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Attorneys for Plaintiff Randall Kowalke

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 in her official)
capacity as Director of Elections)
)
Defendant.)
_____)

Case No. 3AN-22-07404 CI

**REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

I. PRELIMINARY STATEMENT

The integrity of an election, the enfranchisement of voters in House District 27, and the continued presence of an ineligible legislator on the ballot are all at stake if this preliminary injunction is not granted. Plaintiff Randall Kowalke has made a clear showing that David Eastman, as an admitted member of the Oath Keepers, an

extremist organization that advocates for the violent overthrow of the United States government, is disqualified from serving in the Alaska legislature under the Disloyalty clause of the Alaska Constitution. The public's interest in having valid elections with eligible candidates who are elected by the people, rather than appointed by the Governor, all support granting Mr. Kowalke's requested preliminary injunction.

II. SUMMARY OF EVIDENCE

Representative Eastman and the Oath Keepers

As Representative Eastman admits, he first became a member of the Oath Keepers in 2009 when he paid money to the group in exchange for a "Life Member Certificate."¹ This action established Representative Eastman's membership in the group. As Representative Eastman stated on October 20, 2021, "I joined the Oath Keepers when it first started."²

Representative Eastman has never taken any action to revoke or renounce his membership in Oath Keepers. Instead, Representative Eastman's actions — both before and after the January 6 Insurrection — "illustrate a close alignment with the

¹ Eastman Answer, ¶ 1; Eastman Affidavit, ¶ 2. Nowhere in Eastman's Affidavit, Answer, nor Opposition to Preliminary Injunction does he deny being a member of the Oath Keepers; he admits that he received a "Life Member Certificate" without offering any explanation as to how this certificate, which includes the word "member" in its title, is not really membership. *See* Eastman Answer, ¶¶ 1, 13, 14, 19, 20, 21.

² Eastman Answer, ¶ 21; James Brooks, [Leaked list shows Alaska state Rep. David Eastman is a 'lifetime member' of a leading Capitol-riot group](https://www.adn.com/politics/2021/10/20/leaked-list-shows-alaska-state-rep-david-eastman-is-a-lifetime-member-of-a-leading-capitol-riot-group/), KTOO (Oct. 21, 2021), <https://www.adn.com/politics/2021/10/20/leaked-list-shows-alaska-state-rep-david-eastman-is-a-lifetime-member-of-a-leading-capitol-riot-group/>.

vision and goals of the Oath Keepers.”³

Since the group’s inception in 2009, Oath Keepers “has been primarily focused on conflict with a federal government it perceives to be inherently tyrannical.”⁴ Indeed, Oath Keepers *openly* advocates for the forceful overthrow of the U.S. Government.⁵ This has been true of the group long before the January 6 insurrection.

These actions speak louder than any unenforced bylaws. While the Oath Keepers’ bylaws might *say* that no member may advocate for the overthrow of the government of the United States, these provisions are not followed or enforced.⁶ Indeed, individuals are not actually vetted prior to being granted membership.⁷

It is also clear that these bylaws are meaningless words in light of the actions of the Oath Keepers. In 2014, the group participated in the Bundy Ranch standoff, an armed confrontation between supporters of cattle rancher Cliven Bundy and federal law enforcement officers, after Bundy refused to follow court orders to pay over \$1 million in withheld grazing fees to the U.S. Bureau of Land Management. In 2016, Oath Keepers provided perimeter defense for the occupation of the Malheur National Wildlife Refuge. Again, an armed group of extremists, including Oath Keepers, seized

³ Affidavit of Jonathan Lewis, § 7. To the degree Representative Eastman challenges the reliability of the two experts, Matthew Kriner and Jonathan Lewis, their expert opinions are permissible because they are based on facts and data “of a type reasonably relied upon by experts in the particular field.” Alaska R. Evid. 703; *Patterson v. Cox*, 2017 Alas. LEXIS 141, at *7 n.19 (Alaska 2017).

