avoid civil sanction or criminal penalty
8 may warrant preenforcement review in some cases.”¹⁶ “A court may adopt this
9 somewhat relaxed approach to justiciability, however, only upon a showing that the
10 plaintiff ‘is immediately in danger of sustaining[] a direct injury as a result of [an
11 executive or legislative] action.’”¹⁷ The Party has made so such showing here.
12

13 Alaska Statute 15.25.030 does not put the Party in immediate danger of
14 sustaining a direct injury. Any injury is contingent on the appearance of an interested
15 candidate. Lacking any such candidate, the Party does not confront harm: it currently
16 faces no credible threat of prosecution,¹⁸ and it has not shown that it is censoring itself
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21 ¹⁶ *Alaska Right to Life Political Action Committee v. Feldman*, 504 F.3d 840, 851
22 (9th Cir. 2007) (citing *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988)).

23 ¹⁷ *Alaska Right to Life Political Com.*, 504 F.3d at 851 (quoting *Laird v. Tatum*,
408 U.S. 1, 12-13 (1972)).

24 ¹⁸ *See San Diego Gun Rights Committee v. Reno*, 98 F.3d 1121, 1132 (9th Cir.
25 1996) (explaining that when “none of the plaintiffs have been charged under the
26 [challenged] Act with any criminal violation” and did not “face a credible threat of
prosecution,” they could not demonstrate hardship sufficient to warrant jurisdiction).

1 because of the law.¹⁹ Rather, the Party's position is analogous to the plaintiffs in *Renne*
2 *v. Geary*.²⁰ Plaintiffs in that case were members of the local Republican and Democratic
3 Central Committees who challenged a provision of the California Constitution that
4 prohibited parties and central committees from endorsing candidates for nonpartisan
5 offices.²¹ Based on this provision, the local government had a policy of deleting any
6 references to a party endorsement from the statements of nonpartisan candidates
7 included in voter pamphlets.²² But that was insufficient to "demonstrate[] a live
8 controversy ripe for resolution."²³

9
10 Although the plaintiffs alleged a "desire to endorse . . . [nonpartisan] candidates
11 for city and county office through their county and central committees, and to publicize
12 such endorsements by having [them] published in the voter's pamphlet,"²⁴ the Court
13 questioned how "the committee members [had] third-party standing to assert the rights
14 of candidates, since no obvious barrier exists that would prevent a candidate from
15 asserting his or her own rights."²⁵ The Court also noted that "justiciability concerns not
16 only the standing of litigants to assert certain claims, but also the appropriate timing of
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20 ¹⁹ See *Alaska Rights to Life Political Com.*, 504 P.3d at 851 ("Because the
21 organization would not itself have risked civil sanction or criminal penalty, it has not
22 'suffered the constitutionally recognized injury of self-censorship.'").

23 ²⁰ 501 U.S. 312 (1991).

24 ²¹ *Id.* at 314 (citing Article II, § 6(b) of the California Constitution).

25 ²² *Id.* at 315.

26 ²³ *Id.*

²⁴ *Id.* at 316.

²⁵ *Id.* at 320 (citing *Powers v. Ohio*, 499 U.S. 400, 414-415 (1974)).

1 judicial intervention.”²⁶ The Court rejected justiciability based on the allegation that the
2 Democratic committee had not endorsed candidates in elections for several years for
3 fear of violating the constitutional provision, because the committee failed to indicate
4 “whom the Democratic committee wished to endorse, for which office, or in what
5 election.”²⁷ It also found no ripe controversy in the allegations that the plaintiffs wanted
6 to endorse candidates in future elections, because they did not “allege an intention to
7 endorse any particular candidate, nor that a candidate wants to include a party’s or
8 committee member’s endorsement in a candidate statement.”²⁸ The Court “possess[ed]
9 no factual record of an actual or imminent application of [the constitutional provision]
10 sufficient to present the constitutional issues in a ‘clean-cut and concrete form.’”²⁹

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13 The Party similarly presents no indication that its First Amendment speech is
14 chilled due to overbreadth, and presents no concrete controversy. Without a willing
15 candidate, the Party is not in “immediate danger” of sustaining “a direct injury.”
16 Therefore, this case does not trigger relaxed justiciability standards.

17
18 **D. The risks of deciding this complex constitutional question are more
substantial than the Party recognizes.**

19 Just as the Party overstates its purported need for a decision on the party-
20 membership requirement’s validity, it also underestimates the risks of making this
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23 ²⁶ *Id.* at 320.

24 ²⁷ *Id.* at 321.

25 ²⁸ *Id.*

26 ²⁹ *Id.* at 322 (quoting *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S.
549, 584 (1947)).

1 decision now. If the Court decides that the candidate eligibility statute is
2 unconstitutional, it will unravel the State's established electoral and candidate eligibility
3 scheme that relies on a connection between a party's candidate and the party for
4 purposes of conferring official political party status—with all of its attendant privileges.
5 This case thus raises issues of considerable importance and sensitivity, and its resolution
6 could have significant consequences. [State's MSJ at 2-5, 27-34]

8 Moreover, the Party's suggestion that the question before the Court is not
9 especially difficult because "substantial Alaska and federal case law is available to
10 guide this court's decision" is remarkable given the Party's reliance on only two cases,
11 both of which address a different kind of statute—one limiting voter participation in
12 primaries rather than candidate eligibility. [Party's Opp. at 18] In fact, to the extent that
13 the Court looks to federal precedent—as no Alaska precedent addresses a candidate
14 affiliation statute like the one at issue here—the Court would be far more likely to
15 affirm the provision's validity given that federal courts have consistently upheld
16 analogous candidate affiliation requirements.³⁰ Indeed, the State believes these
17 precedents are persuasive and their reasoning should be adopted by this Court.³¹

20
21 ³⁰ See e.g., *Storer v. Brown*, 415 U.S. 724 (1974); *Timmons v. Twin Cities Area*
22 *New Party*, 520 U.S. 351 (1997); *Swamp v. Kennedy*, 950 F.2d 383 (3rd Cir. 1991); *Van*
23 *Susteren v. Jones*, 331 F.3d 1024 (9th Cir. 2003); *Jolivette v. Husted*, 694 F.3d 760 (6th
24 *Cir.* 2012); *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006); *Libertarian Party of*
25 *Michigan v. Johnson*, 714 F.3d 929 (6th Cir. 2013); *South Dakota Libertarian Party v.*
26 *Gant*, 60 F.Supp.3d 1043 (D.S.D. 2014); *Curry v. Buescher*, 394 Fed.Appx 438 (10th
27 *Cir.* 2010) (unpublished); *Vulliet v. Oregon*, 2013 WL 867439 (unpublished). See also,
28 *Colorado Libertarian Party v. Sec'y of State of Colorado*, 817 P.3d 998 (Colo. 1991).

29 ³¹ See State's MSJ at 22-27.

