

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, DIVISION OF
ELECTIONS,

Appellant,

v.

DANIEL J. SULLIVAN,

Appellee.

Appeal Case No. S-19935
Superior Case No. 3AN-26-07485 CI

ADMINISTRATIVE APPEAL FROM THE SUPERIOR COURT,
THIRD JUDICIAL DISTRICT AT ANCHORAGE,
THE HONORABLE THOMAS MATTHEWS

**THE HONEST ELECTIONS PROJECT PROPOSED AMICUS BRIEF
IN SUPPORT OF APPELLANT
STATE OF ALASKA, DIVISION OF ELECTIONS**

LAW OFFICES OF
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Clerk of the Appellate Courts

By : _____

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EXCERPT OF STATUTORY AUTHORITY

U.S. Const. art. I, § 3, cl.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

U.S. Const. art. I, § 4, cl. 1

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

AS 15.25.060(a). Preparation and Distribution of Ballots.

The primary election ballots shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall prepare and provide a primary election ballot that contains all of the candidates for elective state executive and state and national legislative offices and all of the ballot titles and propositions required to appear on the ballot at the primary election. The director shall print the ballots on white paper and place the names of all candidates who have properly filed in groups according to offices. The order of the placement of the names for each office shall be as provided for the general election ballot. Blank spaces may not be provided on the ballot for the writing or pasting in of names.

6 AAC 23.212. Appearance of Candidates Name on Ballot.

(b) A candidate's name may not appear on a ballot

- (1) with a designation of any academic, professional, personal, or honorary degree or title held by a candidate; or
- (2) in a manner that is confusing or misleading to voters or compromises the fairness or neutrality of the ballot.

AS 15.15.010. General Administrative Supervision by Director.

The director shall provide general administrative supervision over the conduct of state elections, and may adopt regulations under AS 44.62 (Administrative Procedure Act) necessary for the administration of state elections. The director shall adopt regulations that establish for the broadcasting of notices under AS 15.15.070 the frequency of the broadcasts, appropriate broadcast times, and the locations for the broadcasts. The broadcasting regulations must be reasonably calculated to provide the widest possible exposure of the notices.

AS 15.15.030. Preparation of Official Ballot.

The director shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following directives shall be followed when applicable:

- (1) The director shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law.
- (2) The director shall number ballots in series to assure simplicity and secrecy and to prevent fraud.
- (3) The director may contract for the preparation of the ballots on a regional basis if necessary and may contract for the preparation of ballots without obtaining competitive bids.
- (4) The director may not include on the ballot as a part of a candidate's name, any honorary or assumed title or prefix but may include in the candidate's name any nickname or familiar form of a proper name of the candidate.
- (5) The names of the candidates and their party designations shall be placed in separate sections on the

state general election ballot under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate. The lieutenant governor and the governor shall be included under the same section. Provision shall be made for voting for write-in and no-party candidates within each section. Paper ballots for the state general election shall be printed on white paper.

(6) The names of the candidates for each office shall be set out in the same order on ballots printed for use in each house district. The director shall randomly determine the order of the names of the candidates for state representative for each house district. The director shall rotate the order of placement of the names of candidates for governor, lieutenant governor, United States senator, United States representative, and state senator on the ballot for each house district.

(7) The general election ballot shall be designed with the names of candidates of each political party, and of any independent candidates qualified under AS 15.30.026 , for the office of President and Vice-President of the United States placed in the same section on the ballot rather than the names of electors of President and Vice-President.

(8) The general or special election ballot shall be designed with the title and proposition for any initiative, referendum, or constitutional amendment formulated as prescribed by law and placed on the ballot in the manner prescribed by the director. When placed on the ballot, a state ballot proposition or ballot question shall carry the number that was assigned to the petition for the proposition or question. Provision shall be made for marking the proposition "Yes" or "No."

(9) The general or special election ballot shall be designed with the question of whether a constitutional convention shall be called placed on the ballot in the following manner: "Shall there be a constitutional convention?" Provision shall be made for marking the question "Yes" or "No."

(10) A nonpartisan ballot shall be designed for each judicial district in which a justice or judge is seeking

retention in office. The ballot shall be divided into four parts and each part must bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall be retained as justice of the supreme court for 10 years?"; (B) "Shall be retained as judge of the court of appeals for eight years?"; (C) "Shall be retained as judge of the superior court for six years?"; or (D) "Shall be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No."

