

**CS FOR HOUSE BILL NO. 47(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered: 4/5/94
Referred: Finance**

Sponsor(s): REPRESENTATIVE MARTIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to primary elections and to the delivery of the primary ballots
2 to persons making application for them when, by operation of political party rule,
3 two or more primary ballots must be provided to the public; preventing a voter
4 from changing the voter's party affiliation within 30 days of a primary election
5 when two or more primary ballots must be provided to the public; and annulling
6 a related regulation; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) To implement the stipulation
9 and approval entered into between the state and various parties in the case captioned Zawacki
10 v. State, No. A-92-414-Civil, in the United States District Court for the District of Alaska, the
11 lieutenant governor prepared and adopted a series of emergency regulations, codified as 6
12 AAC 28. Among the provisions was a subsection, 6 AAC 28.040(c), directing that "if an
13 applicant for an absentee ballot does not indicate a ballot preference on the absentee ballot

1 application, the director [of elections] will send the applicant the open primary (statutory)
2 ballot." As a result of the stipulated subsection, persons registered to the one political party
3 whose rules then required the use of a ballot containing a listing of candidates limited to those
4 who were registered as members of that political party received the absentee ballot for the
5 September 8, 1992, primary that contained the names of candidates seeking the nomination
6 of other political parties. The regulations in question lapsed, effective November 7, 1992, and
7 do not apply to future primary elections. The division of elections has since adopted a
8 permanent regulation, 6 AAC 28.130(c), making the same provision.

9 (b) The purpose of AS 15.20.155, added by sec. 2 of this Act, is to establish that, for
10 purposes of guiding state primary elections after June 30, 1994, if a political party's rules
11 require the use of an absentee ballot containing a listing of candidates limited to those who
12 were registered as members of that political party, absentee ballot applicants shall receive the
13 primary election ballot of their choice or, in the event of failure to indicate a choice or lack
14 of opportunity to make the choice, shall receive the appropriate primary election ballot or, if
15 the director is unable to make a determination of the appropriate primary election ballot after
16 review of relevant division records, shall receive the open primary (statutory) ballot.

17 (c) It is the intent of the legislature in enacting secs. 3 and 4 of this Act to amend the
18 nominating process to take into account the decision in *Tashjian v. Republican Party of*
19 *Connecticut*, 479 U.S. 208 (1986).

20 * Sec. 2. AS 15.20 is amended by adding a new section to read:

21 Sec. 15.20.155. DELIVERY OF PRIMARY BALLOT. (a) The provisions
22 of this section apply to a state primary election held on or after July 1, 1994, when

23 (1) the central committee or other governing body of a political party
24 adopts a rule that, notwithstanding AS 15.25.010 - 15.25.130, nominees of the party
25 may not be chosen by a primary election open to all voters, but rather shall be chosen
26 by a primary election that is limited to voters whose political affiliation or
27 nonaffiliation is designated by the party rules; and

28 (2) the director is prevented by application of that rule from providing
29 to a voter the ballot of a political party if, under the rules of that party, the voter
30 would not be eligible to vote in that party's primary election.

31 (b) If an applicant for an absentee ballot under AS 15.20.071, 15.20.081, or

1 15.20.082

2 (1) indicates a ballot preference on the absentee ballot application when
3 an opportunity to indicate the preference has been provided on the application, the
4 director shall deliver to the applicant the primary ballot indicated on the application
5 unless the director reasonably believes the applicant does not qualify to vote in that
6 party's primary election;

7 (2) does not qualify to vote in a party's primary election for which the
8 applicant has indicated a ballot preference, does not indicate a ballot preference on the
9 absentee ballot application when an opportunity to indicate the preference has been
10 provided on the application, or has not been given an opportunity on the application
11 to indicate the applicant's preference, the director shall deliver to the applicant the
12 primary ballot that is appropriate based on the applicant's political party affiliation or
13 nonaffiliation; the director shall make the determination of appropriateness of the
14 primary ballot on the basis of voter registration documents maintained by the director
15 as follows:

16 (A) the director shall determine whether the applicant has filed
17 a change of party registration at the same time the person has filed an
18 application for an absentee ballot; if the person has