1 But because this Court need not determine the constitutionality of AS
2 15.25.030(a) absent an independent candidate who wants to run in the Democratic
3 primary without registering as a Democrat, and the Party is unaware of the existence of
4 any such candidate for the 2018 or any future election, the State respectfully asks the
5 Court to dismiss the Party's complaint as unripe.
6

7 **IV. The party-membership requirement is a constitutionally valid election**
8 **regulation.**

9 **A. This court should reject the Party's nihilistic view of party politics.**

10 The Party's opposition seizes upon the shifting nature of political alliances and
11 ideology and the fact that there is no test required to register as a Democrat to posit—
12 without any supporting evidence—that we live in a world where political parties have
13 no identifiable political goals or shared values and party labels are devoid of any
14 meaning. [Party's Opp. at 22-25, 34-36] In this world, voters of all political persuasions
15 may vote in a *political party* primary for candidates with no party affiliation and still
16 produce a candidate that the State should accept as a "party" representative at the
17 general election, even as that candidate disavows that label. And none of this will
18 confuse voters or harm the party system generally or the State's statutory scheme, which
19 confers political party benefits based on a party's support among voters. Nothing in
20 either the federal or state constitution requires the State or the Court to embrace such
21 political nihilism.
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24 The Party frames the constitutional right that it asserts as the right "to allow
25 independent candidates to participate in the party's primary election without the
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1 candidate registering as a member of the party.” [Party’s Opp. at 22] In effect, the Party
2 claims that just as it has invited voters of any affiliation to vote for candidates running
3 in its primary, so too should it have a constitutionally protected right to open its primary
4 election to any candidate, regardless of political affiliation.³² But once a party primary
5 election is open to voters of any party affiliation (or none at all) and a party primary
6 ballot is open to candidates who refuse to be members of the Democratic Party, the
7 Democratic primary is not a party primary at all. At that point, the primary has lost its
8 political party identity: non-Democratic Party voters nominate a non-Democratic Party
9 standard bearer. In this way, the Party’s new rule effectively destroys the notion of a
10 Democratic primary.
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13 The Supreme Court has noted “that the First Amendment, among other things,
14 protects the right of citizens ‘to band together in promoting among the electorate
15 candidates who espouse their political views.’”³³ And in its motion for summary
16 judgment, the State argued that the associational right protected by the First
17 Amendment presupposed the common political values underlying the association.
18 [State’s MSJ at 21]³⁴ In response, the Party’s opposition asserts that party affiliation
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21 ³² Although the Party’s new rule opens its primary only to candidates registered as
22 independent or non-partisan—in addition to Democrats—none of the Party’s arguments
23 are, or could be meaningfully limited to, independent candidates; the same logic would
24 apply just as well if the Party sought to attract Republican candidates to run in its
25 primary.

24 ³³ *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *California Democratic
Party v. Jones*, 530 U.S. 567, 574 (2000)).

25 ³⁴ “It can hardly be controversial to suggest that before a candidate can become a
26 party’s ‘standard bearer,’ the candidate in fact bear the party’s standards.”

1 essentially means little because anyone can register as a Democrat, regardless of their
2 political views. [Party's Opp. at 22-23] "It will be up to the voters in the ADP's primary
3 to determine, on behalf of the party, which candidates, independent or Democrat, will
4 best represent the party in its general election." [Party's Opp. at 23] But the Party is
5 wrong to suggest that the primary election it envisions can serve as an ideological check
6 on such candidates. Because the Party has already opened its primary to *all voters* and
7 Democrats are outnumbered among Alaska voters by both Republicans and
8 independents, an independent candidate running in the Democratic primary could be
9 selected as the Democratic nominee without earning the vote of a single Democratic
10 voter. Such a primary election would be a "Democratic" primary in name only. And
11 thus, the Party's new rule would allow the vehicle of the Democratic Party's entitlement
12 to a primary election to be used as a substitute for the statutory nominating petition
13 process required of independent candidates. Neither the federal nor the Alaska
14 constitution requires this result and, indeed, Alaska's statutory scheme legitimately
15 prohibits it.

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19 Moreover, the Party's apparent belief that party labels serve no real purpose and
20 are not relied upon by voters is fundamentally inconsistent with a basic premise of this
21 lawsuit—the existence of independent candidates who would run for the Democratic
22 nomination but who are unwilling to register as Democrats. But if voters do not rely on
23 party labels for information, a theoretical independent candidate would have no reason
24 to be reluctant, much less completely unwilling, to register as a Democrat in order to
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1 access the Democratic primary ballot.

2 The Party suggests that the alleged benefit of opening its primary to candidates
3 who do not share the Party's political views "mirrors the benefit to the party served by
4 the inclusion of independent voters," which has been recognized by both the Alaska and
5 the U.S. Supreme Court. But this is incorrect. By opening the primary to independent
6 voters—or voters of any affiliation as the Party has done—a party can better determine
7 the relative appeal of *its own candidates*—i.e., candidates who are sufficiently aligned
8 with the party's expressed political values to willingly register as party members—
9 among the wider electorate. This has the clear benefit of helping the party identify the
10 candidates in the party most likely to serve as an effective rallying-point for voters, and
11 hence win the general election.
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13 By contrast, there is no comparable benefit to the party when the candidate who
14 wins the party's primary election is a candidate who refuses to embrace any part of that
15 party's platform and shares none of the party's political goals or values. In the former
16 scenario, a party is drawing on a broader base of support in order to field the strongest
17 party candidates who will, given those candidates' affiliation with the party's platform,
18 successfully advocate for that platform once elected. In the latter scenario, however, the
19 Party has abandoned any fidelity to its platform; without that link there is no longer any
20 clear indicator of what the Party is advocating for; and voter choice becomes
21 increasingly fragmented as the party bestows state-conferred advantages on any number
22 of candidates who might appear—regardless of the seriousness of any given candidacy
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1 or the candidates' political beliefs and goals.³⁵

2 In effect, the Party argues that its associational rights include the right to
3 associate with candidates who do not actually want to be associated with the Party, but
4 who would like to use the state-run primary election to get on the general election ballot
5 rather than gathering signatures as currently required to do.³⁶ Nothing in federal or state
6 case law requires this Court to adopt such an expansive view of free association rights
7 or such a bizarre interpretation of internal party affairs.

9 **B. The statute does not severely burden the Party's associational rights.**

10 The State's motion for summary judgment cited numerous federal precedents
11 supporting its view that candidate affiliation requirements like AS 15.25.030 do not
12 severely burden political parties' associational rights. In opposition, the Party argues
13 that these cases are not persuasive, relying on immaterial distinctions and
14 mischaracterizations of the facts and holdings.

15 First, the Party attempts to distinguish *Timmons v. Twin Cities Area New Party*,³⁷
16 a case in which the Supreme Court held that Minnesota's antifusion law did not violate
17 a party's associational rights, by arguing that fusion candidates are "significantly
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20 ³⁵ *Lubin v. Panish*, 415 U.S. 709, 715 (1974) ("A procedure inviting or permitting
21 every citizen to present himself to the voters on the ballot without some means of
22 measuring the seriousness of the candidate's desire and motivation would make rational
23 voter choices more difficult because of the size of the ballot and hence would tend to
24 impede the electoral process. . . . The means of testing the seriousness of a given
25 candidacy may be open to debate; the fundamental importance of ballots of reasonable
26 size limited to serious candidates with some prospects of public support is not.").

³⁶ See AS 15.25.140 *et seq.*

³⁷ 520 U.S. 351 (1997).

1 different” than independent candidates running in the Democratic primary because
2 fusion candidates would “appear on the ballot of more than one party,” rather than only
3 on the Democratic ballot. [Party’s Opp. at 26] But the Party misunderstands both the
4 facts in *Timmons* and the concept of a fusion candidate. The candidate in *Timmons* was
5 not trying to run in two separate primary elections—he had already been selected as the
6 nominee of two different parties and was seeking to be listed on the general election
7 ballot as the candidate of both parties.³⁸ Moreover, the Court’s explanation for its
8 holding—that Minnesota could ban fusion candidates without violating parties’ First
9 Amendment associational rights—has nothing to do with the number of ballots on
10 which the candidate might appear. Rather, the Court held that while the party had a right
11 to select its own candidate, its “standard bearer,” the party was not “absolutely entitled
12 to have its nominee appear on the ballot as that party’s candidate.”³⁹ A particular
13 candidate might be left off the ballot because of ineligibility, unwillingness to run, or a
14 desire to appear as the candidate for a different party.⁴⁰ The court noted that the party
15 was “free to try to convince” the candidate to choose to be that party’s candidate rather
16 than that of another party.⁴¹ But the fact that “a particular individual may not appear on
17 the ballot as a particular party’s candidate does not severely burden that party’s
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23 ³⁸ *Timmons*, 520 U.S. at 354.

