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

RANDALL KOWALKE, Plaintiff, v. DAVID EASTMAN, STATE OF ALASKA, DIVISION OF ELECTIONS, and GAIL FENUMIAI, in her official capacity as Director of Elections, Defendants.	)	Case No. 3AN-22-07404 CI

STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Mr. Kowalke's Motion for Preliminary Injunction argues that he has established probable success on the merits of his claim *against Rep. Eastman,* but he is asking for a preliminary injunction *against the Division of Elections.* Mr. Kowalke's motion does not address his claims against the Division at all. A plaintiff cannot get a preliminary injunction against one defendant based on probable success on the merits against a different defendant.[1] This Court should deny Mr. Kowalke's motion for a preliminary injunction against the Division of Elections and its Director for this reason alone.

This Court should also deny Mr. Kowalke's motion because he has failed to demonstrate that he will suffer irreparable harm in the absence of a preliminary

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[1] The Division takes no position on the strength or weakness of Mr. Kowalke's claims against Rep. Eastman, and maintains that the strength or weakness of those claims is irrelevant to the strength or weakness of his claims against the Division.

injunction against the Division. And Mr. Kowalke's requested preliminary injunction against the Division is now practically impossible to implement due to his own delay in bringing this motion, so granting the motion would severely upset the orderly administration of the upcoming election. This is clearly against the public interest, which is an independent ground to deny the preliminary injunction motion.

BACKGROUND

On June 10 of this year, Mr. Kowalke filed an administrative complaint with the Division[2] alleging that Rep. Eastman "is ineligible for public office per the Alaska and U.S. Constitutions" because he "is a member of Oath Keepers, an organization which advocates the overthrow by force or violence of the government of the United States" and "has given aid and comfort to participants in the January 6th insurrection against the government of the United States."[3] The Division responded with a letter denying Mr. Kowalke's complaint ten days later, on June 20.[4] The Division explained that, pursuant to 6 AAC 25.260, its administrative process for reviewing candidate eligibility complaints is limited to review of its own records and the public records of other state agencies.[5] The Division's letter stated that it has "reviewed Representative Eastman's voter registration records and declaration of candidacy and it is unaware of any relevant

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2 As in previous filings, this brief will refer to the state defendants collectively as "the Division."

3 *See* Exhibit 2 to Plaintiff's Motion for Preliminary Injunction.

4 *See* Exhibit 1 to Plaintiff's Motion for Preliminary Injunction.

5 *Id.*

records held by other state agencies" regarding the allegations.[6] The Division further stated that Mr. Kowalke's allegations that Representative Eastman is a member of the Oath Keepers organization and attended the rally in Washington, D.C. on January 6, 2021, without more, do not provide a basis to remove Representative Eastman from the ballot.[7] Mr. Kowalke did not attempt to appeal this administrative decision.

A month and a half later—on July 29—Mr. Kowalke filed a lawsuit in this court against Rep. Eastman and the Division. Mr. Kowalke did not move for a preliminary injunction or seek any other relief at that point, nor did his complaint specify what "[d]eclaratory and injunctive relief" he sought against either defendant.[8] On August 12, the Division moved for dismissal of the lawsuit against it for failure to state a claim. The primary election, in which Rep. Eastman appeared on the ballot, took place on August 16. Rep. Eastman advanced out of the primary with 1,931 votes, representing 52% of the vote in his district.[9]

On August 29—the week before the Division's deadline for finalizing the general election ballots—Mr. Kowalke moved for a preliminary injunction "ordering the removal of David Eastman's name from the November 8, 2022 General Election ballot for House District 27," and sought expedited consideration.[10] The Court denied

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6 *Id.*

7 *Id.*

8 Complaint at p. 8.

9 *See* https://www.elections.alaska.gov/election-results/.

