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

DANIEL J. SULLIVAN, JR.,

Appellant,

Case No. 3AN-26-07485 CI

v.

#6

STATE OF ALASKA, DIVISION OF  
ELECTIONS,

Appellee.

**OPPOSITION TO ALASKA  
REPUBLICAN PARTY’S MOTION  
TO INTERVENE**

**INTRODUCTION**

Appellant Daniel J. Sullivan, Jr. (“Mr. Sullivan”), by and through undersigned counsel, submits this opposition to the Alaska Republican Party’s (“ARP”) Motion to Intervene. The instant action is an administrative appeal from a final decision of the Division of Election brought under the precedent and court rules applicable to appellate matters. Given this procedural posture and the closed nature of the administrative record, ARP may not seek intervenor status or expansive participatory rights. While this procedural defect is dispositive, ARP’s Motion must also be denied because ARP fails to show its entitlement to intervene as a matter of right under the four-part Civil Rule 24(a) standard applicable to trial court proceedings (assuming *arguendo* such standard applies –

which it does not). ARP’s disruptive invitation to expand the scope of this proceeding should be rejected.

## I. DISCUSSION

### A. **The Appellate Rules Control This Matter and Do Not Permit Motions to Intervene**

Appeals from final decisions of administrative agencies – like the Division of Elections’ June 15, 2022 Final Decision at issue in the instant matter – are governed by Part VI of the Alaska Rules of Appellate Procedure. *See* Alaska R. App. P. 601(a) (“Part Six of these rules (Rules 601 through 612) applies to requests to the superior court to review decisions of the district court or an administrative agency under AS 22.10.020(d) and AS 22.15.240(a), either by appeal or by petition for review.”). Neither Part VI of the Appellate Rules, nor any other part thereof, permits a person or entity that was not part of the proceedings below to intervene and participate as a party for purposes of the appeal.

To the contrary, Appellate Rule 602(h) is directly on-point, and clarifies that the parties to this action are fixed, and overlap entirely with the parties to the proceeding below: the “parties to the . . . agency action when the final order or judgment was entered are parties to the appeal.” Alaska R. App. P. 602(h). Alaska’s Administrative Procedure Act, in turn, governs administrative adjudications and clarifies that the “parties” to an agency action are limited to the agency, the respondent, and a person who “has been allowed to appear in the proceeding.” AS 44.62.640(b)(4). Here, the agency is the Division of Elections, and the respondent is Mr. Sullivan. The Alaska Republican Party, though a complainant which apparently prompted the Division to adjudicate whether Mr. Sullivan was a qualified candidate, was not “allowed to appear in the proceeding” and is therefore not a “party.” Indeed, the Division has inherent regulatory authority to “evaluate a candidate’s eligibility for office, as addressed in the candidate’s declaration of candidacy, in the absence of a complaint.” 6 AAC 25.260(j).

The ARP was neither an actual nor necessary participant in the proceeding below, and is therefore not automatically designated as a party on appeal. Likewise, because the

Appellate Rules do not include a path to intervenor status for a person or entity that was not a party below, ARP is not entitled to the relief it seeks.

**B. Alaska Rule of Civil Procedure 24 Does Not Allow the ARP to Intervene as a Matter of Right.**

Apparently recognizing that the court rules applicable to this proceeding do not support its request to participate as an intervenor, ARP grossly mischaracterizes the nature and procedural posture of this case, claiming that “[b]y filing this matter, the Plaintiffs seek a preliminary injunction, delaying the printing of the Primary Election ballots.” ARP Mot. to Intervene at 2. Of course, in this an administrative appeal, Mr. Sullivan is an “appellant,” not a “plaintiff,” and his Motion for Stay or, in the Alternative, for Temporary Restraining Order and Preliminary Injunction is ancillary to the issues raised and relief sought by his opening brief.