24 ³⁹ *Id.* at 359.

25 ⁴⁰ *Id.*

26 ⁴¹ *Id.* at 360.

1 associational rights.”⁴²

2 Thus, the Party is wrong to assert that “[n]othing in *Timmons* suggests that the
3 burden of candidate qualification requirements is presumptively minimal [or] that such
4 requirements cannot significantly burden a political party’s associational rights.”
5 [Party’s Opp. at 27] To the contrary, the Supreme Court said *exactly that*: “That a
6 particular individual may not appear on the ballot as a particular party’s candidate does
7 not severely burden that party’s associational rights.”⁴³ And in this case, any such
8 burden is less severe because the Party is not even seeking to associate with a *particular*
9 candidate, but only a hypothetical one so vaguely described—independent but unwilling
10 to register as a Democrat yet interested in being on the Democratic primary ballot—that
11 there is no guarantee that if such a candidate actually emerges, the Party will want to
12 support him or her. Moreover, if the Party does support this hypothetical candidate, the
13 Party remains “free to try to convince” the candidate to register as a Democrat in order
14 to compete for the Democratic Party nomination.
15

16 The Party also argues that *Timmons* is distinguishable because “the number of
17 candidates affected was quite small: it only restricted ‘those few individuals who both
18 have already agreed to be another party’s candidate and also, if forced to choose,
19 themselves prefer that other party.’” [Party’s Opp. at 26] But the number of candidates
20 affected by AS 15.25.030 is far smaller: indeed, it is currently zero. In *Timmons*, the
21 plaintiff party had an actual candidate that it wished to support; here, the party has none.
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25 ⁴² *Id.* at 359.

26 ⁴³ *Id.*

1 And although the Party argues that AS 15.25.030 “rules out *all* Undeclared and Non-
2 Partisan candidates from participating in the ADP’s primary,” this is incorrect—any
3 such candidate need only register as a Democrat to run in the Democratic primary. At
4 most, AS 15.25.030(a), like the law in *Timmons*, only affects “those few individuals
5 who both” are registered independents “and also, if forced to choose, themselves prefer”
6 to remain that way and seek access to the general election ballot by gathering
7 signatures.⁴⁴ Thus, under *Timmons*, the party-membership requirement does not
8 severely burden the Party’s rights.
9

10 Similarly, although the Party suggests that the court in *Libertarian Party of*
11 *Michigan v. Johnson* did not base its decision “on the idea that candidate qualification
12 requirements always only impose a minimal burden on a party’s associational rights, but
13 rather, that under certain circumstances the burden is not severe,” the quoted language
14 from that case supports the State’s position. [Party’s Opp. at 27-28] The court pointed
15 out that “[t]he Supreme Court has held that laws having the same effect as the Michigan
16 sore-loser law, *i.e. precluding a particular candidate from placing his or her name on*
17 *the ballot under certain circumstances*, do not place severe burdens on voters’ or
18 candidates’ associational rights.”⁴⁵ Alaska’s law has the same effect as Michigan’s sore-
19 loser law: it precludes particular candidates—those who are not registered party
20 members—from placing their names on the party’s primary ballot.
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24 ⁴⁴ *Id.* at 363.

25 ⁴⁵ *Libertarian Party of Michigan v. Johnson*, 905 F.Supp.2d 751, 759 (E.D. Mich.
26 2012).

1 Although the Party asserts that the laws at issue in *Timmons* and *Libertarian*
2 *Party of Michigan* did not involve “the categorical ideological test that the party-
3 membership restriction applies here,” this is incorrect. [Party’s Opp. at 28] To the
4 contrary, the anti-fusion law in *Timmons* had precisely the same effect in that case as the
5 candidate eligibility statute has here: it prevented a party from nominating an individual
6 who was already identified with a different party or political identity as its candidate in
7 the general election, just as here the Democratic Party is prevented from nominating
8 candidates who are already identified as independents and who wish to retain that
9 identity as its candidate in the general election.
10

11 Similarly, the Party’s argument that *South Dakota Libertarian Party v. Gant* is
12 “unpersuasive” focuses on the fact that the Libertarian Party also required candidates to
13 be registered members at the time of their nomination, so the district court did not
14 address the Democratic Party’s allegedly distinct “associational interest in independent
15 candidates.” [Party’s Opp. At 29] But the Party does not dispute that the court in *South*
16 *Dakota Libertarian Party* held that the State’s party-membership requirement “is only a
17 slight burden on the party’s associational rights and does not justify strict scrutiny of the
18 law.”⁴⁶ And it is illogical to argue that a political party’s interest in associating with
19 independent candidates could be stronger than its interest in associating with candidates
20 who are *actually party members*. [Party’s Opp. at 28-29]
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23 Finally, the Party suggests that because the Alaska Supreme Court has indicated
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25 ⁴⁶ *South Dakota Libertarian Party v. Gant*, 60 F.Supp.3d 1043, 1049 (D.S.D.
26 2014).

1 that “the results we derive under the Alaska Constitution *need not* correspond with those
2 the Supreme Court might reach under the federal constitution,”⁴⁷ this Court should find
3 that the party-membership requirement places a substantial burden on the Party’s
4 associational rights. [Party’s Opp.at 30, emphasis added] But the fact that the Alaska
5 constitution *may* provide broader protection than the federal constitution is not an
6 argument that in any particular situation it does. And the Party’s only argument that it
7 should—that the benefits that flowing from allowing non-party-member voters to
8 participate in a party primary “also accrue from inviting participation by independent
9 candidates”⁴⁸—is plainly incorrect, as explained above.⁴⁹

11
12 **C. The party-membership requirement serves the State’s interests.**

13 The Party vastly understates the importance of the party-membership
14 requirement to the State’s interests. Specifically, the Party conflates and confuses the
15 support necessary to help candidates reach the general election ballot and that required
16 to attain official political party status in Alaska. The Party’s approach to political party
17 identity would not only strip party labels of meaning and confuse voters—it would
18 effectively destabilize the foundation of Alaska’s political party system.

19
20 **1. The party-membership requirement is integral to the privileged
21 status granted to parties that establish a modicum of public
22 support and to the stability of the party system.**

23 The Party argues that the party-membership requirement does not serve the State

24 ⁴⁷ *State v. Green Party of Alaska*, 118 P.3d 1054, 1061 (Alaska 2005).

25 ⁴⁸ Party’s Opp. at 30-31.

26 ⁴⁹ *See supra* at 20-21.