10 Motion for Preliminary Injunction at 1.

expedited consideration. The Court pointed out that, in the event Mr. Kowalke ultimately prevails, "other potential remedies exist even if Eastman's name remains on the ballot."[11] The Court also noted that Mr. Kowalke "could have sought injunctive relief at least several weeks ago and avoided the tight deadline now facing the parties."[12]

The deadline to finalize the general election ballots passed on September 8.[13] Due to the stringent anti-fraud protections built into the Division's election-management software, it is not practically possible to remove Rep. Eastman's name from the ballot after that deadline.[14] On September 8, the Division completed its lengthy process of programming the "election project" software, finalizing the ballots, and sending them to the printer.[15] The anti-fraud protections prevent *anyone,* even someone within the Division, from altering the slate of candidates in any race after the programming is

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11 Order Denying Expedited Consideration of Plaintiff's Motion for Preliminary Injunction at 4.

12 *Id.* at 5.

13 Affidavit of Gail Fenumiai (September 14, 2022) at ¶ 6.

14 *Id.* at ¶ 6.

15 *Id.* at ¶¶ 2–3.

complete.[16] The only way to remove Rep. Eastman's name from the ballot would be to start over and re-program the entire election project for the entire state.[17]

The Division dedicates weeks to programming the election project, testing all of the software and hardware necessary to run the election, and printing the ballots.[18] All of these pieces must work together to ensure an accurate and secure election.[19] The Division must also complete this process in time to meet the deadlines in state and federal law for mailing ballots to overseas military personnel.[20] Requiring the Division to re-start this process from scratch would cause the Division to miss that deadline, and likely cause serious delays in mailing absentee ballots and transmitting voting materials to polling sites statewide.[21] Furthermore, Division staff time would be diverted to re-programming the election project and away from other essential pre-election duties, likely causing further delays and administrative problems.[22]

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16 *Id.* at ¶ 5. This is also consistent with 6 AAC 25.210, which provides that candidates' names will not be removed from the general election ballot within 64 days of the election, even if the candidate voluntarily withdraws, dies, or becomes incapacitated.

17 Ex. 1 at ¶ 7. The Division was able to add a party designation and reprint ballots for a single House race in 2020, but it cannot remove a candidate and reprint ballots without re-programming the election project. *Id.* at ¶ 12.

18 *Id.* at ¶ 8.

19 *Id.* at ¶ 2.

20 *Id.* at ¶¶ 9–10.

21 *See id.* at ¶ 11.

22 *Id.* at ¶ 8.

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LEGAL STANDARDS

I. A plaintiff seeking a preliminary injunction must establish that he is faced with irreparable harm pending litigation on the merits.

A preliminary injunction is "considered 'an extraordinary remedy never awarded as of right.'"[23] Preliminary injunctions are "harsh remedies" used to "preserve the status quo" when necessary to prevent "the irreparable loss of rights before judgment."[24] "Mandatory" injunctions requiring the opposing party to act (as opposed to "prohibitory" injunctions preventing a party from taking an action to change the status quo) are particularly disfavored: "a mandatory injunction will seldom be granted before final hearing, and should be granted only in extreme or exceptional cases and with great caution."[25]

Under Alaska law, a "[p]laintiff may obtain a preliminary injunction by meeting either the balance of hardships or the probable success on the merits standard."[26] Each of these standards requires the plaintiff to demonstrate that he will suffer irreparable harm in the absence of a preliminary injunction.[27] The crucial difference between these

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[23] *State v. Galvin*, 491 P.3d 325, 338 (Alaska 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 24 (2008)).

[24] *Martin v. Coastal Vills. Region Fund*, 156 P.3d 1121, 1126 & n.4 (Alaska 2007) (quoting *United States v. Guess*, 390 F.Supp.2d 979, 984 (S.D. Cal. 2005)).

[25] *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1274 n. 9 (Alaska 1992) (quoting 42 Am.Jur.2d Injunctions § 21 (1969)) (internal alterations omitted).

[26] *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

[27] *Miller v. Atkinson*, 365 P.2d 550, 552 (Alaska 1961).

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standards is whether *the defendant's* interests can be adequately protected.[28] Where the defendant's interests can be adequately protected, an injunction may issue under the balance of hardships standard; if not, the probable success on the merits standards applies.[29]

But no preliminary injunction may issue unless the plaintiff faces irreparable harm pending litigation on the merits. Without irreparable harm, there is simply no reason for a court to truncate its usual procedures and attempt to quickly assess the merits of a case on an abbreviated record. Holding accelerated mini-trials on the merits of every case at a very early stage would burden the court system and lead to hasty, erroneous decisions.[30] Although language in a handful of Alaska cases suggests that a party whose harm is "less than irreparable" might be able to obtain a preliminary injunction,[31] the Alaska Supreme Court has never actually approved of such an

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28 *Alsworth*, 323 P.3d at 54-56.

