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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

ALASKA DEMOCRATIC PARTY,

Plaintiff,

vs.

STATE OF ALASKA,

Defendant.

Case No. 1JU-17-563 CI
Judge: Philip M. Pallenberg

**ALASKA DEMOCRATIC PARTY'S
MOTION FOR SUMMARY JUDGMENT**

(Dated: June 19, 2017)

I. Introduction

Plaintiff ALASKA DEMOCRATIC PARTY seeks to allow independent candidates to run in its primary election. This conflicts with AS 15.25.030(a)(16), which requires that primary election candidates be a registered member of the party whose nomination is sought. The Alaska Supreme Court has held that the Alaska Constitution "protects a political party's right to determine for itself who will participate in crystallizing the . . .

ALASKA DEMOCRATIC PARTY'S MOTION FOR SUMMARY JUDGMENT

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party's political positions into acceptable candidates."¹ The United States Supreme Court has held that a political party has the right to choose to allow independent voters to participate in its primary election.² At issue before the court is the complimentary half of that right: whether a political party may choose to allow not only independent voters, but also independent candidates to participate in its primary election. The answer, compelled by both Alaska and Federal law, is that a political party has the constitutional right to determine who may participate as a voter *and* as a candidate.

AS 15.25.030(a)(16)'s requirement of party membership by primary election candidates substantially burdens the Alaska Democratic Party's associational right to allow independent candidates to run in its primary election. As Alaska election law already allows for open primary elections – a party may choose to allow registered voters of any party to vote in its primary – the State's potential interests in this restriction on candidates are insufficient to justify the burden on the Alaska Democratic Party's associational right. Because this case presents solely questions of law, the Alaska Democratic Party moves the court for summary judgment on its claims for declaratory and injunctive relief.

II. Background

The Alaska Democratic Party ("ADP") is a political party "recognized" under AS 15.80.008 with more than 75,000 registered members.³ It is the second largest political

¹ See *State v. Green Party of Alaska*, 118 P.3d 1054, 1065 (Alaska 2005).

² See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986).

³ Exhibit 4, Affidavit of Jay Parmley, 2.

party in Alaska.⁴ Unlike many other states, where most voters are registered members of the two major political parties in the United States, more than half of all registered voters in Alaska have chosen “Non-Partisan” or “Undeclared” as their party affiliation: they do not affiliate with any specific political party.⁵ These “independent” voters thus exercise substantial influence in the outcome of Alaska elections.

As allowed by Alaska law,⁶ the ADP has “open” primary elections: any registered voter in the State of Alaska may participate in choosing the party’s nominees for the general election by choosing to vote on the ADP ballot at the primary election.⁷ However, prior to 2016, the ADP only allowed registered members to run as candidates in its primary. At its biennial State Convention in 2016, the ADP amended its governing document, the Party Plan of Organization (“PPO”), to allow “Undeclared” and “Non-Partisan” candidates, candidates unaffiliated with any political party (hereinafter “independent candidates”), to run in the ADP primary election with no requirement that they become registered members of the ADP.⁸

⁴ *Id.*

⁵ *Id.*

⁶ AS 15.25.014(b). *See also State v. Green Party of Alaska* at 1058 (discussing allowance for closed, open, and partially-closed primary elections under Alaska law.)

⁷ Exhibit 1, Alaska Democratic Party Party Plan of Organization (Adopted May 15, 2016), 4 (“The Alaska Democratic Party’s primary election is open to all Alaska registered voters.”)

⁸ Exhibit 4, 2.

Pursuant to AS 15.25.014(a),⁹ on December 12, 2016, Kay Brown, the ADP Executive Director at that time, formally petitioned the State of Alaska, Division of Elections to adopt a regulation allowing independent candidates to run in ADP primary elections as allowed in the ADP's PPO.¹⁰ On January 18, 2017, Division of Elections Director Josie Bahnke responded in writing that the Division of Elections had denied the ADP's petition because it conflicted with AS 15.25.030(a)(16).¹¹ Director Bahnke affirmed that Division of Elections would enforce the party membership rule as required by that statute.¹²

The ADP filed the instant challenge to AS 15.25.030(a)(16) on February 21, 2017. The next primary election takes place on August 21, 2018, with a June 1, 2018 candidate filing deadline.

III. Summary Judgment Standard

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹³ The parties do not anticipate that there will be any disputes of material fact and have accordingly agreed on a briefing schedule with the instant cross-motions for summary judgment.

⁹ Changes to who is allowed to participate in a party's primary election must be approved by the Division of Elections.

¹⁰ Exhibit 2, Letter and Petition.

¹¹ Exhibit 3, Response from Division of Elections.

¹² *Id.*

¹³ See, e.g., *DeNardo v. Municipality of Anchorage*, 105 P.3d 136, 139 (Alaska 2005).

IV. Argument

Plaintiff's arguments in this matter track the Alaska Supreme Court's decision in *State v. Green Party of Alaska* (hereinafter "*Green Party*").¹⁴ Argument that closely follow that decision, in Plaintiff's view, is unavoidable, as *Green Party* establishes the rights at issue, provides a framework for analysis, and addresses the interests that will likely be raised by the State in defense of the restriction here.

In *Green Party*, the Court, applying Alaska and federal precedent (primarily the Supreme Court's decision in *Tashjian v. Republican Part of Connecticut*, 479 U.S. 208 (1986)) held that the Green Party of Alaska and the Republican Moderate Party had an associational right under both the Alaska and United States constitutions to share a combined primary election ballot on which candidates from both parties would appear.¹⁵ Alaska election law had required that each political party have its own primary ballot on which only its candidates appeared. At a primary election, a registered voter could only cast a vote on one party's primary election ballot.¹⁶ In affirming the superior court's grant of summary judgment in favor of the Green and Republic Moderate parties, the Alaska Supreme Court held that the "Alaska Constitution protects a political party's right to determine for itself who will participate in crystallizing the party's political positions into acceptable candidates,"¹⁷ that the restriction on combined ballots substantially burdened

¹⁴ See generally *State v. Green Party of Alaska*, *supra*, 118 P.3d 1054.

¹⁵ See *id.*

¹⁶ See *id.* at 1058.

¹⁷ See *id.* at 1064-65.

that right,¹⁸ and, importantly, that the State's interests in "holding primary elections, complying with United States Supreme Court precedent, avoiding ballot overcrowding, requiring political parties to show that they have community support, strengthening political parties, preserving political stability, encouraging the two-party system, avoiding voter confusion, and holding orderly and efficient primary elections," did not justify the burden placed on the associational rights of the parties by the one party/one ballot restriction.¹⁹

The holdings, fundamental principles, and analysis set forth in *Green Party*, as applied to the facts of the instant matter establish that 1) the ADP has a constitutionally protected associational right to determine who may participate as a candidate in its primary elections, 2) AS 15.25.030(a)(16) substantially burdens that right by limiting candidates to registered members of the ADP, and 3) the State's interests do not justify that substantial burden on the associational right, especially given the Court's decision in *Green Party* and the allowance for open primary elections under Alaska law.

In *Green Party*, the Alaska Supreme Court set forth a four-step test for constitutional challenges to election laws.²⁰ First, the court must determine whether the claimants has "in fact asserted a constitutionally protected right."²¹ Second, the court must

¹⁸ See *id.* at 1065.

¹⁹ See *id.* at 1066-1070.

²⁰ See *id.* at 1061.

²¹ See *id.*

assess “the character and magnitude of the asserted injury” to that right.²² Third, the court weighs “the precise interests put forward by the State as justifications for the burden imposed by its rule.”²³ Finally, the court judges “the fit between the challenged legislation and the state’s interests in order to determine the extent to which those interests make it necessary to burden the plaintiff’s rights.”²⁴ “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 state’s interest must be closer.”²⁵

1. The Alaska Democratic Party has a constitutionally protected right to open participation in its primary elections to independent candidates.

The ADP has a constitutionally protected right to choose both who may participate as a voter and who may participate as a candidate. Partisan political organizations such as the ADP have a right to freedom of association under the First and Fourteenth Amendments to the United States Constitution.²⁶ The Alaska Constitution’s free speech guarantee under article I, section 5 of the Alaska Constitution “is more protective of the right to participate in the political process than its federal counterpart, the First Amendment to the United States Constitution.”²⁷

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See State v. Green Party of Alaska, supra*, 118 P.3d at 1064.

²⁷ *See id.* at 1060.

"[T]he freedom to join together in furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute the association."²⁸ This freedom encompasses both a right to include and a right to exclude.²⁹ A political party's efforts to "broaden the base of public participation in and support for its activities" is "conduct undeniably central to the exercise of the right of association."³⁰ The right to association is especially strong in the context of primary elections:

This right is perhaps nowhere more important than during a primary election: it is at the primary election that political parties select the candidates who will speak for them to the broader public and, if successful, will lead their political party in advancing its interests. In addition, as the Court recognized in *Tashjian*, a political party may desire to open its primary ballot to a wider spectrum of voters in order to allow the political party and its members "to inform themselves as to the level of support for the Party's candidates among a critical group of electors."³¹

Applying the above in *Green Party*, the Alaska Supreme Court held that "the Alaska Constitution protects a political party's right to determine for itself who will participate in crystallizing the political party's political positions into acceptable candidates."³² That right, to determine who may vote for candidates in a party's primary election, is hollow without a corresponding right to determine who those candidates may

²⁸ *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215 (1986).

²⁹ See *State v. Green Party of Alaska*, *supra*, 118 P.3d at 1064 (discussing *California Democratic Party v. Jones*, 530 U.S. 567 (2000)).

³⁰ See *id.* at 1063 (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986)).

³¹ *Id.* at 1064.

