ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10851 HOUSE JUDICIARY

> When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The Constitution thus requires that all House vacancies be filled by special election. There is no constitutional provision for the appointment of interim Representatives.

**Scheduling.** The responsibility for scheduling special elections is vested in the state legislatures (2 U.S.C. 8):

> The time for holding elections in any State, District, or Territory for a Representative to fill a vacancy, whether such vacancy is caused by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

House vacancies that occur in the first session of a Congress are invariably filled by special elections. The responsibility for ordering a special election is vested in the governors of the states. Most states also either set a window of time, or prescribe an exact number of days after the vacancy occurs, in which nomination procedures and the special election must be held. Within these constraints, state governors and election authorities generally attempt to schedule special elections for a regular election day, in the interests of economy, convenience, and increased voter participation.

Procedures governing vacancies occurring during the second session of a Congress differ from state to state, and are largely dependent on the amount of time intervening between the vacancy and the next general election. For instance, if a House seat becomes vacant within six months of the expiration of the previous incumbent's term, many states allow the seat to remain vacant for a time, providing for a special election to be held on the regularly scheduled election day, at the same time that a regular election for that seat for the ensuing Congress is held. Other states, under these circumstances, do not provide for a special election, and the affected seat remains vacant until the ensuing Congress convenes the following January.

**Nominations.** Nomination procedures for House of Representatives special elections vary as widely among the states as do those for the Senate. Some states require a special primary election to determine the major party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. A plurality is sufficient to elect in most primary states, but some southern states require a majority to nominate in the primary. If no candidate attains a majority, then a runoff, or second, primary is held at a later date, in which the two candidates winning the most primary votes compete for the nomination. Others provide for nomination by such party-established procedures as party congressional district caucuses and conventions, or meetings of party committees or interested party members in jurisdictions comprising the affected congressional district.

**General Elections.** Special general election procedures for the House of Representatives generally mirror those for the Senate, with some variations. Once again, in most states a plurality is sufficient to elect in the general election. Several states, however, have adopted procedures for House special elections that effectively conjoin the nomination and election process, sometimes in combination with other variations. These include California, Georgia, Louisiana, and Texas.

All qualified candidates for House special elections in California compete in a special primary, regardless of party affiliation. Nomination is by petition. Any candidate receiving more than 50% of the vote in the primary is elected, and the general election is canceled. If no candidate receives the required majority, the single candidate of each party receiving the most votes competes in a special general election, wherein a plurality of votes is sufficient to elect. In the event that candidates of only one party compete in the primary, a plurality is sufficient to elect, and there is no general election.[8]

As noted previously, Georgia requires a majority to elect in all congressional and statewide special elections. If no candidate receives 50% of the vote, then a runoff, or second, election is held between the two candidates gaining the most votes.[9]

Louisiana procedures for House special elections are the same as those applying to its Senate elections. All candidates who qualify for ballot access compete in the primary election, in which a majority of votes is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election. Louisiana mandates the all-parties primary for regular as well as special elections.[10]

Texas provides for an all-parties special primary election to fill House vacancies. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless or party affiliation, compete in a second election, termed a runoff in Texas. Unlike in Louisiana, in Texas the all-parties primary is unique to special elections.[11]

Winners of House special elections held concurrently with those for the ensuing Congress are often not sworn in as Members of the House of Representatives, since Congress has usually adjourned *sine die* before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing.

**Staff Disposition.** Staff of a deceased or resigned Representative are compensated until a successor is elected to fill the vacancy, performing duties under the direction of the Clerk of the House (2 U.S.C. 92 b,c).

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[8] *California Election Code*, § 10700-10707 (2001).

[9] *Georgia Election Code*, § 21-2-501 (2001).

[10] *Louisiana Election Code*, tit. 18, § 511, §512, and §1279. The Supreme Court's 1997 decision in *Foster v. Love* (522 U.S. 67 (1997)) affected only the timing of regular general elections in Louisiana; the all-parties nature of the procedure was not in question, and remains intact for both special and regularly scheduled elections.

[11] *Texas Election Law*, § 203.001-012, 0A; and 204.021.

# Selected States' Statutory Definition of "Political Party"

Following are twenty states' statutory definitions of "political party." This information was compiled through the combined efforts of Tim Storey at the National Conference of State Legislatures and searches we conducted of online statutory resources.

## ALABAMA

TITLE 17. ELECTIONS
CHAPTER 16. PRIMARY ELECTIONS
ARTICLE 1. GENERAL PROVISIONS

Ala. Code § 17-16-2 (2003)

Political parties; defined

An assemblage or organization of electors which, at the general election for state and county officers then next preceding the primary, casts more than 20 percent of the entire vote cast in any county is hereby declared to be a political party within the meaning of this chapter within such county; and an assemblage or organization of electors which, at the general election for state officers then next preceding the primary, casts more than 20 percent of the entire vote cast in the state is hereby declared to be a political party within the meaning of this chapter for such state.

CASE NOTES

CONSTITUTIONALITY.
Section 17-7-1(a)(2) as applied to those political parties ineligible to hold primary elections under Alabama law, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; and, accordingly it cannot be enforced against political parties ineligible to hold primary elections under Alabama law in a way that requires such parties to certify their candidates prior to the last date on which any political party eligible to hold a primary election may certify any of its candidates where no contest is filed. Whig Party v. Siegelman, 500 F. Supp. 1195 (N.D. Ala. 1980).

## ALASKA

TITLE 15. ELECTIONS
CHAPTER 60. GENERAL PROVISIONS

Alaska Stat. § 15.60.010 (2003)

Definitions

(21) "political party" means an organized group of voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

# ARKANSAS

TITLE 7. ELECTIONS
CHAPTER 1. GENERAL PROVISIONS

Ark. Code Ann. § 7-1-101 (2003)

Definitions

(18) (A) "Political party" means any group of voters which at the last-preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) No group of electors shall assume a name or designation which is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party;

# CALIFORNIA

ELECTIONS CODE
DIVISION 5. Political Party Qualifications
CHAPTER 2. Parties Qualified to Participate in the Primary Election

Cal Elec Code § 5100 (2003)

Qualification of party to participate in primary election

A party is qualified to participate in any primary election under any of the following conditions:

(a) If at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the state, at least 2 percent of the entire vote of the state.

(b) If on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him or her by the county elections officials, that voters equal in number to at least 1 percent of the entire vote of the state at the last preceding gubernatorial election have declared their intention to affiliate with that party.

(c) If on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the state at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county elections officials substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point boldface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election."

## COLORADO

TITLE 1. ELECTIONS
GENERAL, PRIMARY, AND CONGRESSIONAL VACANCY ELECTIONS
ARTICLE 1. ELECTIONS GENERALLY
PART 1. DEFINITIONS AND GENERAL PROVISIONS

Colo. Rev. Stat. § 1-1-104 (2003)

Definitions

(22) "Major political party" means any political party that at the last preceding gubernatorial election was represented on the official ballot either by political party candidates or by individual nominees and whose candidate at the last preceding gubernatorial election received at least ten percent of the total gubernatorial votes cast.

(22.5) "Major political party affiliation" means an elector's decision to affiliate with a major political party, as defined in subsection (22) of this section.

(23) "Minor political party" means a political party other than a major political party that satisfies one of the conditions set forth in section 1-4-1303 (1) or has submitted a sufficient petition in accordance with section 1-4-1302.

(23.3) "Nonpartisan election" means an election that is not a partisan election.

(23.6) "Partisan election" means an election in which the names of the candidates are printed on the ballot along with their affiliation. The existence of a partisan election for the state or for a political subdivision as a part of a coordinated election does not cause an otherwise nonpartisan election of another political subdivision to become a partisan election.