⁴ Affidavit of Jonathan Lewis, ¶ 6.

⁵ Affidavit of Matthew Kriner, ¶ 6.

⁶ Supplemental Affidavit of Matthew Kriner, ¶ 5-6.

⁷ *Id.*

and occupied the headquarters of the federal refuge and continued to occupy it for over a month until law enforcement made its last arrest.⁸ Most recently, Oath Keepers planned and participated in the January 6 insurrection at the Capitol.⁹ The very author of the Oath Keepers' bylaws, Stewart Rhodes, has been indicted for seditious conspiracy along with other members of the Oath Keepers.¹⁰

The Oath Keepers remain an active group that has not disbanded, contrary to Representative Eastman's unsupported suggestion.¹¹ Following the January 13, 2022 arrest of the group's founder and leader, Stewart Rhodes, the Oath Keepers' General Counsel, Kellye SoRelle, publicly acknowledged that she was "currently acting as President of Oath Keepers in lieu of Mr. Rhodes until he is released."¹² There has been no mention of Rhodes being ineligible as a continued member of the Oath Keepers, let alone its President, in light of his charge of seditious conspiracy.

Just two weeks *after* Mr. Rhodes' arrest for seditious conspiracy, Representative Eastman made clear that he wished to remain associated with this group:

I refuse to step aside and throw the law-abiding members of Oathkeepers to the Cancel Culture wolves. . . . I will continue to associate with those veterans if they will continue to have me.¹³

⁸ Affidavit of Matthew Kriner, ¶ 8.

⁹ Affidavit of Jonathan Lewis, ¶¶ 8-15.

¹⁰ Supplemental Affidavit of Matthew Kriner, ¶ 7.

¹¹ *Id.* ¶ 2.

¹² *Id.* This is in contrast to other violent extremist groups such as the Three Percenters who did formally dissolve as a group on February 21, 2021, following the January 6 Insurrection. *Id.*

¹³ David Eastman, [Here I stand, I can do no other, so help me God](https://davideastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/), (Jan. 30, 2022), <https://davideastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/>.

Representative Eastman has never affirmatively withdrawn or renounced his membership from the Oath Keepers.¹⁴

Not only has Representative Eastman espoused the goals of the Oath Keepers both before and after their role in the January 6 Insurrection, public reporting has made clear that his white supremacist rhetoric and anti-Semitic worldview has increasingly aligned with the Oath Keepers' embrace of fascism.¹⁵ Eastman compared a speech by President Biden to one given by Adolf Hitler, promoted the openly anti-Semitic "Protocols of Zion," and took photographs in front of an Adolf Hitler quote on the subject of the extermination and annihilation of 'undesirable' individuals during the Holocaust.¹⁶ These actions illustrate a close alignment with the vision and goal of the Oath Keepers.¹⁷

Representative Eastman admits that he traveled to Washington, D.C. from January 4-7, 2021.¹⁸ These dates align with the Oath Keepers' planned travel to Washington, D.C. for the insurrection.¹⁹ Representative Eastman has said that he wanted to "*answer the call of the president* and physically stand with him in his final days in office."²⁰ Representative Eastman "stood shoulder to shoulder with half a

¹⁴ This includes the noted absence of revoking membership or denying membership in Eastman's Affidavit, Answer, and Opposition to Preliminary Injunction.

¹⁵ Affidavit of Jonathan Lewis, ¶ 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Eastman Affidavit, ¶ 4.

¹⁹ Affidavit of Jonathan Lewis, ¶¶ 13-14.

