

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

ALYSE S. GALVIN,

Plaintiff,

v.

GAIL FENUMIAI, in her official capacity as
DIRECTOR OF THE DIVISION OF
ELECTIONS; and STATE OF ALASKA,
DIVISION OF ELECTIONS,
Defendants,

Defendants.

Case No. 3AN-20-0799 CI

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

Plaintiff ALYSE S. GALVIN, by her undersigned counsel, states:

PARTIES

1. This is an action for declaratory and injunctive relief against Gail Fenumiai, in her official capacity as the Director of the Division of Elections, and the State of Alaska, Division of Elections.

2. Alyse S. Galvin, who is registered as a Non-Partisan voter, is the Democratic Nominee to represent Alaska in the United States House of Representatives. While Galvin

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won the Alaska Democratic Primary, she does not self-identify as a Democrat, and that she is Non-Partisan is a critical aspect of her identity and her political platform.

3. Gail Fenumiai is the Director of the Alaska Division of Elections, and she is sued in her official capacity only. Under AS 15.15.010, Fenumiai 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.

4. 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

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

6. Venue is proper in this Court under Alaska Rule of Civil Procedure 3 and AS 22.10.030.

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**SINCE 2018, CANDIDATE VOTER AFFILIATION HAS BEEN A FEATURE OF
THE ALASKA BALLOT**

7. In 2018, the Alaska Supreme Court held that the Division of Elections violated Article I, Section 5 of the Alaska Constitution when it prohibited the Alaska Democratic Party from allowing independent voter candidates to participate in Democratic primary elections. *See generally State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

8. Since then, independent, non-partisan, and unaffiliated voter candidates have been permitted to participate in Democratic primary elections, and Fenumiai and the Division of Elections have consistently indicated each candidate's voter affiliation on the ballot, parenthetically after her name.

9. This approach was consistent with and required by statute. Namely, AS 15.15.010(5) requires that "[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated," and that "[t]he party affiliation, if any, shall be designated after the name of the candidate."

10. Thus, in prior elections, Fenumiai and the Division of Elections prepared and printed ballots consistent with AS 15.15.010(5) to indicate the party affiliation (if

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any) of the candidate and the party by which the candidate was nominated, as shown in the excerpt from the 2018 federal sample ballot below:

United States Representative (vote for one)	
<input type="radio"/> Galvin, Alyse S. (U)	Alaska Democratic Party Nominee
<input type="radio"/> Young, Don (R)	Alaska Republican Party Nominee
<input type="radio"/>	
Write-in	

11. This was how Defendants have interpreted and applied AS 15.15.010(5) in primary elections as well as in general elections, as shown in the excerpt below from the 2018 Primary sample ballot:

United States Representative (vote for one)	
<input type="radio"/> Cumings, Christopher C. (N)	Alaska Democratic Party Primary
<input type="radio"/> Galvin, Alyse S. (U)	Alaska Democratic Party Primary
<input type="radio"/> Hafner, Carol (D)	Alaska Democratic Party Primary
<input type="radio"/> Shein, Dimitri (D)	Alaska Democratic Party Primary

12. And this remained true during the 2020 Primary election:

¹<https://elections.alaska.gov/election/2018/General/SampleBallots/GEN%2018%20FEDERAL%20Sample.pdf>.

²<https://www.elections.alaska.gov/election/2018/Primary/SampleBallots/HD1%20ADL%20Sample.pdf>.

United States Senator (vote for one)	
<input type="radio"/> Blatchford, Edgar - D	Democratic
<input type="radio"/> Cumings, Chns C. - N	Democratic
<input type="radio"/> Gross, Al - N	Democratic
<input type="radio"/> Howe, John Wayne - A	AK Indep.
United States Representative (vote for one)	
<input type="radio"/> Galvin, Alyse S. - N	Democratic
<input type="radio"/> Hibler, William "Bill" - D	Democratic
<input type="radio"/> Tugatuk, Ray Sean - D	Democratic

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YESTERDAY, WITHOUT WARNING, DEFENDANTS MATERIALLY CHANGED THE WAY CANDIDATES APPEAR ON THE BALLOT

13. On September 14, without warning or explanation, Defendants published sample ballots for the 2020 general election, which do not follow AS 15.15.010(5), nor are they consistent with Defendants' past practice in implementing the statute.

