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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
RESPONSE TO COURT'S 9/15/22 ORDER**

COMES NOW Defendant David Eastman (“Representative Eastman” or “Mr. Eastman”), by and through the Law Offices of Joseph Miller, LLC, and hereby provides this Response to the Court’s 9/15/22 Order regarding whether the Court should reconsider its order denying the Division’s motion to dismiss. Representative Eastman agrees that reconsideration should be granted. A distinction has not been properly drawn in this case between a candidate running for office, who *need not* meet the qualifications of office *at the time he or she is elected*, and an elected official who *must* meet such qualifications “*when entering upon the duties of their office.*”¹ Here, Plaintiff’s remedies against the State must be rejected as they exclusively focus on a candidate running for office, not an individual who has been elected. As explained at oral

¹ Alaska Constitution, Article XII, Section 5. In other words, when the elected official is seated and/or takes the oath of office.

RESPONSE

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argument on 9/20/22, candidates regularly run for office at a time when do not qualify to hold that office by virtue of age, employment,² or other mutable characteristics.³ In like manner, the “Loyalty Clause” of the Alaska Constitution is written exclusively in the present tense⁴ and can only disqualify an individual from elected office after the election has already taken place and at the time they are to enter upon the duties of their office or have already done so. Thus, there is no role for the State here.

DATED this 26th day of September 2022, at Fairbanks, Alaska.

LAW OFFICES OF JOSEPH MILLER, LLC

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

² It is a matter of public record that numerous individuals have run for office without resigning the public office that they hold at the time of election even though holding both seats simultaneously would disqualify them from office (e.g., Representative Christopher Kurka who is currently serving in the legislature until 2023, but has been running for Governor for the term beginning in 2022, or Sen. Joshua Revak who is currently serving in the legislature until 2023, but has been a candidate for U.S. Representative for the current term of office).

³ See Alaska Constitution, Article II, Section 5 (“[n]o legislator may hold any other office or position of profit under the United States or the State”; see also AS 24.05.040 (“[a] member of the legislature may not hold any other office or position of profit under the United States or the state”).

⁴ Alaska Constitution, Article XII, Section 4 (“[n]o person who advocates, or who aids or belongs to any . . . organization . . . 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 . . .”) (emphasis added).