1 interest in ensuring that political parties enjoy a modicum of public support in order to
2 establish official political party status with all of its attendant privileges. [Opp. at 34]
3 But the Party fails to step back and evaluate the electoral system as a whole. It
4 complains that the State “provides no compelling basis for why the fact that an
5 individual is a registered member of a political party as compared to being the party’s
6 nominee is important to gauging whether the party has a modicum of community
7 support,” reasoning that “there is no reason to treat a vote for a candidate differently for
8 determining support for the party . . . based on whether that candidate is a registered
9 member of that party, as opposed to chosen as a candidate via the party’s primary
10 election mechanism. Only the latter is significant for determining whether the candidate
11 enjoys the party’s support.” [Opp. at 34-35]

12 This makes no sense. As the Party repeatedly acknowledges, any voter—even
13 members of the Republican Party—is permitted to vote in the Democratic primary.
14 There is no reason to suppose that an independent candidate who wins a Democratic
15 primary but is unwilling to register as a Democrat represents support for the Party.
16 Indeed, such a candidate has expressly declined to associate with the Party and its
17 platform. Implicit in such a candidate’s refusal to become a Democrat is the candidate’s
18 assumption that the Democratic Party membership label would be detrimental in some
19 way. Votes for such candidates plainly do not constitute support for parties that
20 nominated them.

21 As the State explained in its opening motion, candidates demonstrate the
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1 requisite minimum support to earn their place on the general election ballot either by
2 collecting a specific number of signatures in support of their candidacy or by winning a
3 party primary election. The statutory scheme assumes that a party primary election
4 winner will enjoy a minimal level of support in the general election—even if the
5 primary was uncontested and few voters participated—based on (1) the *candidate's*
6 *membership in the party*, (2) the implication of shared political values that that
7 membership represents, and (3) the statewide support for the party evidenced either by
8 the number of registered members or votes won by the party's candidate in the most
9 recent statewide election. Contrary to the Party's contention, the party-membership
10 requirement is an essential component of this scheme. If a candidate is not a member of
11 the party, then the support enjoyed by the party is no guide at all to the support that
12 might be enjoyed by the candidate.

15 Nor should the Party's observation that anyone can register as a party member
16 alter this Court's analysis. While there are no guarantees that a party member
17 necessarily shares all, or indeed any, of the values of the Party, there is also no reason to
18 suppose that party membership is a worthless proxy for political values. Indeed,
19 although the Party takes the surprising position that party labels are essentially
20 meaningless,⁵⁰ this is unsupported by any evidence or legal authority and is inconsistent
21 with this lawsuit: if political affiliations and labels are unimportant, then an independent
22 candidate should have no reason to be reluctant to take on the Democratic Party label by
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25 _____
26 ⁵⁰ See Party's Opp. at 23-24, 35-36.

1 registering as a party member in order to run in the primary. There would also be no
2 reason why the Party would assert, as it does in its opposition, that it has an interest in
3 associating itself with candidates who want to label themselves “independent” as
4 opposed to “Democratic.” [Party’s Opp. at 29]
5

6 In sum, although party labels may not be a uniformly reliable indicator of a
7 voter’s or candidate’s political philosophy, they remain important to voters and
8 candidates alike. No constitutional principle prohibits the State either from structuring
9 its electoral system on the foundation of the party system or from attributing party
10 support to votes cast in favor of candidates who are members of—and therefore appear
11 to represent—the parties’ political ideologies. The party-membership requirement is a
12 key component of that system and should be upheld.
13

14 **2. Dismantling the party-membership requirement will sow voter**
15 **confusion and undermine ballot integrity.**

16 The Party casually dismisses the State’s interest in fairly and effectively
17 administering elections, arguing that voters are not likely to be confused by candidates
18 who declare themselves to be independent yet are claimed by the Democratic Party as
19 Democratic nominees, because “labels are a poor proxy for ideology” and, in any event,
20 voters can rely on the fact that a candidate won the Democratic primary as an indicator
21 of the candidate’s values. [Opp. at 37] But the latter contention is plainly untrue, since
22 anyone may vote in the Democratic primary; and the former is nothing more than the
23 Party’s unsupported, cynical characterization of the state of American politics.
24 Moreover, even if the Party’s dubious assumptions were true, it seems wholly oblivious
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1 to the potential problems that its new rule would unleash.

2 For example, the Alaska Democratic Party shares a ballot with the Alaska
3 Libertarian Party and the Alaskan Independence Party, known as the combined party
4 ballot.⁵¹ This ballot lists candidates with their party affiliations under each office for
5 which nominees are being elected in the primary.⁵² On the ballot, the party affiliation
6 informs voters of both the candidates' party membership and the primary election in
7 which the candidate is running, because they are the same. As the Ninth Circuit recently
8 noted in rejecting a challenge to a law that prohibited a candidate from using the label
9 "independent" on the ballot, "[t]he term "Independent," if listed next to a candidate's
10 name on a ballot, might be confused with the name of a political party, such as the
11 "American Independent" party—one of California's "qualified" political parties."⁵³
12 Here, the Party does not explain how the State should describe the independent
13 candidate on the ballot so as to adequately inform voters which primary they are voting
14 in and the political affiliation—or lack thereof—of the candidate while still avoiding
15 any possible confusion with the Alaska Independence Party's primary and candidates.
16 Nor does it indicate how the "independent" candidate selected as the Democratic Party's
17 nominee for office should be described on the general election ballot, so as to protect
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23 ⁵¹ See e.g., a sample primary election ballot from the 2014 primary election at
<http://www.elections.alaska.gov/doc/sb/14PRIM/ADL/hd09sample.pdf>

24 ⁵² Sample ballots from previous elections can be found on the Division of
25 Elections' website at <http://www.elections.alaska.gov/Core/sampleballots.php>

26 ⁵³ *Chamness v. Bowen*, 722 F.3d 1110, 1118 (9th Cir. 2013).

1 the State's "important regulatory interests"⁵⁴ including "prevent[ing] misrepresentation
2 and electoral confusion."⁵⁵

3 The State is entitled to regulate elections so that it may provide voters with a
4 ballot that is neither misleading nor confusing with respect to the political affiliations—
5 and thus the political goals and values—of the candidates. The party-membership
6 requirement serves that interest.

7
8 Finally, the Party contends that "Alaska's high proportion of independent voters
9 indicates less reliance on party identity as a proxy for beliefs and values than the State's
10 arguments would imply." [Opp. at 38] But this simply does not follow: the high
11 proportion of independent voters in Alaska suggests that many Alaskans, finding that
12 the political parties do not adequately represent their political views, decline to label
13 themselves as party members, not that the labels have less meaning than the State
14 believes. Indeed, if voters really believed that "labels are a poor proxy for ideology,"
15 any independent candidate wishing to take advantage of the Democratic primary as an
16 alternate route to the general election ballot could have no conceivable reason to resist
17 registering as a Democrat in order to do so.

18
19
20 **3. The party-membership requirement serves the State's interest in**
21 **the stability of its political system and the preservation of political**
22 **parties as viable groups.**

23 The Party suggests that the Alaska Supreme Court's decision in *Green Party*
24 forecloses the State's reliance on its interest in the party system as a justification for the

25 ⁵⁴ *Timmons*, 520 U.S. at 358.

26 ⁵⁵ *Norman v. Reed*, 502 U.S. 279, 290 (1992).

