IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA DEMOCRATIC PARTY and ANITA THORNE, Plaintiff, v. CAROL BEECHER, in her official capacity as DIRECTOR OF THE DIVISION OF ELECTIONS and STATE OF ALASKA, DIVISION OF ELECTIONS Defendant.	)	Case No. 3AN-24-08665CI

ORDER DENYING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

On September 4, 2024, Plaintiffs, the Alaska Democratic Party and Anita Thorne, filed their Complaint in this case seeking declaratory relief and a motion for a temporary restraining order and preliminary injunction. Plaintiffs sought expedited consideration, which the court granted, setting forth an accelerated briefing schedule with oral argument on September 9. Defendants, Director Carol Beecher and the State of Alaska, Division of Elections, filed their opposition to the motion on September 6 and Plaintiffs replied later that day.

The motion asks the court to grant a temporary restraining order and preliminary injunction requiring Defendants to remove candidate Eric Hafner from the general election ballot for the U.S. House of Representatives in the upcoming November 2024 election, ruling him disqualified and arguing that Alaska law does not permit primary candidates who finished lower than fifth place to replace a candidate who timely withdraws on the general election ballot.

The court held oral argument on September 9. Both parties appeared through counsel. The Alaska Republican Party, through counsel, filed a motion to intervene at the outset of the hearing. After allowing time for other counsel to confer with their clients, the court granted the intervention unopposed. Hafner was not named as a party in the Complaint, was not served any Summons, and did not appear. All parties at the September 9 hearing agreed to the court proceeding without appearance or service to Hafner. This issue is addressed in more detail below. The court has reviewed the briefing, affidavits, exhibits, and arguments made at the hearing and now issues the following order.

I. Undisputed relevant facts

1. The Alaska Democratic Party represents and organizes Democrats across Alaska, with the mission to help them win state and federal races.[1] The Party endorsed Rep. Mary Peltola for the present election.[2]
2. Anita Thorne is a registered Democrat from Anchorage who supports Rep. Peltola and plans to vote for her in the upcoming election.[3]
3. On May 29, 2024, Eric Hafner, a Democrat, filed his declaration of candidacy for U.S. Representative for Alaska.[4] Hafner is presently incarcerated in federal prison in New York.[5] He is not scheduled to be released until 2036.[6]
4. Plaintiffs assert that Hafner resided in New Jersey at the time of his sentencing and that he has never been to Alaska.[7] Defendants are without knowledge to these facts and do not contest them for purposes of this motion. These facts have not changed since Hafner filed his declaration on May 29, 2024.
5. On August 20, 2024, Alaska held its primary election for its sole congressional seat.[8]

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[1] *Complaint* at 3 ¶6 (filed Sept. 4, 2024).
[2] *Id.*
[3] *Id.* at ¶7.
[4] Exhibit A.
[5] *Id.* at 3.
[6] *Complaint* at 8 ¶26.
[7] *Id.* at ¶27-28.
[8] *Id.* at 4 ¶12.

6. Alaska uses a top four nonpartisan open primary system to advance candidates to the general election ballot.[9]
7. The Division certified the primary results on September 1.[10]
8. Congresswoman Mary Peltola, a Democrat, finished first in the primary election with 50.9% of the votes.[11]
9. Republican candidates Nick Begich, Lieutenant Governor Nancy Dahlstrom, and Matthew Salisbury finished second, third, and fourth in the primary election receiving 26.7%, 19.9%, and 0.6% of the votes, respectively.[12]
10. John Wayne Howe, affiliated with the Alaskan Independence Party, finished fifth, receiving 0.57% of the vote.[13]
11. Hafner finished sixth, receiving 0.43% of the vote.[14]
12. On August 27, Lt. Gov. Dahlstrom timely filed her notice of withdrawal from the general election, creating a vacancy.[15]
13. On August 30, Salisbury timely filed his notice of withdrawal from the general election, creating another vacancy.[16]
14. The deadline for candidates to withdraw from the November general election was September 2 at 5:00pm.[17]
15. On September 2 at 5:16pm, the Division updated its website to show Rep. Peltola, Begich, Howe, and Hafner as the final four candidates for the general election ballot.[18]
16. On September 5, the Division finalized the general election ballot designs and sent them to the printer.[19]