(24) "Political organization" means any group of registered electors who, by petition for nomination of an unaffiliated candidate as provided in section 1-4-802, places upon the official general election ballot nominees for public office.

(25) "Political party" means either a major political party or a minor political party.

## CONNNECTICUT

Conn. Gen. Stat. § 9.372 (2003)

Definitions. The following terms, as used in this chapter and sections 9-51 to 9-67, inclusive, 9-169e, 9-217, 9-236 and 9-361, shall have the following meanings:
(1) "Caucus" means any meeting, at a designated hour and place, or at designated hours and places, of the enrolled members of a political party within a municipality or political subdivision thereof for the purpose of selecting party-endorsed candidates for a primary to be held by such party or for the purpose of transacting other business of such party;
(2) "Convention" means a meeting of delegates of a political party held for the purpose of designating the candidate or candidates to be endorsed by such party in a primary of such party for state or district office or for the purpose of transacting other business of such party;
(3) "District" means any geographic portion of the state which crosses the boundary or boundaries between two or more towns;
(4) "District office" means an elective office for which only the electors in a district, as defined in subdivision (3) of this section, may vote;
(5) "Major party" means (A) a political party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of

the whole number of votes cast for all candidates for Governor or (B) a political party having, at the last- preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state;
(6) "Minor party" means a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election;

## DELAWARE

TITLE 15. ELECTIONS
PART I. ADMINISTRATIVE AGENCIES
CHAPTER 1. PURPOSE AND MEANING OF ELECTION LAWS

Del. Code. Ann. 15, § 101 (2003)

(13) "Party" or "political party" means any political organization which elects a state committee and officers of a state committee, by a state convention composed of delegates elected from each representative district in which the party has registered members, and which nominates candidates for electors of President and Vice-President, or nominates candidates for offices to be decided at the general election. All political parties shall be divided into 2 classes:

a. "Major political party" means any political party which, as of December 31 of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least 5 percent of the total number of voters registered in the State.

b. "Minor political party" means any political party which does not qualify as a major political party.

## FLORIDA

TITLE 9. ELECTORS AND ELECTIONS
CHAPTER 97. QUALIFICATION AND REGISTRATION OF ELECTORS
PART I. GENERAL PROVISIONS

Fla. Stat. § 97.021 (2003)

FIRST OF TWO VERSIONS OF THIS SECTION

§ 97.021. Definitions (effective until January 1, 2004)

(14) "Minor political party" is any group as defined in this subsection which on January 1 preceding a primary election does not have registered as members 5 percent of the total registered electors of the state. Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws. It shall be the duty of the minor political party to notify the department of any changes in the filing certificate within 5 days of such changes.

TITLE 9. ELECTORS AND ELECTIONS
CHAPTER 103. PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS

Fla. Stat. § 103.091 (2003)

Political parties

(1) Each political party of the state shall be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper. Unless otherwise provided by party rule, the county executive committee of each political party shall consist of at least two members, a man and a woman, from each precinct, who shall be called the precinct committeeman and committeewoman. For counties divided into 40 or more precincts, the state executive committee may adopt a district unit of representation for such county executive committees. Upon adoption of a district unit of representation, the state executive committee shall request the supervisor of elections of that county, with approval of the board of county commissioners, to provide for election districts as nearly equal in number of registered voters as possible. Each county committeeman or committeewoman shall be a resident of the precinct from which he or she is elected.

(2) The state executive committee of a political party may by resolution provide a method of election of national committeemen and national committeewomen and of nomination of presidential electors, if such party is entitled to a place on the ballot as otherwise provided for presidential electors, and may provide also for the election of delegates and alternates to national conventions.

(3) The state executive committee of each political party shall file with the Department of State the names and addresses of its chair, vice chair, secretary, treasurer, and members and shall file a copy of its constitution, bylaws, and rules and regulations with the Department of State. Each county executive committee shall file with the state executive committee and with the supervisor of elections the names and addresses of its officers and members.

(4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the first primary election in each year a presidential election is held. The terms shall commence on the first day of the month following each presidential general election; but the names of candidates for political party offices shall not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections not earlier than noon of the 57th day, or later than noon of the 53rd day, preceding the first primary election. The outgoing chair of each county executive committee shall, within 30 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers. The chair of each state executive committee shall, within 60 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers.

(5) In the event no county committeeman or committeewoman is elected, or a vacancy occurs from any other cause in any county executive committee, the county chair shall call a meeting of the county executive committee by due notice to all members, and the vacancy shall be filled by a majority vote of those present at a meeting at which a quorum is present. Such vacancy shall be filled by a qualified member of the political party residing in the district where the vacancy occurred and for the unexpired portion of the term.

(6) (a) In addition to the members provided for in subsection (1), each county executive committee shall include all members of the Legislature who are residents of the county and members of their respective political party and who shall be known as at-large committeemen and committeewomen.

(b) Each state executive committee shall include, as at-large committeemen and committeewomen, all members of the United States Congress representing the State of Florida who are members of the political party, all statewide elected officials who are members of the party, and the President of the Senate or the Minority Leader in the Senate, and the Speaker of the House of Representatives or the Minority Leader in the House of Representatives, whichever is a member of the political party, and 20 members of the Legislature who are members of the political party. Ten of the legislators shall be appointed with the concurrence of the state chair of the respective party, as follows: five to be appointed by the President of the Senate; five by the Minority Leader in the Senate; five by the Speaker of the House of Representatives; and five by the Minority Leader in the House.

(c) When a political party allows any member of the state executive committee to have more than one vote per person, other than by proxy, in a matter coming before the state executive committee, the 20 members of the Legislature appointed under paragraph (b) shall not be appointed to the state executive committee and the following elected officials who are members of that political party shall be appointed and shall have the following votes:

1. Governor: a number equal to 15 percent of votes cast by state executive committeemen and committeewomen;

2. Lieutenant Governor: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;

3. Each member of the United States Senate representing the state: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;

4. Attorney General: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;

5. Chief Financial Officer: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;

6. Commissioner of Agriculture: a number equal to 5 percent of the votes cast by state executive committeemen and committeewomen;

7. President of the Senate: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;

8. Minority leader of the Senate: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;

9. Speaker of the House of Representatives: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen;

10. Minority leader of the House of Representatives: a number equal to 10 percent of the votes cast by state executive committeemen and committeewomen; and

11. Each member of the United States House of Representatives representing the state: a number equal to 1 percent of the votes cast by state executive committeemen and committeewomen.

(d) 1. The governing body of each state executive committee as **defined** by party rule shall include as at-large committeemen and committeewomen all statewide elected officials who are members of such political party; up to four members of the United States Congress representing the state who are members of such political party and who shall be appointed by the state chair on the basis of geographic representation; the permanent presiding officer selected by the members of each house of the Legislature who are members of such political party; and the minority leader selected by the members of each house of the Legislature who are members of such political party.

2. All members of the governing body shall have one vote per person.

(7) Members of the state executive committee or governing body may vote by proxy.

(8) The conducting of official business in connection with one's public office constitutes good and sufficient reason for failure to attend county or state executive committee meetings or a meeting of the governing body.

## GEORGIA

TITLE 21. ELECTIONS
CHAPTER 2. ELECTIONS AND PRIMARIES GENERALLY
ARTICLE 1. GENERAL PROVISIONS

Ga. Code Ann. § 21-2-2 (2002)

Definitions

(25) "Political party" or "party" means any political organization which at the preceding:

(A) Gubernatorial election nominated a candidate for Governor and whose candidate for Governor at such election polled at least 20 percent of the total vote cast in the state for Governor; or

(B) Presidential election nominated a candidate for President of the United States and whose candidates for presidential electors at such election polled at least 20 percent of the total vote cast in the nation for that office.