(11) When the legislature by law authorizes a state debt for capital improvements, the director shall place the question of whether the specific authorization shall be ratified by placing the ballot title and question on the next general election ballot, or on the special election ballot if a special election is held for the purpose of ratifying the state debt for capital improvements before the time of the next general election. Unless specifically provided otherwise in the Act authorizing the debt, the ballot title shall, by the use of a few words in a succinct manner, indicate the general subject of the Act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the Act authorizing the state debt. The question of whether state debt shall be contracted shall be assigned a letter of the alphabet on the ballot. Provision shall be made for marking the question substantially as follows:

"Bonds. Yes" or "Bonds No," followed by an appropriate oval.

(12) The director may provide for the optical scanning of ballots where the requisite equipment is available.

(13) The director may provide for voting by use of electronically generated ballots by a voter who requests to use a machine that produces electronically generated ballots.

STATEMENT OF INTEREST FOR AMICUS CURIAE

The Honest Elections Project (“HEP”) is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, HEP defends fair and reasonable measures that legislatures put in place to protect the integrity of voting. HEP supports commonsense voting rules and opposes efforts to reshape or manipulate election rules for partisan gain.

This appeal challenges the Alaska’s Division of Elections authority to set reasonable restrictions on ballot procedures to prevent voter confusion and ensure fairness during the electoral process.

HEP has a significant interest in this case, as it implicates the constitutional authority of states to establish reasonable regulations governing their elections.

PRELIMINARY STATEMENT AND STANDARD OF REVIEW

The Superior Court framed this case as one about candidate qualifications, and that framing decided the outcome. Treating the Division's action as an attempt to add a "good-faith qualification" to the three qualifications for United States Senate, the court reversed almost as a matter of course on that basis. *See* Order at 16; U.S. Const. art. I, § 3, cl. 3.

But the dispositive question is narrower. It is whether a State, exercising its delegated authority over the "Manner" of holding elections, may decline to give ballot effect to a declaration of candidacy filed to confuse voters and corrupt the neutrality of the ballot. U.S. Const. art. I, § 4, cl. 1. That distinction controls the standard of review.

The threshold questions are whether the declaration was "properly filed" under Alaska Stat. § 15.25.060(a), and whether the requested presentation renders the ballot 'confusing or misleading to voters or compromises the fairness or neutrality of the ballot' under 6 Alaska Admin. Code 25.212(b)(2). These questions are mixed determinations and rely on the Division's expertise in administering elections. Accordingly, they should be owed reasonable-basis deference. *State v. Jeffery*, 170 P.3d 226, 231 (Alaska 2007). As such, the court erred by collapsing the deferential reasonable basis standard into a de novo constitutional inquiry. *See* Order at 10.

ARGUMENT

I. Refusing to Place a Confusion-Designed Candidacy on the Ballot Is a Valid Regulation of the "Manner" of Holding Elections, Not an Added "Qualification"

The Elections Clause delegates to the States authority over the "Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. art. I, § 4, cl.

1. Declining to certify a confusion-designed filing protects the integrity, reliability, fairness, and neutrality of the ballot itself, not any candidate's fitness to serve. *See* Br. of Appellee Alaska Div. of Elections at 19.

Under the Elections Clause, a state may exercise its authority for 'the prevention of fraud and corrupt practices' and 'the protection of voters,' *Smiley v. Holm*, 285 U.S. 355, 366 (1932), and expressly permits regulation 'to avoid undue voter confusion,' *Am. Party of Tex. v. White*, 415 U.S. 767, 783 n.14 (1974); see also *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997) ('[B]allots serve primarily to elect candidates, not as forums for political expression.').

The Superior Court's view rests on a category error: it read the Director's determination as a finding that Mr. Sullivan "lacked a particular quality or fitness, specifically a 'good-faith' intention." Order at 16. That conflates a measure of ballot integrity with a judgment about the worth of a candidate, the very line that separates permissible regulation from qualification under *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), and *Powell v. McCormack*, 395 U.S. 486 (1969).

The analysis should turn on the operative statutory and regulatory text. Specifically, the prohibition on a confusing or misleading ballot, rather than on a 'good faith' label, which

was the primary focus of the Superior Court. The Division applied a standard from its own rule: whether the filing renders the ballot "confusing or misleading to voters or compromises the fairness or neutrality of the ballot." 6 Alaska Admin. Code 25.212(b)(2) (2024). This standard measures the filing's effect on the ballot and on voters, not the candidate's worthiness for office. It therefore falls outside the trait-based qualifications prohibited in *U.S. Term Limits* and *Powell*.