14. Specifically, in stark contrast to their prior practice and contrary to the clear statutory requirements, Defendants have suddenly omitted candidate voter registration affiliation information from the ballot.

15. The 2020 sample federal ballot, which Defendants published yesterday, lists candidate names as follows:

³<https://www.elections.alaska.gov/election/2020/Primary/SampleBallots/FED%20AD.pdf>

United States Senator (vote for one)	
<input type="radio"/> Howe, John Wayne	AK Indep. Nominee
<input type="radio"/> Sullivan, Dan	Republican Nominee
<input type="radio"/> Gross, Al	Democratic Nominee
<input type="radio"/> _____	
United States Representative (vote for one)	
<input type="radio"/> Galvin, Alyse S.	Democratic Nominee
<input type="radio"/> Young, Don	Republican Nominee
<input type="radio"/> _____	

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**DEFENDANTS HAVE FAILED TO OFFER ANY EXPLANATION FOR
THIS SUDDEN CHANGE**

16. Galvin first learned of Defendants' abrupt and unexplained change yesterday, through a report first published on Twitter as seen below:

⁴ <https://www.elections.alaska.gov/election/2020/General/SampleBallots/FED.pdf>

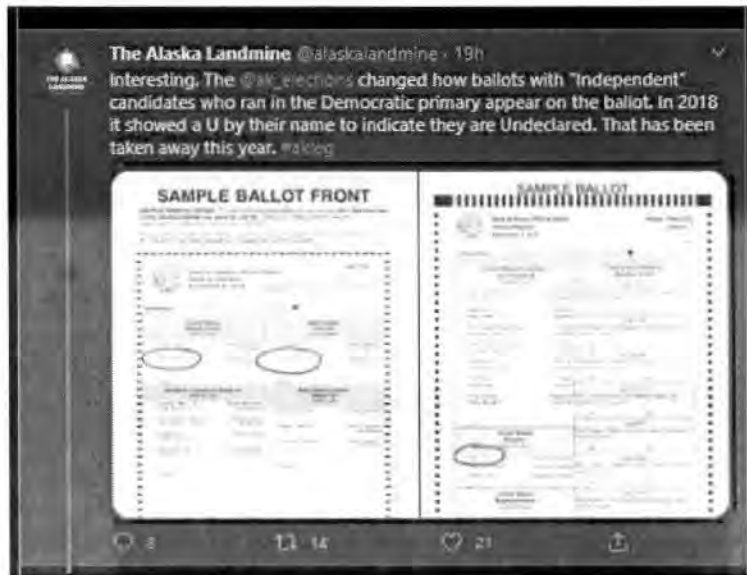
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17. In response, Galvin’s campaign reviewed the sample ballot recently published on the Division of Elections website and confirmed that it was consistent with the sample ballot posted on Twitter.

18. News outlets reported that “[t]he change was made unilaterally on Monday by Alaska Division of Elections Director Gail Fenumiai.”⁶

19. On information and belief, Defendants failed to announce their abrupt decision to change the ballot until Monday September 14 to avoid a court challenge.

⁵ <https://twitter.com/alaskalandmine/status/1305590538314289152?s=21>.

⁶ James Brook and Aubrey Weiber, *A late change to the 2020 General Election ballot sparks outcry from Alaska Democrats*, Anchorage Daily News (Sept. 14, 2020), <https://www.adn.com/politics/2020/09/14/a-late-change-to-the-2020-general-election-ballot-sparks-outcry-from-alaska-democrats/> (reporting that “[l]ooking at the ballot alone, there’s no way to tell that [candidates are] independents or non-partisan”).

because federal law requires that absent stateside and overseas uniformed service members and overseas civilian voters be sent their ballots by no later than 45 days before election day. *See* 42 U.S.C. § 1971, *et seq.* For the November 3, 2020 general election, that deadline is this Saturday, September 19.