## HAWAII

DIVISION 1. GOVERNMENT
TITLE 2. ELECTIONS
CHAPTER 11. ELECTIONS, GENERALLY
PART V. PARTIES

Haw. Rev. Stat. § 11-61 (2003)

Political party" defined

(a) The term "political party" means any party which has qualified as a political party under sections 11-62 and 11-64 and has not been disqualified by this section. A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the State, including a regularly constituted central committee and county committees in each county other than Kalawao.

(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to 11-64, shall be subject to disqualification:

(1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraph (2) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and

(2) The party received at least ten per cent of all votes cast:

(A) For any of the offices voted upon by all the voters in the State; or

(B) In at least fifty per cent of the congressional districts; or

(3) The party received at least four per cent of all the votes cast for all the offices of state senator statewide; or

(4) The party received at least four per cent of all the votes cast for all the offices of state representative statewide; or

(5) The party received at least two per cent of all the votes cast for all the offices of state senate and all the offices of

state representative combined statewide.

Hawaii makes no provision for write-in voting in its primary or general elections; however, the Hawaii election law system provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary; consequently, any burden on voters' freedom of choice and association is borne only by those who fail to identify their candidate of choice until days before the primary. Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). Hawaii's interest in avoiding the possibility of unrestrained factionalism at the general election provides adequate justification for its ban on write-in voting in November. Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). When a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights--as do Hawaii's election laws--a prohibition on write-in voting will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme. Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

Hawaii promotes the two-stage, primary-general election process of winnowing out candidates by permitting the unopposed victors in certain primaries to be designated office holders; this focuses the attention of voters upon contested races in the general election and this would not be possible, absent the write-in voting ban. Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

Cited in Hustace v. Doi, 60 Haw. 282, 588 P.2d 915 (1978).

OPINIONS OF ATTORNEY GENERAL

Change of party name—Although amendments, including name changes, made by a corporation are governed by statute, which provides for amendment only after two-thirds vote of all stockholders, amendments by associations, such as political parties, are governed by existing rules as enacted in their constitution and bylaws; and where the constitution and bylaws of a political party permit amendments to be made to it by the executive committee, a name change made by the executive committee of the party appears to be permissible. Op. Att'y Gen. No. 82-1 (1982).

Use of "democratic" in party name—The initial registrant of the name "Democratic Party of Hawaii" may exclusively refer to itself by this name, but the state may not prohibit the use of the word "Democratic" when another party seeks to use that as part of its party name, such as "The Independent Democratic Party of Hawaii." Op. Att'y Gen. No. 82-1 (1982).

Blank ballots should not be counted as votes cast when determining the qualifications of political parties under subsection (b). Op. Att'y Gen. No. 81-6 (1981).

## IDAHO

GENERAL LAWS
TITLE 34. ELECTIONS
CHAPTER 1. DEFINITIONS

Idaho Code § 34-109 (2003)

"Political party" defined

"Political party" means an affiliation of electors representing a political group under a given name as authorized by law.

GENERAL LAWS
TITLE 34. ELECTIONS
CHAPTER 5. POLITICAL PARTIES – ORGANIZATION

Idaho Code § 34-501 (2003)

"Political party" defined -- Procedures for creation of a political party

(1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the following three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, provided that those individuals seeking the office of president, vice president and president elector shall be considered one candidate, or

(b) By polling at the last general election for any one of its candidates for state or national office at least three per cent (3%) of the aggregate vote cast for governor or for presidential electors.

(c) By an affiliation of electors who shall have signed a petition which shall:

(A) State the name of the proposed party in not more than six (6) words;

(B) State that the subscribers thereto desire to place the proposed party on the ballot;

(C) Have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to two per cent (2%) of the aggregate vote cast for presidential electors in the state at the previous general election at which presidential electors were chosen;

(D) Be filed with the secretary of state on or before August 30 of even numbered years;

(E) The format of the signature petition sheets shall be prescribed by the secretary of state and shall be patterned after, but not limited to, such sheets as used for state initiative and referendum measures;

(F) The petitions and signatures so submitted shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(G) The petition shall be circulated no earlier than August 30 of the year preceding the general election.

(2) Upon certification by the secretary of state that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law.

## ILLINOIS

CHAPTER 10. ELECTIONS
ELECTION CODE
ARTICLE 8. NOMINATIONS OF MEMBERS OF THE GENERAL ASSEMBLY

10 Ill. Comp. Stat. 5/8-2 (2003)

Sec. 8-2. The term "political party" as used in this article shall mean a political party which, at the next preceding election for governor, polled at least five per cent of the entire vote cast in the State; Provided, that no political

organization or group shall be qualified as a political party hereunder, or given a place on a ballot, which organization or group is associated, directly or indirectly, with Communist, Fascist, Nazi or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois.

ANALYSIS

CHANGING POLITICAL PARTIES

Restrictions upon party switching by political candidates and establishment of the periods of time involved are, within constitutional limitations, matters for legislative determination. Sperling v. County Officers Electoral Bd., 57 Ill. 2d 81, 309 N.E.2d 589 (1974).

ESTABLISHED PARTIES

An individual or group of less than five percent has a right to place a name upon the primary ballot by petition with the requisite number of signatures, and if such group or political party in the ensuing election polls more than five percent of the vote in such election, then it becomes an "established political party" for the subdivision in which the election was held and is entitled to the identical rights to which political parties are entitled with a like percentage of votes. Progressive Party v. Flynn, 400 Ill. 102, 79 N.E.2d 516 (1948).

## INDIANA

Title 3
Section 5
Chapter 2

Ind. Code Ann. § 3-5-2-5.5 (2003)

"Bona fide political party"

Sec. 5.5. "Bona fide political party" means:

(1) a major political party; or

(2) a political party that has:

(A) nominated at least one (1) candidate for political office during the preceding five (5) years;

(B) held a convention; or

(C) raised money and filed the financial reports required by law.

As added by P.L.3-1993, SEC.3.

## KANSAS

CHAPTER 25. ELECTIONS
ARTICLE 39. FILLING VACANCIES IN OFFICES AND CANDIDACIES

Kan. Stat. Ann. § 25-3901 (2002)

Definitions.

As used in this act, unless the context otherwise requires, the words and terms defined in article 25 of chapter 25 of Kansas Statutes Annotated shall have the meaning therein ascribed thereto, to the extent that the same are not in conflict with the following:

(a) "District office" means the office of district judge, district magistrate judge, county commissioner, state

representative, state senator, district attorney or county attorney.

(b) "Party" means a political party having a state and national organization and of which the officer or candidate whose position has become vacant was a member.

(c) "Party candidacy" means a candidate of a political party for a party nomination at a primary election or the party candidate at a general election.

(d) "General election" means the election held on the Tuesday succeeding the first Monday in November in even-numbered years.

(e) "Primary election" means the election held on the first Tuesday in August in even-numbered years.

(f) "County chairman" or "county chairperson" means the chairperson of the county central committee, provided to be elected under K.S.A. 25-3802 and amendments thereto, of the political party of which the officer or candidate whose position has become vacant was a member.

## IOWA

TITLE II. ELECTIONS AND OFFICIAL DUTIES
SUBTITLE 1. ELECTIONS
CHAPTER 43. PARTISAN NOMINATIONS -- PRIMARY ELECTION

Iowa Code § 43.2 (2003)

Definitions.

