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

ALYSE S. GALVIN,

Plaintiff,

v.

STATE OF ALASKA, DIVISION OF
ELECTIONS, and Gail Fenumiai, Director
of the Division of Elections,

Defendants.

Case No. 3AN-20-07991 CI

FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT

OCT 29 2020

Clerk of the Trial Courts

By _____ Deputy

ANSWER

1. Admit.

2. The defendants admit that Alyse Galvin is registered as a non-partisan voter and that she won the Alaska Democratic Party primary to become the Democratic Nominee for Alaska's seat in the United States House of Representatives. The defendants lack sufficient information to admit or deny the remaining allegations of this paragraph and therefore deny them.

3. The defendants admit that Gail Fenumiai is the Director of the Alaska Division of Elections ("Division") and that she is being sued in her official capacity. The defendants also admit that Ms. Fenumiai is the chief elections official for the State, though they note that the Lieutenant Governor is responsible for controlling and supervising the Division under AS 15.10.105(a). The defendants also admit that the plaintiff has accurately quoted AS 15.15.010. While the defendants admit that

Ms. Fenumiai is responsible for the preparation of ballots, the defendants deny that she is responsible for the printing of ballots under AS 15.15.035.

4. Admit.

5. Admit.

6. Admit.

7. The defendants admit that the Alaska Supreme Court held in *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018) that AS 15.25.030(a)(16) violated the Alaska Constitution by prohibiting political parties from allowing candidates not registered to vote as party members to run in their primaries.

8. The defendants admit that since 2018, candidates registered to vote as “non-partisan” or “undeclared” have been allowed to run in Democratic primary elections and that in the 2018 and 2020 primaries, candidates were listed with letters indicating their voter registration status in parentheses after their names, followed by the name of the party whose nomination they sought. The defendants further admit that on the 2018 general election ballot, which was designed before the Alaska Supreme Court issued its opinion in *State v. Alaska Democratic Party*, candidates were listed with letters in parentheses after their names indicating their voter registration status at the time they filed their declaration of candidacy, followed by the name of the party that nominated them, if any. All other allegations of this paragraph are denied.

9. The defendants admit that the plaintiff has accurately quoted parts of AS 15.15.030(5). The defendants deny that this statute requires the general election ballot to include the voter registration status of candidates.

10. The defendants admit that the plaintiff has provided an accurate reproduction of the 2018 general election ballot, but deny that AS 15.15.030(5) required this ballot design.

11. The defendants admit that the plaintiff has provided an accurate reproduction of the 2018 primary election ballot. The defendants deny that AS 15.15.030(5) required this ballot design. The defendants further deny that this ballot design was based on an interpretation of AS 15.15.030(5), which applies only to the general election ballot.

12. The defendants admit that the plaintiff has provided an accurate reproduction of the 2020 primary election ballot but deny that AS 15.15.030(5) required this ballot design or that the design was based on an interpretation of AS 15.15.030(5), which applies only to the general election ballot.

13. The defendants deny that the Division posted the general election sample ballot on its website on September 14, 2020, but admit that it did so on September 10. The defendants deny that the ballot does not follow AS 15.15.030(5) or that it is inconsistent with the Division's longstanding past practice in implementing the statute. The defendants further deny the remaining allegations of this paragraph.

14. Deny.

15. The defendants admit that the plaintiff has accurately reproduced a sample general election ballot for the 2020 general election. The defendants deny that it was "published" the day before the complaint was filed.

16. The defendants lack sufficient information to admit or deny how Galvin learned about the 2020 general election ballot design and therefore deny that allegation. The defendants further deny that the ballot design represented an “abrupt” change or that the change has not been explained.

17. The defendants lack sufficient information to admit or deny the allegations of this paragraph and therefore deny them.

18. The defendants admit that the plaintiff has accurately quoted the cited news story, but deny that the news story is accurate.

19. The defendants admit that the deadline to send uniformed and overseas voters their absentee ballots for the 2020 general election was September 19, 2020. The defendants deny the remaining allegations of this paragraph.

20. Deny.

21. Deny.

22. Admit.

23. The defendants note that voters can change their registration status at any time and therefore cannot admit or deny the truth of the allegations of this paragraph because it lacks a temporal basis.

24. The defendants admit that more than half of Alaska voters do not affiliate with any political party, but lack sufficient information to admit or deny the remaining allegations of this paragraph.

25. The defendants admit that Galvin was registered as undeclared for over a decade, but lack sufficient information to admit or deny how she “identified.”

26. Admit.

27. The defendants lack sufficient information to admit or deny the allegations of this paragraph and therefore deny them.

28. The defendants lack sufficient information to admit or deny the allegations of this paragraph and therefore deny them.

29. The defendants lack sufficient information to admit or deny the allegations of this paragraph and therefore deny them.

30. Deny.

31. Deny.

32. Deny.

33. Deny.

34. The defendants admit that the plaintiff has accurately quoted parts of AS 15.15.030(5).

35. Deny.

36. Deny.

37. The defendants admit that they do not have the authority to violate Alaska law, but deny any implication that the design of the general election ballot is not consistent with AS 15.15.030(5).

38. The defendants admit that the plaintiff has accurately quoted art. I, section 5 of the Alaska Constitution and a portion of *State v. Green Party of Alaska*, 118 P.3d 1054 (Alaska 2005). The defendants further admit that the Alaska Constitution protects the right of political association to a greater degree than the federal constitution.

The defendants, however, deny any implication that the design of the general election ballot violates the plaintiff's or any other person's right of political association.

39. The defendants admit that the plaintiff has accurately quoted portions of *State v. Green Party of Alaska*, which lay out the test Alaska courts apply to evaluate the constitutionality of election laws. The defendants, however, deny any implication that their conduct violates the Alaska Constitution and deny the allegation that *State v. Alaska Democratic Party* addressed a rule imposed by the Division rather than a law passed by the Alaska Legislature.

40. The defendants admit that the plaintiff has accurately quoted a portion of *State v. Green Party of Alaska*, but deny the implication that the design of the general election ballot design violates the plaintiff's or any other person's right of political association.

41. Deny.

42. Deny.

43. Deny.

44. Deny.

45. Deny.

AFFIRMATIVE DEFENSES

1. The defendants have already prepared and printed the ballots for the 2020 general election. Many of these ballots have already been distributed, voted, and returned to the Division, and Election Day is next week. Therefore, the plaintiff's claims are moot, either in full or in part.

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2. The plaintiff has failed to state a claim upon which relief can be granted.

PRAYER FOR RELIEF

The defendants ask the Court for the following relief:

1. That the plaintiff take nothing by way of her complaint;
2. That the plaintiff's complaint be dismissed with prejudice;
3. That the defendants be awarded costs and reasonable attorneys' fees, if

appropriate;

4. Any other relief this Court deems just and equitable.

DATED October 29, 2020.

CLYDE "ED" SNIFFEN, JR.
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