29 *Id.*

30 *See A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970) modified, 483 P.2d 198 (Alaska 1971) ("The necessity of avoiding litigation of the merits at this early stage stems from two factors. First, a ruling on the merits in an action for preliminary relief would be premature, since it would usually be based on an incomplete complete record and made with an insufficient amount of time. Second, a ruling at this early stage would ultimately result in forcing the court to rule on the merits of the case twice—once at the preliminary stage and once in the final adjudication.").

31 *See State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021) ("Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits"); *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (same).

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injunction.[32] And such an injunction would be inappropriate, as language in other Alaska Supreme Court cases makes clear.[33]

Consistent with this logic, irreparable harm is "[p]erhaps the single most important prerequisite" for a preliminary injunction under federal law.[34] As the U.S. Supreme Court explained in *Winter v. Natural Resources Defense Council, Inc*., its "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction."[35] A mere "possibility" of irreparable harm is insufficient—the plaintiff must show that irreparable harm is "likely" without an injunction.[36] As the Court explained, "[i]ssuing a

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[32] *See Galvin*, 491 P.3d at 333 (plaintiff faced irreparable harm in the absence of a preliminary injunction and Court affirmed denial of preliminary injunction on grounds that State could not be adequately protected and plaintiff failed to establish probable success on merits); *Metcalf*, 110 P.3d at 979 ("issuance of this injunction is a zero-sum event, where one party will invariably see unmitigated harm to its interests").

[33] *See VECO Int'l, Inc. v. Alaska Pub. Offices Comm'n*, 753 P.2d 703, 718 (Alaska 1988) ("VECO could have sought to enjoin the state from enforcing the Campaign Disclosure Act. That would require a showing of irreparable harm, among other things."); *Miller v. Atkinson*, 365 P.2d 550, 552 (Alaska 1961) (preliminary injunctive relief is available "to enjoin acts of the defendant which will cause irreparable injury to the personal or property rights of the plaintiff" and "to call into action this extraordinary power required a clear showing of the irreparable injury for which there was no other adequate remedy").

[34] *See* 11A Wright & Miller Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) ("Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered. Only when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief.").

[35] 555 U.S. 7, 22 (2008).

[36] *Id.*

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preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."[37]

II. Where the opposing party's interests cannot be adequately protected, a plaintiff seeking a preliminary injunction must clearly establish probable success on the merits.

As noted above, a "[p]laintiff may obtain a preliminary injunction by meeting either the balance of hardships or the probable success on the merits standard."[38] The balance of hardships standard applies when the plaintiff establishes three factors: (1) the plaintiff is faced with irreparable harm, (2) the opposing party is adequately protected, and (3) the plaintiff raises "serious and substantial questions going to the merits of the case."[39] When the opposing party's interests cannot be adequately protected, the party seeking relief must make "a clear showing of probable success on the merits of the dispute before a court may grant the preliminary injunction."[40]

Here, Mr. Kowalke concedes that the lower "balance of hardships" standard does not apply and makes his motion under the more stringent "probable success on the merits" standard.[41]

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37 *Id*. *See also* 42 Am. Jur. 2d Injunctions § 9 ("As is true of injunctions generally, a preliminary injunction is seen as an extraordinary remedy that should be issued cautiously").

38 *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

39 *Id.* at 54.

40 *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021) (internal quotations omitted).

41 Memorandum in Support of Motion for Preliminary Injunction at 4.

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III. Even if the plaintiff establishes probable success on the merits, courts have discretion to deny a preliminary injunction that would be contrary to the public interest.