²⁰ David Eastman, What it Meant to be in Washington, DC on January 6th, DavidEastman.org (January 8, 2022) (emphasis added), available at:

million or more Americans” at the Ellipse and listened to President Trump’s speech moments before many of those in attendance stormed the Capitol.²¹

Division of Elections

In light of the facts detailed above, Mr. Kowalke filed a complaint challenging the eligibility of Representative Eastman for the 2022 General Election on June 10, 2022.²² The Division of Elections responded with a letter denying Mr. Kowalke’s eligibility complaint on June 20.²³

The Division determined that even “assuming these allegations [that Representative Eastman is a member of an extremist group that advocates for the violent overthrow of the government] are true, DOE has determined that they do not — without more — provide a basis to prevent Representative Eastman from running for state office.”²⁴ The reason for the Division’s determination became clear when it later argued to this Court that it does not have the authority to enforce the Alaska Constitution’s Disloyalty clause in Article 12, section 4.²⁵

<https://david-eastman.org/articles/what-it-meant-to-be-in-washington-dc-on-january-6th/>.

²¹ *Id.* During his speech, President Trump said, “Our country has had enough. We will not take it anymore and that’s what this is all about. And to use a favorite term that all of you people really came up with: We will stop the steal.” Transcript of Trump’s speech at US Capitol riot, Associated Press (Jan. 13, 2021)

<https://apnews.com/article/election-2020-joe-biden-donald-trump-capitol-siege-media-e79eb5164613d6718e9f4502eb471f27>.

²² Exhibit 2, attached to the Memorandum in Support of Preliminary Injunction.

²³ Exhibit 1, attached to the Memorandum in Support of Preliminary Injunction.

²⁴ Exhibit 1.

²⁵ Division’s Motion to Dismiss State Defendants.

No administrative appeal process was provided to Mr. Kowalke.²⁶ Mr. Kowalke spent the next month acquiring an attorney and then filed a complaint against Representative Eastman and the Division on July 29. The complaint alleged that “Mr. Eastman is ineligible to continue serving in public office for the State of Alaska and is ineligible to be a candidate for future elections.”²⁷ The Division understood the intent and goal of that complaint — to find Representative Eastman ineligible for office and to consequently remove him from the ballot — when it filed its Motion to Dismiss on August 12.²⁸

The primary election for House District 27 took place on August 16. The election results for the primary election were not certified until September 2, 2022.²⁹ On August 29, *prior* to certification of the primary election, Mr. Kowalke moved for this preliminary injunction and requested expedited consideration so that a decision on the injunction could be made by September 6, when the ballots would be certified,³⁰ which would be well before the September 12 deadline for an election contest to be filed in superior court. The Division strenuously opposed expedited consideration of the preliminary injunction motion. This Court denied expedited consideration, in part because the Court found that “this case concerns only House District 27 and it is not

²⁶ See Exhibit 1.

²⁷ Complaint, p. 6.

²⁸ Division’s Motion to Dismiss State Defendants, p. 2.

²⁹ Division of Elections Calendar, <https://www.elections.alaska.gov/calendar/>.

³⁰ Certification of ballots occurs after all ballots have been reviewed, including absentee and questioned ballots, and after candidates have had the opportunity to withdraw, thus the final results are not certified for a few weeks following an election day. *See, e.g.* 6 AAC 25.050.

apparent that the Division could not account for updated ballots,” and because “[p]ast elections have also seen candidates withdraw after ballots had been printed and mailed without throwing the election into chaos.”³¹

The next week, on September 6, the Division certified the ballot; all three candidates for House District 27 moved forward from the primary election to the November general election.³² In just two days, the Division then completed its process of finalizing the ballots and election project software and sending the ballots to the printer on September 8.³³

The Division is required to mail absentee ballots to uniformed and overseas voters 45 days prior to the general election,³⁴ but it is permitted to waive the timing requirement “under certain circumstances, including ‘a delay in generating ballots due to a legal contest.’”³⁵ Regardless, the Division’s current goal is to mail out the overseas ballots by Friday, September 23.³⁶ This Court will hold oral argument on whether this preliminary injunction should be granted on Tuesday, September 20.