The term "political party" shall mean a party which, at the last preceding general election, cast for its candidate for president of the United States or for governor, as the case may be, at least two percent of the total vote cast for all candidates for that office at that election. It shall be the responsibility of the state commissioner to determine whether any organization claiming to be a **political party** qualifies as such under the foregoing **definition.**

A political organization which is not a "political party" within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapters 44 and 45.

As used in this chapter, unless the context otherwise requires, "book", "list", "record", or "schedule" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

## NORTH CAROLINA

CHAPTER 163. ELECTIONS AND ELECTION LAWS
SUBCHAPTER 04 . POLITICAL PARTIES
ARTICLE 9. POLITICAL PARTY DEFINITION

N.C. Gen. Stat. § 163-96 (2003)

(a) **Definition.** -- A **political party** within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential

electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED AND WHOSE STATE CHAIRMAN IS , RESIDING AT AND WHO CAN BE REACHED BY TELEPHONE AT THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

## KENTUCKY

TITLE X. ELECTIONS
CHAPTER 118. CONDUCT OF ELECTIONS

KRS § 118.015 (2003)

Definitions

As used in this chapter, unless the context otherwise requires:

(1) A "political party" is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and whose candidate received at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for;

## MAINE

Title 21-A: Elections
Chapter 1: General Provisions
Subchapter 1: Definitions, Construction, and Application

Me. Rev. Stat. Ann. Tit. 21, § 1.1 (2003)

Definitions

22. Major party. "Major party" means a political party polling the greatest or the next greatest number of votes cast for Governor at the last gubernatorial election. [1985, c. 161, §6 (new).]

24. Minor party. "Minor party" means a political party other than a major party. [1985, c. 161, §6 (new).]

28. Party. "Party" means a political organization which has qualified to participate in a primary or general election under chapter 5. [1985, c. 161, §6 (new).]

Title 21-A: Elections
Chapter 5: Nominations
Subchapter 1: By Political Parties
Article 1: Party Qualification

Me. Rev. Stat. Ann. Tit. 21, § 5.1 (2003)

Qualified parties

1. Primary election. A party qualifies to participate in a primary election if its designation was listed on the ballot of either of the 2 preceding general elections and if:

A. The party held municipal caucuses as prescribed by Article II in at least one municipality in each county in the State during the election year in which the designation was listed on the ballot and any interim election year and fulfills this same requirement during the year of the primary election; [1999, c. 450, §1 (amd).]

B. The party held a state convention as prescribed by Article III during the election year in which the designation was

listed on the ballot and any interim election year; and [1999, c. 450, §1 (amd).]

C. Its candidate for Governor or for President polled at least 5% of the total vote cast in the State for Governor or President in either of the 2 preceding general elections. [1999, c. 450, §1 (amd).]

D. [1999, c. 450, §1 (rp).]

Each state party committee must file a statement with the Secretary of State on or before March 20th certifying that the party has held the municipal caucuses required by paragraph A. The statement must be signed by the party chair or the chair's designated agent.

[1999, c. 450, §1 (amd).]

2. General election. A party which qualifies under subsection 1 to participate in a primary election must, in that same year, hold a state convention as prescribed by Article III in order to have the party designation of its candidates printed on the ballot in the general election of that year. [1985, c. 161, §6 (new).]

## MARYLAND

"Majority party" means the political party to which the incumbent Governor belongs, if the incumbent Governor is a member of a principal political party. If the incumbent Governor is not a member of one of the two principal political parties, "majority party" means the principal political party whose candidate for Governor received the highest number of votes of any party candidate at the last preceding general election.

Md. Code Ann., [Election Law] § 4-102 (2003)

(a) Any group of registered voters may form a new political party by:

(1) filing with the State Board on the prescribed form a petition meeting the requirements of subsection (b) of this section and of Title 6 of this article; and

(2) adopting and filing an interim constitution and bylaws in accordance with subsection (e) of this section.

(b) (1) The petition shall state:

(i) the partisan organization's intent to organize a State political party;

(ii) the name of the partisan organization;

(iii) the name and signature of the State chairman of the partisan organization; and

(iv) the names and addresses of 25 registered voters, including the State chairman, who shall be designated as constituting the initial governing body of the partisan organization.

(2) (i) Appended to the petition shall be papers bearing the signatures of at least 10,000 registered voters who are eligible to vote in the State as of the first day of the month in which the petition is submitted.

(ii) Signatures on the petition must have been affixed to the petition not more than 2 years before the filing date of the last qualifying signature.

(c) (1) Except as provided in paragraph (2) of this subsection, a petition for the formation of a new political party, or any additional signatures to a petition, may be filed at any time.

(2) A petition for the formation of a new political party, or any additional signatures to a petition, may be filed:

(i) in the year of an election at which the President is elected except:

1. during the period of time that registration is closed before and after a primary election in accordance with § 3-302(a) of this article; and

2. after the first Monday in August until registration reopens after the general election in accordance with § 3-302(a) of this article;

(ii) in the year of an election at which the Governor is elected, except after the first Monday in August until registration reopens after the general election in accordance with § 3-302(a) of this article; or

(iii) when a special primary election and a special election are proclaimed by the Governor in accordance with § 8-710 of this article except:

1. after the fifth Monday before the special primary election through the tenth day following the special primary election; and

2. after the fifth Monday before the special election through the fifteenth day following the special election.

(d) (1) (i) If the petition is certified under Title 6 of this article, the State Board shall promptly notify the State chairman of the partisan organization.

(ii) Upon the filing of a constitution and bylaws with the State Board by a partisan organization in accordance with subsection (e) of this section, the State Board shall:

1. review the constitution and bylaws to determine whether the constitution and bylaws meet the requirements of subsection (e) of this section; and

2. if the constitution and bylaws meet the requirements of subsection (e) of this section, promptly notify the partisan organization designated in the petition that it is considered a State political party for the purposes of this article.

(2) If the petition does not meet the requirements of this section and of Title 6 of this article:

(i) the State Board shall declare the petition insufficient;

(ii) the partisan organization is not a State political party for the purposes of this article; and

(iii) the State Board shall promptly notify the State chairman of the partisan organization.

(e) (1) The constitution and bylaws of a new political party shall:

(i) comply with the requirements of § 4-204 of this title; and

(ii) be adopted by the individuals designated in the petition as the initial governing body at an organizational meeting held within 90 days after the date of the filing of the last qualifying signature on its petition.

(2) The individual designated in the petition as the State chairman of the political party shall convene the organizational meeting under paragraph (1)(ii) of this subsection and shall preside as president pro tem of the meeting until party officers are elected.

(f) Unless a new political party is required to hold a primary election to nominate its candidates under Title 8 of this article, the new political party may nominate its candidates by:

(1) petition in accordance with Title 5 of this article; or

(2) if at least 1% of the State's registered voters, as of January 1 in the year of the election, are affiliated with the political party, convention in accordance with rules adopted by the political party.

§ 4-103.

(a) (1) Unless extended pursuant to paragraph (2) of this subsection, a new political party shall retain its status as a political party until December 31 in the year of the second statewide general election following the party's qualification under § 4-102 of this subtitle.

(2) The political party shall retain its status as a political party through either of the following:

(i) if the political party has nominated a candidate for the highest office on the ballot in a statewide general election, and the candidate receives at least 1% of the total vote for that office, the political party shall retain its status through December 31 in the year of the next following general election; or

(ii) if the State voter registration totals, as of December 31, show that at least 1% of the State's registered voters are affiliated with the political party, the political party shall retain its status until the next following December 31.

(b) The State Board shall promptly notify the State chairman of a group that loses its status as a political party.