³² *Id.* at 1064-65.

be. Just as a political party may wish to open a primary ballot to a wider spectrum of voters, so too may it wish to open candidacy on that ballot to a wider spectrum of candidates. Such candidates may draw wider appeal in a subsequent general election, and thus better advance the party's political positions than a candidate who is a registered member of the party. This is especially true in Alaska, whose large proportion of independent voters may be more drawn to an independent candidate than to one that identifies as a member of a specific political party.

Both the Alaska and United States Supreme Courts have strongly affirmed the constitutional right of political parties to exercise control over participation in their primary elections. This right, necessarily, must include control over who may participate as a candidate. Here, the Alaska Democratic Party has asserted a constitutional right under both the Alaska and United States constitutions to allow independent candidates to run in its primary election.

2. AS 15.25.030(a)(16) requirement that primary election candidates be a member of the party whose nomination is sought places a substantial burden on the ADP's associational rights.

The analysis in *Green Party* concluding that the Alaska election code placed a substantial burden on the associational rights of the Green and Republic Moderate parties is equally applicable here.³³ The ADP seeks to give voters in its primary election a broader spectrum of candidates to choose from. The state's restriction on the spectrum of candidates has a significant effect on the candidates the party ultimately nominates as well

³³ See *State v. Green Party of Alaska*, *supra*, 118 P.3d at 1065.

as the ideological cast of the nominated candidates.³⁴ Even though the ADP has an open primary in which any registered voter may participate, the state's restriction limits those voters' choices to registered members of the ADP. This prevents the ADP from determining for itself whether its interests are best served by candidates who are registered members of the party, or independent candidates who may share political and policy goals with the ADP while also appealing to a broader spectrum of general election voters. And, as in *Tashjian*, the choice of the broad spectrum of voters as between registered member candidates and independent candidates in the primary informs the party as to the relative "level of support for the Party's candidates among a critical group of electors."³⁵ Thus, AS 15.25.030(a)(16)'s requirement that primary election candidates be a registered member of the party whose membership is being sought places a substantial burden on the ADP's associational rights.

3. The State's interests in avoiding voter confusion do not justify the substantial burden AS 15.25.030(a)(16) places on the ADP's associational rights.

As this case has moved directly into cross-motions for summary judgment, Plaintiff does not yet know which specific interests the State will assert as justifying the restriction in AS 15.25.030(a)(16) as applied against the ADP's wish to allow independent candidates to run in its primary election. Whatever interests are asserted, the State will have to show that they are concretely at issue, not merely abstract concerns:

[W]hile the state may anticipate likely problems in the electoral process, it cannot justify imposing significant constitutional burdens merely by asserting interests that are compelling only in the abstract . . . [I]t is not sufficient for the state to assert theoretical possibilities, albeit undesirable

³⁴ See *id.*

³⁵ See *id.* At 1064 (discussing *Tashjian v. Republican Party of Conn.*, *supra*).

ones, to justify incursions upon free speech rights protected by the Alaska Constitution. Instead, the state must explain why the interests it claims are concretely at issue and how the challenged legislation advances those interests. And in reviewing the adequacy of the state's explanation, a court must ask not in the abstract whether fairness, privacy, etc. are highly significant values but rather whether the *aspect* of fairness, privacy, etc. addressed by the law at issue is highly significant.³⁶

Accordingly, the State's interests will be better addressed in Plaintiff's Opposition to the State's Cross-Motion for Summary Judgment after the State has presented the interests it believes are concretely affected by the ADP's proposed change. However, to the extent that the State will likely raise the same interests discussed in *Green Party*, the Alaska Supreme Court's analysis of those interests in *Green Party* establishes that they do not sufficiently justify the substantial burden placed on the ADP's associational rights as the effects of allowing independent candidates to participate are similar to those of allowing independent voters.

The interests raised by the State in *Green Party* included: "holding primary elections, complying with United States Supreme Court precedent, avoiding ballot overcrowding, requiring political parties to show that they have community support, strengthening political parties, preserving political stability, encouraging the two-party system, avoiding voter confusion, and holding orderly and efficient primary elections."³⁷

For most of these potential interests, the ADP will reserve in-depth response for its Opposition to the State's Motion. At the threshold level, however, the Alaska Supreme

³⁶ *State v. Green Party of Alaska*, *supra*, 118 P.3d at 1066 (internal quotation marks omitted, phases in original).

³⁷ *See id.* at 1066-1070.

Court's analysis of these interests as applied in the primary election context is well-suited to this case, and demonstrates that these interests do not justify AS 15.25.030(a)(16)'s burden on the ADP's associational rights.³⁸ It is inconsistent for the State to both allow open primaries, but to disallow participation by independent candidates against a party's wishes. Indeed, the above-interests are more directly and significantly impacted by open primaries than they are by the participation of independent candidates.

The interest that seems most likely to be raised by the State is that of voter confusion: the concern that voters in either the primary election or the general election will be confused by the presence of "Unaffiliated" or "Non-Partisan" candidates on either the ADP primary ballot or as the ADP's nominee on the general election ballot. Here, again, the Court's analysis in *Green Party* is instructive. In *Green Party*, the Court noted that because Alaska's previous blanket primary system, in which the primary election candidates *of all parties* appeared *on the same ballot* "caused little apparent voter confusion, we see no basis for predicting that Alaska voters might be incapable of understanding combined ballots."³⁹ As the United States Supreme Court stated in *Tashjian*, "[The State's] argument depends upon the belief that voters can be 'misled' by party labels. But our cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues."⁴⁰ Alaska voters, who somehow managed to navigate a blanket primary ballot in the past, will be able to understand the presence of an

³⁸ See *id.*

³⁹ See *id.* at 1068 (voter confusion), 1057 (description of blanket primary system).

⁴⁰ See 479 U.S. at 220.

independent candidate on the ADP primary ballot, or an independent candidate as the ADP nominee on a general election ballot.

Finally, as the United States Supreme Court further explained in addressing the issue of voter confusion in *Tashjian*, the great benefit to be gained by the party in appealing to independent voters outweighs the State's interest in preventing voter confusion:

In arguing that the Party rule interferes with educated decisions by voters, [the State] also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to [the Party] in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism. The State's legitimate interests in preventing voter confusion and providing for educated and responsible voter decisions in no respect make it necessary to burden the Party's rights.⁴¹

One way to improve the odds of selecting a successful general candidate is to change the pool of available candidates in the primary. The numerical strength of independent voters in Alaska emphasizes the potential value to the ADP and other parties from allowing independent candidates to seek their party's nomination. The party's registered members, in concert with other voters that are allowed and choose to participate in the party's primary election, may find that an independent candidate provides the best overall package

⁴¹ 479 U.S. 208 at 221.

of policy and electability. Preventing voter confusion is by far the State's strongest interest at play here, but the risk is insubstantial, and the burden high. Accordingly, as in *Green Party*, the restriction at issue, AS 15.25.030(a)(16), does not fit the interest well enough to justify the burden on the ADP's associational rights.

V. Conclusion

In *Tashjian v. Republican Party of Connecticut*, United States Supreme Court explained:

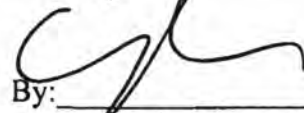
Were the State to restrict by statute financial support for the Party's candidates to Party members, *or to provide that only Party members might be selected as the Party's chosen nominees for public office*, such a prohibition of potential association with no members would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals.⁴²

Although technically dicta, the fact that exactly the prohibition at issue here was used as an example of a clearly unconstitutional restriction in *Tashjian* is significant. Further, as the Alaska Supreme Court reminded us in *Green Party*, the Alaska Constitution is *more protective* in this area than the Constitution of the United States. This is not a tough call under either Alaska or Federal law. The Alaska Democratic Party has a constitutionally protected right to allow independent candidates to run in its primary election. AS 15.25.030(a)(16)'s requirement that primary election candidates be a registered a member of the party whose nomination is sought is unconstitutionally burdens that right. Therefore, the Alaska Democratic Party respectfully requests that the court grant summary judgment in its favor on its claims for declaratory and injunctive relief.

⁴² 479 U.S. 208 at 215 (emphasis added).

DATED: Monday, June 19, 2017 at Juneau, Alaska.

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Certificate of Service

I certify that a copy of the foregoing
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ALASKA DEMOCRATIC PARTY,)
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Defendant.)

Case No.: 1JU-17-00563CI

**MEMORANDUM IN SUPPORT OF THE STATE OF ALASKA'S MOTION
FOR SUMMARY JUDGMENT**

I. Introduction

The Alaska Democratic Party (the Party) filed this lawsuit challenging a statute— AS 15.25.030(a)—that requires a person to be a registered member of a political party when seeking that party's nomination in a primary election. The statutory party-membership requirement conflicts with a recent change to the Party's bylaws allowing non-affiliated and independent candidates to run in the Democratic primary. The Party claims that the party-membership requirement violates its right to freedom of association under the federal and state constitutions, and asks this Court to invalidate it.¹

But the Party's complaint does not allege that any non-affiliated or independent candidate hopes to run for the Democratic Party nomination for any public office either in 2018 or at some future point. Thus, the Party's claim is not ripe. Also, because the party-membership requirement applies to candidates—not political parties—the Party

¹ Complaint at ¶¶ 15-19.

1 lacks standing to challenge it.