19 (i) filed a change of party affiliation and the change of
20 party affiliation may take effect before the primary election, the director
21 shall make the determination of appropriateness of the primary ballot
22 on the basis of the affiliation designated by the applicant on that change
23 of party registration form;

24 (ii) not filed a change of party affiliation, or has filed a
25 change of party affiliation that may not take effect before the primary
26 election because of the operation of AS 15.25.090(b), the director shall
27 make the determination of appropriateness of the primary ballot on the
28 basis of the then current registration of the applicant;

29 (B) the primary ballot that is appropriate based on the
30 applicant's political party affiliation or nonaffiliation is

31 (i) the ballot described in AS 15.25.060(b) of the

1 appropriate political party, if the applicant's registration shows
2 affiliation with a political party for which a separate ballot is required
3 under AS 15.25.060(b); or

4 (ii) the statutory primary ballot described in
5 AS 15.25.060(a) in cases not described in (i) of this subparagraph.

6 * Sec. 3. AS 15.25.060 is amended to read:

7 Sec. 15.25.060. PREPARATION AND DISTRIBUTION OF BALLOTS. The
8 primary election ballot shall be prepared and distributed by the director in the manner
9 prescribed for general election ballots except as specifically provided otherwise for the
10 primary election. Except when (b) of this section otherwise requires, the [THE]
11 director shall place the names of all candidates who have properly filed in groups
12 according to offices filed for, without regard to party affiliation. The names for each
13 office shall be rotated as provided for the general election ballot. Blank [NO
14 BLANK] spaces may not [SHALL] be provided on the ballot for the writing or
15 pasting in of names. The ballot prepared under this subsection shall be designated,
16 prominently labeled, and referred to as the "statutory primary ballot." In this
17 subsection, "statutory primary ballot" means that the ballot is available to all
18 qualified and eligible voters of the state.

19 * Sec. 4. AS 15.25.060 is amended by adding new subsections to read:

20 (b) If, for a primary election held on or after July 1, 1994, (1) the central
21 committee or other governing body of a political party adopts a rule that,
22 notwithstanding AS 15.25.010 - 15.25.130, nominees of the party may not be chosen
23 by a primary election open to all voters, but rather shall be chosen by a primary
24 election limited to voters whose political affiliation or nonaffiliation is designated by
25 the party rule; (2) the central committee or other governing body of the party delivers
26 a copy of the rule to the director no later than March 1 of the year in which a primary
27 election is to take place; and (3) the rule has been submitted to the United States
28 Department of Justice for review under 42 U.S.C. 1973c (section 5, Voting Rights Act
29 of 1965, as amended) and the Department of Justice has provided an affirmative
30 indication of nonobjection to the rule's implementation, the director shall prepare a
31 separate ballot listing only the candidates of that party, and shall authorize the

1 distribution of that ballot only to the registered voters who are eligible to vote in that
2 party's primary under the party rule. Candidates who are listed on a separate ballot
3 under this subsection may not be listed on the ballot described in (a) of this section.
4 The names of the candidates for each office shall be rotated as provided for the general
5 election ballot, and blank spaces may not be provided on the ballot for the writing or
6 pasting in of names. A ballot prepared under this subsection shall be designated,
7 prominently labeled, and referred to as the "(insert name of the party whose candidates
8 appear on the ballot) party primary ballot."

9 (c) If at a primary election under AS 15.25.010 there is more than one ballot
10 available, a registered voter may choose which ballot the voter wishes to use. A voter
11 may not be given more than one ballot, and may not be given a ballot of a political
12 party if, under the rules of that party as delivered to the director under (b) of this
13 section, the voter would not be eligible to vote in that party's primary election.

14 * **Sec. 5.** AS 15.25.090 is amended by adding a new subsection to read:

15 (b) The director shall change the party affiliation of a registered voter when
16 requested by the voter. However, when a primary election involves a ballot required
17 by AS 15.25.060(b), the director may not change a registered voter's party affiliation
18 during the period after the 30th day preceding the primary election and the date of the
19 primary election.

20 * **Sec. 6.** 6 AAC 28.130(c) is annulled.

21 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).