The Alaska Supreme Court recently affirmed that the public interest is an additional factor in the preliminary injunction analysis: "even if a party requesting preliminary injunctive relief satisfies the requirements of the probable success on the merits standard, a court has the discretion to deny the requested relief if granting it would imperil the public interest."[42] In that same case, the Court equated harm to the Division's interests to harm to the interests of Alaskan voters in general.[43]

The Court also noted that "[t]his factor becomes especially important when a requested preliminary injunction threatens the public's interest in an orderly election."[44] Timing also matters, and "a court is entitled to and should consider the proximity of a forthcoming election" in the context of this factor.[45]

ARGUMENT

I. Mr. Kowalke has not established that he faces irreparable harm without a preliminary injunction against the Division.

Mr. Kowalke has not even attempted to show that he faces irreparable harm absent his requested injunction against the Division. He has done nothing to establish that the only way to vindicate his claims that Representative Eastman is disqualified

42 *Galvin*, 491 P.3d at 338-39.

43 *Id.* at 334.

44 *Id.* at 338.

45 *Id.* at 339 (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)).

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from office is to remove his name from the 2022 general election ballot. Article XII, Section 4 of the Alaska Constitution does not say anything about ballots, or even elections. It addresses when a person is disqualified from holding state public office. Based on that language, if Mr. Kowalke succeeds on the merits of his claim against Rep. Eastman, he may be entitled to an order that Rep. Eastman is disqualified from holding state public office. Such an order could presumably be enforced against Rep. Eastman directly, and at any time.[46] Thus, no relief against the Division is necessary to vindicate Mr. Kowalke's claims, and certainly not the specific relief of removing Rep. Eastman from the 2022 general election ballot.[47]

Mr. Kowalke's own delay in bringing this lawsuit and seeking a preliminary injunction against the Division further demonstrate that Mr. Kowalke does not face irreparable harm in the absence of this preliminary injunction.[48] If Mr. Kowalke truly believed that having Rep. Eastman's name appear on the ballot would cause him irreparable harm, he would have acted promptly after receiving the Division's denial on June 20 rather than waiting until late August to seek relief. Properly, he would have

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[46] *See, e.g., State v. Jeffery,* 170 P.3d 226, 237 (Alaska 2007) (where the names of judicial retention candidates improperly remained on the ballot, and the voters retained the candidates, the court ordered the candidates to vacate their judicial positions).

[47] If Rep. Eastman were to lose in the general election, Mr. Kowalke's lawsuit would become moot and no relief would be necessary.

[48] Additionally, plaintiffs generally must show "reasonable diligence" in pursuing preliminary injunctive relief. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018). *See also City & Borough of Juneau v. Breck,* 706 P.2d 313 (Alaska 1985) (reversing preliminary injunction granted based on probable success on the merits where the plaintiff waited to move for a preliminary injunction against building construction until the building was half finished).

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acted before the August 16 primary election where Rep. Eastman's name already appeared on the ballot.

Because Mr. Kowalke has not established that he faces irreparable harm in the absence of a preliminary injunction against the Division, he may await a decision on the merits in due course.

II. Mr. Kowalke has not made a clear showing of probable success on the merits of his claims against the Division.

Even if Mr. Kowalke had established that he faces irreparable harm absent an injunction, his motion does not address his claims against the Division at all and therefore fails to show a probability of success on the merits of those claims.[49] This Court has denied the State's motion to dismiss it from this lawsuit under Alaska R. Civ. P. 12(b)(6), but the Court's Order relied heavily on the low bar to survive a motion to dismiss.[50] The burden on the plaintiff to obtain a preliminary injunction is very different from the burden to overcome a motion to dismiss. To overcome a motion to dismiss, the plaintiff "need only allege a set of facts consistent with and appropriate to some enforceable cause of action."[51] But to obtain a preliminary injunction, a plaintiff must

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49 *See, e.g.,* Memorandum in Support of Motion for Preliminary Injunction at 9 (arguing that Mr. Kowalke has shown "a high probability of success in establishing that Mr. Eastman has violated the Alaska Constitution's disloyalty clause and is ineligible for public office").

50 *See* Order (September 12, 2022) at 3, 11.