(c) A group that loses its status as a political party may regain that status only by complying with all the requirements for qualifying as a new party under § 4-101 of this subtitle.

# UTAH

TITLE 20A. ELECTION CODE
CHAPTER 8. POLITICAL PARTY FORMATION AND PROCEDURES
PART 1. FORMATION OF POLITICAL PARTIES RECOGNIZED BY THE STATE

Utah Code Ann. § 20A-8-101 (2003)

Definitions

As used in this chapter:

(1) "Continuing political party" means an organization of voters that participated in the last regular general election and polled a total vote for any of its candidates for any office equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives.

(2) "County political party" means, for each registered political party, all of the persons within a single county who, under definitions established by the county political party, are members of the registered political party.

(3) "Newly registered political party" means a statewide organization of voters that has complied with the petition and organizing procedures of this chapter to become a registered political party.

(4) "Registered political party" means an organization of voters that:

(a) participated in the last regular general election and polled a total vote for any of its candidates for any office equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives; or

(b) has complied with the petition and organizing procedures of this chapter.

(5) "State political party" means, for each registered political party, all of the persons in Utah who, under definitions established by the state political party, are members of the registered political party.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THE GREEN PARTY OF ALASKA,

Plaintiff,

vs.

THE STATE OF ALASKA, DIVISION OF ELECTIONS, and LAURA GLAISER, Director of the Division of Elections,

Defendants.

Case No. 3AN 03-9936 CI

**PRELIMINARY INJUNCTION**

Defendant is enjoined from denying plaintiff, The Green Party of Alaska, the benefits of political party status as set out in AS 15.25.030, AS 15.25.140 and AS 15.60.010(21).

No bond is required for this preliminary injunction.

This injunction will remain in force until the earlier of (a) the general election in November 2004; (b) the legislature corrects the problems with party eligibility in the statutes; or (c) further order of this court.

DATED at Anchorage, Alaska this 3rd day of November, 2003.

JOHN REESE
Superior Court Judge

I certify that on 11/4/03 a copy of the above was mailed to each of the following at their address of record:
Moriott/AG (Felix)

Administrative Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

THE GREEN PARTY OF ALASKA,

Plaintiff,

vs.

THE STATE OF ALASKA, DIVISION OF ELECTIONS, and LAURA GLAISER, Director of the Division of Elections,

Defendants.

Case No. 3AN 03-9936 CI

**ORDER**

**I. Introduction**

The Green Party of Alaska ("Green Party") is seeking a preliminary injunction against the State to receive treatment as a political party defined in AS 15.60.010(21). The State opposes the motion arguing that the Green Party does not satisfy the requirements to receive the injunction. The motion should be granted.

**II. Facts**

In 1990, Green Party gubernatorial candidate Jim Sykes received over 3% of the votes. After that election, the Green Party was deemed a "political party" by the State pursuant AS 15.60.010 (21). Green Party candidates continued to receive at least 3% of the vote in gubernatorial races through 2002, so the organization maintained its political party status. In 2002, Diane Benson ran for governor as a Green Party candidate and received less than 3% of the vote. After the 2002 election, the Green Party was no

longer considered a political party by the State. In 2002, two other Green Party candidates ran for federal positions—U.S. Representative and U.S. Senator—and each candidate received over 6% of the vote.

The Green Party filed a suit against the state alleging its equal protection rights are being violated and seeking a declaratory judgment that it is unconstitutional to deny political party status to the Green Party while granting that status to other political organizations. Because the adjudication of the underlying claims may continue through the next election (or at least through the important deadlines), the Green Party currently seeks a preliminary injunction so it can plan its political campaign accordingly.

Discussion

A political party is defined as:

> [A] group of organized voters that represents a political program and that either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election.

AS 15.60.010 (21). A political group is a group of organized voters with a political program that does not otherwise satisfy the requirement for political party. AS 15.60.010(20). Political groups that want to place a candidate on a ballot must first file a petition including an adequate number of signatures on the day of the primary election. AS 15.25.140-60. P ..cal party candidates, to the contrary, do not have to gather voter signatures in order to be placed on the ballot. Instead, they must file a declaration of candidacy by June 1 of the year of the election. AS 15.25.030-04.

The plaintiff seeks a preliminary injunction to receive treatment as a political party despite its failure to satisfy AS 15.60.010 (21). The following is the applicable statutory standard for granting an injunction:

> When it appears that (1) the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual...

AS 09.40.230.

When ruling on whether to grant preliminary relief, the court must "avoid extensive involvement in the merits of the issues between the parties." *A.J. Industries v. Alaska Public Service Commission*, 470 P.2d 537,540 (Alaska 1970). When the party seeking relief will not be harmed by the injunction, that party must establish a clear showing of probable success before the motion is granted. *Id.* However, when the party seeking the relief would be irreparably harmed and the opposing party can be adequately protected from harm, then the court must apply a "balance of hardships" approach. *State of Alaska v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270 (Alaska 1992). The balance of hardships approach involves a three-part test:

> (1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'

*Id.* at 1273 (quoting *Messerli v. Dep't of Natural Resources*, 768 P.2d 1112, 1122 (Alaska 1989)).

Here, the plaintiff argues that it will be irreparably harmed if the injunction is not granted, so the balancing test applies. The defendant, however, argues that the plaintiff will not be irreparably harmed, so it must establish probable success on the merits. The determination of which test applies turns on whether the plaintiff will be irreparably harmed if the injunction is not granted.

Irreparable harm

An irreparable injury is an injury, regardless of its size, that cannot be reasonably redressed in a court of law. *Kluti Kaah,* 831 P.2d at 1273 n.5, citing Black's Law Dictionary, 786 (6th Ed. 1990). For purposes of the balancing test here, the injury must be established with substantial certainty.

The State argues that the plaintiff will not suffer any harm because it has sufficient time to register enough Green Party voters to be recognized as a political party in time for the primary. After the 2002 elections, the Libertarian party did exactly that after it had lost its party status.

The Green Party states that it has never been able to register enough voters to be recognized as a political party. Its only option, therefore, is to gather signatures in preparation of the 2004 election. The Green Party argues that if the injunction is not granted, the organization will be harmed because it will have to "jump through additional registration and petitioning hurdles," including gathering signatures. The Green Party will also be fiscally impaired because AS 15.13.070(b) significantly limits the amount of contributions that can be made to the organization if it is a political group instead of a political party. In addition, the plaintiff will not be able to participate in the primary, an event with great political value and media coverage.

Participation in a primary has great political value. As noted in *Vogler v. Miller*, 660 P.2d 1192 (Alaska 1983) ("*Vogler II*"), candidates that participate in primaries receive intense media coverage, whereas a candidate from a small party that is simply on the ballot will likely go unnoticed. *Id.* at 1194. The primary has been described as "one of the great drive engines of American politics." *Id.* (quoting T. White, *The Making of the President 1972*, 71 (1973)). The Green Party's absence from the primary may have a harmful effect on that party's recognition and future support. The Green Party has clearly made strides over the past twelve years by maintaining its party status and having two candidates for federal office receive over 6% of the vote. Precluding the Green Party from the primary, coupled with imposing limitations on its fundraising abilities will likely harm the party in a way that could not be compensable in a court of law.

Because the plaintiff will be irreparably injured if the injunction is not granted, the balance of hardship approach must be applied.

