

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ALASKA DEMOCRATIC PARTY; and
ANITA THORNE,

Plaintiffs,

v.

CAROL BEECHER, in her official capacity
as DIRECTOR OF THE DIVISION OF
ELECTIONS; and STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

Case No. 3AN-24-0866.SC1

**VERIFIED COMPLAINT SEEKING DECLARATORY JUDGMENT AND
PRELIMINARY INJUNCTION PURSUANT TO ALASKA
RULE OF CIVIL PROCEDURE 65**

Plaintiffs Alaska Democratic Party and Anita Thorne, by their undersigned
counsel, state:

1. This is an emergency action for declaratory and injunctive relief against
Carol Beecher, in her official capacity as the Director of the Division of Elections, and the
State of Alaska, Division of Elections, to address Defendants' violations of Alaska law
with respect to the candidates slated to appear on the 2024 general election ballot for
Alaska's representative in the U.S. House of Representatives.

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2. Congresswoman Mary Peltola won the August 20 primary election with a clear majority of the votes cast. The next three highest vote-getters were all Republicans. But as an apparent result of last-minute machinations at the expense of Alaska voters, two of those three Republican candidates dropped out, and Defendants certified late Monday that they intended to place the fifth and sixth-place finishers on the general election ballot in their place.

3. Plaintiffs agree that the fifth-place finisher should be placed on the general election ballot under Alaska law. But the sixth-place finisher, Eric Hafner—a New Jersey man currently serving a 20-year federal prison sentence in New York—has no business being placed on the ballot.

4. Alaska law does not provide for the inclusion of the sixth-place primary finisher on the general election ballot under any circumstances. But if it did allow for such inclusion, Mr. Hafner would need to be replaced by the seventh-place finisher: Mr. Hafner is disqualified from representing Alaska in Congress for two reasons. First, because he is not and cannot possibly become an inhabitant of Alaska—as the U.S. Constitution requires—while he is serving a federal prison sentence in New York until 2036. And second, because he failed to list his full residence address on his declaration of candidacy, as Alaska law requires.

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5. Either way, the Court should enjoin the printing of general election ballots with Mr. Hafner's name on them, and order Defendants to comply with Alaska law.

PARTIES

6. Plaintiff Alaska Democratic Party is a statewide organization that represents and organizes Democrats across the state of Alaska. The mission of the Alaska Democratic Party is to help Democrats across the state win races at both the state and federal level. In this election, their preferred and endorsed candidate is Congresswoman Mary Peltola.

7. Plaintiff Anita Thorne is a registered Democrat residing in Anchorage, Alaska. She is a retired court system employee. She is a current volunteer organizer for the Democratic Party of Alaska. Ms. Thorne supports Congresswoman Peltola and plans to vote for her in the upcoming general election.

8. Carol Beecher is the Director of the Alaska Division of Elections, and she is sued in her official capacity only. Under AS 15.15.010, Beecher is the chief elections official for the State and is responsible for the "general administrative supervision over the conduct of state elections, and may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary for the administration of state elections." She is also responsible for the printing and preparation of ballots. *See* AS 15.15.035.

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9. The State of Alaska, Division of Elections is an executive branch agency responsible for the administration of Alaska's elections and enforcement of Alaska's election laws.

JURISDICTION AND VENUE

10. This Court has jurisdiction to award declaratory and injunctive relief under AS 22.10.020 (a, b, c & g).

11. Venue is proper in this Court under Alaska Rule of Civil Procedure 3 and C.

FACTUAL ALLEGATIONS

12. On August 20, 2024, Alaska held its primary for its sole congressional seat.

13. Congresswoman Mary Peltola, a Democrat, won the primary with 50.89% of the votes. Republicans Nicholas Begich and Lieutenant Governor Nancy Dahlstrom, came in second and third, with 26.7% of the votes and 19.9% percent of the votes, respectively. Republican Matthew Salisbury was a distant fourth, with just 0.6% of the votes.

14. Alaska uses a top-four primary system in which the top four vote-getters in the primary election, regardless of partisan affiliation, advance to the general election.

See AS 15.25.100(a).

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15. After the primary, Congresswoman Peltola, Mr. Begich, Lieutenant Governor Dahlstrom, and Mr. Salisbury were therefore slated to advance to the general election.

16. Alaska law provides, however, that “if a candidate nominated at the primary election dies, withdraws, resigns, [or] becomes disqualified from holding office for which the candidate is nominated . . . after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.” AS 15.25.100(c).