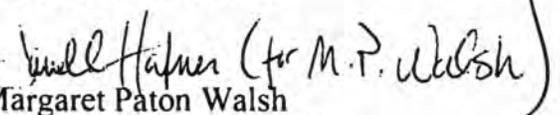
1 party-membership requirement. [Party's Opp. at 38-39] But the Party's argument relies
2 on its superficial understanding of the implications of severing the ideological link
3 between a party and its primary candidates and its cynical view of the importance of
4 shared ideology and the utility of party labels. But under the Party's rules an
5 independent candidate with no connection to the Democratic Party could win the
6 Democratic nomination without winning the vote of a single Democratic voter
7 rendering the notion of a Democratic primary meaningless and threatening the stability
8 of Alaska's party system. The party-membership requirement serves as a bulwark
9 against the disintegration of parties in Alaska and amply justifies the minimal burden on
10 the Party's associational rights.
11

12 **V. CONCLUSION**

13 Because the Party's associational right to allow independent candidates to run in
14 its primary is questionable at best and is only minimally burdened by the party-
15 membership requirement, and because that requirement serves important state interests
16 in the stability of the party system and the fair and effective administration of elections,
17 AS 15.25.030 is a constitutionally permissible election regulation and should be upheld.
18 Therefore, the State asks this Court to grant its motion for summary judgment.
19
20

21 DATED: August 28, 2017.

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AB

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ALASKA DEMOCRATIC PARTY,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 1JU-17-563 CI
Judge: Philip M. Pallenberg

**THE ALASKA DEMOCRATIC PARTY'S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

(Dated: September 14, 2017)

In attempting to justify AS 15.25.030(a)(16)'s burden on the ADP's associational rights, the State has defended the requirement that a candidate be "registered to vote as a member of the political party whose nomination is being sought" as an ideological litmus test upon which the fate of Alaska's political system rests. The State warns of dire consequences if a political party is allowed to associate through its primary election with a candidate who has not registered to vote as a member of that party. Without the requirement, candidates who utterly reject the party's beliefs will make it on to the primary ballot. Those candidates will lack a connection to the party's level of popular support.

ADP'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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They will exploit the party's recognized status to secure a position on the general election ballot. Therefore, the State reasons, the requirement that a candidate be registered to vote as a member of the political party whose nomination is sought is the very "foundation of the State's party system" and "plays a central role in ensuring that candidates have the requisite modicum of public support to obtain access to the general election ballot."¹

The State's exaggeration of the utility and importance of the requirement is unsupportable. Relative to the operation of the primary election itself, the requirement that a candidate be registered to vote as a member of the party whose nomination is sought provides neither protection from ideological renegades, nor any additional assurance that a candidate enjoys a modicum of public support. There is nothing printed on a primary ballot that distinguishes the beliefs of candidate A, a registered member of the ADP, from the beliefs of candidate B, also a registered member, even if their beliefs are diametrically opposed.² Yet, Alaska has relied on primary election voters to distinguish and decide between those two candidates, and accepts their decision as demonstrative of a "modicum of public support" regardless of the total number of votes cast. Indeed, in order for a "modicum of public support" to mean anything in the primary election context, it must relate to victory at the ballot box, not the voter registration of the candidate. The former requires actually winning some amount of support, the latter requires none. The legitimacy

¹ See SOA's Opposition to the ADP's Motion for Summary Judgment, 1-2.

² See, e.g., sample ADP 2016 Primary Election and General Election ballots for House Districts 3, 26, and 40 are attached as Exhibits 1 (Primary) and 2 (General) to this Reply. These ballots, and sample ballots for all other districts are available at http://www.elections.alaska.gov/Core/Archive/SampleBallot_2016_Primary.php, and <http://www.elections.alaska.gov/Core/SampleBallotLanguages.php?year=2016&cbxElecti on=General&cbxLanguage=English>.

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of the resulting general election candidacy flows from victory in the primary election, not from the label next to the name.

In the framework of interests that the State has identified as being central to the requirement's function—ensuring that a candidate who makes it to the general election represents the ideology of a party's members and demonstrates a modicum of public support—it is the primary election itself, not the registered-to-vote-as-a-member requirement, that is the true foundation of Alaska's political party system. It is at the primary election that voters decide who the party will support in the general election. In doing so, they necessarily pass judgment on which candidate's ideology best represents the party. The winning number of votes show that the candidate has the requisite modicum of support. While it is true that a party can make efforts to endorse a candidate outside of the primary election, such decisions lack the input and demonstration of support that comes from the selection of a candidate by the broader pool primary election voters. A candidate chosen through the primary election is more valuable to the party: he or she has been chosen by a competitive process, reflects a broader base of support, and is thus more likely to be elected and advance the party's political goals.

In limiting the ADP's ability to have its primary voters give their input on candidates who have not registered to vote as a member of a political party, the State has drawn an ideological border around the ADP across which no candidate can pass without registering to vote as a member of the ADP, and thus satisfy the State that the candidate's beliefs are reflective of the ADP's. Unlike other candidate qualifications, AS 15.25.030(a)(16) is unique in that the State's asserted interest in the requirement is that it

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gauges whether the candidate is sufficiently *ideologically* representative of a political party to be qualified to run to be that party's nominee.

In the State's view, either a candidate is willing to register to vote as a member of the ADP, or that candidate is unwilling to associate with the party. In the latter case, the State contends that there is no association. This is a false dichotomy. The State incorrectly assumes that political association is linear, and that voter registration is a necessary prerequisite to substantial association. The law says otherwise. The Supreme Court has recognized that "the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important."³ The choice to run in the ADP primary is a choice to participate in the ADP's affairs. It is a form of association. In many ways, it is a more intense and more involved form of association than registering to vote as a member.

The ADP has chosen to define its associational boundaries to recognize the value in this form of association. It has changed its rules to encourage and allow candidates who are not registered to vote as members of any political party, but choose to associate with the ADP by competing for its nomination to elected office. This association requires commitment from both sides. The ADP is committing to support the unregistered candidate over candidates who are registered to vote as members of the ADP should the candidate win the primary. The candidate is committing to the primary election as her only route, other than a write-in campaign, to the general election ballot. And, to make it to that general election, she will have to convince the ADP's primary voters to choose her over

³ See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215 (1986).

other unregistered candidates, and candidates who are registered to vote as members of the ADP. If she is able to do so, it will be because the ADP's primary voters determine that she "best represents their ideologies and preferences,"⁴ and she will have necessarily demonstrated a modicum of public support for her candidacy.

In defending AS 15.25.030(a)(16), the State has asserted that it may mandate that only candidates who register to vote as a member of the ADP can best represent the ideologies and preferences of the ADP and its primary voters. By imposing this ideological test on the ADP, in direct conflict with the ADP's rules, the State has restricted the ADP's associational rights at the critical juncture of the primary election. The primary is the process through which the ADP identifies the candidates that best represent the ideologies and preferences of the voters in its primary election. The candidates identified through this process are those most likely to succeed in advancing those ideologies and preferences in the general election. The State's intrusion in this domain severely burdens the ADP's associational rights. The government dictating acceptable ideology to a political association is antithetical to the rights guaranteed by the First Amendment and Alaska Constitution Article I, sections 5 and 6.

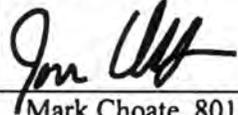
By contrast, the registered-to-vote-as-a-member does nothing to advance the interests the State has identified. It comes nowhere near proving itself as the "foundation" of Alaska's party system. There is no logical basis for its supposed "central role" in ensuring that a candidate has a "modicum of public support" relative to the primary election itself. The State has no valid interest in interfering with the ADP's ideological

⁴ See *State v. Green Party of Alaska*, 118 P.3d 1054, 1066 (Alaska 2005).

boundaries, and any valid interests it has are not served by AS 15.25.030(a)(16) as applied to the ADP. Accordingly, the ADP's Motion for Summary Judgment should be granted.

DATED: Thursday, September 14, 2017 at Brooklyn, New York.