Adequate protection of the defendant

The injunction may only be granted if the State is adequately protected. The court must consider the clear ramifications of an injunction, including potential for similar actions by other parties seeking injunctive relief, and whether similarly situated parties would be treated differently. *See Kluti Kaah*, 831 P.2d at 1273. In *Kluti Kaah*, the superior court improperly granted an injunction to a Native Village without considering that other similarly situated Native Villages would seek the same relief. In fact, seven other Villages sought the same relief. The court is prohibited from treating similarly situated Villages differently. The purpose of the underlying restriction was to

increase the moose population, and granting all eight injunctions would not have adequately protected the state's interest in increasing the moose population.

The State argues that it will be harmed by the injunction because it will have to spend its limited funds for printing and computer programming associated with a candidate. In addition, the State argues that it has an interest in ensuring that the candidates on each ballot have a modicum of support by voters. Without that support, the voters will be subject to overcrowding and confusion. The Green Party argues that the amount of money the State would spend on printing is minimal and not enough to constitute harm and the Green Party has received sufficient support over the years to prevent voter confusion.

No evidence was presented that any other political organization is situated similarly to the Green Party.[1] Therefore, it does not appear that a similar injunction will be sought by other parties, overburdening the defendant. Over the past decade the State has absorbed the cost of having a Green Party candidate on the gubernatorial ballot. Including the Green Party in the upcoming primary will not be any different from previous races, thus not financially harming the State.

The State does have an interest to ensure parties with at least a modicum of support are on the ballot. *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) ("*Vogler I*"). However, the Green Party has established a modicum of support by maintaining its political party status from 1990 to 2002 and by obtaining over 6% of the votes in the

[1] The Republican Moderate Party also lost its party status after the 2002 election. However, no evidence has been presented that it has been recognized as a political party as long as the Green Party and that they received over 3% of the votes in the races for U.S. Representative and U.S. Senator.

most recent U.S. Senate and U.S. Representative races. The state's interest will not, therefore, be harmed by granting the preliminary injunction.

Serious and substantial question

The final question in the inquiry is whether the Green Party has raised a serious and substantial question that goes to the merits of the case. The plaintiff alleges that taken together, AS 15.60.010(21), 15.25.030, and 15.25.140 violate its equal protection rights under the state and federal constitutions. The plaintiff argues that it is situated similarly to organizations that are recognized as political parties because it has received more than 3% of the vote in a state-wide election and that depriving the plaintiff of its political party status because the requisite votes arose from candidates for federal positions instead of the candidate for governor is unconstitutional.

The Green Party did have a modicum of support during the 2002 election. Although the candidate for governor did not receive the requisite 3% vote, two other state-wide candidates did receive over 6% of the votes. Because such support for the Green Party does exist, the State may be treating the Green Party differently from other similarly situated political organizations in violation of the state and federal constitutions. This issue has yet to be litigated in Alaska courts. The Green Party, therefore, has raised a serious and substantial question that goes to the merits of the case and is not frivolous

## III. Conclusion

Because the Green Party will be irreparably harmed, the State is adequately protected, and the Green Party presents a serious and substantial question, the motion

for a preliminary injunction is GRANTED.

It is so ORDERED.

DATED at Anchorage, Alaska this 30th day of October, 2003.

JOHN REESE
Superior Court Judge

I certify that on 11/3/03 a copy of the above was mailed to each of the following at their address of record:
Morford / AG (Felix)

Administrative Assistant

Kevin M. Morford, attorney at law
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Chugiak, AK 99567
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Attorney for plaintiffs
Alaska Bar No. 8406040

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

| | | |
|---|---|---|
| THE GREEN PARTY OF ALASKA,<br><br>Plaintiff,<br><br>vs.<br><br>THE STATE OF ALASKA, DIVISION OF ELECTIONS, and LAURA GLAISER Director of the Division of Elections,<br><br>Defendants. | ) | Case No. 3AN-03-9936 CI |
| STATE OF ALASKA | ) | |
| | ) ss | |
| THIRD JUDICIAL DISTRICT | ) | |

**AFFIDAVIT OF JIM SYKES**

Jim Sykes, being first duly sworn, upon oath, deposes and says:

1. I am presently a co-chair of the Green Party of Alaska in the above captioned action, and I make this affidavit based upon my own personal knowledge.

2. I am presently deciding whether or not to run for statewide office in the 2004 primary and general elections in Alaska. If I do run, it will be as a candidate of the Green Party of

Alaska.

3. Until the court decides whether or not to grant the Green Party of Alaska's pending motion for a preliminary injunction in this lawsuit, it remains uncertain whether or not I will be required to gather signatures on a nominating petition, pursuant to AS 15.25.140 et seq., in order to be able to appear on the primary ballot, and (if I win in the primary election) the general election ballot. Knowing whether or not I will be required to gather signatures on a nominating petition would significantly change the timing and structure of my campaign. I would be reluctant to waste limited time and resources from my campaign seeking signatures on a nominating petition which could subsequently become unnecessary if the Green Party's motion for a preliminary injunction is granted.

4. The Green Party of Alaska is also currently suffering from the uncertainty of not having a decision from the court on the motion for a preliminary injunction. It will continue to be harmed by that uncertainty until the court is able to decide that pending motion. Because existing and ongoing interests of the Green Party of Alaska are presently being harmed, and because its potential candidates like me are also being harmed while the motion for preliminary injunction remains unresolved, I request that the court agree to decide the motion for a preliminary injunction on an expedited basis.

Jim Sykes

Subscribed and sworn to before me this 23 day of October, 2003.

Kathleen Johnson

Notary Public in and for Alaska
My Commission Expires: 7-16-2007

Kathleen D. Johnson
Notary Public - State of Alaska
My Comm. Expires 7-16-2007

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent by first class mail, postage paid, to Sarah J. Felix, attorney for defendants, on the 23rd day of October, 2003.

Kevin Morford

Kevin M. Morford

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE GREEN PARTY OF ALASKA, and THE REPUBLICAN MODERATE PARTY, INC.,

Plaintiffs,

vs.

THE STATE OF ALASKA, DIVISION OF ELECTIONS, and JANET KOWALSKI, Director of the Division of Elections,

Defendants.

Case No. 3AN-02-10451 CI

**ORDER RE: SUMMARY JUDGMENT**

**Introduction**

This lawsuit involves a challenge by the Green Party and the Republican Moderate Party to laws governing Alaska's primary election system. Alaska's current law regarding the conduct of primary elections is set out in AS 15.25.010 *et seq.* A portion of that statute was amended, effective July 14, 2001. The amendments mandated, among other things, that each political party that is qualified to participate in a primary election have their own separate ballot, on which only candidates of that political party may appear. See AS 15.25.010, .014, and .060. The prior version of these statutes had allowed for a single

primary ballot on which all candidates of all political parties would appear.

The state of Alaska, Division of Elections, which administers the statutes, has interpreted them to require that the candidates of each political party must appear on a separate primary ballot, and to prohibit individual parties from joining together in a combined primary ballot, even if these parties agree to do so. In conformity with that interpretation, the most recent primary election, held on August 27, 2002, used separate ballots for each of the six recognized political parties that participated in the election.

In this lawsuit, Plaintiffs claim that the statutes unconstitutionally infringe on the associational rights of political parties and their members. Plaintiffs seek a declaratory judgment that the 2002 election and future elections held under AS 15.25.010, .014, and .060 are unconstitutional. Plaintiffs also seek an injunction requiring defendants to allow plaintiffs to join together with each other and with other willing political parties in a unified ballot. Both sides have filed respective motions for summary judgment.