2 But even if the Party could bypass this subject matter jurisdiction problem, its
3 claim would fail on the merits. The party-membership requirement is a valid candidate
4 eligibility provision that reflects legitimate, long-standing policy choices Alaska
5 lawmakers have made requiring candidates affiliated with political parties to be
6 nominated to elective office in one way, and independent candidates in another.² When
7 balanced against the State's significant interests in preserving the legitimacy and
8 stability of Alaska's party system, ensuring ballot integrity, and mitigating the risk of
9 voter confusion, the requirement easily withstands constitutional scrutiny. Accordingly,
10 the State respectfully moves the Court for summary judgment in its favor.
11

12
13 **II. Relevant background**

14 **A. The political party system plays an important role in Alaska's**
15 **elections and candidate nomination framework.**

16 Political parties in Alaska enjoy significant benefits, and the fabric of Alaska's
17 political party system—of which AS 15.25.030(a) is a critical thread—impacts nearly
18 every aspect of elections administration. But in order to obtain official “political party”
19 status and reap those benefits, an entity must meet certain statutory criteria. These
20 include securing a certain number of votes in a preceding general election or reaching a
21 certain threshold of registered voters.³ In this way, Alaska limits the many advantages
22 of party status to groups who have demonstrated a minimum level of public support.
23

24 ² For purposes of this motion, “independent,” “unaffiliated,” “non-affiliated,”
25 “non-partisan,” and similar terms are used interchangeably.

26 ³ AS 15.80.008; AS 15.80.010(26)-(27).

1 How party status and affiliation shape Alaska's broader electoral scheme is
2 evident from the first moment that a person registers to vote. Upon registering, a voter
3 may mark their choice of party affiliation on a voter registration form, or register as
4 "non-partisan" or "undeclared."⁴ If a voter fails to declare any affiliation, the Division
5 of Elections (the Division) will register the voter as "undeclared;" if the voter declares
6 an affiliation with a "political group"—meaning a group of organized voters which
7 represents a political program but does not qualify as a political party—the Division
8 will register the voter as "other."⁵

10 Party affiliation also affects the Division's preparation of the official ballot, both
11 because statute requires a candidate's party affiliation to be designated after the name of
12 the candidate, and because the director must "prepare all official ballots to facilitate
13 fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the
14 intent of the voter, and to expedite the administration of elections."⁶

16 The party system further affects candidates and their campaigns, providing party
17 candidates with unique and significant benefits. For example, political parties may
18 receive larger contributions from donors, and make larger contributions to candidates,
19 than other groups.⁷ And unlike an independent candidate who dies or withdraws from
20

23 ⁴ AS 15.07.050; AS 15.07.075.

24 ⁵ AS 15.80.010(26); AS 15.07.075(3).

25 ⁶ AS 15.15.030; Affidavit of Josephine Bahnke at 2-4.

26 ⁷ AS 15.13.070; AS 15.13.116; AS 15.13.400.

1 office,⁸ a party may petition to have a deceased, disqualified, or incapacitated candidate
2 replaced during a particular window in time before the general election, and may fill
3 vacancies by party petition between the primary and general elections and, when
4 necessary, in office.⁹ What is more, the two parties whose candidates received the two
5 highest numbers of votes in the most recent general election in which a governor was
6 elected secure two seats on the Alaska Public Offices Commission.¹⁰

8 Besides these benefits, the party system also affects ballot counting and conduct
9 at polling places. The Division appoints election boards to count ballots with the input
10 of political parties, and board membership depends on the governor's party affiliation
11 and the number of votes a party received in the last election.¹¹ Teams of counters that
12 assist the election board may have no more than two counters from the same political
13 party.¹² Political parties appoint poll watchers, who are posted at precincts and counting
14 centers, according to party affiliation or lack thereof.¹³

16 While Alaska's Election Code is thus littered with statutes predicated on the
17 legitimate presumption that political parties reflect broad levels of public support, the
18

20
21 ⁸ AS 15.25.200.

22 ⁹ AS 15.25.056; AS 15.25.110; AS 15.25.120; AS 15.25.130; AS 15.40.200; AS
15.40.290; AS 15.40.330.

23 ¹⁰ AS 15.13.020.

24 ¹¹ AS 15.10.120; AS 15.10.180; AS 15.20.190.

25 ¹² AS 15.10.140.

26 ¹³ AS 15.10.170.

1 most important of these advantages is participation in the primary election.¹⁴

2 Alaska's election laws provide two avenues for candidates to be listed on the
3 general election ballot. Political parties nominate their candidates for the general
4 election using the primary election process outlined in AS 15.25.010-130, which
5 requires candidates to file a declaration of candidacy under AS 15.25.030(a) asserting
6 their party membership and registration.¹⁵ Party candidates thus enjoy a presumption of
7 support based on their association with a recognized political party.
8

9 By contrast, independent candidates "not representing a political party are
10 nominated by petition."¹⁶ Lacking the presumptive support that attaches to party
11 candidates based on their party affiliation, nomination petitions are subject to certain
12 technical and signature threshold requirements.¹⁷ This process guarantees that
13 independent candidates enjoy some level of public support before their names are
14 placed on the ballot.¹⁸
15

16 **B. Factual and procedural background**

17 In May 2016, the Party adopted a new Party Plan of Organization at its state
18 convention. The plan permits persons who are registered as "undeclared" or "non-
19
20
21

22 ¹⁴ AS 15.25.010-130.

23 ¹⁵ AS 15.25.030(a)(16).

24 ¹⁶ AS 15.25.140.

25 ¹⁷ AS 15.25.180; AS 15.40.190.

26 ¹⁸ AS 15.25.140-.200.

partisan” to run in the Democratic primary election.¹⁹ Alaska Statute 15.25.030(a)(16), however, requires that a candidate affirm they are a member of the political party whose nomination they seek when they file a notice of candidacy for the primary election. Recognizing the conflict between the party plan and Alaska law, the Party petitioned the Division to adopt a regulation that would allow independent candidates to run in Democratic primaries.²⁰ The Division denied the petition because the Party’s proposed regulation would conflict with the statute,²¹ and the Party filed suit. On April 21, 2017, the State filed its answer. The State now moves for summary judgment.

III. Standard of review

Alaska Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.”²² There are no genuine issues of material fact in dispute in this case, and summary judgment is proper.

¹⁹ Complaint at ¶ 3.

²⁰ Complaint at ¶ 4.

²¹ Complaint at ¶ 5.

²² Alaska Rule Civ. Proc. 56(c). *See also, e.g., Anchorage Police Dep’t Employees Ass’n v. Feichtinger*, 994 P.2d 376, 380 (Alaska 1999).

IV. Argument

This lawsuit should—and indeed must—be dismissed because the Court lacks subject matter jurisdiction over the complaint.²³ “[A] court which does not have subject matter jurisdiction is without power to decide a case,” and the “issue cannot be waived.”²⁴ Here, the Party requests relief under Alaska’s declaratory judgment statute, which requires an “actual controversy”²⁵—a concept that “encompasses considerations of standing, mootness, and ripeness”²⁶ and “reflects a general constraint on the power of courts to resolve cases.”²⁷ Because the Party has not alleged that any unaffiliated candidate wishes to run in the party’s primary, this case is not ripe. Relatedly, because the party-membership requirement for primary elections applies only to individual candidates—not parties—the Party lacks standing. This case therefore should be dismissed for lack of subject matter jurisdiction.

The complaint also fails to state a viable cause of action.

Alaska Statute 15.25.030(a)(16) is a valid candidate eligibility requirement. It reflects

²³ *Northwest Medical Imaging, Inc. v. State, Dep’t of Revenue*, 151 P.3d 434, 438 (Alaska 2006).

²⁴ *Hawkins v. Attatyauk*, 322 P.3d 891, 894 (Alaska 2014) (emphasis added).

²⁵ AS 22.10.020(g) (“In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.”).

²⁶ *State v. American Civil Liberties Union of Alaska*, 204 P.3d 364, 368 (Alaska 2009) (citing *Brause v. State, Dep’t of Health & Soc. Servs.*, 21 P.3d 357, 358 (Alaska 2001)).

²⁷ *Id.*

1 legitimate legislative policy choices regarding the nomination of candidates to elected
2 public office and the manner by which candidates must first demonstrate some level of
3 voter support before their names appear on the general election ballot. The minimal
4 burden the party-membership requirement imposes on candidates and parties is eclipsed
5 by the State's weighty interests in the stability of Alaska's party system and the
6 soundness of its elections, ballot integrity, and avoidance of voter confusion. The
7 requirement easily survives constitutional scrutiny under both the state and federal
8 constitutions.

11 **A. Because the Party cannot identify a single candidate who wants to run as
12 an independent in the Democratic primary election, the Party's claim is
13 not ripe.**

13 "The central concern of ripeness 'is whether the case involves uncertain or
14 contingent future events that may not occur as anticipated, or indeed may not occur at
15 all.'"²⁸ When evaluating whether a case is ripe, a court considers "'the fitness of the
16 issues for judicial decision and the hardship to the parties of withholding court
17 consideration' in an effort to 'balance[] the need for decision against the risks of
18 decision.'"²⁹ Here, the candidate qualification requirements of AS 15.25.030(a) will
19 affect the Party only if an independent candidate wishes to run for the Democratic
20 nomination for a public office. But the complaint does not allege that any such
21 candidate exists or that any potential candidate has expressed a desire to run in any

23 ²⁸ *Brause*, 21 P.3d at 359 (quoting 13A Charles Alan Wright, et al., *Federal*
24 *Practice and Procedure* § 3532, at 112 (2d ed. 1984)).

25 ²⁹ *Jacko v. State, Pebble Lmt'd Partnership*, 353 P.3d 337, 340 (Alaska 2015)
26 (quoting *Am. Civil Liberties Union of Alaska*, 204 P.3d at 369)).

