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12 Attorneys for Plaintiff Randall Kowalke

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

12 RANDALL KOWALKE, )  
13 )  
14 Plaintiff, )  
15 )  
16 vs. )  
17 )  
18 DAVID EASTMAN, STATE OF )  
19 ALASKA, DIVISION OF ELECTIONS, )  
20 and GAIL FENUMIAI in her official )  
21 capacity as Director of Elections )  
22 )  
23 Defendant. )  
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28 )

Case No. 3AN-22-07404 CI

**PLAINTIFF’S REPLY IN SUPPORT OF MOTION TO STRIKE JURY DEMAND**

Defendant David Eastman concedes that the determination of whether a civil litigant is entitled to a jury trial under Article I, Section 16 of the Alaska Constitution “focuses on the relief sought,” and turns on the distinction between equitable and legal relief.<sup>1</sup> The right to a jury trial

<sup>1</sup> Defendant David Eastman’s Opposition to Plaintiff’s Motion to Strike Jury Demand (hereinafter “Eastman Opp.”) at 1-2. The other defendants have not taken a position on the plaintiff’s motion to strike the jury demand.

1 extends only to cases seeking legal relief.<sup>2</sup>

2           These concessions should end the inquiry, because the only relief sought by plaintiff Randall  
3 Kowalke in this case is an injunction against the defendants,<sup>3</sup> which is equitable relief,<sup>4</sup> and nominal  
4 damages below the \$250 “amount in controversy” threshold under Article I, Section 16.<sup>5</sup> Thus, Rep.  
5 Eastman simply does not have the right to a jury trial in this case. But instead of conceding the issue,  
6 Rep. Eastman makes a series of meritless arguments.

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8           The first argument is that “equitable claims are considered legal if the remedy sought is  
9 legal.”<sup>6</sup> That statement is true enough. The Alaska Supreme Court has repeatedly held that “the  
10 nature of a claim — equitable or legal — depends on the remedy sought.”<sup>7</sup> For example, in *Brooks*  
11 *v. Hollaar*,<sup>8</sup> the court held that a promissory estoppel claim, which is based on “an equitable  
12 doctrine,” was nonetheless a legal claim because the plaintiff “sought money damages.”<sup>9</sup> Similarly,  
13 in *Henrichs*, the court held that a breach of fiduciary duty claim was legal where the plaintiff sought  
14 “monetary damages as part of the recovery.”<sup>10</sup> But these cases do not help Rep. Eastman, because  
15 the remedy sought here, i.e., injunctive relief, is considered equitable under controlling precedent  
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20 <sup>2</sup>       *See McGill v. Wahl*, 839 P.2d 393, 396 (Alaska 1992).

21 <sup>3</sup>       Complaint (Jul. 29, 2022) at 8 (prayer for relief).

22 <sup>4</sup>       *See State v. First Nat’l Bank*, 660 P.2d 406, 424 (Alaska 1982).

23 <sup>5</sup>       *See Zok v. State*, 903 P.2d 574, 578-59 (Alaska 1995) (explaining that nominal damages are  
24 “usually one cent or one dollar.”).

25 <sup>6</sup>       Eastman Opp. at 2.

26 <sup>7</sup>       *Henrichs v. Chugach Alaska Corp.*, 250 P.3d 531, 539 (Alaska 2011).  
27 297 P.3d 125, 130 (Alaska 2013).

28 <sup>8</sup>       *Id.*

<sup>9</sup>       *Henrichs*, 250 P.3d at 539.

1 from the Alaska Supreme Court.<sup>11</sup> And here, unlike the plaintiffs in *Brooks* and *Henrichs*, Mr.  
2 Kowalke is *not* seeking an award of monetary damages exceeding \$250.

3           Rep. Eastman also argues that the plaintiff’s claims are legal because “the loss of  
4 Representative Eastman’s job would be a loss of tens of thousands of dollars to him in salary and  
5 lost benefits, so the amount in controversy far exceeds the constitutional threshold of \$250.”<sup>12</sup> This  
6 argument shows a fundamental misunderstanding of the distinction between legal and equitable  
7 claims. Most, if not all, equitable relief has a financial impact on the defendant. For example, in  
8 *State v. First National Bank*,<sup>13</sup> the Alaska Attorney General sought the restitution of more than \$1.6  
9 million from real estate developers,<sup>14</sup> but the court still held that the relief sought was purely  
10 equitable, despite the obvious and significant financial impact of the relief on the developers.<sup>15</sup>  
11 Similarly, in *Young v. Embley*,<sup>16</sup> the plaintiff sought to unwind a foreclosure sale of property for  
12 \$165,201.04.<sup>17</sup> Despite the significant amount of money at stake, the Alaska Supreme Court held  
13 that the lawsuit sought “a relief that sounds properly only in equity.”<sup>18</sup> Thus, the fact that Rep.  
14 Eastman may lose salary and benefits if the plaintiff prevails in this case is legally irrelevant to his  
15 right to a jury trial under the Alaska Constitution. This Court must look instead to the type of relief  
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20 <sup>11</sup> See *supra* n.4. As stated above, while the plaintiff’s complaint also seeks an award of nominal  
21 damages, such damages, by definition, are well below the \$250 “amount in controversy” requirement  
22 under Article I, Section 16. See *supra* n.5.