## Factual Background

The facts here are not at issue. Both plaintiffs were "political parties" recognized by the state of Alaska during the 2002 election season. Both have since lost political party status in accordance with AS 15.60.010(21). They are, however, still recognized as "political groups." AS 15.60.010(20)

Currently, the primary system in Alaska requires each party to have a separate primary ballot. Parties may choose whether or not to let voters affiliated with other parties participate in their primary. This right includes the decision to open their primary to non-partisan or undeclared voters. See AS 15.25.060. Any registered voter may vote either in the primary of the party to which they belong or in the primary of a party which allows non-affiliated members to participate. However, a voter may only vote for candidates on a single ballot. This system, a partially closed primary, is radically different than its predecessor, the blanket primary. The blanket primary is one in which all parties' candidates are listed on a single ballot

and voters can vote for the candidate of their choice, regardless of party affiliation. A closed primary is one in which only registered members of a party are allowed to vote in the party's primary. An open primary is one in which any voter can for the candidates of any single party. A partially closed party, such as the one Alaska currently has, allows the political parties to decide whether or not to open their individual ballots to non-party members and if so, to whom. See generally, O'Callaghan v. State, 914 P.2d 1250, 1254 (Alaska 1996) (O'Callaghan II).

Alaska's history with the blanket primary system dates back to 1947 when it was enacted following a referendum. Id. at 1255. At that time, the Democrats opposed the blanket primary and the Republicans supported it. However,

> [d]espite the overall partisan flavor that the issue was to acquire ... opposition existed on the part of some Republicans, and support existed on the part of some Democrats. In general, party stalwarts and those who believe in the importance of strong parties in the political process, opposed and continue to oppose the blanket primary. Those who are not firmly aligned with a political party, and who believe that the voter should have maximum independence in balloting matters, support the blanket primary. Party loyalty has not been strong in Alaska, and legislators from both parties have responded to widespread public support for the blanket primary. . . The blanket primary seems to suit Alaska, where party ties and party organizations are weak.

Id. at 1255-56 (quoting Memorandum from Gordon S. Harrison, Director, Legislative Research Agency, Research Request 90.294 (May 23, 1990)). When the legislature met for its first session in 1959, with the Democrats in control, a single-ballot, open primary replaced the blanket primary. Id. at 1256. Several attempts were made to restore the blanket primary through 1966. In that year, Republicans gained control of the Legislature and Walter Hickel, a Republican, was elected governor. The blanket primary was immediately restored. Id.

In 1990, the Republican Party of Alaska, in an about-face from its previous support of the blanket primary, passed a party rule that allowed for only registered Republicans, registered Independents and non-affiliated voters to vote in the Republican Primary. Id. at 1252. Thus, for the 1992 and 1994 primary elections, there were two ballots. One ballot listed only Republican candidates and could only be used by those

voters allowed under the Party's rules and one ballot listed all other candidates and remained open to all voters. This system set the stage for the legality of the blanket primary to be challenged in O'Callaghan II. Id. at 1253. In that case, the Alaska Supreme Court upheld the validity of the blanket primary (at the expense of individual party rights). Id. at 1263. Thus, the blanket primary was reinstated until the 2001 amendments. The amendments came about because of the U.S. Supreme Court's decision in California Democratic Party v. Jones 530 U.S. 567 (2000) (holding that a state's blanket primary system might unconstitutionally infringe upon political parties' rights of association and effectively overturning O'Callaghan II). See 2001 Temporary and Special Acts § 1 ch. 103, SLA 2001 (stating that the purpose of the amendments was to comply with the Jones decision). Now, each party has a separate ballot. AS 15.25.060.

For the August 27, 2002, primary election, the Plaintiffs wished to join together on a combined ballot. The Director of Elections refused to allow this and the Plaintiffs ran their candidates on separate ballots. As a result of the 2002 general election, both Plaintiffs lost their political party status as neither party had an enrollment equaling 3% of the total votes passed for governor nor did their gubernatorial candidates receive votes equaling 3% of the total votes cast for governor.[1]

Relevant Procedural History

Plaintiffs brought this lawsuit seeking declaratory and injunctive relief from the decision to not allow them to be on the same ballot. They filed this suit on September 5, 2002. Defendants answered on October 4, 2002. Plaintiffs filed a motion for summary judgment on May 15, 2003. The Defendants opposed that motion and filed their own summary judgment motion on May 29. After briefing was complete, oral argument was held on August 28, 2003.

**Standard for Summary Judgment**

A party seeking to recover upon a claim may move for summary judgment in his or her favor as to all or any part thereof. Summary judgment may be granted in favor of a party if there are no genuine issues of material fact and it is entitled to judgment as a matter of law. AK Civ. R. 56(c). In considering the motion for summary judgment, the court shall draw all reasonable factual inferences in favor of the non-moving party. Alaska Southern Partners v. Prosser, 972 P.2d 161, 164 (Alaska 1999); Rush v. Alaska Mortgage Group, 937 P.2d 647, 651 (Alaska 1997).

The moving party, "has the initial burden of making a prima facie showing establishing the absence of genuine issues of material fact and his or her right to judgment as a matter of law." Yurioff v. American Honda Motor Co., Inc., 803 P.2d 386, 389 (Alaska 1990).

Where the moving party has made a prima facie showing that he or she is entitled to judgment on the established facts as a matter of law, "the opposing party must demonstrate that a genuine issue of fact exists to be litigated by showing that it can produce admissible evidence reasonably tending to dispute the movant's evidence." French v. Jadon, Inc., 911 P.2d 20, 23 (Alaska 1988) (citing Wassink v. Hawkins, 763 P.2d 971, 973).

It is notable that in the case at bar there are no disputed facts and that both parties agree that summary judgment is the appropriate manner by which this case should be resolved.

## Discussion

### A. Do the Green Party and the Republican Moderate Party Have Standing?

As a threshold issue, the Defendants claim that the Plaintiffs do not have standing to bring this claim because they have lost political party status. A political "group" has political "party" status if it

"represents a political program and . . . either nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding election." AS 15.60.010(21).

Plaintiffs respond they have standing under both the citizen-taxpayer and interest-injury standards. They cite to O'Callaghan v. Coghill, 888 P.2d 1302 (Alaska 1995) (O'Callaghan (I)); O'Callaghan (II), 914 P.2d 1250 (Alaska 1996); and Sonneman v. State, 969 P.2d 632 (Alaska 1998) as examples where individuals who were not political parties were allowed to challenge the manner in which elections were held. (Plaintiffs' Reply at 3.) Additionally, they argue that part of their claim includes a challenge to the 2002 primary (noting they both had "political party" status for that election). (Plaintiffs' Reply at 2.) Moreover, throughout their pleadings and in oral argument, they have asserted the rights of individual voters as well as their own.

Alaska favors a broader basis for standing than the federal courts have traditionally allowed. Standing is a rule of judicial self-restraint rather than a constitutional doctrine. Trustees for Alaska v. State, 736 P.2d 324, 327 (Alaska 1987). In Alaska, a party qualifies for standing if they either have interest-injury status or citizen-taxpayer status. For interest-injury status, a party must have an interest that is negatively affected by the challenged conduct. Id. at 327. The interest need only be an "identifiable trifle" for questions of principle and the injury may be future. Id. at 327; Johns v. Commercial Fisheries Entry Commission, 699 P.2d 334, 338 (Alaska 1985).

Citizen-taxpayer status is conferred if a plaintiff can meet two requirements: 1) show that the case is one of "public significance;" and 2) demonstrate that the plaintiff is an "appropriate" party to bring the case. Sonneman, 969 P.2d at 636 *citing* Baxley v. State, 958 P.2d 422, 428 (Alaska 1998). "These requirements ensure that the plaintiff will serve as a true and strong adversary . . . ." Id. (internal quotations omitted). In Alaskans for a Common Language v. Kritz, the Alaska Supreme Court specifically adopted the U.S.