II. The Statutory Command to Place Only Candidates Who Have "Properly Filed" Supplies the Alaska-Law Authority the Order Found Missing

The order's central statutory premise is that "Alaska statutes are silent on the issue of 'good faith,'" leaving the Division powerless to act. Order at 17. That premise overlooks operative text. The Legislature did not direct the Director to ministerially place every candidate who filed onto the ballot; it directed her to "place the names of all candidates who have properly filed." Alaska Stat. § 15.25.060(a).

Had the Legislature meant to require placement of everyone who merely "filed," it would not have added "properly," and that word must be given independent effect. See *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1179 (Alaska 1985) (contrasting "filed" with "properly filed"). A declaration submitted not to seek office but to confuse voters and compromise the ballot's neutrality is not "according to the rules," and so is not "properly filed." Proper, *Black's Law Dictionary* (12th ed. 2024) (also defined as "[c]onforming to the best ethical or social usage; allowable, right, and becoming" and "[a]ppropriate, suitable, right, fit, or correct").

This reading harmonizes the placement command with the anti-confusion mandate of 6 Alaska Admin. Code 25.212(b)(2) and restores meaning to a word the order read out of the statute. The "properly filed" condition is not a freestanding motive inquiry; it is anchored in the Director's statutory duties to protect the ballot. The Legislature charged the Director with "general administrative supervision over the conduct of state elections," Alaska Stat. § 15.15.010, and directed her to "prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter." Alaska Stat. § 15.15.030.

This Court has held it "malconduct" for the Division to prepare a ballot whose content "was inherently misleading." *Boucher v. Bomhoff*, 495 P.2d 77, 79–81 (Alaska 1972). It would be contradictory to forbid the Division from producing a misleading ballot yet compel it to do so on the demand of a filer whose purpose, based within the record and outside of the record, is to mislead and confuse.¹ "Properly filed" is a substantive term that exists to empower the Division to implement its delegated authority to safeguard the

¹ Honest Elections Project is unaware that the record reflects the following information and respectfully requests this Court take judicial notice of the absence of any Statement of Candidacy (Form 2) or Statement of Organization (Form 1) filed with the Federal Election Commission ("FEC") by, or on behalf of, Daniel J. Sullivan, Jr. or any principal campaign committee authorized by him in connection with his asserted candidacy for the office of United States Senator. See Federal Election Commission, Candidate overview: Sullivan, S., FEC (last visited June 27, 2026, at 1:12pm ET), <https://www.fec.gov/data/candidates/?q=Sullivan&office=S&state=AK>. Judicial notice is governed by Alaska Rule of Evidence 201, under which "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Alaska R. Evid. 201(b).

An individual running for the House, Senate or President becomes a candidate when they raise or spend more than \$5,000 in contributions or expenditures. Candidates must register using a Statement of Candidacy (Form 2) within 15 days after becoming a candidate and designate their principal campaign committee. 11 C.F.R § 101.1. The designated principal campaign committee must then file a Statement of Organization 10 days following such designation. 11 C.F.R § 102.1.

The absence of the Form 1 and Form 2 is at a minimum corroborative context that the Division's final determination was aligned with its delegated authority under Alaska Stat. § 15.15.030.

reliability, fairness, and neutrality of the ballot for all of Alaska's voters rather than the interests of one individual.

III. Alaska's Interest in Preventing Voter Confusion Supports the Division's Authority and Duty to Act

Alaska has an interest in preventing deliberate voter confusion, and the Division bears both the authority and responsibility to prevent it. The order acknowledged that the State "must show a compelling interest" to justify severe ballot-access burdens. Order at 21. Yet it failed to credit the State's compelling interest in preventing deliberate confusion and preserving the ballot's capacity "to reflect most accurately the intent of the voter." Alaska Stat. § 15.15.030. That interest is present here.

The record shows he attempted to use the middle initial of his primary candidate, a freshly assumed party label with no, a newly used nickname, and a campaign website mimicking the incumbents, and a failure to fully cooperate with the administrative proceedings. The record shows an identical surname, an attempt to appropriate the middle initial, a freshly assumed party label, and a campaign website mimicking the incumbent's. See R. DOE 128–130. While the Superior Court found that he "quickly corrected" the middle initial issue and thus did not amount to evidence could just as be viewed given the other activities as an admission-against-interest regarding his true intent in this process that was only remedied when questioned. *See* Order at 26.