51 *Id.* at 3.

make a "clear showing of probable success on the merits."[52]

The Division incorporates by reference here the arguments made in its briefing and oral argument on its Motion to Dismiss as well as in its Motion for Reconsideration of the Court's denial of that motion, filed today. For all the reasons stated, Mr. Kowalke has not made a clear showing of probable success on the merits of his claims against the Division, and his Motion for Preliminary Injunction does not contain any argument about those claims that could change that analysis.[53] The Division cannot be subject to liability when it properly followed its governing statutes and regulations.

Mr. Kowalke's motion also does not make any new factual allegations against the Division that could change the analysis in the Motion to Dismiss. But Mr. Kowalke's motion does make one new and inaccurate factual assertion about the Division that must be corrected for the record. The Motion asserts that the "Oath Keepers is a militia group that supports the violent overthrow of the United States government,"[54] and claims that the Division denied Mr. Kowalke's administrative

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52 *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021).

53 The Motion cites two Alaska Supreme Court cases involving the Division of Elections for the proposition that courts have the authority to "declare candidates ineligible for the ballot if they do not comply with constitutional and statutory requirements," but both those cases involved compliance with requirements for *candidacy* found in Title 15 of the Alaska Statutes. They do not support a cause of action against the Division based on AS 24.05.060. *See State v. Jeffery,* 170 P.3d 226 (Alaska 2007) (addressing whether judicial retention candidates met deadlines set in AS 15.35.070 and AS 15.35.110); *Silides v. Thomas,* 559 P.2d 80 (Alaska 1977) (addressing whether candidates met deadlines set in AS 15.13.060).

54 Memorandum in Support of Motion for Preliminary Injunction at 2.

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complaint "even though it knows all of the relevant facts."[55] The Division does *not* "know[] all of the relevant facts" as recited by Mr. Kowalke about the Oath Keepers, including that the "Oath Keepers is a militia group that supports the violent overthrow of the United States government." The Division has no records in its own files, nor is it aware of any public records of other state agencies, proving or disproving this very serious allegation, and thus the Division has no "knowledge" about it one way or the other.[56]

In support of this assertion regarding the Oath Keepers, Mr. Kowalke cites only an affidavit by a private researcher.[57] The Division cannot be charged with "knowing" the opinions of private researchers wholly unconnected with the Division or the State of Alaska. And the Division cannot be held to a standard of omniscience. This Court should thus disregard Mr. Kowalke's unsupported assertion about the Division.

III. Entering a preliminary injunction against the Division is not in the public interest.

Finally, entering Mr. Kowalke's requested relief after the ballot printing deadline would cause severe harm to the public interest in the orderly administration of elections. Not to mention the harm inherent in preemptively taking a choice away from voters before resolution of the case on the merits. Alaskan voters, and the public at large, are

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55 *Id.* at 3.

56 *See* Exhibit 2 to Motion for Preliminary Injunction.

57 Memorandum in Support of Preliminary Injunction at 2 (citing affidavit of Matthew Kriner); Exhibit 1 to Affidavit of Matthew Kriner (reciting that Mr. Kriner is a "Senior Research Scholar" at the "Center on Terrorism, Extremism, and Counterterrorism" in Washington, D.C.).

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not represented in this case, except through the interests of the Division in the orderly administration of elections.[58] The interests of voters and the public cannot be ignored.

Mr. Kowalke filed his administrative complaint on June 10 and the Division issued its decision sooner than required, on June 20. The clear import of this administrative process is to resolve candidate eligibility complaints before a primary election.[59] Yet Mr. Kowalke waited until weeks after the August 16 primary election to move for a preliminary injunction. In the meantime, Rep. Eastman was a candidate in the primary and received more than half of the vote in his district, legally entitling him to appear on the general election ballot.[60]

Mr. Kowalke moved for a preliminary injunction just a week before the ballot printing deadline for the general election. The ballot printing deadline has been publicly noticed on the Division's website for months.[61] In opposing Mr. Kowalke's motion for expedited consideration, the Division noted that after that deadline, Mr. Kowalke would

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58 *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 979 n. 11 (Alaska 2005) (noting "the state's interest in the consistent administration of elections"); *State v. Galvin*, 491 P.3d 325, 334 (Alaska 2021) ("The harm to the Division's interests [is] therefore also a harm to the interests of Alaskan voters and other political candidates").