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[9] AS 15.15.025.
[10] *Affidavit of Carol Beecher* at 2 ¶3 (filed Sept. 6, 2024).
[11] *Complaint* at 4 ¶13.
[12] *Id.*
[13] *Complaint* at 7 ¶22.
[14] *Complaint* at 7 ¶23.
[15] *Affidavit of Carol Beecher* at 2 ¶5.
[16] *Id.* at 2 ¶6.
[17] *Id.* at 2 ¶3.
[18] *Affidavit of Carol Beecher* at 2 ¶7.
[19] *Id.* at 3 ¶6.

17. On September 6, the printer began printing the test ballots the Division will use to test its election equipment.[20]
18. The State Review Board tests the ballots beginning on September 11 for one to two days.[21]
19. Once the testing is complete, the Division will begin printing over 3,500 ballots for uniformed, overseas, and state advance voters.[22]
20. State and federal law requires the Division to mail ballots to these voters 45 days before the election: by September 21.[23] September 21 is a Saturday; so, the bulk mail order must be delivered to the post office by Friday September 20.[24]
21. Printing all 700,000 ballots for statewide use in the general election takes about two and a half weeks to print, cut, and sequence, and costs about $300,000.[25]

II. Governing Law

AS 15.25.100(c)

> [I]f a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

U.S. CONST. art. 1 § 2, cl. 2

> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

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[20] *Id.* at 4 ¶8.
[21] *Id.* at ¶9.
[22] *Id.* at ¶10.
[23] *Id.* at ¶11.
[24] *Id.*
[25] *Id.* at 5 ¶15.

III. Discussion

a. Temporary restraining order and preliminary injunction

Effectively, all parties acknowledge that the request for a temporary restraining order (TRO) and the request for a preliminary injunction are one in the same and that Plaintiffs are in fact seeking a consolidated ruling on the merits[26] of the case for declaratory relief, solely due to the extremely time-sensitive nature of the case subject. For this reason, the court's analysis refers primarily to preliminary injunctions, but does so as an umbrella for jointly analyzing all three forms of relief that Plaintiffs seek.

Alaska Civil Rule 65 governs preliminary injunctions. There are two standards that the court may use when considering whether to grant a preliminary injunction: "[a] plaintiff may obtain a preliminary injunction by meeting either [1] the balance of hardships or [2] the probable success on the merits standard."[27]

A preliminary injunction is warranted under the "balance of the hardships" standard when the following three elements are met: "(1) the plaintiff [is] faced with irreparable harm; (2) the opposing party [is] adequately protected; and (3) the plaintiff [raises] serious and substantial questions going to the merits of the case; that is, the issues raised [are not] frivolous or obviously without merit."[28] Irreparable harm "should not be inflicted" and is a harm which no court can reasonably redress "because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages."[29] Adequate protection "exists where 'the injury that will result from the injunction can be indemnified by a bond or where it is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.'"[30] If the plaintiff raises "serious and substantial questions going to the merits of the case," then the court will "'balance[e] the harm the plaintiff will suffer

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[26] Civil Rule 65(a)(2).
[27] *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).
[28] *Id.* (quoting *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992)).
[29] *Kluti Kaah*, 831 P.2d at 1273 n.5.
[30] *State, Division of Elections v. Metcalfe*, 110 P.3d 976, 978-979 (citing *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991)).

without the injunction against the harm the injunction will impose on the defendant' to determine whether or not to grant the injunction."[31]

