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

RANDALL KOWALKE,)
)
Plaintiff,)
)
vs.)
)
DAVID EASTMAN,)
STATE OF ALASKA DIVISION OF)
ELECTIONS, and)
GAIL FENUMIAI,)
)
Defendants.)
)

Case No. 3AN-22-07404 CI

**DEFENDANT DAVID EASTMAN’S
OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW Defendant David Eastman (“Representative Eastman” or “Mr. Eastman”), by and through the Law Offices of Joseph Miller, LLC, and hereby opposes Plaintiff’s Motion for Preliminary Injunction. In short, Plaintiff believes this Court should order the State Defendants to remove Representative Eastman’s name from the General Election ballot because they have found some researcher with absolutely no firsthand knowledge of Mr. Eastman to swear out an affidavit suggesting he is part of a terrorist group.¹ Obviously, this Court should not disrupt an on-going election based upon such ridiculous, patently false assertions, particularly given Representative Eastman’s sworn assurances filed with this Opposition.

¹ See Affidavit of Kriner, dated August 28, 2022, at ¶ 9 (“[t]hreatening force for political and ideological purposes is clearly in line with the DOJ definition of terrorism”); see also ¶¶ 6 -8, 10.

Background

In 2009, David Eastman made a donation to the Oath Keepers and received thereafter a “Life Member Commemorative Certificate.” The Oath Keepers’ bylaws established the group’s commitment to “support and defend the Constitution” and specifically excluded from membership anyone “who advocates, or has been or is a member, or associated with, any organization, formal or informal, that advocates the overthrow of the government of the United States. . .”² Moreover, the bylaws affirmed the Oath Keepers’ mission to support “like minded citizens who take an Oath to stand with us” and “to support and defend the Constitution against all enemies, foreign and domestic, so help us God. Our Oath is to the Constitution.”³

Following his financial donation in 2009, Representative Eastman never attended any Oath Keeper meeting or gathering.⁴ Although Mr. Eastman was in Washington, D.C. on January 6, 2021, he was there from January 4 through January 7, 2021, to meet with his elected representatives in Congress and to hear the President speak.⁵ Representative Eastman was not part of any protest, did not enter the U.S. Capitol, and, in fact, has not been inside the Capitol for well-over ten years.⁶

Over the course of his adult life, Representative Eastman has sworn an oath to the U.S. Constitution on multiple occasions, as a West Point cadet, then as an Army officer, and at other times.⁷ Additionally, as a State legislator, Mr. Eastman has taken an oath both to the Constitution of the United States and the Constitution of the State of Alaska as recently as January 19, 2021.⁸ Representative Eastman has never renounced his oath to either constitution, and has never

² Plaintiff’s Affidavit, at 2.

³ *Id.* at 2-4.

⁴ *Id.* at 1. To Defendant’s knowledge, there were no known regular Oath Keeper meetings in Alaska.

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ *Id.* at 3.

⁸ *Id.*

participated in or given aid to any insurrection, rebellion, or sedition against the government of the United States or of the State of Alaska.⁹

Given the arrest of the leader of the Oath Keepers, Stewart Rhodes, as well as some two dozen individuals affiliated with the Oath Keepers, the Oath Keepers no longer appears to be an active organization. Its official website is no longer active, and there do not appear to be any meetings, emails or mailings sponsored by the group.¹⁰

Nevertheless, Kowalke contends that Representative Eastman should not be on the General Election ballot because he is a member of Oath Keepers and is therefore disqualified from holding office under Article XII, Section 4 of the Alaska Constitution (the “Loyalty Clause”):

[n]o person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.

Given the pending election, Kowalke has moved for “a preliminary injunction removing Eastman's name from the General Election ballot for House District 27.” This is despite the fact that the voters of that district voted overwhelmingly to advance David Eastman to the general election.

Although Kowalke’s proposed order reflects that he seeks this injunction against only the State Defendants, Representative Eastman and the voters of his district would be gravely impacted by such injunctive relief. Removing Representative Eastman’s name from the ballot

⁹ *Id.*

¹⁰ *Id.*

would leave voters with exceptionally limited choices; most importantly, the majority of the voters from his district would lose their preferred candidate.¹¹

Legal Standard

Generally, injunctive relief is disfavored under Alaska law. Not only are “preliminary injunctions . . . generally harsh remedies,” “their purpose is not to immediately initiate a full trial on [the merits].”¹² Rather, “[t]he purpose of a preliminary injunction is to maintain the status quo.”¹³ And where, such as here, a movant seeks through his injunction to compel “an affirmative act or mandate[] a specified course of action,”¹⁴ the Supreme Court has found it “well settled” that such “a mandatory injunction will seldom be granted before final hearing, and . . . should be granted only in extreme or exceptional cases [and] . . . with great caution.”¹⁵

In seeking his preliminary injunction, Plaintiff rightfully concedes that he would lose the balance of hardships test for a preliminary injunction so he opts to proceed instead under the “more difficult” success on the merits test.¹⁶ But Kowalke makes a critical omission in describing this test. He suggests throughout his Memorandum that he need only show a “probability of success on the merits”¹⁷ as opposed to the Supreme Court’s requirement that he demonstrate a “clear showing of probable success on the merits.”¹⁸ This is not an omission without consequence. Rather, in order to prevail, Kowalke would need to submit convincing

¹¹ As reflected by the majority vote Mr. Eastman received at the primary election.

¹² *Martin v. Coastal Villages Region Fund*, 156 P.3d 1121, 1126 (Alaska 2007).

¹³ *Id.*

¹⁴ *Cook Inlet Fisherman’s Fund v. State, Dep’t of Fish & Game*, 357 P.3d 789, 794 n.11 (Alaska 2015) (quotation omitted).