17. Apparently fearing the results of an election in which Republican votes were split among three Republican candidates, Lieutenant Governor Dahlstrom withdrew from the general election on Friday, August 23, 2024, and Matt Salisbury withdrew two days ago, on Monday, September 2, 2024.

18. September 2, 2024—the federal Labor Day holiday—was the last possible day in which candidates could withdraw from the ballot under Alaska law. *See* AS 15.25.100(c).

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19. On information and belief, the withdrawals of Lieutenant Governor Dahlstrom and Mr. Salisbury were orchestrated by the Alaska Republican Party in an effort to ensure that only one Republican candidate appears on the general election ballot.

20. The *Alaska Beacon* has reported that these withdrawals are “part of a larger trend this year: In some races with multiple Republicans, candidates are withdrawing in order to consolidate support behind a single Republican.” James Brooks, *Why are some Republican candidates quitting Alaska’s general election? Strategy.*, Alaska Beacon (Aug. 27, 2024), <https://alaskabeacon.com/2024/08/27/why-are-some-republican-candidates-quitting-alaskas-general-election-strategy/>. According to the *Alaska Beacon*, the Alaska Republican Party has orchestrated this strategy in “response to the party’s experience two years ago” when Congresswoman Peltola “defeated Republicans Nick Begich and Sarah Palin” in part because “many Begich voters either failed to rank anyone second or chose Peltola after Begich was eliminated.” *Id.*

21. The *Alaska Beacon* further reports that Republicans have adopted this withdrawal strategy only after their earlier strategy of swaying voters to vote for Republicans failed: “The Republican Party attempted to convince voters to ‘Rank the Red’ in a pre-election campaign, but in the two years since the last election, that approach has been discarded by a significant number of Republicans.” *Id.* According to the *Beacon*,

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instead of continuing to campaign and attempt to persuade voters to vote Republican in the ranked-choice voting system, Republicans are attempting to subvert that system and “recreate the state’s old primary elections system—in which only one candidate from a particular party advances to the general election—through voluntary withdrawals.” *Id.* Lieutenant Governor Dahlstrom and Mr. Salisbury’s withdrawals appear to be a part of that strategy.

22. On the evening of September 2, Director Beecher filled the vacancies created by Lieutenant Governor Dahlstrom’s and Mr. Salisbury’s withdrawals by certifying the candidates who received the fifth and sixth most votes in the primary election to the general election ballot: John Wayne Howe, who received 0.57% of the vote and identifies as a member of the Alaskan Independence Party, and Eric Hafner, who received 0.43% of the vote and identifies as a Democrat.

23. Mr. Hafner placed sixth in the primary with just 467 votes—less than one half of one percent of the 108,407 votes cast in that contest.

24. Director Beecher’s certification two days ago was the first time that Plaintiffs had any reason to believe that Mr. Hafner would potentially be included on the general election ballot.

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25. Although Mr. Hafner identifies as a Democrat, he has no affiliation with Plaintiff Alaska Democratic Party.

26. Based on federal prison records, Mr. Hafner is currently incarcerated in FCI Otisville, a medium security federal prison in Otisville, New York. Mr. Hafner is not slated to be released from federal prison until October 12, 2036.

27. According to the United States Attorney's Office for the District of New Jersey, Mr. Hafner—then a resident of Monmouth County, New Jersey—was sentenced to 240 months in prison in December 2022 for making threatening telephone calls and sending threatening email messages to New Jersey elected officials and public servants.

28. As far as Plaintiffs have been able to determine, Mr. Hafner has never resided in Alaska.

29. The United States Constitution requires that members of the House of Representatives be, “when elected, . . . an Inhabitant of that State” in which they are elected. U.S. Const. Art. I, § 2, cl. 2.

30. Because Mr. Hafner will be incarcerated in federal prison in New York until 2036, Mr. Hafner cannot possibly become an “Inhabitant” of Alaska before the November 5, 2024 general election, nor before January 3, 2025, when members of the 119th Congress elected in the November 2024 general election will be sworn in.

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31. Mr. Hafner therefore is “disqualified from holding [the] office for which [he] is nominated.” AS 15.25.100(c).

32. Mr. Hafner is also not qualified because he failed to properly declare his candidacy. Under AS 15.25.030(a), a “person who seeks to become a candidate in the primary election or a special primary election shall execute and file a declaration of candidacy” that states “the full residence address of the candidate, and the date on which residency at that address began.”