While this experience is new to Alaska, it is not novel to our democratic process. Nebraska's experience confirms that election officials are not powerless against same-name manipulation even without an express good-faith statute, and that Alaska's framework is

stronger still. In *State ex rel. Johnson v. Marsh*, a candidate whose true name was Arthur Fred Johnson sought the ballot as "Fred Johnson" to "confuse his name with that of Fred H. Johnson, a good faith candidate who had already filed for the same office." 120 Neb. 297, 232 N.W. 104, 104 (1930).

The Nebraska Supreme Court excluded him because permitting the tactic "would be to sanction a patent fraud . . . particularly upon the electors who are entitled under the law to have their identification of candidates unobscured by trickery and fraud." *Id.* The Nebraska Supreme Court did not rely on any good-faith statute, and it still held that "[u]nder the law, the pleadings and the evidence, we have the power to exclude" a candidate who "so falsely misrepresented his name." *Id.*

The Eighth Circuit, addressing the 1930 scheme in a subsequent federal perjury prosecution arising from testimony before a United States Senate subcommittee, recognized that such confusion "interferes with and prevents expression of the real sentiment and wish of the voters" and "is deceptive, is intended to be so, and would entirely fail in its purpose were it not so." *Seymour v. United States*, 77 F.2d 577, 583 (8th Cir. 1935). This discussion acknowledges the damage that a misleading and confusing ballot can have on the electoral process and highlights the importance of exercising reasonable Manner regulations. *Seymour* observed only that the conduct 'may not be illegal' under Nebraska's then-existing primary law, which lacked a provision expressly prohibiting it. *Id.* That observation was dictum in a perjury appeal and addressed only the purported absence of a prohibiting statute.

But Alaska supplies what Nebraska then lacked: the anti-confusion command of 6 Alaska Admin. Code 25.212(b)(2) and the requirement of Alaska Stat. § 15.25.060(a) that the Director place only candidates who have 'properly filed. The Superior Court asserts that the Division "could-have-promulgated-a-regulation" is misplaced for these reasons. Order at 22. The court faulted the Division for not adopting a specific anti-sham rule, reasoning that the Director "knows how to draft regulations" but chose not to. Order at 19, 22. That logic would leave administrators defenseless against unprecedented manipulation that no express regulation could anticipate. The pre-existing anti-confusion authority found in 6 Alaska Admin. Code 25.212(b)(2) is sufficient, and the Division exercised delegated authority through an existing rule rather than inventing a new one.

Alaska's interest in an accurate, non-misleading ballot is squarely at issue here, and the Division's refusal to certify a confusion-designed filing was a proper application of its authority under the Elections Clause.

A candidacy that intends to confuse and mislead voters is in effect not a good faith candidacy. And it is within the Director's legal authority to determine if a declaration was properly filed in accordance with Alaska's election laws. Here, these terms are not mutually exclusive.

IV. The Director's Independent Authority to Evaluate Eligibility on Records is Independently Sustained.

Alternatively, and independent of the arguments above, even when accepting the order's reading of the complaint-channel limits in 6 Alaska Admin. Code 25.260(c), the Division's final determination is independently sustainable. Generally, this Court affords

a deferential standard when reviewing an agency's interpretation of its own regulations. Recognizing the agency is best able to discern its intent in promulgating the regulation at issue. *Stosh's I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1183 (Alaska 2000) (internal citation omitted).

The Legislature delegated the Director the "general administrative supervision over the conduct of state elections, who is tasked with "the "prepar[ation] of all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter." Subsection (j) provides that "[n]othing in this section limits the authority of the director to evaluate a candidate's eligibility for office, as addressed in the candidate's declaration of candidacy." 6 Alaska Admin. Code 25.260(j). Amicus acknowledges that this provision speaks of evaluation "in the absence of a complaint," and that complaints were filed here. *Id.*

But the provision also confirms that the Director's authority is independent of the complaint process, and the arrival of a complaint should not strip her of authority she would otherwise possess under the authorizing statute. The facts on which she relied—the requested ballot name, the party designation, and the campaign website—are all items the declaration must contain and are therefore "addressed in" the declaration itself. *See* Alaska Stat. § 15.25.030; Br. of Appellee Alaska Div. of Elections at 16–17.

For these independent reasons, this Court should affirm the Director's determination on the integrity-protecting basis that the records in the Division's custody independently establish, rather than fault the channel through which the inquiry began.

CONCLUSION

For these reasons, the Court should reverse the Superior Court's reversal and affirm the Division of Election's final determination to remove Mr. Daniel J. Sullivan from the ballot.