CHOATE LAW FIRM LLC
Attorneys for Plaintiff

By: 
Mark Choate, 8011070
Jon Choate, 1311093

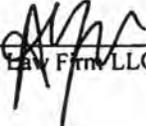
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Email: lawyers@choatelawfirm.com

Certificate of Service

I certify that a copy of the foregoing was served on the undersigned counsel of record on this 14th day of Sept., 2017 via
 US Mail [] Fax Email
[] Courtbox

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Choate Law Firm LLC

ADP'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT
Alaska Democratic Party v. State, 1JU-17-563 CI
Page 6 of 6

Exhibit 1
Sample 2016 Primary Election Ballots

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ADP'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT
Alaska Democratic Party v. State, 1JU-17-563 CI
Exhibit 1

SAMPLE BALLOT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one.
A vote which has been erased or changed will not be counted.



State of Alaska Official Ballot Primary Election, August 16, 2016

HD 3

Alaska Democratic Party
Alaska Libertarian Party
Alaskan Independence Party

Instructions: To vote, completely fill in the oval next to your choice, like this: ●

United States Senator (vote for one)	
<input type="radio"/> Stevens, Cean	Libertarian
<input type="radio"/> Blatchford, Edgar	Democrat
<input type="radio"/> Metcalfe, Ray	Democrat
United States Representative (vote for one)	
<input type="radio"/> Lindbeck, Steve	Democrat
<input type="radio"/> McDermott, Jim C.	Libertarian
<input type="radio"/> Watts, Jon B.	Libertarian
<input type="radio"/> Hibler, William D. "Bill"	Democrat
<input type="radio"/> Hinz, Lynette "Moreno"	Democrat
State Senator District B (vote for one)	
<input type="radio"/> Hopkins, Luke	Democrat
State Representative District 3 (vote for one)	
<input type="radio"/> Sinclair, Christina M.	Democrat

SAMPLE BALLOT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one.
A vote which has been erased or changed will not be counted.



**State of Alaska Official Ballot
Primary Election, August 16, 2016**

HD 26

Alaska Democratic Party
Alaska Libertarian Party
Alaskan Independence Party

Instructions: To vote, completely fill in the oval next to your choice, like this: ●

United States Senator (vote for one)	
<input type="radio"/> Metcalfe, Ray	Democrat
<input type="radio"/> Stevens, Cean	Libertarian
<input type="radio"/> Blatchford, Edgar	Democrat
United States Representative (vote for one)	
<input type="radio"/> Hibler, William D. "Bill"	Democrat
<input type="radio"/> Hinz, Lynette "Moreno"	Democrat
<input type="radio"/> Lindbeck, Steve	Democrat
<input type="radio"/> McDermott, Jim C.	Libertarian
<input type="radio"/> Watts, Jon B.	Libertarian
State Representative District 26 (vote for one)	
<input type="radio"/> Goodell, Bill	Democrat

SAMPLE BALLOT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. **A vote which has been erased or changed will not be counted.**



**State of Alaska Official Ballot
Primary Election, August 16, 2016**

HD 40

Alaska Democratic Party
Alaska Libertarian Party
Alaskan Independence Party

Instructions: To vote, completely fill in the oval next to your choice, like this: ●

United States Senator (vote for one)	
<input type="radio"/> Blatchford, Edgar	Democrat
<input type="radio"/> Metcalfe, Ray	Democrat
<input type="radio"/> Stevens, Cean	Libertarian
United States Representative (vote for one)	
<input type="radio"/> Watts, Jon B.	Libertarian
<input type="radio"/> Hibler, William D. "Bill"	Democrat
<input type="radio"/> Hinz, Lynette "Moreno"	Democrat
<input type="radio"/> Lindbeck, Steve	Democrat
<input type="radio"/> McDermott, Jim C.	Libertarian
State Senator District T (vote for one)	
<input type="radio"/> Olson, Donald C. "Donny"	Democrat
State Representative District 40 (vote for one)	
<input type="radio"/> Westlake, Dean	Democrat
<input type="radio"/> Nageak, Benjamin P. "Piniqluk"	Democrat

Exhibit 2
Sample 2016 General Election Ballots

CHOATE LAW FIRM LLC
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ADP'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT
Alaska Democratic Party v. State, 1JU-17-563 CI
Exhibit 2

SAMPLE BALLOT FRONT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.



**State of Alaska Official Ballot
General Election
November 8, 2016**

HD3-JD4

Instructions: To vote, completely fill in the oval next to your choice, like this:
 Please be sure to vote both sides of the ballot

<p align="center">United States President Vice President (vote for one)</p> <p><input type="radio"/> Castle, Darrell L. Bradley, Scott N. Alaska Constitution</p> <p><input type="radio"/> Clinton, Hillary Kaine, Tim Democrat</p> <p><input type="radio"/> De La Fuente, Roque "Rocky" Steinberg, Michael Non Affiliated</p> <p><input type="radio"/> Johnson, Gary Weld, Bill Libertarian</p> <p><input type="radio"/> Stein, Jill Baraka, Ajamu Green</p> <p><input type="radio"/> Trump, Donald J. Pence, Michael R. Republican</p> <p><input type="radio"/> Write-in</p>	<p align="center">State Representative District 3 (vote for one)</p> <p><input type="radio"/> Sinclair, Christina M. Democrat</p> <p><input type="radio"/> Wilson, Tammie Republican</p> <p><input type="radio"/> Olson, Jeanne L. Non Affiliated</p> <p><input type="radio"/> Write-in</p>
<p align="center">United States Senator (vote for one)</p> <p><input type="radio"/> Metcalfe, Ray Democrat</p> <p><input type="radio"/> Miller, Joe Libertarian</p> <p><input type="radio"/> Murkowski, Lisa Republican</p> <p><input type="radio"/> Stock, Margaret Non Affiliated</p> <p><input type="radio"/> Craig, Breck A. Non Affiliated</p> <p><input type="radio"/> Gianoutsos, Ted Non Affiliated</p> <p><input type="radio"/> Write-in</p>	<p align="center">Ballot Measure No. 1- 15PFVR An Act Allowing Qualified Individuals to Register to Vote When Applying for a Permanent Fund Dividend</p> <p align="center">Ballot Measure No. 1</p> <p>This act would instruct the Division of Elections to register a qualified Alaskan to vote when applying for the permanent fund dividend (PFD). If a person registers to vote for the first time through a PFD application, the Division of Elections would compare the person's information to state records to ensure that the person is an eligible voter. The Division of Elections would let the citizen know if he or she has been added to the state registration list, or if the person's current voting address does not match the one provided on the PFD form. In that case, the person could change their voter registration address. The notice also would allow an applicant to request removal from the registration list. Thus, using the data from the PFD form, the Division of Elections would register a qualified Alaskan to vote unless he or she opts out. The notice would also allow a person to register with a political party. Voter information is already confidential under existing state law.</p> <p>Should this initiative become law?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p align="center">United States Representative (vote for one)</p> <p><input type="radio"/> Souphanavong, Bernie Non Affiliated</p> <p><input type="radio"/> Young, Don Republican</p> <p><input type="radio"/> Lindbeck, Steve Democrat</p> <p><input type="radio"/> McDermott, Jim C. Libertarian</p> <p><input type="radio"/> Write-in</p>	<p align="center">Ballot Measure No. 2 Allow Debt for Postsecondary Student Loans Senate Joint Resolution No. 2</p> <p align="center">Ballot Measure No. 2</p> <p>This amendment to Article IX, section 8 of the Alaska Constitution would expand the State's authority to incur debt by letting the State issue general obligation bonds backed by the state for postsecondary student loans.</p> <p>Should this constitutional amendment be adopted?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>
<p align="center">State Senator District B (vote for one)</p> <p><input type="radio"/> Hopkins, Luke Democrat</p> <p><input type="radio"/> Coghill, John B. Jr. Republican</p> <p><input type="radio"/> Write-in</p>	<p align="center">Supreme Court</p> <p align="center">Justice Bolger</p> <p>Shall Joel H. Bolger be retained as justice of the supreme court for ten years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p> <p align="center">Justice Maassen</p> <p>Shall Peter J. Maassen be retained as justice of the supreme court for ten years?</p> <p><input type="radio"/> YES <input type="radio"/> NO</p>

Continue Voting on Next Side

ADP's Reply in Support of Motion for Summary Judgment, Exhibit 2, Page 1 of 6

FRONT Card 49 SEQ# 1 English

Exc. 195

Exhibit 2
page 000329 of 6

SAMPLE BALLOT BACK

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.