The "probable success on the merits standard" applies "if the party requesting preliminary injunctive relief does not face irreparable harm or if the opposing party cannot be adequately protected against injury threatened by the requested relief."[32] Under this standard, a court may grant a preliminary injunction if "the party seeking relief ... make[s] 'a clear showing of probable success' on the merits of the dispute."[33] The party seeking a preliminary injunction has the burden to support their request.[34] The same standards apply for a TRO.[35]

i. No irreparable harm shown

To succeed under this standard, the movant must be subject to irreparable harm.[36] Plaintiffs first argue that Hafner's inclusion on the ballot will harm Congresswoman Peltola's prospects because Hafner's inclusion will confuse voters by presenting them with another candidate.[37] Second, Plaintiffs assert they are harmed by the use of Hafner's name and his Democratic affiliation suggesting they are affiliated with a convicted felon.[38] The court does not find any reasonable argument from Plaintiffs that Hafner's appearance on the ballot is going to harm another candidate or voters.

First, ranked-choice voting neutralizes any claim of harm because in theory *every* voter can rank *all* candidates if they choose. Alaska utilizes ranked-choice voting which gives voters the ability to rank one or more candidates as they prefer.[39] Voters are able to accurately indicate their preferences under this system. If a voter votes only for Hafner,

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[31] *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021) (quoting *Alsworth*, 323 P.3d at 54).
[32] *Id.* (citing *Alsworth*, 323 P.3d at 54-55).
[33] *Id.* (citing *Alsworth*, 323 P.3d at 54 n. 14).
[34] *Randle v. Bay Watch Condo. Ass'n*, 488 P.3d 970, 974 (Alaska 2021) (citing *State v. Norene*, 457 P.2d 926, 934 n.5 (Alaska 1969) ("The applicant has the burden of showing his right to injunctive relief by evidence and that irreparable injury will result if the injunction is not granted ....")).
[35] *See Alsworth*, 323 P.3d at 54 (citing *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991)).
[36] *Id.*
[37] *Memorandum in Support of Emergency Motion for Temporary Restraining Order and Preliminary Injunction* at 10 (filed Sept. 4, 2024).
[38] *Id.* at 11.
[39] AS 15.58.020(a)(13).

and does not rank other candidates, then the voter expressly asserts that they only want to vote for Hafner if no other ranking is indicated. Under this voting regime, no votes are diverted from one candidate to another, so no candidate is harmed. If a voter chooses not to vote for Rep. Peltola, she is not harmed because the voter's will has been carried out. If the voter chooses to vote for one or more candidates from a specific political party affiliation, that is also the voter's individual right and prerogative under the statute. No political party is harmed by the existence of that *option* because it is not exclusive. That is, allowing additional candidates on the ballot does not in and of itself cause any harm to any other candidate specifically because of the ranked-choice format allowing multiple candidates to be chosen. Likewise, no voter is harmed since voters have the ability to rank their chosen candidates and to not elect other candidates. The Alaska Supreme Court has previously analyzed the complexities of choice in a single-choice voting system compared to ranked-choice and held that the "difficulty" of voting is a "basic problem...whenever there are more than two candidates" in any system, but voters are capable of navigating the "minimal burden" of ranked-choice.[40] The court finds that Plaintiffs have demonstrated almost no harm whatsoever facing them from Hafner being on the general election ballot. They have simply highlighted the realities of ranked-choice voting and a "top four nonpartisan open primary" system.

Second, because the choice of affiliation belongs to *candidates* and not parties, there can be no claimed harm to a political party by Hafner's declared affiliation. Candidates on the ballot have the option to identify with "the political party or political group with which the candidate is registered as affiliated."[41] A statutory disclaimer on every general election and primary election pamphlet protects against fears of implicit endorsement by association:[42] "[a] candidate's political party or political group designation on a ballot *does not imply* that the candidate is nominated or endorsed by the party or political group or that

[40] *Kohlhaas v. State*, 518 P.3d 1095, 1123 (Alaska 2022).
[41] *Id.* at 1101.
[42] AS 15.58.010.

the party or group approves of or associates with that candidate."[43] This language makes clear that a political party designation next to the candidate's name on the ballot does not mean that the listed party is associated with the candidate in any manner; it only signifies what party the candidate wants listed next to his or her name. Here, Hafner is a registered Democrat and he wanted the ballot to reflect this. The Alaska Supreme Court has also analyzed and rejected this argument about harm in *Kohlhaas* and placed its "confidence in Alaska voters' common sense."[44] Again, the court does not find that Plaintiffs face any harm here.