Why does the ARP mischaracterize the nature of this proceeding? Ostensibly, it is because ARP believes that if the Court considers its Motion under the inapplicable standard provided by Civil Rule 24(a), it will be permitted the expansive participatory privileges of a party “as a matter of right.” The problem with this position is that, even if Rule 24(a) applied to appellate proceedings – a prospect for which there is no legal support – ARP cannot satisfy the conjunctive four-part test required to obtain mandatory intervention.

Under Rule 24(a), trial courts use the following inquiry to determine whether an applicant may intervene as a matter of right:

(1) the motion must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) it must be shown that this interest may be impaired as a consequence of the action; and (4) it must be shown that the interest is not adequately represented by an existing party.

*Hopper v. Est. of Goard*, 386 P.3d 1245, 1247 (Alaska 2017) (internal citations omitted). Inadequacy of representation by an existing party may be proven by “a showing of collusion, adversity of interest, possible nonfeasance, or incompetence.” *McCormick v. Smith*, 793 P.2d 1042, 1045 (Alaska 1990) (finding that failure to file an appeal

constituted “possible nonfeasance” for purposes of establishing inadequate representation within the intervention test). While ARP’s Motion to Intervene was made soon after Mr. Sullivan commenced this appeal, none of the other four prongs of the test are met.

The interests ARP identifies in its Motion—i.e., its associational rights, and “the enforcement and integrity of the candidate eligibility process” (ARP Mot. 2)—are insufficient to justify intervention. First, the Alaska Supreme Court in *Kohlhaas v. State* rejected the very associational rights interest ARP tries to advance here. 518 P.3d 1095, 1104-13 (2022) (holding Alaska’s current primary system does not violate political parties’ associational rights). ARP has no articulable right, or interest, to keep candidates that it does not like off the ballot. Second, because the ARP has no legally protected interest in the outcome of this proceeding, it necessarily cannot show that any such interest “may be impaired” as a consequence of this action. Third, the ARP’s interest in keeping Mr. Sullivan off the ballot is unquestionably adequately represented by the Division. The Division chose below to exclude Mr. Sullivan from the ballot, and it apparently intends to defend that result on appeal. There is an identity of interest between the ARP and the Division. In short, though timely, ARP’s Motion to Intervene fails on the merits.<sup>1</sup>

## **II. CONCLUSION**

ARP’s participation on appeal is unsupported by the Court rules and is inconsistent with the principles applicable to party and non-party participation applicable to this proceeding. ARP’s participation would be distracting and confusing, and would place Mr. Sullivan in the unfortunate position of having to respond to not one, but two merits briefs despite the extraordinarily expedited nature of this proceeding.

The indisputable facts establish that Mr. Sullivan met and meets all of the qualifications to run for and hold the office of United States Senator for the State of

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<sup>1</sup> Because ARP is not a party to this appeal, any submission by ARP could only be considered as a brief of amicus curiae under Appellate Rule 517.2. However, ARP has not moved for leave to participate in that capacity, and Mr. Sullivan therefore takes no position on the propriety of any such effort.

Alaska, including his timely submission of a complete, accurate, and notarized Declaration of Candidacy to the Division. *See* Appellant Br. 1-3. Said more plainly: Mr. Sullivan complied with all of the substantive and procedural requirements to run for the office of United States Senator. Despite this, the Division, at ARP's bidding, applied an unlawful and standardless "good faith" requirement to de-certify Mr. Sullivan as a candidate for United States Senator, potentially keeping him off of the 2026 primary ballot. Appellant App. 26-28. That fact that the ARP would prefer that Mr. Sullivan not exercise his legal rights to run for public office and to challenge and remedy the Division's erroneous Final Decision keeping his name off the ballot as he currently is doing does not constitute an "interest" under Rule 517.2. The ARP's Motion to Intervene is the latest installment in its effort to prevent Mr. Sullivan from exercising his constitutional right to run for U.S. Senate, and should be denied.

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