III. ARGUMENT AND AUTHORITIES

A. Mr. Kowalke Has Established Probable Success on the Merits.

³¹ Order Denying Expedited Consideration of Plaintiff’s Motion for Preliminary Injunction, p. 4.

³² State of Alaska, 2022 Primary Election Election Summary Report, August 16, 2022 Official Results, <https://www.elections.alaska.gov/results/22PRIM/ElectionSummaryReportRPT.pdf>.

³³ Division’s Opposition to Plaintiff’s Motion for Preliminary Injunction, p. 4.

³⁴ Affidavit of Gail Fenumiai, ¶ 9.

³⁵ 52 U.S.C. § 20302(g)(2)(B)(ii); *State v. Galvin*, 491 P.3d 325, 342 (Alaska 2021) (dissent).

³⁶ Affidavit of Gail Fenumiai, ¶ 10.

Mr. Kowalke has to prove three things for this preliminary injunction: (1) Representative Eastman is a member of the Oath Keepers; (2) Oath Keepers is an organization that advocates for the overthrow of the United States government by force or violence; and (3) the Division erred when it failed to enforce the Disloyalty clause. Mr. Kowalke has made a clear showing of probable success on the merits on these issues.

1. Representative Eastman Is a Member of the Oath Keepers.

This issue is undisputed. Representative Eastman admits that he “joined” the Oath Keepers in 2009 and received a “Life **Member** Certificate.”³⁷ He has never revoked or renounced his membership. To the contrary, even after the arrest of the Oath Keepers’ founder and President, Stewart Rhodes, for seditious conspiracy, Representative Eastman made crystal clear that that he would “continue to associate with” Oath Keepers, and they would “continue to have” him as a member.³⁸ This satisfies the “belongs to” requirement of the Disloyalty clause.

2. The Oath Keepers Advocate the Overthrow of the United States by Force.

The Oath Keepers’ actions speak louder than their unenforced bylaws. As detailed above, the Oath Keepers have participated in multiple violent standoffs against the federal government, with the most illustrative example being the January 6 insurrection. Contrary to Representative Eastman’s suggestion, the participants at

³⁷ Eastman Affidavit, ¶ 2.

³⁸ David Eastman, [Here I stand, I can do no other, so help me God](https://davideastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/), (Jan. 30, 2022), <https://davideastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/>.

these seditious events were not rogue members of the Oath Keepers or acting at odds with the goals of the organization. Rather, the Oath Keepers participated in planning these events, and high-ranking members (Stewart Rhodes, Edward Vallejo, Thomas Caldwell, Joseph Hackett, Kenneth Harrelson, Joshua James, Kelly Meggs, Roberto Minuta, David Moerschel, Brian Ulrich, Jessica Watkins)³⁹ personally participated.

Representative Eastman also miscolors the insurrection by saying that these were simply actions that “supported the President then in power, Donald Trump” and thus could not possibly be labeled an attempt to overthrow the government.⁴⁰ The opposite is true: January 6 was in fact an insurrection because it was an attempt to stop the peaceful transition of power from an outgoing president to a validly elected incoming president.⁴¹ This becomes all the more apparent in light of the Oath Keepers who have since been charged for seditious conspiracy and for conspiring to obstruct the congressional proceeding during which the electoral results were due to be certified.⁴² Of the 32 Oath Keepers that have been charged, 9 have so far pled guilty, including 7 for their role in conspiracies.⁴³ Thus, Oath Keepers are a group “which advocates[] the overthrow by force or violence of the government of the United States.”⁴⁴

3. The Division Failed to Enforce the Disloyalty Clause.

³⁹ *United States v. Rhodes, et. al*, Indictment (Jan. 12, 2022), <https://www.justice.gov/opa/press-release/file/1462481/download>; Affidavit of Jonathan Lewis, ¶ 14.

⁴⁰ Eastman Opposition to Preliminary Injunction, p. 6.