Plaintiffs' complaint is not about the action or status of Hafner or the action or determination of the Defendants, but with the amendments of Ballot Measure 2 itself. Plaintiffs complain that the statutes allow a candidate, such as Hafner, to unilaterally choose his party affiliation and declare it on the ballot. The court is applying that law to the facts and finds that Hafner is acting within his legal right to declare his registered voter affiliation and have it listed on the ballot. The court is likewise applying that law to the facts and finds that the Division is properly printing ballots as such. Plaintiffs allege no violation of law by Defendants or Hafner and no resulting harm.

As a final point, Defendants argue that Plaintiffs' case amounts to a veiled or improperly pled election contest. Plaintiffs dispute this characterization. The court made the analogy that one's failure to plan does not constitute another's emergency. The time sensitivity of this motion is inescapable. Equally inescapable is the reality that Plaintiffs could have pursued this relief at any time after Hafner filed his declaration of candidacy in late May. The analysis and outcome may have been the same, but the urgency of the proceedings would not have been. While half of Plaintiffs' case centers on an issue that solely exists between the primary and general election phases of the case, the other half (Hafner's qualification to appear on any ballot and his party affiliation) could have been raised much earlier or could still be raised after the election as an election contest. To the

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[43] AS 15.58.020(a)(13) (emphasis added); *see also* AS 15.15.030(15).
[44] *Kohlhaas*, 518 P.3d at 1110.

extent that Plaintiffs assert that Hafner's candidacy was so obscure that there was no reason to address this until the unlikely scenario that is now before the court presented itself, the court finds that assertion unreasonable. It was *very* foreseeable that two candidates of either major party could wind up in the top four when there were only three competitive candidates in the primary election. If Plaintiffs did not evaluate this possible outcome in May, June, or even July, that was a failure to plan by the Plaintiffs, not the emergency that is being depicted here.

ii. No adequate protection available

The court further finds that the Defendants' interests in this matter are not adequately protected. Director Beecher has detailed, under oath, the harm that the Division and the public (voters) would suffer if an injunction were to be granted. It would delay the Division's ability to meet state and federally mandated timelines, force the Division to stop, redesign, and recommence processes already underway, and incur substantial costs in re-printing the ballots. These harms are not insignificant at all, but they are the lesser of the two harms at issue.

As was squarely addressed in *State v. Galvin* in 2021, the Alaska Supreme Court has taken note of the harm the public would face by such delays or by reprinting.[45] It is nothing short of threatening "'the prospects of an organized and successful election moving forward.'"[46] The "danger" is that "the Division might not be able to successfully conduct a timely election" which becomes "a harm to the interests of [all] Alaskan voters and [all] political candidates" and parties.[47] This was the same risk without adequate protection that existed in the *Galvin* case and this court makes the same finding here. At oral argument, the Division plainly stated that there are no extra days built into the ballot-printing timeframe. This is a fact that Plaintiffs downplay, but offer no legitimate argument to refute, and no evidence to contradict.

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[45] *State v. Galvin*, 491 P.3d 325, n. 60 (Alaska 2021).
[46] *Id.* at 339.
[47] *Id.* at 334.