1 future primary election for the Democratic nomination. Absent such a candidate, the
2 Party is not harmed, and any potential harm will result only if such a candidate
3 emerges—a wholly theoretical proposition. At this point, this case turns on a
4 contingency. It is therefore not ripe and will not be so unless and until a potential
5 candidate appears.
6

7 Nor is this case fit for judicial decision. The Party's claim questions the
8 constitutionality of a validly enacted law without a showing of actual injury. And the
9 Alaska Supreme Court has repeatedly refused to decide whether a statute is
10 unconstitutional when the legal challenge was divorced from any immediate factual
11 context, as here. For example, in *State v. American Civil Liberties Union*, the Alaska
12 Supreme Court declined to consider a pre-enforcement challenge to a state statute
13 prohibiting the possession and use of marijuana because the parties "face[d] little
14 hardship if their claims [were] not resolved in a hypothetical setting" and their fears of
15 criminal enforcement were "speculative and overstated."³⁰ The court also noted that the
16 case was "high profile"—involving the interests of the public, the executive branch, and
17 the legislative branch of government—and that the issue was "a difficult one with
18 reasonable arguments available to both sides."³¹ But because "[d]ue respect for the
19 legislative branch of government" required it to "exercise [its] duty to declare a statute
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25 ³⁰ *Am. Civil Liberties Union of Alaska*, 204 P.3d at 369.

26 ³¹ *Id.* at 373.

1 unconstitutional only when squarely faced with the need to do so," the court dismissed
2 the case as unripe.³²

3 This Court should exercise similar restraint. The Party asks the Court to
4 undertake a complex constitutional balancing analysis in which the "character and
5 magnitude of the asserted injury" to a constitutional right must be weighed against "the
6 precise interests put forward by the State as justifications for the burden imposed by its
7 rule."³³ The court then must "judge the fit between the challenged legislation and the
8 state's interests in order to determine the extent to which those interests make it
9 necessary to burden the plaintiff's rights."³⁴ Such complex balancing should await an
10 actual need to do it.

11
12 The Alaska Supreme Court also declined to issue an advisory decision in *Brause*
13 *v. State, Department of Health and Social Services*. There, the court rejected a same-sex
14 couple's challenge to a statute that denied same-sex relationships the benefits available
15 to married couples.³⁵ The court acknowledged that in some circumstances married
16 couples had rights that unmarried domestic partners were denied.³⁶ Still, it rejected the
17 declaratory judgment action as unripe because plaintiffs had "failed to identify any
18 actual harm they might suffer, even assuming that the state continued to enforce the
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22 ³² *Id.*

23 ³³ *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1061 (Alaska
24 2005) (internal quotations omitted).

25 ³⁴ *Id.*

26 ³⁵ 21 P.3d 357.

³⁶ *Id.* at 360.

1 disputed provision.”³⁷ The court also acknowledged the broader risks to prematurely
2 ruling on statutory challenges, noting that doing so not only indicated a lack of respect
3 for the legislative branch but “increases the risk of erroneous decisions” and potentially
4 undermines public trust in the confidence of the courts.³⁸

5
6 As in *Brause*, this Court is not “squarely faced” with the need to address the
7 constitutionality of AS 15.25.030(a) given the “purely hypothetical” nature of the
8 Party’s challenge. The complaint does not allege that any candidate has expressed a
9 desire to run in a future Democratic primary yet retain his or her unaffiliated registration
10 status. The court should therefore demonstrate sound respect for the legislative branch
11 and decline the Party’s invitation to needlessly rule on the constitutionality of a validly
12 enacted statute. Given the difficult legal issues this case presents, the lack of hardship of
13 withholding judgment until a concrete dispute arises, and the contingent nature of the
14 Party’s claim, the Court should decline to address the constitutionality of
15 AS 15.25.030(a)(16) absent a concrete dispute and a need to enforce it.

16
17
18 **B. The Party lacks standing to challenge the candidate eligibility statute.**

19 The Court should also dismiss this case because the Party lacks standing. In
20 Alaska, standing is a “rule of judicial self-restraint based on the principle that courts
21 should not resolve abstract questions or issue advisory opinions.”³⁹ A standing inquiry
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23 ³⁷ *Thomas v. Anchorage Equal Rights Comm’n*, 102 P.3d 937, 942 (Alaska 2004)
24 (discussing *Brause*, 21 P.3d at 357).

25 ³⁸ *Brause*, 21 P.3d at 360.

26 ³⁹ *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Alaska 2004).

1 asks the court to consider whether the litigant is the proper party to adjudicate the issue
2 before it.⁴⁰ Alaska courts have recognized two kinds of standing—interest-injury
3 standing and citizen-taxpayer standing.⁴¹ The Party's complaint fails to establish either
4 because it fails to allege the existence of an independent candidate who wishes to reap
5 the benefits of the Party's recognized political party status by running in the Democratic
6 primary—but without registering as a Democrat.

8 To establish interest-injury standing, the Party must prove it has “a sufficient
9 personal stake in the outcome of the controversy and an interest which is adversely
10 affected by the complained-of-conduct.”⁴² But there is no adversity of interest between
11 the Party and the party-membership requirement: unless and until a candidate appears
12 who wishes to run in the Democratic primary, but who is unwilling to register as a
13 Democrat in order to do so, the requirement will not injure the Party.

15 For the same reason, the Party cannot establish citizen-taxpayer standing. To
16 show citizen-taxpayer standing, the Party must show both that it is an appropriate
17 plaintiff and that the case has public significance.⁴³ The Alaska Supreme Court has held
18 that “a plaintiff was not appropriate when the plaintiff was a ‘sham plaintiff’ with no
19 true adversity of interest; when the plaintiff was incapable of competently advocating
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21 ⁴⁰ *Law Project for psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (Alaska
22 2010).

23 ⁴¹ *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (“Our cases have
24 discussed two different kinds of standing. One is interest-injury standing; the other is
citizen-taxpayer standing”).

25 ⁴² *Keller v. French*, 205 P.3d 299, 304-05 (Alaska 2009) (internal citation omitted).

26 ⁴³ *Id.* at 302 (citing *Trustees for Alaska*, 736 P.2d at 329).

1 his or her position; and when there was another potential plaintiff more directly affected
2 by the challenged conduct who had sued or was likely to sue.”⁴⁴ Regardless of the
3 significance of election laws generally or the party-membership requirement in
4 particular, other individuals are more directly affected by the provision who would be
5 better positioned to adjudicate the Party’s claim—specifically, independent candidates
6 unwilling to run as Democrats but nevertheless wishing to run on the Democratic ballot.
7

8 The lack of an appropriate plaintiff in this case also exposes an additional
9 standing infirmity—namely, that AS 15.25.030 does not even apply to the Party. The
10 statutory membership requirement governs *candidates*, not parties. It sets forth the
11 required elements of a declaration of candidacy for “[a] member of a political party who
12 seeks to become a candidate of the party in the primary election.”⁴⁵ By this statute, a
13 candidate must include sixteen specific facts on the declaration, including the
14 candidate’s name and address, length of residency in the state and in the district, the
15 manner in which the candidate wishes his or her name to appear on the ballot, and an
16 indication “that the candidate is registered to vote as a member of the political party
17 whose nomination is being sought.”⁴⁶ These requirements are personal to the
18 individual—not the party. Because the declaration of candidacy imposes no
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24 ⁴⁴ *Id.*

25 ⁴⁵ AS 15.25.030(a).

26 ⁴⁶ AS 15.25.030(a)(1), (2), (8), (15), (16).

1 requirements on a political party, the Party lacks standing to challenge the requirements
2 as they would apply to some hypothetical individual at some theoretical future date.⁴⁷

3 Absent the identification of an independent candidate who wishes to run in the
4 Democratic primary, the Party's new rule is purely symbolic. Only if an unaffiliated
5 candidate emerges to seek the Democratic nomination will the Party's new rule even be
6 relevant. This hypothetical candidate would be directly affected by the party-
7 membership requirement, would then be likely to sue, and would be a far more
8 appropriate plaintiff than the Party. But the speculation that such a person might exist,
9 either now or at some unknown future date, is not an appropriate basis upon which to
10 devote limited judicial resources to evaluating a complex constitutional question.
11

12 Although standing in Alaska is not a constitutional doctrine—and "Alaska
13 courts, using the interest-injury standard, are more open to litigants than federal
14 courts"⁴⁸—the Party is not, and cannot by itself, be harmed by AS 15.25.030. Not unless
15 and until a number of contingent events come to pass will the Party suffer any injury as
16 a result of the challenged statute. Thus, the Party lacks standing and its complaint
17 should be dismissed.
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22 ⁴⁷ Nor does the Party have standing to assert the constitutional rights of any
23 hypothetical candidate. Litigants generally lack standing to assert the constitutional
24 rights of third parties, and there is no indication any of the exceptions to the third-party
standing rule would apply in this case. See *Falcon v. Alaska Public Offices Commission*,
570 P.2d 469, 475 (Alaska 1977) (discussing third-party standing).

25 ⁴⁸ *Bowers Office Products, Inc. v. University of Alaska*, 755 P.2d 1095, 1097
26 (Alaska 1988).

1 **C. Even if the court has subject matter jurisdiction over this dispute,**
2 **AS 15.25.030(a)(16) is a valid candidate eligibility requirement.**

3 Alaska's party-membership requirement is a sound elections regulation that does
4 not unconstitutionally interfere with the Party's associational rights. Indeed, it does not
5 affect a constitutionally-protected right at all. Even if it did, the resulting burden is
6 minimal at most. At the same time, the restriction is closely drawn to advance important
7 state interests in ensuring the legitimacy of the political party system, maintaining ballot
8 and electoral integrity, and preventing voter confusion.

9
10 **1. The court should apply a low level of scrutiny.**

11 The First Amendment "protects the right of citizens 'to band together in promoting
12 among the electorate candidates who espouse their political views.'"⁴⁹ But these
13 associational rights are not absolute; they are necessarily subject to qualification if
14 elections are to be run fairly and effectively.⁵⁰ To that end, the Supreme Court has
15 recognized "that government must play an active role in structuring elections,"⁵¹ and
16 determined that states retain power to regulate and facilitate the conduct of fair and
17 orderly elections.⁵²

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20 ⁴⁹ *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *California Democratic*
21 *Party v. Jones*, 530 U.S. 567, 574 (2000)).