⁴¹ Affidavit of Jonathan Lewis, ¶¶ 8-15.

⁴² Affidavit of Jonathan Lewis, ¶ 14.

⁴³ *Id.*

⁴⁴ Alaska Constitution art. XII, § 4.

The Division erred in its review of Mr. Kowalke’s eligibility complaint against Representative Eastman because of its policy that it does **not** enforce the Disloyalty clause. This is apparent in the Division’s determination letter, which found Representative Eastman eligible for the ballot *even assuming the allegations of Mr. Kowalke were true* — that Representative Eastman is a member of the Oath Keepers, and the Oath Keepers advocate the overthrow of the United States government by force. This was made even more apparent in the Division’s motion to dismiss, when it argued in no uncertain terms that “nothing in [] the Alaska Constitution gives the Division of Elections a role in enforcing this disqualification [for disloyalty] standard.”⁴⁵

As the parties thoroughly briefed, and this Court already held, the Division *does* have to enforce the Alaska Constitution’s Disloyalty clause. “The Division is [. . .] required by state law and its own regulation to determine whether a person is qualified for service in the legislature based upon the qualifications and disqualifications for office set out in the Alaska Constitution — including whether the person is ineligible under the Disqualification for Disloyalty clause.”⁴⁶

By the Division’s own admission, it failed to enforce the Disloyalty clause when originally reviewing the eligibility of Representative Eastman as a candidate. This was in error, and the preliminary injunction seeks an order requiring the Division to remove Representative Eastman from the 2022 general election ballot (or equivalent relief, as discussed below).

⁴⁵ Division’s Motion to Dismiss State Defendants, p. 6.

⁴⁶ Order Denying Division’s Motion to Dismiss for Failure to State a Claim, p. 7.

B. The Public Has a Strong Interest in Legitimate Elections and Enfranchisement.

Our country has already witnessed the harmful result of having an election’s integrity doubted — it led to the January 6 insurrection. There is a strong public interest in proper ballots and enfranchisement of voters. Nevertheless, the Division and Representative Eastman flag four public interest concerns to argue against granting the preliminary injunction.⁴⁷ None are valid.

First, Mr. Kowalke’s preliminary injunction would not cause a disorderly election. While the Division is now claiming difficulties in printing new ballots for House District 27, the Division’s “impossibility” arguments smack of bad faith. After all, Mr. Kowalke requested expedited consideration precisely to avoid any such difficulties with the printing of ballots, and the Division strenuously *opposed* expedited consideration. In any event, there are alternative ways to effectuate this preliminary injunction. The Division could alter the name of Representative Eastman on the ballot so that it would read “Ineligible Candidate” rather than his name.⁴⁸ Or the Division could deem Representative Eastman ineligible and take a similar route as it did in *State v. Arctic Village Council*, where it put forth “a carefully targeted public education

⁴⁷ *State v. Galvin*, 491 P.3d 325, 338 (Alaska 2021) (“Federal courts are required to consider the public interest when deciding whether to grant a preliminary injunction . . . [t]his factor becomes especially important when a requested preliminary injunction threatens the public’s interest in an orderly election.”).

⁴⁸ This would be a similar solution to the Division’s actions in the 2020 general election when it added a party designation to one House candidate and re-printed the ballots that had not already been mailed because this would not alter the list of candidates on the actual ballot, it would simply provide better notice to voters in House District 27. Affidavit of Gail Fenumiai, ¶ 12.

plan.”⁴⁹ In this case, that could include mailing an additional mailer to everyone in House District 27 informing them that Representative Eastman is ineligible and that votes for him would not count. These options would each achieve the Division’s responsibility if the preliminary injunction is granted, and none would disrupt an orderly election.