Instructions: To vote, completely fill in the oval next to your choice, like this:
Please be sure to vote both sides of the ballot

Court of Appeals
Judge Allard Shall Marjorie K. Allard be retained as judge of the court of appeals for eight years? <input type="radio"/> YES <input type="radio"/> NO
Fourth Judicial District Superior Court
Judge Blankenship Shall Douglas L. Blankenship be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO
Judge Herbison Shall Bethany S. Herbison be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO
Judge Kauvar Shall Jane F. Kauvar be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO
Judge MacDonald Shall Michael A. MacDonald be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO
Judge McConnell Shall Dwayne W. McConnell be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO
Fourth Judicial District District Court
Judge Christian Shall Matthew C. Christian be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO
Judge Hammers Shall Patrick S. Hammers be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO
Judge Peters Shall Nathaniel Peters be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO

ADP's Reply in Support of Motion for Summary Judgment, Exhibit 2, Page 2 of 6

BACK Card 49 SEQ# | English

Exc. 196

Exhibit 2
page 003806

SAMPLE BALLOT FRONT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.



State of Alaska Official Ballot
General Election
November 8, 2016

HD26-JD3

Instructions: To vote, completely fill in the oval next to your choice, like this: ●
 Please be sure to vote both sides of the ballot

<p>United States President Vice President (vote for one)</p> <p><input type="radio"/> Castle, Darrell L. Bradley, Scott N. Alaska Constitution</p> <p><input type="radio"/> Clinton, Hillary Kaine, Tim Democrat</p> <p><input type="radio"/> De La Fuente, Roque "Rocky" Steinberg, Michael Non Affiliated</p> <p><input type="radio"/> Johnson, Gary Weld, Bill Libertarian</p> <p><input type="radio"/> Stein, Jill Baraka, Ajamu Green</p> <p><input type="radio"/> Trump, Donald J. Pence, Michael R. Republican</p> <p><input type="radio"/> _____ Write-in</p>	<p>Ballot Measure No. 1- 15PFVR An Act Allowing Qualified Individuals to Register to Vote When Applying for a Permanent Fund Dividend</p> <p>Ballot Measure No. 1</p> <p>This act would instruct the Division of Elections to register a qualified Alaskan to vote when applying for the permanent fund dividend (PFD). If a person registers to vote for the first time through a PFD application, the Division of Elections would compare the person's information to state records to ensure that the person is an eligible voter. The Division of Elections would let the citizen know if he or she has been added to the state registration list, or if the person's current voting address does not match the one provided on the PFD form. In that case, the person could change their voter registration address. The notice also would allow an applicant to request removal from the registration list. Thus, using the data from the PFD form, the Division of Elections would register a qualified Alaskan to vote unless he or she opts out. The notice would also allow a person to register with a political party. Voter information is already confidential under existing state law.</p> <p>Should this initiative become law? <input type="radio"/> YES <input type="radio"/> NO</p>
<p>United States Senator (vote for one)</p> <p><input type="radio"/> Gianoutsos, Ted Non Affiliated</p> <p><input type="radio"/> Metcalfe, Ray Democrat</p> <p><input type="radio"/> Miller, Joe Libertarian</p> <p><input type="radio"/> Murkowski, Lisa Republican</p> <p><input type="radio"/> Stock, Margaret Non Affiliated</p> <p><input type="radio"/> Craig, Breck A. Non Affiliated</p> <p><input type="radio"/> _____ Write-in</p>	<p>Ballot Measure No. 2 Allow Debt for Postsecondary Student Loans Senate Joint Resolution No. 2</p> <p>Ballot Measure No. 2</p> <p>This amendment to Article IX, section 8 of the Alaska Constitution would expand the State's authority to incur debt by letting the State issue general obligation bonds backed by the state for postsecondary student loans.</p> <p>Should this constitutional amendment be adopted? <input type="radio"/> YES <input type="radio"/> NO</p>
<p>United States Representative (vote for one)</p> <p><input type="radio"/> McDermott, Jim C. Libertarian</p> <p><input type="radio"/> Souphanavong, Bernie Non Affiliated</p> <p><input type="radio"/> Young, Don Republican</p> <p><input type="radio"/> Lindbeck, Steve Democrat</p> <p><input type="radio"/> _____ Write-in</p>	<p>Supreme Court</p> <p>Justice Bolger Shall Joel H. Bolger be retained as justice of the supreme court for ten years? <input type="radio"/> YES <input type="radio"/> NO</p> <p>Justice Maessen Shall Peter J. Maessen be retained as justice of the supreme court for ten years? <input type="radio"/> YES <input type="radio"/> NO</p>
<p>State Representative District 26 (vote for one)</p> <p><input type="radio"/> Birch, Chris Republican</p> <p><input type="radio"/> Gillespie, David M. Democrat</p> <p><input type="radio"/> _____ Write-in</p>	<p>Court of Appeals</p> <p>Judge Allard Shall Marjorie K. Allard be retained as judge of the court of appeals for eight years? <input type="radio"/> YES <input type="radio"/> NO</p>

Continue Voting on Next Side

ADP's Reply in Support of Motion for Summary Judgment, Exhibit 2, Page 3 of 6

FRONT Card 72 SE0# 1 English

Exc. 197

Exhibit 2
 page 0033 of 6

SAMPLE BALLOT BACK

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.

Instructions: To vote, completely fill in the oval next to your choice, like this: **Please be sure to vote both sides of the ballot**

Third Judicial District Superior Court	Judge Wallace Shall David R. Wallace be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO
Judge Aarseth Shall Eric A. Aarseth be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	Judge Washington Shall Pamela S. Washington be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO
Judge Easter Shall Catherine M. Easter be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	Judge Zwick Shall David L. Zwick be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO
Judge Kristiansen Shall Karl Kristiansen be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Marston Shall Erin B. Marston be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Moran Shall Anna M. Moran be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Rindner Shall Mark Rindner be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Saxby Shall Kevin M. Saxby be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Smith Shall Jack W. Smith be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Judge White Shall Vanessa H. White be retained as judge of the superior court for six years? <input type="radio"/> YES <input type="radio"/> NO	
Third Judicial District District Court	
Judge Dickson Shall Leslie Dickson be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Hanley Shall J. Patrick Hanley be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Henderson Shall Jennifer S. Henderson be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Murphy Shall Margaret L. Murphy be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Schally Shall Daniel Schally be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	
Judge Swideraki Shall Alex M. Swideraki be retained as judge of the district court for four years? <input type="radio"/> YES <input type="radio"/> NO	

ADP's Reply in Support of Motion for Summary Judgment, Exhibit 2, Page 4 of 6

BACK Card 72 SEQ# 1 English

Exc. 198

Exhibit 2
page 4 of 10
000332

SAMPLE BALLOT FRONT

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.