Plaintiffs seek to distinguish the timing here with *Galvin*, but the timing is nearly the same: mid-September. To the extent the suit in *Galvin* was filed a week or two later than the case here, that status does not change anything because there remain no extra days built into the timetable to allow for even minor delays or do-overs in the process of designing/printing/testing/printing/mailing ballots. The Division has demonstrated that ballot designs were finalized and sent to the printer on September 5, 2024 and that it takes over two weeks for the Division to print, cut, and sequence the 700,000 ballots it needs for the election. The Division cannot change the candidates on the ballots without reprogramming the ballots, which would subject the Division to substantial costs and very likely keep the election from being held on time.

Additionally, as the first round of ballots (3,500+) are mailed abroad, there exists a substantial risk of harming the public through a loss of trust in the integrity of the election if those ballots are reprinted and reshipped. This means that 3,500+ invalid ballots will be in circulation causing significant confusion, public fear of fraud and other malfeasance, and disruption in the election as a whole. The risk then arises that voters will submit obsolete ballots and miss their chance to cast a valid ballot. The added complexity for poll workers of identifying and weeding out invalid ballots arises. The risks of harm go on and on and greatly outweigh any hypothetical harm that Plaintiffs have alleged.

In sum, an injunction threatens a successful administration of the election process, harming the Defendants without adequate protection, while the Plaintiffs face only minimal harm. Most concerning to the court is the harm to the public and the integrity of the election, which would be truly irreparable. Accordingly, the court denies the motion for an injunction or TRO under the "balance of the hardships" standard.

The court's finding under this standard necessarily calls into question whether it is temporally possible for a plaintiff to file such a motion as this if the timetable that the Division operates under will essentially forever defeat challenges merely by its tight margins. That is, if the trial court must always conclude that there is not enough time, then plaintiffs are hypothetically denied justice regardless of the merits of their complaint.

Certainly, the Plaintiffs here argue that they filed this case at the earliest conceivable juncture: within 48 hours of the certifying of the general election finalists. The court rejects this argument and finds that the available avenues of relief would have been to file this prior to the primary or as an election contest after the general election.

iii. "The probable success on the merits" standard

"If the party requesting preliminary injunctive relief does not face irreparable harm or if the opposing party cannot be adequately protected against injury threatened by the requested relief, then the standard of probable success on the merits applies."[48] As the court has found neither irreparable harm facing Plaintiffs, nor adequate protection for Defendants, the probable success on the merits standard applies.

The Plaintiffs request the court to grant an injunction effectively removing Hafner from the ballot and requiring the Division to stop the processes already underway. Granting this relief would effectively be a summary ruling on the merits of the case. The temporary relief sought is the same as the final declaratory judgment sought. If the Plaintiffs prevail, the Division could appeal, possibly reversing and requiring ballots to be changed again. There is no feasible way this sequence can play out for a later trial on the merits to occur given the timeline of this matter. Thus, the preliminary decision here is the final decision on the merits of the case as dictated by time constraints.

As set forth below, the court does not find it at all clear that Plaintiffs will succeed on the merits of this case.

1. <u>Hafner's qualifications for candidacy</u>

Plaintiffs first argue that they will succeed on the merits to exclude Hafner from the ballot because they assert he is "disqualified" under AS 15.25.100(c) by not being an inhabitant of Alaska.[49] Plaintiffs originally alleged an additional deficiency in Hafner's declaration of candidacy, which was later withdrawn by footnote.[50]

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[48] *Id.* at 333.
[49] *Complaint* at 8 ¶30.
[50] *Reply in Support of Motion for TRO and Injunction* at 8 (filed Sept. 6, 2024).

Plaintiffs' argument here conflates multiple concepts. They conflate "candidacy" with "serving in office." And they conflate "residency while a candidate" with "inhabitant when taking office." The distinctions are dispositive here.

The U.S. Constitution does not require a candidate to be an inhabitant *when running* for an office; it only requires the candidate to be an inhabitant on election day *if and when elected.*[51] States may not add to the list of qualifications set forth in Article 1, Section 2, Clause 2 of the U.S. Constitution,[52] so this court is without authority to change the constitutional requirements for *running* for a congressional office.