¹⁵ *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270 (Alaska 1992) (quotation omitted).

¹⁶ See Plaintiff’s Memorandum in Support of Preliminary Injunction, 4.

¹⁷ *Id.* at 4-6.

¹⁸ *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272 (Alaska 1992); see also *State, Division of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005); *City of Kenai v. Friends of Recreation Ctr.*, 129 P.3d 452, 456 (Alaska 2006).

OPPOSITION

Kowalke vs. Eastman, et al., 3AN-22-07404 CI

Page 4 of 7

evidence of both (1) Representative Eastman’s continuing violation of the Loyalty Clause of the Alaska Constitution and (2) the State’s violation of law in placing Representative Eastman’s name on the ballot.¹⁹

Discussion

Kowalke repeatedly makes the specious claim of “indisputable” facts throughout his pleadings to-date, yet he has failed to present *any* relevant admissible evidence, let alone *convincing* evidence, of Representative Eastman’s violation of the Alaska Constitution’s Loyalty Clause. In support of his “indisputable” facts, he submits only an affidavit from a researcher who studies terrorism at Middlebury University, as well as his own affidavit referencing an article that Representative Eastman wrote. The researcher’s affidavit contains nothing other than speculative comments and broad opinions supported by nothing other than his “studie[s],” “research,” and Internet links. His “research” cherry-picks one or two statements from affiliates of a group that has had at least 38,000 members,²⁰ but makes no reference to the legally-binding bylaws which almost wholly contradict all of the researcher’s comments.

There is nothing in Representative Eastman’s article, nor in the researcher’s affidavit, from which the Court may reasonably conclude that Mr. Eastman has violated the Loyalty Clause. Even if Plaintiff could specifically identify members of the Oath Keepers (and he does not) who “advocate[d] the overthrow by force or violence of the government of the United

¹⁹ Importantly, because Kowalke is seeking this injunction against the State Defendants, he would need to make not only a clear showing of a probability of success on the question of Representative Eastman’s continuing violation of the Loyalty Clause, but also the State’s violation of law in placing Representative Eastman’s name on the general ballot. In other words, even if Representative Eastman was in violation of the Loyalty Clause, the State’s actions of placing him on the ballot may still be lawful. However, if Representative Eastman is *not* in violation of the Loyalty Clause, then there can be no actionable issue with the State’s placement of his name on the ballot.

²⁰ <https://www.iowapublicradio.org/national-news/2022-09-14/elected-officials-police-chiefs-on-leaked-oath-keepers-list>

States” on January 6, 2021 – in and of itself a strange proposition given that they purportedly supported the President then in power, Donald Trump – guilt by association has never been an American value. And more importantly to the pending Motion, guilt by association to fringe elements is not the type of convincing evidence required for a preliminary injunction. This is especially true of an organization whose governing documents strictly prohibit members from “advocate[ing] for the overthrow of the government of the United States” and expressly requires members to support the very essence of American government: the Constitution.²¹

In short, Kowalke has no evidence of: any official statement from the Oath Keepers organization advocating the overthrow of the U.S. government; or even any specific member of the Oath Keepers who has advocated that the organization formally adopt such a position; the current existence of the Oath Keepers as a “party or organization or association”; Representative Eastman’s past or present²² advocacy for the overthrow of, or the use of violence against, the U.S. government; Representative Eastman’s involvement in any protest or unlawful action on January 6, 2021; Representative Eastman’s belonging to the Oath Keepers in such a way that his loyalty to that organization or its mission could supersede or in any way contradict his loyalty to the United States Constitution; or Representative Eastman’s renouncement of his oath to either the Constitution of the United States or the Constitution of the State of Alaska.

On the other hand, this Court has before it Representative Eastman’s sworn statement reflecting that his loyalty is to the Constitution, demonstrated publicly by his taking an oath of allegiance to the Constitution on January 19, 2021, as required by the Constitution of the State of Alaska. Moreover, Representative Eastman affirms that he has never belonged to any group that

²¹ See Affidavit of David Eastman, at Exhibit A, 8.02(a), 8.05.

²² The Loyalty Clause requires, by its present verb tenses, a continuing violation. In other words, unlike Section 3 of the 14th Amendment of the U.S. Constitution, past acts do not put one in violation of Article XII, Section 4 of the Alaska Constitution.

has advocated for the overthrow of the federal or state government by force or violence. Additionally, Mr. Eastman’s affidavit establishes that the controlling bylaws of the Oath Keepers – the organic documents from which the group was created – require all members to support the U.S. Constitution and forbid a member from advocating for overthrow of the federal government. Finally, Representative Eastman has taken numerous oaths supporting both the U.S. and State Constitutions and has never recanted those sworn commitments. Rather than movant, Representative Eastman has made an undeniably “clear showing of a probable success on the merits.”

Conclusion

Kowalke has failed to make a clear showing of a probability of success on the merits. There is not a scintilla of evidence that Representative Eastman has “advocate[d] . . . the overthrow by force or violence of the government of the United States or of the State.” Nor is there any reliable evidence that he has ever “belong[ed] to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State.” On the contrary, Representative Eastman’s Affidavit establishes precisely the opposite, that he and any groups to which he belongs have always supported the Constitution of the United States and/or the Constitution of the State of Alaska.

Kowalke Motion must therefore be denied. An appropriate order is lodged herewith.

DATED this 14th day of September 2022, at Fairbanks, Alaska.

LAW OFFICES OF JOSEPH MILLER, LLC

By: s/ Joseph Miller – Bar Number 9511067
Attorney for Defendant