33. Mr. Hafner’s declaration does not include the required residential address. Instead, based on the document posted on the Elections Division’s website, Mr. Hafner listed only an address for Americas Mailbox, a mail forwarding service in South Dakota.¹ Mr. Hafner could not have lived in South Dakota when he filed his declaration in 2024 because he was incarcerated in New York at the time.

34. Despite Alaska’s ranked-choice voting system, some Alaskans vote only for one candidate. As a result, some Alaskans will vote only for Mr. Hafner. Those

¹ See *Eric Hafner Candidate Declaration*, Division of Elections, <https://www.elections.alaska.gov/doc/oep/2024/Hafner>, Eric US Rep Eng 07.01.24PWeb.pdf (last visited Sept. 4, 2024); AMERICA’S MAILBOXES, <https://americasmalbox.com/> (last visited Sept. 4, 2024).

Alaskans will have voted only for an unqualified candidate. And because they voted for only Mr. Hafner, there will be no other qualified candidate for whom their vote can count.

35. Mr. Hafner's presence on the general election ballot will irreparably harm Plaintiff Alaska Democratic Party. The Alaska Democratic Party supports Congresswoman Peltola and has no affiliation whatsoever with Mr. Hafner. His presence on the ballot as a purported Democrat would force Plaintiff Alaska Democratic Party to associate with him against its will and would confuse voters, making it more difficult for Plaintiff Alaska Democratic Party to turn out voters to support Congresswoman Peltola.

36. Mr. Hafner's presence on the general election ballot would also irreparably harm Plaintiff Anita Thorne. Ms. Thorne plans to vote for Congresswoman Peltola and wants Congresswoman Peltola to represent her in Congress. Mr. Hafner's presence on the ballot would divert votes away from Congresswoman Peltola and raise the risk that Ms. Thorne, and all Alaskans, might cast their ballots for a congressional representative who is constitutionally unqualified to represent them.

COUNT I:

Violation of AS 15.25.100(C) Due to Certification of Sixth-Place Primary Candidate to General Election Ballot

37. Plaintiffs incorporate and re-allege paragraphs 1 to 36 by reference.

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38. Alaska law does not authorize, under any circumstances, the inclusion on the general election ballot of a candidate who placed *sixth* in the primary election.

39. To the contrary, AS 15.25.100(c) expressly provides that “if a candidate nominated at the primary election dies, withdraws, resigns, [or] becomes disqualified from holding office for which the candidate is nominated,” only “the candidate who received the *fifth* most votes in the primary election” may be added to the general election ballot.

40. The present text of AS 15.25.100 was enacted by ballot measure. In construing a law adopted by ballot measure, the Court must consider the materials available to Alaska voters when they adopted the measure. *Guerin v. State*, 537 P.3d 770, 780 (Alaska 2023).

41. When Alaska voters adopted AS 15.25.100, they had access to its full text, which included the statement that the fifth-place candidate could advance to the general election under some circumstances, but which never suggested that the sixth-place candidate could do so.

42. If the drafters of AS 15.25.100 had wanted to allow for the possibility of multiple withdrawals and replacements between the primary and general elections, they could easily have drafted AS 15.25.100(c) to accomplish that goal.

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43. For Defendants to include Eric Hafner on the general election ballot would therefore violate AS 15.25.100(c), because Mr. Hafner was the sixth-place finisher, and AS 15.25.100(c) does not allow for the inclusion of the sixth-place finisher on the general election ballot, even if multiple candidates withdraw.

COUNT II:
**Violation of AS 15.25.100(C) Due to Certification of
Eric Hafner, a Disqualified Candidate**

44. Plaintiffs plead Counts II and III in the alternative to Count I.

45. Plaintiffs incorporate and re-allege paragraphs 1 to 36 by reference.

46. Article I, Section 2, Clause 2 of the United States Constitution prohibits anyone from serving as a member of Congress “who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.”

47. Eric Hafner would not be qualified to serve in Congress if elected because he has never resided in Alaska and cannot possibly move to Alaska and become an inhabitant of the State by election day or the first day of the 119th Congress because he is serving a 20-year federal prison sentence until 2036 in New York.

48. AS 15.25.100(c) requires that a replacement candidate be named not only if a candidate slated for inclusion on the general election ballot “withdraws,” but also if

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such a candidate “becomes disqualified from holding the office for which the candidate is nominated.”

49. To the extent that Mr. Hafner would otherwise be included on the general election ballot as a replacement candidate because of the withdrawals of Lieutenant Governor Dahlstrom and Mr. Salisbury, AS 15.25.100(c) required that Mr. Hafner himself be replaced because he is “disqualified from holding the office for which” he is nominated due to his inability to become an inhabitant of Alaska as the U.S. Constitution requires.