There is no dispute that Hafner is not residing in Alaska today. But there is no requirement under law that he reside in Alaska today, in the past, or in the future at any time prior to the day "when elected" to office. That day has not yet arrived, and regardless of the probability that Plaintiffs assert, the court cannot make any factual finding about the future. The court would be speculating, which it has no authority to do in this context. Plaintiffs argue that the court "must take judicial notice" that Hafner *will not* be an inhabitant of Alaska on election day. Plaintiffs cite no precedent for a court taking *predictive* judicial notice of future events. A "fact" is defined as: something done[53] or something that has actual existence.[54] This requires the fact to be past-tense or established, not future-tense or speculative. By definition, that would not be a *fact*, and thus is "subject to reasonable dispute."[55] All Plaintiffs are able to do here is establish where Hafner is today, which is legally irrelevant. It is not disqualifying to hold future office.

Plaintiffs here are effectively asserting a primary election contest, improperly filed, or a general election contest filed prematurely. There is no basis under Alaska law or otherwise to challenge a candidate preemptively under constitutional grounds; Plaintiffs

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[51] U.S. CONST. art. 1 § 2, cl. 2 ("No Person shall be a representative... who shall not, *when elected*, be an Inhabitant of that State in which he shall be chosen.") (emphasis added).
[52] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995).
[53] *Fact*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (last visited Sept. 10, 2024), https://www.ahdictionary.com/word/search.html?q=fact
[54] *Fact*, MERRIAM WEBSTER'S DICTIONARY OF LAW (last visited Sept. 10, 2024), https://www.merriam-webster.com/dictionary/fact#legalDictionary
[55] Evidence Rule 201.

may do so after the election is complete, if applicable. Nevertheless, an election challenge at this time fails because Hafner *does* qualify to run. Although it may be unlikely, Hafner *could* be pardoned or otherwise could become an inhabitant of Alaska before Election Day in November 2024.

Thus, the question of Hafner's qualification to serve as a representative is not ripe for the court to rule on today as he has not been elected. The only determination that can be made by the court today is whether Hafner is qualified to *run as a candidate*. The court finds that he is. Accordingly, the court will not grant an injunction or TRO under the "probable success on the merits" standard under this claim.

2. AS 15.25.100(c)

Plaintiffs alternatively argue they are likely to succeed on the merits to exclude Hafner from the ballot because they assert a sixth-place finisher in the primary cannot be placed on the general election ballot.[56] They assert that the language of AS 15.25.100(c) is plain and it expressly provides for only a single replacement candidate; the candidate that received the fifth most votes in the primary election.[57] Relying on this statute, Plaintiffs assert that if two of the top four candidates are disqualified or withdraw from the election, then only one of those two vacancies can be filled by the fifth place finisher.[58] Defendants argue that the statute implies that subsequent withdrawals or disqualifications would be replaced by subsequent finishers in the primary.

When "construing the meaning of a statute," a court must "look to the meaning of the language ... and the purpose of the statute in question ... [and] 'adopt the rule of law that is most persuasive in light of precedent, reason, and policy.'"[59] Statutes originating in ballot measures have additional interpretive rules: "when reviewing a ballot measure, [the court attempts] to place [itself] in the position of the voters at the time the initiative was placed on the ballot, and ... try to interpret the initiative using the tools available to the

[56] *Memo.* at 6 (filed Sept. 4).
[57] *Id.*
[58] *Complaint* at 11 ¶¶39–40.
[59] *Muller v. BP Exploration* (Alaska) Inc., 923 P.2d 783, 787 (Alaska 1996) (quoting *Foreman v. Anchorage Equal Rights Comm'n*, 779 P.2d 1199, 1201 (Alaska 1989)).

citizens of this state at that time.'"[60] Accordingly, a court will only consider "'materials that Alaska voters had available and would have relied upon' when voting on the measure."[61] AS 15.25.100 was enacted by ballot measure.[62] The Alaska Supreme Court has "consistently construed election statutes in favor of voter enfranchisement."[63]

