

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

Randall Kowalke,

Plaintiff,

v.

David Eastman et al,

Defendant.

Case No. 3AN-22-07404 CI

ORDER

The Division of Elections has asked the court to reconsider its order denying the Division's motion to dismiss. After the court requested a response to the motion, Representative David Eastman joined in the Division's request that the court reconsider its ruling. Randall Kowalke opposed reconsideration. For the reasons explained in this Order, the court denies the motion to reconsider.

**I. Discussion**

Under Civil Rule 77(k), a party may move for reconsideration of a court's previous decision if "the court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling" or if the "court has overlooked or misconceived some material fact or proposition of law."<sup>1</sup> The Division argues that the court should reconsider its decision because its ruling allegedly created a novel form of action and opens the Division to legal challenge despite litigants not exhausting their administrative remedies. However, Kowalke correctly points out in his response to the motion that the current litigation does not present that issue. Instead, the Division's motion to dismiss was based on its argument that it has no role in applying the limitations on who can hold public office in Art. XII, § 4 of the Alaska Constitution. The Division's motion for reconsideration does not cite any legal authority overlooked by the court in its decision denying the motion. Nor has the Division pointed to a material fact or proposition of law overlooked by the court. In short, nothing in the Division's motion presents a legal reason for the court to reconsider its decision.

Representative Eastman separately argues that the Division has no role in determining whether a candidate is disqualified by the Disloyalty clause. He argues that because the language in Art. XII, § 4 is written in the present tense, that provision only applies to already-sitting legislators. Or, as put by counsel for Representative Eastman at oral argument, a person may advocate for the violent

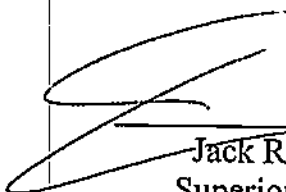
<sup>1</sup> Civil Rule 77(k)(1)(i) and (ii).

overthrow of the United States prior to holding office but once they take an oath to defend the United States Constitution and the Constitution of the State of Alaska, that prior disloyalty is cured by the new oath. This novel interpretation does not address the statutory and regulatory structure discussed in the court's order denying the Division's motion to dismiss. To reiterate the court's earlier holding, state law clearly mandates that, "if the director receives a complaint regarding the eligibility of a candidate for a particular office, the director *shall* determine eligibility under regulations adopted by the director."<sup>2</sup> And the Division's regulation states that "eligibility" complaints include challenges based upon the Alaska Constitution.<sup>3</sup> The Division is therefore required by the law 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. The tense of that clause does not relieve the Division of the responsibility to apply it when a person declares their candidacy. Nor does the timing of when an elected candidate takes the oath of office as specified in Art. XII, § 5 affect the Division's obligation to ensure that candidates for public office meet the qualifications required by the Alaska Constitution. The court will therefore not reconsider its decision to deny the Division's motion to dismiss.

**II. Order**

The motion to reconsider is DENIED.

DONE this 7<sup>th</sup> day of October, 2022, at Anchorage, Alaska.

  
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Jack R. McKenna  
Superior Court Judge

I certify that on 10/7/2022  
a copy of the above was mailed to  
each of the following at their  
addresses of record:  
G Oudukgian, S Fletcher,  
J Davis, T Flynn, L Harrison,  
C Ferntheil J Miller  
Judicial Assistant

<sup>2</sup> AS 15.25.042(a) (emphasis added).  
<sup>3</sup> 6 AAC 25.260(a).