

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 DEIRCTOR OF THE)
 DIVISION OF ELECTIONS; and)
 STATE OF ALASKA, DIVISION OF)
 ELECTIONS,)
)
 Defendant.)
)
 _____) Case No. 3AN-20-07991CI

TEMPORARY RESTRAINING ORDER

TO: Gail Fenumiai, Director, Division of Elections
State of Alaska, Division of Elections

Plaintiff has moved, pursuant to Alaska Rule of Civil Procedure 65(b), for a temporary restraining order in this action. Plaintiff requests this relief pending determination of Plaintiff's motion for preliminary injunction.

Upon the motion and memorandum of Plaintiff and the verified complaint of Plaintiff Alyse S. Galvin, the Court finds, based upon the information currently before it, that Plaintiff has shown that immediate and irreparable injury will occur to Plaintiff if Defendants are not enjoined from printing ballots that do not include candidates' voter registration affiliation. This order is granted after notice to Defendants, in order to preserve the status quo pending a hearing on Plaintiff's

motion for preliminary injunction. The Court further finds that the pleadings present serious questions for litigation, that Defendants can be adequately protected during the short period of time that this order is in effect, and that the balance of hardships at this stage favors Plaintiff.

At this stage in the litigation, the Court is not in a position to make conclusions related to Plaintiff's constitutional claims. The Court does note that the constitutional claims and potential harms asserted by Plaintiff in this case differ in nature and context from the associational claims and interests at issue in the precedent cited by both parties. See *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018); *State v. The Green Party of Alaska*, 118 P.3d 1054 (Alaska 2005). Although the Alaska Supreme Court has alluded to a constitutional dimension to impacts on "the ideological cast of . . . nominated candidates," *State v. Alaska Democratic Party*, 426 P.3d at 909, it is not clear to the Court at this point in the litigation that Plaintiff has a constitutional right to have her voter affiliation stated on the general election ballot, as opposed to being presented in other election or campaign materials. The Court does not at this time reach conclusions one way or the other on Plaintiff's constitutional claims.

Plaintiff raises clear and very significant questions, however, regarding what appears to be a departure by Defendants from the plain language of the statutory requirements stated in AS 15.15.030(5). The statute requires, among other things, that “the [candidate's] party affiliation, if any, shall be designated after the name of the candidate.” Defendants, through counsel, have urged the Court to interpret “party affiliation” as representing essentially the mechanism by which a candidate came to be on the general election ballot; however, given the information currently before the Court, which certainly may evolve, the statutory scheme surrounding this particular section, and significant precedent addressing that term “party affiliation,” support Plaintiff’s interpretation of the meaning of that phrase. The Court does appreciate that prior to the litigation leading to the Alaska Supreme Court’s 2018 decision of the *Alaska Democratic Party* case, a candidate’s “party designation” and “party affiliation” were expected to be the same; however, the fact remains that the plain language of the statute requires that a candidate’s “party affiliation” be included, and the statutory scheme and precedent appear to treat “party affiliation” as one’s voter registration affiliation. The Division of Elections has included this “party affiliation” information on prior ballots since 2018, and has not thus far asserted any meaningful or cogent reason for not including this information on the current general election ballot.

In making this determination, the Court is mindful that this is a very newly filed lawsuit, and that parties likely have additional information and legal argument that will impact the Court’s analysis. The Court is also aware of the

significant repercussions that would come with keeping this temporary restraining order in place without a very prompt hearing on preliminary injunction. As noted by Defendants' counsel during the hearing on temporary restraining order, the relief ultimately requested by Plaintiff involves much more than the re-printing of a few thousand, or a small portion of, ballots. To that end, the Court schedules a further hearing, to address Plaintiff's motion for preliminary injunction, as well as whether there exist adequate alternative forms of relief to re-printing of ballots, on Friday, September, 18, 2020, at 10:30 A.M. Participants may call into the hearing at 1-800-768-2983, access code 2640772#. The Court requests additional briefing from both parties regarding the above points on September 17, 2020, by 4:00 P.M., and briefing and exhibits, if any, may be filed by email to jisaako@akcourts.us. Any request to alter the scheduling of briefing and/or the September 18th hearing shall be filed as immediately as possible.

Based on the above-described analysis of Plaintiff's motion for a temporary restraining order, IT IS HEREBY ORDERED that Defendants are enjoined from printing ballots that do not include candidates' voter registration affiliation. Plaintiff is further ordered, pursuant to Alaska Rule of Civil Procedure 65(c), to post security in the amount of \$10,000. The Court notes that this requirement of security may be modified following further hearing and assessment of potential costs and damages as referenced by the Court Rule.

DATED at Anchorage, Alaska this 17th day of September, 2020.



JENNIFER HENDERSON
SUPERIOR COURT JUDGE

I certify that on 09.17.2020
a copy of the above was mailed to each of
the following at their addresses of record:
K. Feldts, SOA, G. Fenumiai, P. Galvin, M. Walsh

Jessica Isaako
Judicial Assistant 