Reviewing the statutory scheme as a whole, it is evident that the goal of the ballot measure, as presented to voters in 2020, was to have greater choice, specifically *four* candidates on the general election ballot. For example, a new section, AS 15.15.025, was adopted and titled "Top four nonpartisan open primary." Alaska Statute 15.25.100(a) was amended to require "the names of the four candidates receiving the greatest number of votes for an office" to be placed on the general election ballot. Similarly, AS 15.25.010 was amended to state that "only the four candidates who receive the greatest number of votes for any office shall advance to the general election."

The court reviewed the entirety of the 2020 election pamphlet pages 75-106 introducing voters to Ballot Measure 2. The actual ballot language for Ballot Measure 2 referenced that the "four candidates with the most votes in the primary election would have their names placed on the general election ballot."[64] The ballot language made no reference to the withdrawal or disqualification procedure. The Findings and Intent states, "It is in the public interest of Alaska to improve the electoral process by *increasing ... choice*."[65] It further states, "It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will generate *more* qualified and competitive

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[60] *Guerin v. State*, 537 P.3d 770, 780 (Alaska 2023) (quoting *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 193 (Alaska 2007)).
[61] *Id.*
[62] *Memo.* at 7 (filed Sept. 4).
[63] *Miller v. Treadwell*, 245 P.3d 867, 870 (Alaska 2010).
[64] Ballot Measure No. 2 at 75; see also Ballot Measure No. 2 at 75–76 ("The candidates with the four highest vote totals advance to the general election ballot); at 79 ("establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices"); at 80 ("It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will *generate more qualified and competitive candidates* for elected office.")
https://www.elections.alaska.gov/election/2020/General/OEPBooks/2020%20AK%20Region%20I%20pamphlet_FINAL-web.pdf
[65] *Id.* at 79 under Uncodified Law Section 1(1) (emphasis added).

candidates ...."[66] Both of these findings express the intent of the drafters, and by extension the approving voters, to increase choice in candidates on the ballot, not limit the number of candidates. Finally, the Statement in Support prepared by the initiative co-chairs describes ranked-choice voting as "a simple change that gives voters *more freedom* to choose candidates ...."[67] Again, all materials available to voters presented this statutory scheme as increasing choice, increasing candidates on the ballot, and increasing freedom for the voter. This is strong evidence against Plaintiffs' interpretation of limiting AS 15.25.100(c) to only replacing the first withdrawal and no others.

Plaintiffs argue that the plain text of AS 15.25.10(c) only refers to a replacement by the "fifth" place vote-getter and thus any other interpretation requires reading something more into the statute than is there. However, this literal reading of the statute indicated by Plaintiffs leads to an impossibility when more than one candidate withdraws from an election. The section uses the article 'a' to refer to the withdrawing candidate: "if *a* candidate nominated at the primary ... withdraws ..." The choice of 'a' rather than 'one' implies that more than one candidate is capable of dying, withdrawing, resigning, or becoming disqualified. This is obviously true as seen in the present circumstance. While Plaintiffs argue that the use of the specific term "fifth" rather than a more open phrase, such as "next highest" is thus exclusive, it is equally reasonable to assume that the drafters would have used the exact and limiting word 'one' rather than 'a' if they only contemplated a single withdrawal could occur. Plaintiffs' interpretation leads to an absurd result.

Specifically, it would require *all* withdrawn candidates to *only* be replaced by the original fifth place vote-getter meaning that candidate would appear on the ballot more than once if more than one candidate withdraws. For example, when Lt. Gov. Dahlstrom withdrew, her "vacancy ... shall be filled by ... the candidate who received the fifth most votes in the primary election" which was Howe. Then, when Salisbury withdrew, his "vacancy ... shall be filled by ... the candidate who received the fifth most votes in the

[66] *Id.* at 80 Section 1(4) (emphasis added).
[67] *Id.* at 105 (emphasis added).

primary election" which, according to Plaintiffs' logic was still Howe. This is an absurd result, but the necessary logical result of Plaintiffs' reading of the statute. That is clearly not what the voters intended when Ballot Measure 2 was enacted.

