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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 PLAINTIFF’S MOTION  
TO STRIKE JURY DEMAND**

COMES NOW Defendant David Eastman (“Representative Eastman”), by and through the Law Offices of Joseph Miller, LLC, and hereby opposes Plaintiff’s Motion to Strike Jury Demand. Plaintiff contends that his Complaint sounds entirely in equity and that a jury should not resolve such equitable claims. As Plaintiff’s analysis of the amount in controversy, character of the claims made, and relief sought is mistaken, his Motion must be denied.

**Legal Standard**

Article I, Section 16 of the Alaska Constitution provides that “[i]n civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law.” In interpreting this section, the Alaska

Supreme Court focuses on the relief sought. *See Brooks v. Hollaar*, 297 P.3d 125, 130 (Alaska  
OPPOSITION

2013) (“[a] civil litigant's right to a jury depends on the relief sought”). The distinction is between *equitable* relief and *legal* relief. “[W]here equitable relief is sought . . . this court has disallowed the right to a trial by jury. But, where damages or other relief at law is sought this court has allowed a jury trial.” *Keltner v. Curtis*, 695 P.2d 1076, 1079 n. 5 (Alaska 1985).

Importantly, equitable claims are considered legal if the remedy sought is legal. *See Brooks*, 297 P.3d at 130 (“[w]e treat claims sounding in equity as legal when the litigant seeks a legal remedy”); *see also Henrichs v. Chugach Alaska Corp.*, 250 P.3d 531, 539 (Alaska 2011) (“we have expressly rejected the idea that a breach of fiduciary duty claim is purely equitable when money damages are sought as part of the recovery”). And, in any event, “facts common to legal and equitable claims must first be tried to a jury and the primary equitable issues, if any, disposed of in light of the jury verdict.” *Municipality of Anchorage v. Baugh Const. & Eng'g Co.*, 722 P.2d 919, 928 n. 7 (Alaska 1986).

As to distinctions between law and equity, the general rule is that “equity follows the law” and “wherever the rights or the situation of parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation . . .”<sup>1</sup> *Hedges v. Dixon County*, 150 U.S. 182, 192 (1893) (citation omitted). In assessing this distinction, “the liberty of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge.” 1 William Blackstone, *Commentaries on the Laws of England* \*62. ‘

Finally, even if this Court were to determine that Representative Eastman does not have the right to a jury here, this Court may, on its own motion, empanel an advisory jury. *See Civil*

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<sup>1</sup> *See also Marbury v. Madison*, U.S. (1 Cranch) 137, 163, 2 L. Ed. 60 (1803) (“it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded”).

Rule 39(c) (“[i]n all actions not triable of right by a jury the court upon motion by a party or upon its own motion may try an issue with an advisory jury”); *see also Henrichs*, 250 P.3d at 540 (“the trial court has discretion whether or not to use an advisory jury’ and, if it uses one, the court may ‘accept or reject, in whole or in part, the verdict of the advisory jury’ when deciding the equitable issues”) (citation omitted); *cf. Brooks v. Hollaar*, 297 P.3d 125, 130 (Alaska 2013) (characterizing a trial court’s empaneling of an advisory jury as a “prudent approach” where there was a pretrial dispute regarding whether a jury should decide a certain claim).

**Analysis**

Plaintiff makes two claims in his Complaint, the first of which seeks to remove Representative Eastman from office: “[t]his Court should . . . prohibit [Representative Eastman] from serving in public office due to his membership in the Oath Keepers.” Plaintiff’s Complaint, at ¶31. Obviously the loss of Representative Eastman’s job would be a loss of tens of thousands of dollars to him in salary and lost benefits, so the amount in controversy far exceeds the constitutional threshold of \$250. Additionally, not certifying Representative Eastman as the next legislator for District 27, assuming he receives the highest number of votes in the general election next week, would result in his loss of two years of pay and benefits. Thus, under the clear language of Article I, Section 16 of the Alaska Constitution, Representative Eastman is entitled to a jury.

Moreover, Plaintiff’s claims are legal. Plaintiff himself alleges that he is entitled to “full attorney fees because defendants violated [his] constitutional rights.” Plaintiff’s Complaint, at 8. Mr. Kowalke also alleges that Representative Eastman “violated Alaska Constitution Article XII, Section 4, Disqualification for Disloyalty.” *Id.* at ¶ 30. He then quotes the operative language of

the legal provision on disqualification – that due to Representative Eastman’s membership in an organization which “advocates [for] overthrow by force or violence of the government of the United States” – he should lose his job as a state legislator. *Id.* at ¶ 31. Whether evaluated as Plaintiff’s right or Representative Eastman’s right, “the rights or the situation of parties are clearly defined and established by law,” so they do not sound in equity.

**Conclusion**

For the foregoing reasons, Plaintiff’s Motion to Strike Jury Demand should be denied. In the event the Court determines that Representative Eastman is not entitled to a trial by jury, the Court should empanel an advisory jury pursuant to Civil Rule 39(c).

DATED this 31<sup>st</sup> day of October 2022, at Fairbanks, Alaska.

LAW OFFICES OF JOSEPH MILLER, LLC

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