Second, granting this preliminary injunction would not disenfranchise the approximately 2,200 overseas voters, but would in fact better enfranchise all 16,064 voters in House District 27. Regarding overseas voters, as explained above, granting this preliminary injunction does not necessitate reprinting all ballots, and may not necessitate reprinting *any* ballots. If the Division was ordered to enforce this preliminary injunction through a mailed notice to voters for House District 27, then it would certainly be feasible to print the mailed notice for the small fraction of overseas ballots in the three days between oral argument and the Division’s deadline to mail out ballots on September 23. That notice could then go out at the same time as the ballots. If the Division did choose to reprint the ballots for House District 27, that could likely be completed for overseas ballots within three days. But if not, federal law does permit overseas ballots to be mailed later than the deadline under certain circumstances, including “a delay in generating ballots due to a legal contest.”⁵⁰

It is also critical that the public interest in not disenfranchising voters be considered in context. The Division could not fathom the risk of disenfranchising

⁴⁹ *State v. Arctic Vill. Council*, 495 P.3d 313, 321 (Alaska 2021).

⁵⁰ 52 U.S.C. § 20302(g)(2)(B)(ii).

approximately 2,200 voters, but does not bat an eye at the risk of disenfranchising an entire House District with over 16,000 voters. If Representative Eastman remains on the ballot and wins the election, then he would only be found ineligible and removed from office following the December trial. This would leave *all* of House District 27 disenfranchised from voting for an eligible candidate to represent them. Instead, a replacement would have to be appointed by whoever is then elected as Governor.⁵¹

Third, granting a preliminary injunction “mid-stream” between the primary and general election would not undermine Alaskan voters’ confidence in the Division and elections process.⁵² There are explicit procedures available to citizens to contest the nomination or election of any person when that person “is not qualified as required by law.”⁵³ Such a contest can be brought within ten days of an election’s certification.⁵⁴ Mr. Kowalke’s complaint and seeking of a preliminary injunction all occurred well before that “mid-stream” deadline of September 12. The Division cannot claim that Mr. Kowalke’s seeking of a preliminary injunction would be against the public interest when its own statutes allow for the same qualification challenges to be brought even later in the election process.

Fourth, it is not contrary to the public interest to remove a candidate from the ballot when there is clear probability that he is ineligible to be on that ballot. The Court

⁵¹ Alaska Constitution, art. II, § 4; AS 15.40.320.

⁵² Division’s Opposition to Preliminary Injunction, p. 17.

⁵³ AS 15.20.540.

⁵⁴ AS 15.20.550.

did precisely that in *State v. Metcalfe*.⁵⁵ In that case a third-party candidate sought and received a preliminary injunction permitting him to appear on the ballot for U.S. Senate despite not meeting the Division’s three percent threshold for party recognition.⁵⁶ But the Alaska Supreme Court overturned that preliminary injunction, resulting in a ballot that “t[ook] choices away from voters.”⁵⁷ When candidates are ineligible for the ballot, it is not against the public interest to remove them from that ballot. It is in fact in the public’s interest to have a valid ballot so voters can be enfranchised in voting for eligible candidates.

For these reasons the public interest weighs in favor of granting the preliminary injunction, not against it.

C. Plaintiff Will Suffer Irreparable Harm If an Ineligible Candidate Is on the Ballot.

Representative Eastman and the Division both argue in their oppositions that Mr. Kowalke has not made the necessary showing of irreparable harm to obtain a preliminary injunction. This argument is perplexing, given that Mr. Kowalke is seeking the injunction under the “probable success on the merits” standard.⁵⁸ However, to the extent irreparable harm is relevant, Mr. Kowalke (and the voters in House District 27) will suffer irreparable harm if Representative Eastman is not removed from the ballot.

⁵⁵ 110 P.3d 976 (Alaska 2005).

⁵⁶ *See id.* at 978.

⁵⁷ *Id.* at 982.

⁵⁸ Memorandum of Points & Authorities in Support of Plaintiff’s Motion for Preliminary Injunction, p. 4.