The term "fifth" is exemplary, not exhaustive. Necessarily the wording of the statute requires the Director (or the court) to determine how to fill "the vacancy" when a second or subsequent withdrawal occurs. The plain language of filling the vacancy with the fifth-place vote-getter simply fails. It also fails to logically indicate a limit to vacancy replacements. Nothing in the wording of the statute implies replacements are exhausted after one vacancy. Another dilemma would arise if the top four or five candidates all withdrew, died, or were disqualified. In each of these examples, the Plaintiffs' interpretation limits voters' choice, rather than increasing choice as the statute intends.

It is more reasonable to presume that the same procedure provided in AS 15.25.100(c) would continue to apply to subsequent withdrawals; that is, to replace a second candidate who withdrew from the top four with the sixth-place finisher in the primary election, ***and so on***. This is in harmony with the overall statutory scheme, materials available to Alaska voters when Ballot Measure 2 was enacted, reason, and policy: to advance four candidates to the general election; to increase choice; and to give voters more freedom.

Finally, Plaintiffs argue that replacing multiple candidates on the ballot leads to reaching "the dregs of the candidate pool" whom Plaintiffs define as candidates "who received next to no support in the primary and are obviously unsuitable for the office."[68] This argument fails by the very facts of this case, but it is also unsupported anywhere in the statute, precedent, or the Ballot Measure materials. In this case, the fourth through twelfth place finishers in the primary all received 0.6% or less of the vote. Thus, no replacement was necessary to reach candidates with a statistically *de minimis* vote total. This notwithstanding, the spirit of Ballot Measure 2 is clearly in opposition to this argument. Ballot Measure 2 advocated for *more* candidates, and specifically those who are

[68] *Reply* at 7.

independent or "don't want to be affiliated with Republican or Democratic parties" and may have less support.[69]

For all of the above reasons, the court does not find Plaintiffs to have "probable success on the merits" on this claim and denies the requested relief.

b. Indispensable party

Because of how the court has ruled on the above issues, the court deems it necessary to address Hafner as an indispensable party although the issue was not brought before the court by any of the parties. As a matter of due process, the court could not grant the relief sought by the plaintiffs without joining Hafner as an indispensable party.

Under Civil Rule 19(a), an indispensable party must be joined in an "action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest ...." Hafner has an actual interest in the outcome of this case and he would be deprived of his interest without due process if the court granted the relief sought by Plaintiffs.

Even if Hafner loses in the election, which all parties assume is likely, and the court assumes Hafner also accepts is likely, there is still an interest in being listed as a candidate on a ballot regardless of the results of the election. Without question, many people successfully elected into office start out running without the expectation of success, possibly only looking to build name-recognition or call attention to a campaign issue. Whether that applies to Hafner is immaterial; the right to be placed on a ballot is a separate interest without regard to the ultimate success in the general election. That interest is certainly not adequately represented by an existing party.

While the relief sought here is not asking Hafner to do anything, Hafner would still be deprived of his interest without due process of law if he were to be removed from the ballot with no notice or summons of this proceeding. If the requested relief were to be

[69] Ballot Measure No. 2 at 105.

granted, Hafner would be an indispensable party. Because the court is ultimately denying the requested relief, Hafner's interest is not at issue.

IV. Decision

For the foregoing reasons, Plaintiff's motion for temporary restraining order and preliminary injunction is **DENIED**. Per the court's understanding of all parties' agreement on record, this order will constitute a final judgment on the merits of Plaintiffs' claims.

DATED this 10 day of September, 2024.

Ian Wheeles
SUPERIOR COURT JUDGE

I certify that on 9/10/2024
a copy of the above was emailed to the
parties/counsel of record:

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