50. Under those circumstances, to the extent that AS 15.25.100(c) allows for the naming of a replacement candidate other than “the candidate who received the fifth most votes in the primary election,” Mr. Hafner should himself have been replaced by the seventh-place candidate, Gerald Heikes.

51. Thus, as an alternative argument to Count I, for Defendants to include Eric Hafner on the general election ballot would violate AS 15.25.100(c), because Mr. Hafner should have himself been replaced on the ballot by Mr. Heikes due to Mr. Hafner’s status as a disqualified candidate.

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COUNT III:

**Violation of AS 15.25.030(a) Due to Certification of
Candidate with Deficient Declaration**

52. Plaintiffs plead Counts II and III in the alternative to Count I.

53. Plaintiffs incorporate and re-allege paragraphs 1 to 36 and 45 to 51 by reference.

54. AS 15.25.030(a)(6) mandates that a “person who seeks to become a candidate in the primary election or a special primary election shall execute and file a declaration of candidacy” that lists “the full residence address of the candidate, and the date on which residency at that address began.”

55. Eric Hafner submitted a deficient declaration because his declaration listed only an address for America’s Mailbox, a mail forwarding service, and not a residential address. Moreover, Mr. Hafner’s declaration did not list the date on which residency at that address began.

56. Because Mr. Hafner submitted a deficient declaration, he was not a qualified candidate.

57. Defendants can replace withdrawn candidates only with qualified candidates under AS 15.25.100(c).

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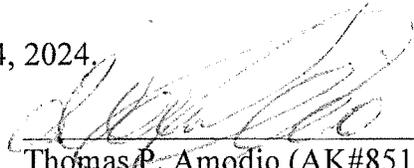
58. Thus, as an alternative argument to Count I, for Defendants to include Eric Hafner on the general election ballot would violate AS 15.25.100(c), because Mr. Hafner should have himself been replaced on the ballot by Mr. Heikes due to Mr. Hafner's status as a disqualified candidate.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court:

- (a) Declare that Defendants' actions violate AS 15.25.100(c);
- (b) Vacate and set aside Defendants' actions;
- (c) Enjoin Defendants from printing ballots that violate the requirements of AS 15.15.100;
- (d) Enjoin Defendants to prepare and print ballots that comply with the requirements of AS 15.15.100; and
- (e) Award Plaintiffs' fees, costs, and other expenses to the extent provided by law; and
- (f) Issue such other relief as the Court may deem just, proper, and equitable.

DATED: September 4, 2024.



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VERIFICATION

I, Lindsay Kavanaugh, having been duly sworn depose and state that I have read the foregoing Verified Complaint for Seeking Declaratory Judgment and Preliminary Injunction Pursuant to Alaska Rule of Civil Procedure 65, and that the information stated therein is factual and true,

Dated: 09/04/2024

Lindsay Kavanaugh

Lindsay Kavanaugh
Alaska Democratic Party

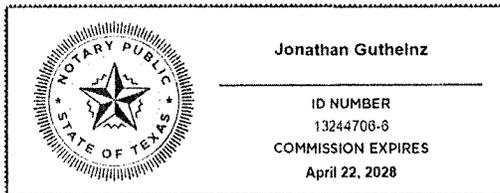
Subscribed and sworn to or affirmed before me in Tarrant, Texas

on 09/04/2024.

Jonathan Guthelz

Clerk, Notary Public, or other person authorized to administer oaths.

My commission expires: 04/22/2028



Electronically signed and notarized online using the Proof platform.

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VERIFICATION

I, Anita Thorne, having been duly sworn depose and state that I have read the foregoing Verified Complaint for Seeking Declaratory Judgment and Preliminary Injunction Pursuant to Alaska Rule of Civil Procedure 65, and that the information stated therein is factual and true,

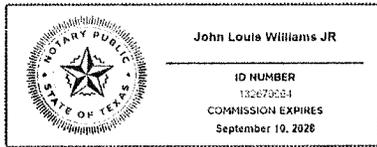
Dated: 09/04/2024

Anita Thorne

Anita Thorne

Subscribed and sworn to or affirmed before me in County of Harris State of Texas

on 09/04/2024.



John Louis Williams JR

Clerk, Notary Public, or other person authorized to administer oaths.

My commission expires: 09/10/2028

Electronically signed and notarized online using the Proof platform.

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