22 ⁵⁰ *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("[A]s a practical matter . . .
23 substantial regulation of elections [is required] if they are to be fair and honest and if
24 some sort of order, rather than chaos, is to accompany the democratic processes.")
(quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). See also, *Munro v. Socialist*
Workers Party, 479 U.S. 189, 193 (1986).

25 ⁵¹ *Burdick*, 504 U.S. at 433.

26 ⁵² *Id.*

1 The fact that a state election law may affect an individual's right to vote,
2 however, does not mean that a court will review a challenge to it using strict scrutiny.
3 On the contrary, in *Burdick v. Takushi* the Supreme Court held that "to subject every
4 voting regulation to strict scrutiny and to require that the regulation be narrowly tailored
5 to advance a compelling state interest . . . would tie the hands of States seeking to assure
6 that elections are operated equitably and efficiently."⁵³ As a result, the court applies a
7 flexible standard, under which "the rigorousness of [the] inquiry into the propriety of a
8 state election law depends upon the extent to which a challenged regulation burdens
9 First Amendment and Fourteenth Amendment rights."⁵⁴

12 "A court considering a challenge to a state election law must weigh 'the
13 character and magnitude of the asserted injury to the rights protected by the First and
14 Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise
15 interest put forward by the State as justifications for the burden imposed by its rule,'
16 taking into consideration 'the extent to which those interests make it necessary to
17 burden the plaintiff's rights.'"⁵⁵ The Alaska Supreme Court uses the same test, but has
18 added an initial step—determining first whether the party challenging the election law
19 "has in fact asserted a constitutionally protected right."⁵⁶ State laws that impose severe

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22 ⁵³ *Id.*

23 ⁵⁴ *Id.* at 434 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) and *Tashjian*
v. Republican Party of Connecticut, 479 U.S. 208, 213-214 (1986)).

24 ⁵⁵ *Id.*

25 ⁵⁶ *State, Div. of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1061 (Alaska
26 2005).

1 burdens on associational rights must be narrowly tailored to serve a compelling state
2 interest.⁵⁷ But when regulations impose lesser burdens, “a State’s important regulatory
3 interests will usually be enough to justify reasonable, nondiscriminatory restrictions.”⁵⁸

4 Alaska’s party-membership requirement helps the state safeguard the integrity of
5 its electoral process. It is a legitimate electoral regulation, and neither the character nor
6 the magnitude of the Party’s asserted injury call for heightened scrutiny. Indeed, the
7 “mere fact that a State’s system ‘creates barriers . . . tending to limit the field of
8 candidates from which voters might choose . . . does not of itself compel close
9 scrutiny.’”⁵⁹ As discussed below, the requirement does not unconstitutionally limit
10 access to the ballot, restrict who may vote in a party’s primary, or impermissibly
11 infringe upon voters’ ability to associate with and ultimately elect the candidate of their
12 choosing.

13 To the extent AS 15.25.030(a)(16) limits the potential universe of eligible
14 primary candidates, any burden is minimal and does not warrant close scrutiny.⁶⁰ A
15 candidate may still register to be a party member at any point up until they file their
16 declaration of candidacy.⁶¹ Any otherwise qualified and eligible candidate remains free
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21 ⁵⁷ *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

22 ⁵⁸ *Id.* (internal citation omitted).

23 ⁵⁹ *Burdick*, 504 U.S. at 433 (1992) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)).

24 ⁶⁰ *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (noting the existence of barriers to
25 candidate access to the primary ballot which limited the field of candidates from which
26 voters could chose “does not of itself compel close scrutiny.”).

⁶¹ Bahnke Affidavit at 3; *see also*, AS 15.25.030(a)(16); AS 15.25.040.

1 to seek a party's nomination. Unaffiliated, independent, or non-party candidates may
2 continue to access the ballot at the general election through the write-in or nomination
3 process.⁶² This system assures ballot access for any interested and otherwise qualified
4 candidate, whether or not they choose to affiliate with a political party. Because the
5 party-membership requirement does not handicap unaffiliated candidates, preclude
6 access to the ballot for non-party members, or prohibit a party's ability to field
7 otherwise eligible candidates, a more deferential standard of review is appropriate.

8
9 **a. The party-membership requirement does not restrict ballot**
10 **access or violate a constitutionally protected right.**

11 "[L]aws restricting ballot access 'place burdens on two different, although
12 overlapping, kinds of rights—the right of individuals to associate for the advancement
13 of political beliefs, and the right of qualified voters, regardless of their political
14 persuasion, to cast their votes effectively.'"⁶³ But AS 15.25.030(a) is not fairly
15 characterized as a ballot access restriction, because it neither prevents the Alaska
16 Democratic Party from running candidates on the ballot nor restricts independent or
17 unaffiliated candidates from appearing on the ballot.

18 Assuming that it is a ballot access restriction, however, the party-membership
19 requirement does not violate a constitutionally protected right. Alaska Statute
20 15.25.030(a) does not impact the right of voters to cast their votes effectively, as it does
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23 ⁶² AS 15.25.105; AS 15.25.110, AS 15.25.140-180.

24 ⁶³ *Green Party of Alaska v. State, Div. of Elections*, 147 P.3d 728, 734 (Alaska
25 2006) (citing *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) and quoting *Williams v.*
26 *Rhodes*, 393 U.S. 23, 30 (1968)).

1 not prevent any candidate from appearing on the ballot, either as a party member or as
2 an independent candidate. Any otherwise eligible individual who wants to run for office
3 may do so; they simply must use a different route.⁶⁴

4
5 Nor does the statute impact individuals' rights to associate for the advancement
6 of common political goals or a party's right to select a "standard bearer who best
7 represents the party's ideologies and preferences."⁶⁵ Any candidate who wishes to
8 advance a recognized party's political beliefs can register with that party, submit a
9 declaration of candidacy, and appear on the party's primary election ballot.⁶⁶ Any
10 candidate who wishes to advance the political beliefs of a non-recognized political
11 group, of him- or herself, or even of an established party, can submit a petition with
12 signatures of voters equal to one percent of the voters who cast ballots in the preceding
13 general election.⁶⁷ But in either case, the Party and the individual remain free to
14 associate with other individuals to advance their political beliefs. And in either case, the
15 Party remains free to promote, support, or ultimately endorse any candidate of its
16 choosing—as the Democratic Party did most recently in Alaska's 2014 gubernatorial
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22 ⁶⁴ *Storer*, 415 U.S. at 733 (noting election laws "aimed at maintaining the integrity
23 of the various routes to the ballot" are likely permissible).

24 ⁶⁵ *Green Party*, 118 P.3d at 1064.

25 ⁶⁶ AS 15.07.050, 15.25.030, AS 15.25.100.

26 ⁶⁷ AS 15.25.160, AS 15.25.170.

1 race.⁶⁸

2 The party-membership requirement is thus far less restrictive in operation and
3 wholly unlike the laws the Alaska Supreme Court reviewed with heightened scrutiny in
4 *State, Division of Elections v. Metcalfe*⁶⁹ and *State, Division of Elections v. Green Party*
5 *of Alaska*.⁷⁰ In *Metcalfe*, the Court applied strict scrutiny but nevertheless reversed the
6 superior court's preliminary injunction of a statutory three percent voter-support
7 requirement for political party recognition. The court concluded that the requirement
8 was narrowly tailored to the State's compelling interest in ensuring political
9 organizations demonstrated a significant modicum of voter support before obtaining,
10 and reaping the benefits of, official political party status.⁷¹ But the law at issue there
11 directly interfered with ballot access by keeping the party plaintiff off the ballot. It thus
12 curtailed political expression in a way the party-membership requirement does not.
13 Thus, *Metcalfe* does not require this Court to apply strict scrutiny here.

14 Similarly, the Alaska Supreme Court applied heightened scrutiny in *State v.*
15 *Green Party*.⁷² But *Green Party* involved a prohibition on combined ballots and the

20 ⁶⁸ Martin Kaste, *In Alaska Race for Governor, Democrats Try an Unusual Tactic:*
21 *Dropping Out*, (NPR News, Oct.18, 2014) available at
22 <http://www.npr.org/2014/10/18/356942426/in-alaska-race-for-governor-democrats-try-an-unusual-tactic-dropping-out>. (Last visited June 15, 2017).

23 ⁶⁹ 110 P.3d 976 (Alaska 2005).

24 ⁷⁰ 118 P.3d 1054.

25 ⁷¹ 110 P.3d at 979.

26 ⁷² *Green Party*, 118 P.3d at 1059-60.

1 ability of a party to open its primary ballot to more voters.⁷³ The law restricted a party's
2 ability to determine who could vote in its primary and curtailed a voter's ability to
3 choose a political party's candidate.

4 By contrast, the party-membership requirement is not a categorical bar to ballot
5 access nor does it curtail political activity. It does not prohibit any unaffiliated candidate
6 from seeking elected office. It does not prevent the Party from endorsing any such
7 candidate. It does not prevent voters from ultimately voting for the candidate of their
8 choice in the general election. It simply instructs that before a candidate may secure the
9 benefits political parties obtain by way of a party's recognized status, the candidate be a
10 member of that party.

11 It can hardly be controversial to suggest that before a candidate can become a
12 party's "standard bearer," the candidate in fact bear the party's standards. After all,
13 under the new bylaw, the Democratic Party may have no idea of the political beliefs of
14 the candidates appearing on its ballot and no choice but to include all interested
15 candidates, even if their political beliefs are offensive to Party values.⁷⁴ And neither a
16 political party nor such a candidate has a constitutionally protected right to have a non-

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22 ⁷³ *Id.* at 1062.

23 ⁷⁴ Granted, even under AS 15.25.030(a), a party cannot be sure that a candidate
24 shares its values simply because he or she registered to vote as a Democrat or
25 Republican. But it seems counterintuitive, to say the least, that a candidate would share
26 a party's values and ideas, wish to run for the party's nomination to public office, but
nevertheless be unwilling to register as a party member in order to do so.