23 <sup>12</sup> Eastman Opp. at 3.  
24 <sup>13</sup> 660 P.2d 406 (Alaska 1982).  
25 <sup>14</sup> See *id.* at 408, 411.  
26 <sup>15</sup> See *id.* at 424.  
27 <sup>16</sup> 143 P.3d 936 (Alaska 2006).  
28 <sup>17</sup> See *id.* at 938-39.  
<sup>18</sup> *Id.* at 948.

1 sought, and whether it includes a request for “monetary damages as part of the recovery.”<sup>19</sup>

2 Rep. Eastman also argues that the plaintiff is seeking legal remedies because his prayer for  
3 relief includes a request for an award of full attorney’s fees.<sup>20</sup> But not one case is cited for the  
4 proposition that a request for attorney’s fees somehow converts an equitable claim into a legal claim.  
5 Such a rule would effectively mean that a jury trial is required for virtually *all* civil cases in Alaska,  
6 because “Alaska is the only state that does not follow the American rule,”<sup>21</sup> which means that  
7 attorney’s fees are awarded in almost all civil cases (regardless of the nature of the relief sought),<sup>22</sup>  
8 and such awards almost always exceed the minimal amount of \$250.  
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10 Finally, Rep. Eastman points out that this Court has the discretion, under Alaska Civil Rule  
11 39(c), to impanel an advisory jury.<sup>23</sup> Rule 39(c) provides: “In all actions not triable of right by a jury  
12 the court upon motion by a party or upon its own motion may try an issue with an advisory jury or,  
13 with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if  
14 trial by jury had been a matter of right.” If an advisory jury is impaneled without the consent of all  
15 parties, “the court may accept or reject, in whole or in part, the verdict of the advisory jury when  
16 deciding the equitable issues.”<sup>24</sup>  
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18 Here, the plaintiff does *not* consent to a jury trial, so any jury verdict would be advisory only.  
19 Furthermore, any benefit of having an advisory jury would be far outweighed by the negative impact  
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23 <sup>19</sup> *Henrichs*, 250 P.3d at 539.

24 <sup>20</sup> Eastman Opp. at 3.

25 <sup>21</sup> *Edwards v. Alaska Pulp Corp.*, 920 P.2d 751, 755 (Alaska 1996).

26 <sup>22</sup> Alaska R. Civ. P. 82(a) (“[T]he prevailing party *in a civil case* shall be awarded attorney’s  
fees calculated under this rule.”) (emphasis added).

27 <sup>23</sup> Eastman Opp. at 2-4.

28 <sup>24</sup> *Henrichs*, 250 P.3d at 540 (citations and internal quotation marks omitted).

1 it would have on the timely resolution of this case. The parties and this Court are already facing  
2 expedited timelines to allow for the completion of trial, a decision by this Court, a likely appeal to  
3 the Alaska Supreme Court, and certification of the election results by the Division of Elections, all  
4 of which need to happen before the start of the next legislative session on January 17, 2023. It is  
5 already going to be a challenge to finish the trial (in spite of the numerous accommodations extended  
6 by the Court) in the time allotted.<sup>25</sup> Having an advisory jury would significantly increase the length  
7 of trial – for reasons such as jury selection in this highly publicized case, jury instructions, sidebars  
8 at trial, jury deliberations, etc. – and would therefore jeopardize the timely certification of the  
9 election for House District 27.<sup>26</sup>

12 For these reasons, this Court should strike Rep. Eastman’s demand for a jury trial.

13 DATED: November 7, 2022

NORTHERN JUSTICE PROJECT, LLC  
Attorneys for Plaintiff

16 By: /s/ Goriune Dudukgian  
17 Goriune Dudukgian, ABA No. 0506051  
18 James J. Davis, Jr., ABA No. 9412140  
19 Savannah Fletcher, AK Bar No. 1811127

22 <sup>25</sup> Rep. Eastman has filed an extensive witness list with 39 lay and expert witnesses and has  
23 told this Court that he intends to mount a robust factual defense. Based on his preliminary witness  
24 list, Rep. Eastman intends to put on testimony regarding the actions of the Oath Keepers on January  
25 6, 2021; that “an important video of Oath Keepers activities from 1/6/21 is missing”; “aspects of  
26 election law as it relates to the events of 1/6/21 in Washington D.C.”; expert testimony on the use of  
27 force; and “legitimate concerns regarding the 2020 presidential election results,” among other areas  
28 of testimony.

<sup>26</sup> As counsel for the Division of Elections told this Court at the status hearing on October 25,  
2022, every single day counts, and even a slight delay in the trial may interfere with the Division’s  
ultimate ability to certify the election.

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**CERTIFICATE OF SERVICE**  
I hereby certify that on 11/7/2022 a true  
and correct copy of the foregoing document  
was served via E-MAIL on:

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By: /s/ Goriune Dudukgian  
Goriune Dudukgian