20. On information and belief, Defendants intend to respond to this challenge by alleging there is no time for them to change the ballot at this time while still complying with federal law to construct a defense against being forced to comply with their obligations under AS 15.15.010(5) and the Alaska Constitution.

21. Upon information and belief, Defendants made this eleventh-hour change to inappropriately affect the outcome of the election by misleading and confusing Alaska voters and depriving them of essential information.

CANDIDATE VOTER AFFILIATION IS IMPORTANT TO ALASKA VOTERS

22. More than half of all Alaska voters are registered as Non-Partisan or Undeclared.

23. Specifically, only 13% of Alaska voters self-identify as Democrats in voter registration records, and only 24% self-identify as Republicans. In contrast, and unlike in most other states, over 58% of Alaska voters are registered as Non-Partisan or Undeclared.

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24. More than half of Alaska voters chose not to affiliate with any political party and therefore exercise their freedom of association by explicitly registering with the state as *not* affiliated with any political party.

GALVIN'S NON-PARTISAN VOTER AFFILIATION IS A CRITICAL COMPONENT OF HER CAMPAIGN AND HER IDENTITY

25. Galvin was registered and identified as an Undeclared voter for well over a decade.

26. In 2019, Galvin changed her registration from Undeclared to Non-Partisan.

27. Galvin changed her registration because Non-Partisan best represents her beliefs and political objectives, and it is how she self-identifies as a voter.

28. That Galvin has won her second Democratic Primary election and, for the second time, is running as the nominee of the Alaska Democratic Party has not changed or altered how Galvin identifies as a voter.

29. Galvin's personal voter registration affiliation as Non-Partisan, and formerly as Undeclared, has been an important part of her identity, her campaign platform, and her relationship with her supporters.

30. Omitting Galvin’s personal voter registration affiliation from the ballot will mislead voters by wrongly suggesting that Galvin’s personal voter registration affiliation is Democratic.

31. Omitting Galvin’s personal voter registration affiliation from the ballot will undermine Galvin’s constitutionally-protected right to associate and identify as a Non-Partisan voter.

32. Omitting Galvin’s personal voter registration affiliation from the ballot will undermine the constitutionally-protected right of Alaska voters to associate with and support a candidate who best reflect their values and personal political associations and identities, should they so choose.

33. Because of Defendants’ unlawful actions, Galvin—and the electorate—will be imminently harmed in a manner that cannot be measured or compensated in economic damages unless the actions of Defendants are enjoined immediately.

COUNT I

VIOLATION OF AS 15.15.030(5)

34. AS 15.15.030(5) requires that “[t]he names of the candidates and their party designations shall be placed in separate sections on the state general election ballot under

the office designation to which they were nominated,” and that “[t]he party affiliation, if any, shall be designated after the name of the candidate.”

35. Based on Defendants’ prior conduct since 2018, when the Supreme Court ordered them to permit independent and unaffiliated voters to run in Alaska Democratic Party primaries, Defendants have interpreted AS 15.15.030(5) to require that they list not only the candidate’s party nomination, but also the candidate’s personal voter registration affiliation on the ballot.

36. Defendants decided they would no longer include the information required by AS 15.15.030(5) in eleventh-hour decision that Fenumiai reportedly made “unilaterally on Monday” of this week.

37. Defendants do not have the authority to act outside the law or in direct violation of the Alaska Election Code, and specifically in direct contravention of AS 15.15.030(5).