1 party candidate appear on the party's primary ballot when the reason is not to advance
2 the party's political beliefs.

3 **b. The party-membership requirement does not place a**
4 **substantial burden on associational rights.**

5 Courts have not found a political party's associational rights to be severely
6 burdened by laws—like Alaska's party-membership requirement—that simply impose
7 qualification requirements on candidates. Although a party has the right to select its own
8 candidate, it is not absolutely entitled to have its nominee appear on the ballot.⁷⁵ “A
9 particular candidate might be ineligible for office, unwilling to serve, or [already be]
10 another party's candidate.”⁷⁶ “[L]imiting the choice of candidates to those who have
11 complied with state election law requirements is the prototypical example of a
12 regulation that, while it affects the right to vote, is eminently reasonable.”⁷⁷

13
14 For example, courts have determined that antifusion laws, which prohibit an
15 individual from appearing on the ballot of more than one party, do not violate a party's
16 associational rights.⁷⁸ In *Timmons v. Twin Cities Area New Party*, the U.S. Supreme
17 Court held that Minnesota's fusion ban did not substantially burden a party's
18 associational rights because it did “not restrict the ability of the [party] and its members
19 to endorse, support, or vote for anyone they like,” and did “not directly limit the party's
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22 ⁷⁵ *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (finding that
23 antifusion laws did not violate a party's First and Fourteenth Amendment associational
rights).

24 ⁷⁶ *Id.* (internal citations omitted).

25 ⁷⁷ *Burdick v.*, 504 U.S. at 440 n.10.

26 ⁷⁸ *See Timmons*, 520 U.S. 351.

1 access to the ballot.”⁷⁹ “Instead, these provisions reduce the universe of potential
2 candidates who may appear on the ballot as the party’s nominee only by ruling out those
3 few individuals who both have already agreed to be another party’s candidate and also,
4 if forced to choose, themselves prefer that other party.”⁸⁰ In the words of the Seventh
5 Circuit, banning candidates from running in more than one party primary for the same
6 office “does not substantially burden the ‘availability of political opportunity,’ . . .
7 because a party may nominate any candidate that the party can convince to be *its*
8 candidate.”⁸¹ And in the view of the Seventh Circuit, the plaintiff political party had “no
9 right to associate with a candidate who has chosen to associate with another party.”⁸²

10
11
12 Nothing in *Tashjian v. Republican Party of Connecticut*⁸³ requires a different
13 result. That case addressed a requirement that voters in a party primary be registered
14 party members, and—in passing—commented that a requirement that “only Party
15 members might be selected as the Party’s chosen nominees for public office . . . would
16 clearly infringe upon the rights of the Party’s members.”⁸⁴ But in *Timmons*, decided
17 eleven years later, the Supreme Court retreated from reading *Tashjian*’s dicta to mean
18 that a prohibition on “one party’s candidate from appearing on the ballot, as that party’s
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21 ⁷⁹ *Id.* at 363.

22 ⁸⁰ *Id.*

23 ⁸¹ *Swamp v. Kennedy*, 950 F.2d 383, 385 (7th Cir. 1991) (internal citation omitted;
24 emphasis in original).

25 ⁸² *Id.*

26 ⁸³ 479 U.S. 208 (1986).

⁸⁴ *Id.* at 215.

1 candidate, if already nominated by another party,”⁸⁵ was constitutionally suspect.
2 Indeed, the Court quoted approvingly the Seventh Circuit’s observation in *Swamp v.*
3 *Kennedy* that “a party may nominate any candidate that the party can convince to be *its*
4 candidate.”⁸⁶ Thus, a political party has no absolute right to thwart the rationale and
5 interests underlying state-conferred party advantages by running as a primary candidate
6 someone who will not agree to join the party. The party remains free to associate with,
7 and share its state-conferred benefits with, any candidate that it can convince to register
8 as a member.
9

10 In addition to antifusion provisions, election laws that prevent a candidate who
11 has lost a party primary from running as a candidate for another party in the subsequent
12 general election—so-called “sore loser” laws—are analogous to Alaska’s party-
13 membership requirement. The Sixth Circuit upheld Michigan’s “sore loser” law,
14 adopting the district court’s ruling that the law did not impose severe burdens on either
15 the candidate or the party.⁸⁷ That decision reasoned that the statute did not regulate
16 parties’ internal decision-making process or compel them to associate with voters of any
17 political persuasion, and left candidates free to withdraw from the primary election or to
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22 ⁸⁵ *Timmons*, 520 U.S. at 360.

23 ⁸⁶ *Id.* (quoting *Swamp*, 950 F.2d at 385 (emphasis in original)).

24 ⁸⁷ *Libertarian Party of Michigan v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013)
25 (affirming “the district court’s judgment for the reasons stated in its . . . opinion and
26 order” and referring to *Libertarian Party of Michigan v. Johnson*, 905 F.Supp.2d 751
(E.D. Mich. 2012)).

1 run as independents in the general election.⁸⁸ Similarly here, the party-membership
2 requirement does not prevent the party from supporting the candidate of its choosing or
3 compel it to associate with select voters, and independent candidates remain free to
4 access the general ballot.

5
6 Courts have likewise held that disaffiliation laws—which exclude from the ballot
7 party candidates who have been affiliated with a different political party for a certain
8 time period before an election—do not severely burden the associational rights of
9 political parties.⁸⁹ In *Van Susteren v. Jones*, the Ninth Circuit upheld a California law
10 that required partisan candidates to be disaffiliated from membership in other political
11 parties for one year prior to filing for primary ballot access.⁹⁰ Similarly, the en banc
12 Colorado Supreme Court upheld a one-year disaffiliation period for candidates against a
13 challenge that it unconstitutionally restricted a political organization's right to choose its
14 representative for public office.⁹¹

15
16 Finally, at least two courts have reviewed affiliation requirements like Alaska's
17 party-membership requirement and concluded that they do not severely burden
18 associational rights. The Oregon District Court concluded that a law requiring an
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20
21 ⁸⁸ 905 F.Supp.2d at 760.

22 ⁸⁹ See, e.g., *Van Susteren v. Jones*, 331 F.3d 1024 (9th Cir. 2003); *Colorado*
23 *Libertarian Party v. Secretary of State of Colo.*, 817 P.2d 998 (Colo. 1991) (en banc);
24 *cf. Storer v. Brown*, 415 U.S. 724 (1974) (finding that state law requirement that
25 independent candidates be disaffiliated for one year was not unconstitutional).

26 ⁹⁰ *Van Susteren*, 331 F.3d at 1026.

⁹¹ *Colorado Libertarian Party v. Secretary of State of Colo.*, 817 P.2d 998 (Colo.
1991) (en banc).

individual to be a member of a political party for at least 180 days before becoming the party's candidate did not impose a severe burden on associational rights warranting strict scrutiny.⁹² The court recognized that the plaintiff, who had not registered as a Democrat in time to run as a candidate for the Democratic party, could still associate with that party as a member or voter, could seek its nomination in any election after complying with the 180-day registration requirement, and could pursue the Democratic nomination via a write-in campaign.⁹³ The South Dakota District Court came to the same conclusion in *South Dakota Libertarian Party v. Gant*, where a state law required all candidates seeking a party's nomination to be registered affiliates of the party.⁹⁴ The court found that this law did not impose a severe burden, in part because the Libertarian Party was not entitled to nominate anyone it wanted; it remained free to "nominate anyone who is eligible for office."⁹⁵ The court stated that "*Timmons* teaches that [the state's requirement that a nominee must become a member of a party before being nominated] is only a slight burden on the party's associational rights."⁹⁶

Nothing about AS 15.25.030(a) prohibits the Alaska Democratic Party from endorsing or supporting unaffiliated candidates or candidates who are associated with another political party or group. Nothing about it prohibits party members from voting

⁹² *Vuliet v. Oregon*, 2013 WL 867439 (D. Ore. 2013).

⁹³ *Id.* at *7.

⁹⁴ 60 F.Supp.3d 1043, 1044 (D. S.D. 2014) (citing SDCL § 12-6-3.2).

⁹⁵ *Id.* at 1049.

⁹⁶ *Id.*

1 for such candidates. Alaska's affiliation requirement is indistinguishable from South
2 Dakota's law and is more lenient than Oregon's law—neither of which were found to
3 substantially burden constitutional rights. And it is analogous to the antifusion,
4 “sore loser,” and disaffiliation laws that numerous courts have found do not
5 substantially burden the associational rights of parties and candidates. The court should
6 follow the lead of those courts to have considered these analogous provisions and
7 decline to apply strict scrutiny; the State need show only that its regulatory interests are
8 “‘sufficiently weighty to justify the limitation’ imposed on the party’s rights.”⁹⁷

11 **2. The State has strong interests in requiring party-membership
12 of candidates appearing on a party primary election ballot.**

13 Alaska's Election Code assumes that votes for a party's candidates reflect public
14 support for that party's beliefs, ideologies, and preferences, and it extends legitimate
15 benefits to parties based on that support. Given the state-conferred advantages and
16 benefits political parties obtain, the State has multiple strong interests in maintaining an
17 authentic link between a political party and party-member candidates.

18 Most importantly, the Alaska Supreme Court has recognized that the State has a
19 “legitimate” and “important” “interest in ensuring that a political group be able to
20 demonstrate a significant modicum of support before enjoying the benefits of political
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25 ⁹⁷ *Timmons*, 520 U.S. at 364 (quoting *Norman v. Reed*, 502 U.S. 279, 288-289
26 (1992)).