State of Alaska Official Ballot
General Election
November 8, 2016

HD40-JD2

Instructions: To vote, completely fill in the oval next to your choice, like this:
 Please be sure to vote both sides of the ballot

<p align="center">United States President Vice President (vote for one)</p> <p><input type="radio"/> Castle, Darrell L. Bradley, Scott N. Alaska Constitution</p> <p><input type="radio"/> Clinton, Hillary Kaine, Tim Democrat</p> <p><input type="radio"/> De La Fuente, Roque "Rocky" Steinberg, Michael Non Affiliated</p> <p><input type="radio"/> Johnson, Gary Weld, Bill Libertarian</p> <p><input type="radio"/> Stein, Jill Baraka, Ajamu Green</p> <p><input type="radio"/> Trump, Donald J. Pence, Michael R. Republican</p> <p><input type="radio"/> _____ Write-in</p>	<p align="center">State Representative. District 40 (vote for one)</p> <p><input type="radio"/> Westlake, Dean Democrat</p> <p><input type="radio"/> _____ Write-in</p>
<p align="center">United States Senator (vote for one)</p> <p><input type="radio"/> Miller, Joe Libertarian</p> <p><input type="radio"/> Murkowski, Lisa Republican</p> <p><input type="radio"/> Stock, Margaret Non Affiliated</p> <p><input type="radio"/> Craig, Breck A. Non Affiliated</p> <p><input type="radio"/> Gianoutsos, Ted Non Affiliated</p> <p><input type="radio"/> Metcalfe, Ray Democrat</p> <p><input type="radio"/> _____ Write-in</p>	<p align="center">Ballot Measure No. 1- 15PFVR An Act Allowing Qualified Individuals to Register to Vote When Applying for a Permanent Fund Dividend</p> <p align="center">Ballot Measure No. 1</p> <p>This act would instruct the Division of Elections to register a qualified Alaskan to vote when applying for the permanent fund dividend (PFD). If a person registers to vote for the first time through a PFD application, the Division of Elections would compare the person's information to state records to ensure that the person is an eligible voter. The Division of Elections would let the citizen know if he or she has been added to the state registration list, or if the person's current voting address does not match the one provided on the PFD form. In that case, the person could change their voter registration address. The notice also would allow an applicant to request removal from the registration list. Thus, using the data from the PFD form, the Division of Elections would register a qualified Alaskan to vote unless he or she opts out. The notice would also allow a person to register with a political party. Voter information is already confidential under existing state law.</p> <p>Should this initiative become law? <input type="radio"/> YES <input type="radio"/> NO</p>
<p align="center">United States Representative (vote for one)</p> <p><input type="radio"/> Young, Don Republican</p> <p><input type="radio"/> Lindbeck, Steve Democrat</p> <p><input type="radio"/> McDermott, Jim C. Libertarian</p> <p><input type="radio"/> Souphanavong, Bernie Non Affiliated</p> <p><input type="radio"/> _____ Write-in</p>	<p align="center">Ballot Measure No. 2 Allow Debt for Postsecondary Student Loans Senate Joint Resolution No. 2</p> <p align="center">Ballot Measure No. 2</p> <p>This amendment to Article IX, section 8 of the Alaska Constitution would expand the State's authority to incur debt by letting the State issue general obligation bonds backed by the state for postsecondary student loans.</p> <p>Should this constitutional amendment be adopted? <input type="radio"/> YES <input type="radio"/> NO</p>
<p align="center">State Senator District T (vote for one)</p> <p><input type="radio"/> Olson, Donald C. "Donny" Democrat</p> <p><input type="radio"/> _____ Write-in</p>	<p align="center">Supreme Court</p> <p align="center">Justice Bolger</p> <p>Shall Joel H. Bolger be retained as justice of the supreme court for ten years? <input type="radio"/> YES <input type="radio"/> NO</p> <p align="center">Justice Maassen</p> <p>Shall Peter J. Maassen be retained as justice of the supreme court for ten years? <input type="radio"/> YES <input type="radio"/> NO</p>

Continue Voting on Next Side

ADP's Reply in Support of Motion for Summary Judgment, Exhibit 2, Page 5 of 6

FRONT Card #7 SISO# | English

Exc. 199

Exhibit 2
 page 000393 ✓

SAMPLE BALLOT BACK

INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval next to the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve and then take your ballot to the ballot box.

If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.

Instructions: To vote, completely fill in the oval next to your choice, like this:
Please be sure to vote both sides of the ballot

Court of Appeals
Judge Allard
Shall Marjorie K. Allard be retained as judge of the court of appeals for eight years?
<input type="radio"/> YES <input type="radio"/> NO

Filed in the
STATE OF ALASKA
AT JUNEAU
SEP 25 2017

By PS Deputy

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Email: lawyers@choatelawfirm.com

Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ALASKA DEMOCRATIC PARTY,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 1JU-17-563 CI
Judge: Pallenberg, Philip

CHOATE LAW FIRM LLC
424 North Franklin Street | Juneau, Alaska 99801
Phone: (907) 586-4490 | Fax: (888) 856-3894
Email: lawyers@choatelawfirm.com

**NOTICE OF SUPPLEMENTAL SUBMISSION IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO THE STATE'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff submits the attached Affidavit of Paul Thomas in Support of Plaintiff's
Opposition to the State's Motion for Summary Judgment.

DATED: Monday, September 25, 2017 at Juneau, Alaska.

CHOATE LAW FIRM LLC
Attorneys for Plaintiff

By: Jon Choate
Mark Choate, 8011070
Jon Choate, 1311093

SUPPLEMENTAL SUBMISSION re OPPOSITION TO STATE'S MSJ
Alaska Democratic Party v. State, 1JU-17-563 CI
Page 1 of 2

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CHOATE LAW FIRM LLC
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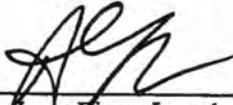
Certificate of Service

I certify that a copy of the foregoing was served on the undersigned counsel of record on this 25 day of September, 2017 via

Email 1st Class Mail Fax

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SEP 25 2017

By PS Deputy

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Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

ALASKA DEMOCRATIC PARTY,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 1JU-17-563 CI
Judge: Pallenberg, Philip

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AFFIDAVIT OF PAUL THOMAS

STATE OF ALASKA)
FIRST JUDICIAL DISTRICT AT JUNEAU) ss.

PAUL THOMAS, being duly sworn upon oath, deposes and states:

1. I am an adult, competent to give testimony, and make this affidavit in support of the Alaska Democratic Party's Opposition to the State of Alaska's Motion for Summary Judgment in the above-captioned matter.

2. I am an Alaska resident, registered to vote in Alaska as a Non-Partisan.

AFFIDAVIT OF PAUL THOMAS
Alaska Democratic Party v. State, 1JU-17-563 CI
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3. I plan to run as an independent candidate for Representative in House District 10 in 2018.

4. If allowed by law to do so, I would run as an independent candidate in the Alaska Democratic Party's 2018 primary election.

FURTHER, AFFIANT SAYETH NAUGHT

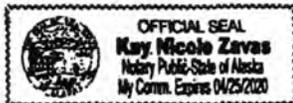
DATED: 9-22-2017, at MVFCU, Alaska.
Sunshine

By: Paul A. Thomas
PAUL THOMAS

SUBSCRIBED AND SWORN TO before me this 22 day of September, 2017
at
MVFCU Sunshine, Alaska.

Mary Zarvas

Notary Public for the State of Alaska.
My Commission Expires: 04/25/20



AFFIDAVIT OF PAUL THOMAS
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