59 *See* 6 AAC 25.260 (setting deadline for complaints 10 days after candidate's deadline for filing for office); AS 15.25.042 (requiring resolution of complaints within 30 days).

60 *See* AS 15.25.100. *See also State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978–79 (Alaska 2005) (explaining that there is "simply no way for the state's interests to be adequately protected," when a preliminary injunction requires the Division to conduct an election contrary to law).

61 *See* https://www.elections.alaska.gov/calendar/.

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have to amend his preliminary injunction motion to seek other relief.[62] Mr. Kowalke has not done so. It is now too late to remove Rep. Eastman's name from the ballot, without completely reprogramming the entire election project and reprinting all ballots. This would be a severe harm to the public interest in orderly elections, risking the disenfranchisement of overseas voters,[63] and requiring significant expenditure of public funds and time that Division employees should be devoting to other pre-election work. This, alone, is reason to deny a preliminary injunction against the Division.

Contrary to Mr. Kowalke's claims, courts in other jurisdictions have not "regularly" issued preliminary injunctions that could require election officials to re-print ballots or postpone elections.[64] In fact, none of the cases Mr. Kowalke cites in support of this statement involved preliminary injunctions—all were decisions on the merits.[65] And the Alaska Supreme Court has recognized the Division cannot be protected against the harm that would result from a preliminary injunction "requiring the Division to

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62 State Defendants' Opposition to Motion for Expedited Consideration at 5.

63 Federal law requires absentee ballots to be mailed to overseas voters at least 45 days before the election—a time period calculated to maximize the ability of such voters to receive, vote, and return those ballots in time for them to count in the election. *See* 52 U.S.C. § 20301 *et seq*. The Division could not reprogram the entire election project in time to meet this federal deadline, thus risking the disenfranchisement of overseas voters, as well as violating federal law.

64 Memorandum in Support of Motion for Preliminary Injunction at 9.

65 *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 726 (Minn. 2003) (reaching a decision on the merits, not on a request for preliminary injunction); *In re Green Party of Texas*, 630 S.W.3d 36, 40 (Tex. 2020) (same); *Taylor v. Kobach*, 300 Kan. 731, 738–39, 334 P.3d 306, 311 (2014) (same); *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178, 199 (2002) (same); *LaRouche v. Hannah*, 822 S.W.2d 632, 634 (Tex. 1992) (same); *State ex rel. Peacock v. Latham*, 125 Fla. 793, 795 (1936) (same).

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redesign and reprint ballots."[66] The Court, along with numerous other courts, has also expressed reluctance to interfere with the administration of an election that is already underway or is about to begin.[67]

Further, granting a preliminary injunction against the Division mid-stream between the primary and general elections could undermine Alaskan voters' confidence in the Division and the elections process. In particular, the 1,931 Alaskan voters who voted for Rep. Eastman in the primary would see their preferred candidate disappear from the ballot between the primary and the general elections based on the complaint of a single voter from a different district.[68]

Finally, while there may be alternative means of vindicating Article XII, Section 4 even if Rep. Eastman remains on the ballot and Mr. Kowalke later prevails on his claims against him, there will be no way to remedy Rep. Eastman's removal from the ballot should this Court later determine that he is not disqualified from public office. Taking choices away from voters in this manner is contrary to the public interest, and has the potential to severely undermine voter confidence in the elections process.

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66 *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021).

67 *Id.* at 339; *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) ("courts will not disrupt imminent elections absent a powerful reason for doing so"); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam) ("This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election."); *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018) ("[T]he Supreme Court has warned us many times to tread carefully where preliminary relief would disrupt a state voting system on the eve of an election.").

68 Complaint at 2 ¶¶5, 8 (reciting that Rep. Eastman is seeking election in House District 27 and Mr. Kowalke is a constituent of House District 10).

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Accordingly, even if Mr. Kowalke would be irreparably harmed—which he will not—and had made a clear showing of probable success on his claims against the Division—which he has not—the Court should still deny him the extraordinary preliminary relief he seeks on the grounds that doing so is contrary to the public interest.

CONCLUSION

This Court should deny the motion for a preliminary injunction against the Division of Elections.

DATED September 14, 2022.

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