1 party status.”⁹⁸ Alaska’s election laws serve this interest by establishing different routes
2 for recognized party candidates and unaffiliated candidates to appear on the general
3 election ballot. These parallel tracks reflect “the obvious differences in kind between the
4 needs and potentials of a political party with historically broad support, on the one
5 hand,”⁹⁹ and an independent or unaffiliated candidate who has not yet established a
6 significant modicum of support.
7

8 Independent candidates or those unaffiliated with a recognized party must seek
9 office by a nominating petition containing signatures of eligible voters equal to one
10 percent of the number of voters who cast ballots in the previous general election.¹⁰⁰
11
12 Candidates of political parties, on the other hand, are presumed to have a significant
13 modicum of support if they prevail in the primary election.¹⁰¹ This is true regardless of
14 voter turnout at the primary election or of the number of votes a candidate receives. The
15 requisite “‘significant modicum of support’ for a principal political party’s candidate is
16 derivative of his or her party’s support at the last general election.”¹⁰² A party’s
17

18 ⁹⁸ See *Green Party of Alaska*, 147 P.3d at 731; *Green Party*, 118 P.3d at 1066-67;
19 *Metcalfe*, 110 P.3d at 980; see also, *Munro*, 479 U.S. at 193 (“it is . . . clear that States
20 may condition access to the general election ballot by a minor-party or independent
21 candidate upon a showing of a modicum of support among the potential voters for the
22 office.”)

23 ⁹⁹ *Jenness v. Fortson*, 403 U.S. 431, 441 (1970).

24 ¹⁰⁰ AS 15.25.010; AS 15.25.160-.170.

25 ¹⁰¹ AS 15.25.100; AS 15.80.010(27).

26 ¹⁰² *Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214, 232 (Md.
2003) (concluding under state’s statutory scheme, candidate from one of two “principal
political parties” deemed to have “a significant modicum of support, regardless of the
voter turnout at the last election”).

1 candidate need not show any personal numerical level of support to be on the general
2 election ballot; it attaches by way of voter support of the party itself in the preceding
3 election.¹⁰³ So, for example, if a Democrat runs unopposed in the Democratic Party's
4 primary election, he or she will become the Democratic candidate on the general
5 election ballot even if that candidate receives only a single vote in the primary. But in
6 either case, the candidate has demonstrated, or presumptively demonstrated, some level
7 of public support for their candidacy.
8

9 Relatedly, the State also has a significant interest in making sure a party's
10 continued status as a recognized political party reflects sincere support for the party's
11 values, to avoid compromising the integrity and value of recognized party benefits.
12

13 Alaska Statute 15.80.010(27) requires that in order to be recognized as a
14 "political party," a group must attain at least three percent of the votes polled in the last
15 gubernatorial election, or register the equivalent number of voters.¹⁰⁴ If a political party
16 fails to retain these numbers, it will lose recognized party status.¹⁰⁵
17

18 The State's election laws grant benefits and privileges both to the party and the

19 ¹⁰³ AS 15.25.100; AS 15.80.010(27).

20 ¹⁰⁴ See AS 15.80.010(27)(A). If the office of governor was not on the ballot in the
21 preceding general election but the office of United States senator was, a group can
22 qualify if it nominated a candidate for that office who received at least three percent of
23 the total votes cast for the office at that general election or has registered voters equal to
24 at least three percent of the total votes cast for United States senator at that general
25 election. AS 15.80.010(27)(B). If neither the office of governor or United States senator
26 was on the ballot, the same formulas apply to the office of United States Representative.
AS 15.80.010(27)(C).

¹⁰⁵ See, e.g., *Green Party of Alaska v.* 147 P.3d at 730 (describing Green Party of
Alaska's loss of recognized party status in the 2002 general election).

1 candidate with that understanding.¹⁰⁶ For example, recognized parties are entitled to
2 have a primary election¹⁰⁷ and have automatic access to the general election ballot.¹⁰⁸
3 They have greater privileges under campaign-finance laws, with statutory authorization
4 to accept and contribute substantially larger sums of money (e.g., while a political group
5 may not contribute more than \$1,000 to a candidate, a political party may contribute as
6 much as \$100,000 to a candidate for governor).¹⁰⁹ Parties with the two highest numbers
7 of statewide votes in a gubernatorial election are given spots for party members on
8 precinct election boards;¹¹⁰ they are permitted to appoint people as precinct and poll
9 watchers;¹¹¹ the parties with the two highest vote totals are authorized to appoint two
10 people each to participate in the state ballot counting review¹¹² (and have similar
11 authority for district counting boards);¹¹³ and the two parties whose candidates received
12 the highest and second-highest number of votes in the most recent general election in
13 which a governor was elected each have two seats on the Alaska Public Offices
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18 ¹⁰⁶ See, e.g., *Metcalf*, 110 P.3d at 981-82 (“[T]he recognition of a political party
19 has lasting implications—that party, among other things, obtains increased powers
20 under the campaign-finance laws, gains access to primary elections, and earns automatic
21 placement on general election ballots . . .”)

22 ¹⁰⁷ AS 15.25.010.

23 ¹⁰⁸ AS 15.15.030(7).

24 ¹⁰⁹ AS 15.13.070(c), (d).

25 ¹¹⁰ AS 15.10.120(c).

26 ¹¹¹ AS 15.10.170.

¹¹² AS 15.10.180.

¹¹³ AS 15.20.190.

Commission.¹¹⁴

Political groups and other entities do not share these benefits. By reflecting the broader will of the Alaskan electorate, these benefits serve a public interest. But they do so only so long as the party's official status is based on—and truly reflects—a critical mass of public support for the party's platform.

That support is tethered to the State's profound interest in fairly and effectively administering elections.¹¹⁵ Ensuring an orderly electoral process is not only a State's interest; it is its duty.¹¹⁶ This State's legitimate interest in reasonably regulating its elections is based not only on "common sense,"¹¹⁷ but constitutional text. Article I of the United States Constitution reserves to the States the power to prescribe "Times, Places, and Manner of holding Elections for Senator and Representatives."¹¹⁸ The State thus has an important interest in ensuring the integrity of the ballot¹¹⁹ and in regulating the number of candidates on the ballot, both to avoid overcrowding and to help ensure that voters can discern the views of those for whom they vote.¹²⁰

Finally, the State also has a strong interest in the stability of its political system

¹¹⁴ AS 15.13.020.

¹¹⁵ *Munro*, 479 U.S. at 193.

¹¹⁶ *Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 774 (7th Cir. 1997); AS 15.15.010.

¹¹⁷ *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

¹¹⁸ U.S. Const., Art. I, § 4, cl. 1.

¹¹⁹ *See Timmons*, 520 U.S. at 358 (acknowledging state's legitimate regulatory interest in reducing campaign-related disorder).

¹²⁰ *Bullock v. Carter*, 405 U.S. at 145.

1 and preserving political parties as viable groups.¹²¹ Because Alaska's election
2 procedures presume a central role for political parties, the erosion of party integrity and
3 identity may have a significant negative impact on the State's electoral process.

4 Alaska's party-membership requirement furthers all of these interests.

5
6 **3. Alaska's party-membership requirement is closely-drawn to
advance the State's important interests.**

7 "In evaluating interests underlying state election laws 'a particularized showing'
8 is not required."¹²² "To require States to prove actual voter confusion, ballot
9 overcrowding, or the presence of frivolous candidacies as a predicate to the imposition
10 of reasonable ballot access restrictions would invariably lead to endless court battles . . .
11 and would necessitate that a State's political system sustain some level of damage
12 before the legislature could take corrective action."¹²³ Legislatures must be "permitted
13 to respond to potential deficiencies in the electoral process with foresight," so long as
14 "the response is reasonable and does not significantly impinge on constitutionally
15 protected rights."¹²⁴

16
17
18 Alaska's party-membership requirement is closely-drawn to further the State's
19 many important interests. A rule that allows any non-party candidate to appear on the
20 party's ballot—without any indication that the candidate shares the party's positions—
21

22 ¹²¹ See *Clingman*, 544 U.S. at 593-94; *Timmons*, 520 U.S. at 366-67.

23 ¹²² *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996) (quoting *Munro v.*
24 *Socialist Workers Party*, 479 U.S. 189, 195-96 (1986)).

25 ¹²³ *O'Callaghan*, 914 P.2d at 1254 (quoting *Munro*, 479 U.S. at 195-96).

26 ¹²⁴ *Id.*

1 severs the connection between the candidate and the political party's ideology. It
2 permits any number of unaffiliated candidates to enjoy the benefits of privileged party
3 status with no assurance that public support warrants it. It thwarts the integrity of
4 Alaska's broader electoral scheme, undermining the state's legitimate presumption that
5 a party candidate may obtain state-conferred advantages because the candidate shares—
6 at least to some appreciable extent—the views of the party. And it risks conferring the
7 significant lasting benefits that accompany party status on an entity so internally
8 fractured and unaligned, that its purported standard bearer refuses to identify with the
9 party's platform. Under the Party's rule, election results are no longer an accurate
10 indicator of which political parties deserve recognized status. And primary ballots risk
11 becoming overcrowded and cluttered by the names of candidates who might aspire to
12 office but lack bona fide public support.

15 Further, it invites parties to turn Alaska's electoral scheme on its head. If the
16 court were to adopt the Party's position, a party that recognizes that it lacks a candidate
17 who could win a sufficient percentage of the vote in the general election (and thus retain
18 its formal party status) could recruit a viable independent candidate to run on that
19 party's primary ballot simply in order to bolster that party's votes in the general
20 election. This would allow groups with dwindling or marginal political support to
21 maintain their recognized party status—and the benefits that status confers—and may
22 ultimately give less popular "parties" valued seats on the boards and commissions that
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1 are staffed according to party rank in the most recent election.¹²⁵ This scheme masks
2 public support for the various parties and therefore undermines the State's interests in
3 ensuring that candidates enjoy a modicum of support and in preserving a viable party
4 system.