COUNT II

VIOLATION OF ALASKA CONST. ART. I, § 5

38. The Alaska Constitution grants every person the right to “freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” Alaska Const. art. I, § 5. This inherently guarantees the rights of people, and political parties, to

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associate together to achieve their political goals. *See State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1064-65 (Alaska 2005) (“*Green Party*”); *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982). Both the First Amendment to the federal constitution and the Alaska Constitution protect “the rights of voters to band together as parties to pursue political ends.” *Green Party*, 118 P.3d at 1064. But, as the Alaska Supreme Court has recognized, the Alaska Constitution is even more protective of political associational rights than the federal constitution. *Alaska Democratic Party*, 426 P.3d at 911.

39. When an election law or procedure is challenged, Alaska courts first determine whether the claimant has asserted a constitutionally protected right. *Green Party I*, 118 P.3d at 1061 (footnotes omitted) (quoting *O’Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)). Next, the court must weigh and assess “the character and magnitude of the asserted injury to the rights,” against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Id.* Finally, courts must “judge the fit between the challenged legislation and the [S]tate’s interests in order to determine ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Id.* “This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the government interest must be more compelling and the fit between the challenged legislation and the [S]tate’s interest must be closer.” *Id.*; *see also*

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Alaska Democratic Party, 426 P.3d at 907 (applying this test to hold that the Division of Elections' prohibition on allowing independent and unaffiliated voters to run in Democratic primary elections imposed an unjustifiable burden on the Alaska Democratic Party's rights to freedom of association under Alaska Const. Art. I, § 5).

40. The Supreme Court has struck down election laws that impinged upon the freedom of association in the political context on multiple occasions. For example, in striking a law that required voters to "fully affiliate themselves with a single political party or to forgo completely the opportunity to participate in that party's primary," the Court found this "place[d] a substantial restriction on the political party's associational rights." *Green Party*, 118 P.3d at 1065.

41. Defendants' actions in omitting Galvin's voter registration affiliation from the ballot impinge upon Galvin's constitutionally-protected right to associate politically as a voter and through her party nomination.

42. Defendants have offered no justification for their actions, let alone one that might justify the burdens their actions have imposed on Galvin's constitutionally-protected right to associate politically as a voter and through her party nomination.

43. Defendants' actions in omitting Galvin's voter registration affiliation from the ballot burden the associational rights of the non-partisan and independent Alaska

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voters who support Galvin, or who simply prefer to support other non-partisan or unaffiliated candidates based on their own political associations and affiliations.

44. Defendants have offered no justification for their actions, let alone any that might justify the burdens imposed on the constitutionally-protected rights of Alaska voters.

45. Because Defendants' interests in or justifications for omitting Galvin's voter registration affiliation from the ballot, to the extent they exist, are vastly outweighed by the burdens Defendants' actions impose on the rights to freedom of political association enjoyed by Galvin and all Alaska voters, Defendants' actions are unconstitutional and must be enjoined.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiff respectfully requests that the Court:

- (a) Declare that Defendants' actions violate AS 15.15.030(5)'s clear mandate that a candidate's voter registration political affiliation be included on the ballot;
- (b) Declare that Defendants' actions impose an undue burden on the right to freedom of association guaranteed by Article I, Section 5 of the Alaska Constitution;
- (c) Vacate and set aside Defendants' actions;

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(d) Restore the *status quo* and prohibitively enjoin Defendants' from printing ballots that violate the requirements of AS 15.15.030(5) and Article I, Section 5 of the Alaska Constitution;

(e) Restore the *status quo* and mandatorily enjoin Defendants by requiring them to prepare and print ballots that comply with the requirements of AS 15.15.030(5) and Article I, Section 5 of the Alaska Constitution;

(f) Award Plaintiff her fees, costs, and other expenses to the extent provided by law; and

(g) Issue such other relief as the Court may deem just, proper, and equitable.

DATED: September 15, 2020.

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By: 

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VERIFICATION

I, Alyse S. Galvin, 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: 9/15/20


Alyse S. Galvin

Subscribed and sworn to or affirmed before me in _____ on
September 15, 2020.

Clerk, Notary Public, or other person authorized to
administer oaths.
My commission expires: _____

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