Mr. Kowalke will suffer the irreparable harm of having a disloyal, ineligible candidate on the ballot if this preliminary injunction is not granted. The harm from this is inherently recognized in the Division’s own statutory and regulatory responsibility to review complaints regarding candidate eligibility which allow “any person” to question the eligibility of a candidate.⁵⁹ If there were no harm in having ineligible candidates on the ballot, there would be no need for a process to challenge the eligibility of candidate, or for the removal of ineligible candidates by the Division.

Irreparable harm is not deemed reparable simply because Mr. Kowalke did not bring his claim on the Division’s ideal timeline. Had the Division properly reviewed Mr. Kowalke’s eligibility complaint in June by considering the Disloyalty clause in its determination, then there would be no need for this case. To the degree the Division argues that Mr. Kowalke did not show “reasonable diligence” in pursuing his claim, it misrepresents the holding of *Benisek v. Lamone* and *City & Borough of Juneau v. Breck*.⁶⁰ In *Benisek* the plaintiff waited *three years* after redistricting occurred to file a complaint challenging the maps, and waited a total of *six years* after the challenged redistricting maps were completed to seek a preliminary injunction, all after three general elections had already occurred with the challenged maps.⁶¹ Mr. Kowalke’s filing of a complaint and seeking a preliminary injunction all prior to the certification of the primary election for Representative Eastman’s first election since the January 6 insurrection is a far cry from the timeline in *Benisek*.

⁵⁹ AS 15.25.042(a); 6 AAC 25.260(a).

⁶⁰ *Benisek*, 138 S. Ct. 1942 (2018); *Breck*, 706 P.2d 313, 315 (Alaska 1985).

⁶¹ *Benisek*, 138 S. Ct. at 1944.

Similarly the plaintiff in *Breck* did not file her complaint until eight months after notice of the challenged project, and four months after the bid had been awarded and construction had begun.⁶² Again, this is a far cry from Mr. Kowalke’s timeline, in which he filed his complaint 1 month and 9 days after the Division denied his eligibility complaint and weeks before the primary election was held. Mr. Kowalke filed in a reasonable amount of time and sought his preliminary injunction sooner than the plaintiffs in *State v. Arctic Village Council*, in which the Court held that the plaintiffs did not unreasonably delay in bringing their suit despite the preliminary injunction regarding the 2020 election not being granted until October 5.⁶³

The Division acknowledges that Mr. Kowalke does not even need to show irreparable harm for this Court to grant a preliminary injunction,⁶⁴ but to claim that there is no irreparable harm when there is an ineligible candidate on the ballot undermines the Division’s entire eligibility review process. If the Division truly believes there is no harm in having ineligible candidates on the ballot, and supports instead having them removed from office after an election and replaced by a governor-selected appointment, then the Division would not seek to determine eligibility through its expedient regulatory review process.⁶⁵

IV. CONCLUSION

⁶² *City & Borough of Juneau v. Breck*, 706 P.2d 313, 315 (Alaska 1985).

⁶³ *State v. Arctic Vill. Council*, 495 P.3d 313, 318-19 (Alaska 2021).

⁶⁴ Division’s Opposition to Preliminary Injunction, p.7 n.31.

⁶⁵ Division’s Opposition to Plaintiff’s Motion for Expedited Consideration, p. 1-2 n.3 (“The statutory and regulatory process for resolving administrative complaints regarding a candidate’s eligibility to appear on the ballot is specifically designed to be resolved well in advance of ballot printing deadlines.”).

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For the foregoing reasons, this Court should grant the preliminary injunction finding Representative Eastman ineligible as a candidate and requiring the Division to enforce that ineligibility in a manner that will not disrupt the election.

DATED this 19th day of September, 2022

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiff

By: /s/ Savannah Fletcher

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document and Affidavit of Matthew Kriner and Affidavit of Jonathan Lewis were served via EMAIL at or before 3:35 pm on:

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s/Savannah Fletcher
Signature

September 19, 2022
Date