5
6 Similarly, the party-membership requirement is closely-drawn to serve the
7 State's interest in maintaining the integrity of elections and avoiding voter confusion or
8 deception.¹²⁶ The State may reasonably impose restrictions intended to "avoid primary
9 election outcomes which would tend to confuse or mislead the general voting
10 population to the extent [it] relies on party labels as representative of certain
11 ideologies."¹²⁷ By severing the link between party and ideology, the Party's new rule
12 conceives of a structure in which a Democratic nominee for any office may not share
13 any political values or policy objectives with the Democratic Party. Party affiliation will
14 thus lose its value as a proxy for political views.

15
16 Ultimately, the party-membership requirement is closely drawn to further the
17 State's interests in ensuring that every candidate, before they appear on the ballot, has a
18 "significant modicum of support," and that the integrity of both the political party
19

20
21 ¹²⁵ In the 2014 general election, an independent ticket led by Bill Walker was
22 endorsed by the Democratic Party, leading to the Democratic Party's loss of its seat on
23 the Alaska Public Offices Commission.

24 ¹²⁶ *Rednour*, 108 F.3d at 774 (The "preliminary demonstration of a 'significant
25 modicum of support' furthers the state's legitimate interest of 'avoiding confusion,
26 deception, and even frustration of the democratic process at the general election.'")
(quoting *Jenness v. Fortson*, 403 U.S. 431, 442 (1971)).

¹²⁷ *Clingman*, 544 U.S. at 594.

1 system and the ballot itself is preserved.

2 **4. The party-membership requirement also survives strict**
3 **scrutiny.**

4 Although Alaska's party-membership requirement does not impose a severe
5 burden on the Party's rights and therefore does not trigger strict scrutiny, the result
6 would be no different if it did. In *Green Party of Alaska*, the Alaska Supreme Court held
7 that "the state's interest in requiring a 'significant modicum of support' is *compelling*
8 because it helps the state 'avoid[] confusion, deception and even frustration of the
9 democratic process at the general election.'"¹²⁸ And the U.S. Supreme Court has
10 repeatedly acknowledged that a state has compelling interests in ensuring the stability of
11 its political system,¹²⁹ preventing fraudulent candidates,¹³⁰ and regulating the number of
12 candidates on the ballot to avoid undue voter confusion.¹³¹ Because the Democratic
13 Party's new rule would cut the link between parties and the votes used to assess those
14 parties' popular support, AS 15.25.030(a) is narrowly tailored.
15

16 In *Metcalf*, the Alaska Supreme Court held that "comparing Alaska's ballot-
17 access requirements with the requirements of other states [was] . . . one reasonable way
18 to determine whether less restrictive alternatives exist."¹³² Numerous cases demonstrate
19 that Alaska's party-membership requirement is far less restrictive than the affiliation
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21

22 ¹²⁸ *Green Party*, 147 P.3d at 735 (emphasis added).

23 ¹²⁹ *Storer*, 415 U.S. at 736.

24 ¹³⁰ *Munro*, 479 U.S. at 194.

25 ¹³¹ *American Party of Texas v. White*, 415 U.S. 767, 782 n.14 (1974).

26 ¹³² *Metcalf*, 110 P.3d at 980.

1 and disaffiliation laws adopted in many other states.

2 For example, in *Storer v. Brown*, the Supreme Court upheld California's one-
3 year party disaffiliation requirement, which forbade ballot position to an independent
4 candidate if the candidate had been registered as a political party member within one
5 year before the primary election.¹³³ In so doing, the Court acknowledged California's
6 "compelling" interest in the stability of its political system, and remarked that the
7 disaffiliation requirement was "expressive of a general state policy aimed at maintaining
8 the integrity of the various routes to the ballot," which helped prevent both
9 "independent candidates prompted by short-range political goals, pique, or personal
10 quarrel" and "a party fielding an 'independent' candidate to capture and bleed off votes
11 in the general election that might well go to another party.'" ¹³⁴

12 More recently, in *Van Susteren v. Jones*, the Ninth Circuit came to a similar
13 conclusion and upheld a disaffiliation requirement applied to candidates who had
14 previously been affiliated with a different political party.¹³⁵ California's twelve month
15 disaffiliation rule is far more restrictive than Alaska's simple requirement that a
16 candidate be willing to register as a member of the party whose nomination she seeks.

17 Similarly, Oregon requires that any candidate who wishes to run in a major party
18 primary have been affiliated with that party for at least 180 days before the primary
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24 ¹³³ *Storer*, 415 U.S. at 726-27.

25 ¹³⁴ *Id.* at 735-36.

26 ¹³⁵ 331 F.3d 1024, 1026 (9th Cir. 2003).

1 filing deadline—a statute that was upheld by the district court in *Vuliet v. Oregon*.¹³⁶
2 And in *South Dakota Libertarian Party v. Gant*, the district court held that South
3 Dakota's party-membership requirement, which is the same as Alaska's, "is far less
4 stringent than the 12-month disaffiliation provision in *Storer* . . . [and] withstands
5 constitutional scrutiny even under the strict standard of review."¹³⁷
6

7 Because Alaska's party-membership requirement is narrowly-tailored to advance
8 the State's compelling interests in ensuring that candidates have a modicum of popular
9 support, preserving the stability of the political system, and avoiding voter confusion
10 and deception, it survives even strict scrutiny.
11

12 V. CONCLUSION

13 Based on the foregoing, the State asks this Court to grant its motion for summary
14 judgment.

15 DATED June 19, 2017.

16 JAHNA LINDEMUTH
17 ATTORNEY GENERAL

18 By: Elizabeth Walsh
19 Margaret Paton Walsh
20 Alaska Bar No. 0411074
21 Elizabeth Bakalar
22 Alaska Bar No. 0606036
23

24
25 ¹³⁶ 2013 WL 867439.

26 ¹³⁷ 60 F.Supp.3d at 1046.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

17 JUN 19 PM 3:24
CLERK, TRIAL COURTS
BY AB DEPUTY

ALASKA DEMOCRATIC PARTY,)
)
Plaintiff(s),)
)
v.)
)
STATE OF ALASKA,)
)
Defendant(s).)

Case No.: 1JU-17-00563CI

AFFIDAVIT OF JOSEPHINE BAHNKE

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

Josephine Bahnke, being duly sworn, states as follows:

1. I am the director of the State of Alaska, Division of Elections (Division), and I have personal knowledge of the matters stated in this affidavit.
2. Under current party bylaws, the Division prepares two ballots for each primary election: (1) a Republican-only ballot; and (2) a combined party ballot on which the Alaska Independence Party, Alaska Libertarian Party, and Alaska Democratic Party appear together. The combined party ballot is not something that is set forth in statute. It is the result of administrative policy—specifically, the Division's application of AS 15.25.014, which allows political parties to determine who may vote in the party's primary. The Division also offers a "measures only" ballot for primary elections for initiatives that meet the constitutional and statutory criteria for inclusion in the

ATTORNEY GENERAL, STATE OF ALASKA
Diamond Courthouse
PO Box 110300, JUNEAU, ALASKA 99811
PHONE (907) 465-3600

1 primary election. The ballots are typically certified, that is, finalized, shortly after the
2 candidate filing deadline at 5:00 p.m. on June 1 of an election year.

3 3. Any individual who wants to be a candidate in a party primary
4 must file a declaration of candidacy establishing that they meet all candidate eligibility
5 requirements, including those set forth in AS 15.25.030. There is no deadline in Alaska
6 law by which an individual must register as a member of a political party before they
7 are eligible to run in a party primary election. For example, if someone wanted to
8 register as a member of the Democratic Party to run in the Democratic primary election,
9 they could register as a member of the Democratic Party the same day they filed their
10 declaration of candidacy. In other words, a candidate filing for office may change their
11 party affiliation up until the June 1, 5:00 p.m. candidacy filing deadline.

12 4. The vast majority of voters in Alaska are unaffiliated with a
13 political party. As of June 2017, there are 189,130 registered undeclared voters; 84,380
14 registered nonpartisan voters, 140,702 registered Republican Party voters; 76,124
15 registered Democratic Party voters; 16,729 registered Alaskan Independence Party
16 voters; and 7,323 registered Libertarian Party voters. There are also 3,267 registered
17 voters of various political groups, the largest of which—the Green Party—has 1,684
18 registered voters.

19 5. The Division has standardized the ballot name layout and style
20 practice of proper case and comma usage on the ballot following the U.S. Elections
21 Assistance Commission best practices and the Associated Press (AP) Style Manual.
22 The names of each candidate— Last Name, First Name, Middle Initial (optional) and a
23
24
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1 "Nickname" (optional)— appear on the ballot next to an oval that is filled in by the
2 voter. On the right of the ballot next to the name is the political party affiliated with the
3 candidate.

4
5 6. The Division prepares election forms, materials and training
6 documents that reflect the two separate ballots with candidates identified as described
7 above. Although the Division could, without any significant administrative burden or
8 disruption to the administration of the primary election, change the designation of a
9 particular candidate's political affiliation on the combined party ballot from, for
10 example, "Democrat" to "Independent" or "Unaffiliated", the Division's ability to make
11 that change is dependent upon a number of unknown factors. Specifically, the Division
12 is unaware of and has no control over whether the Alaska Libertarian Party or Alaskan
13 Independence Party—whose rules previously matched the Democratic Party's rules—
14 might object to the inclusion of new candidates who are unaffiliated with any of the
15 three parties on the combined party ballot. The Division would also be required to
16 evaluate whether the inclusion of unaffiliated or independent candidates would risk
17 confusing or potentially misleading voters, and could require a costly and burdensome
18 reprogramming of the state's ballot tabulation system, including over 1,000 individual
19 memory cards used to count ballots, to accommodate the creation of another primary
20 election ballot.
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Josephine Bahnke
Josephine Bahnke

SUBSCRIBED AND SWORN TO before me this 19 day of

June, 2016.



[Signature]
Notary Public in and for Alaska
My Commission Expires: with
Office