Supreme Court's decision in Hunt v. Wash. State Apple Advertising Comm'n, to hold that an association can have standing to bring a suit on behalf of its members. 3 P.3d 906, 915 (Alaska 2000). Hunt set out a three-part test to determine when an association has such standing. First, the individual members must otherwise have standing in their own right. Second, the interests that the organization seeks to protect must be germane to its purpose. Last, the participation of individual members must not be necessary to assert the claim or request the relief. 432 U.S. 333, 343 (1977).

The Plaintiffs claim an interest that is affected by the current law. The interest is more than a trifling one—they are claiming that their first amendment rights are being violated. Although they do not have "political party" status at this time, at least part of their claim is for a declaration that the 2002 primary election was invalid. They each had "political party" status at that time. Thus, the Plaintiffs certainly meet the requirements of interest-injury standing.

The individual members of the Plaintiff parties have standing to bring these claims. They are citizens and/or taxpayers of Alaska and this case is clearly one of "public significance" as it challenges the constitutionality of our primary election laws. The laws at issue directly affect for whom the individuals can vote and how their parties' primaries are conducted. As the United States' Supreme Court stated in Democratic Party of United States v. Wisconsin ex rel. LaFollette, 450 U.S. 107 (1981) and again in Tashjian v. Republican Party of Connecticut, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." 479 U.S. 208, 216 (1986). In addition, the first amendment rights associated with voting are certainly germane to these political organizations' interests. Indeed, the issues raised in this lawsuit are fundamental to the political process. Finally, individual members are not needed to bring these claims or request relief. The parties can competently represent the rights of their members. There is no doubt that the parties serve as true and strong adversaries. Thus, the Green Party and Republican Moderate Party have standing to bring this case on behalf of their members in addition to the standing to bring it on their own behalf.

## B. Is the Statutory Scheme Constitutional?

The Alaska Supreme Court, in O'Callaghan I, and O'Callaghan II, specifically adopted the United States Supreme Court's framework, first laid out in Anderson v. Celebrezze, 460 U.S. 780 (1983) for determining whether or not a statute dealing with elections is constitutional. A court in facing such a decision,

> must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgement, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Id. at 789.

The O'Callaghan II court went on to heavily rely upon the approach the United States Supreme Court took in Burdick v. Takushi, 504 U.S. 428 (1992),

> It is beyond cavil that voting is of the most fundamental significance under our constitutional structure. . . . It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute. . . .The Constitution provides that States may prescribe the Times, Places and Manner of holding Elections for Senators and Representatives, Art. I, § 4, cl. 1, and the Court therefore has recognized that States retain the power to regulate their own elections. . . . Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.
>
> . . .
>
> Election laws will invariably impose some burden upon individual voters. Each provision of a code, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends. . . . Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would ties the hands of States seeking to assure that elections are operated equitably and efficiently. . . . Accordingly, the mere fact that a State's system creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does

not of itself compel close scrutiny.

> Instead, . . . a more flexible standard applies. . . Under this standard [set out in Anderson v. Celebreeze and quoted *supra*], the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. . . . But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions.

O'Callaghan II, 914 P.2d at 1254 quoting Burdick, 504 U.S. at 433-34 (internal quotations omitted.) Thus, this Court must determine the kind of right that is being affected and then apply the appropriate level of scrutiny in determining whether the limitation of the right is constitutional.

Here, the Plaintiffs claim that their fundamental rights of association and ballot access are restricted and that the government has not provided the compelling interests necessary to show that the statutes are constitutional. The state meanwhile does not believe any fundamental interest is at stake and thus opposes a strict scrutiny analysis. (Defendants' Motion for Summary Judgment pp. 15-18.) This Court must determine the exact nature of the rights claimed by the Plaintiffs and then apply the appropriate level of scrutiny.

## 1. Does the Statutory Scheme Affect a Fundamental Right of the Plaintiffs?

Political parties have the right to open or close their primaries to any class of voters. For instance, in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986), the Republican Party of Connecticut, wished to open its primary to unaffiliated voters. At the time, Connecticut had a closed primary system in which only members of a party were allowed to vote in the party's primary. The Court held that this closed system unconstitutionally interfered with the Republican Party's associational rights. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable

aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." 479 U.S. at 214 (quoting NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)). The Court noted,

> The Party here contends that [the statute] impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, the freedom to join together in furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute association.
>
> . . .
>
> The statute here places limits upon the group of registered voters whom the Party may invite to participate in the basic function of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.

Tashjian, 479 U.S. at 214-216 (internal citations omitted). While acknowledging that the state has an interest in regulating the mechanics of elections, the Court ultimately held this power does not extend to regulations restricting fundamental rights. Id. at 217.

Likewise, California Democratic Party v. Jones, held that California's blanket primary was unconstitutional. In a situation inverse from that it confronted in Tashjian, the Supreme Court found that the desires of the Democratic, Republican, Libertarian, and Peace and Freedom Parties to close their primaries were implicit in their fundamental right to associate. The Court refused to allow states to freely regulate the selection of a political party's candidates,

> To the contrary, we have continually stressed that when States regulate parties' internal processes they must act within the limits imposed by the Constitution.
>
> . . .
>
> In no area is the political association's right to exclude more important that in the process of selecting its nominee. . . . Unsurprisingly, our cases vigorously affirm the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard bearer who best represents the party's ideologies and preferences.

530 U.S. 567, 573, 575 (2000) (internal quotation marks omitted).

The Alaska Supreme Court, likewise, has found the rights of association and ballot access to be fundamental, "[i]t is well accepted that in ballot access cases, the state must show a compelling interest in order to justify infringements of these rights." Vogler v. Miller, 651 P.2d 1, 3 (Alaska 1982). There, the Court held portions of a statute, which required independents and candidates of small parties to submit petitions carrying the signatures of individuals equaling three percent of the vote cast at last election in order to secure a place on the ballot, unconstitutional. The Court stated,

> [i]f the state has effectively eliminated a political party's access to the ballot, it has deprived the party of much of the substance of the values meant to be insured by the rights of free speech and association.
>
> [O]nly a regulation which impinges on the right to speak and associate to the least degree possible consistent with the achievement of the state's legitimate goals will pass constitutional muster.

Id. at 3, 5. As a result, the Court found that the smaller parties and individual's rights to free speech were curtailed.

Here, Plaintiffs argue that they, like the Republican Party in Tashjian, want to open their ballots to additional voters. They contend that if parties are allowed join together and open their ballots, the number of voters participating in each election would be significantly increased. (Plaintiffs' Motion for Summary Judgment p.5.) The Plaintiffs note that in Jones, the Court held that the associational rights of parties were greater than the state's right to host a blanket primary. They argue, the associational rights of parties should also be greater than the state's right to have a partially closed primary system. (Plaintiffs' Motion for Summary Judgment pp. 6-7.)

The Defendants maintain that first amendment rights are not implicated here at all. Rather, they claim the Plaintiffs are promoting a fusion ballot, which Alaska law specifically bans. See AS 15.25.060(b). In this argument, the State relies heavily on Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997), which dealt with Minnesota's ban of fusion candidates. In that case, the New Party wished to nominate Andy Dawkins as its candidate for the 1994 general election. Dawkins agreed even though he was already

the candidate for the Democratic-Farm Labor Party. The Court defined fusion as "the electoral support of a single set of candidates by two or more parties," or "the nomination by more than one political party of the same candidate for the same general election." Id. at 354. Because Minnesota bans fusion candidates, election officials refused to accept the New Party's nominating papers. Id.

The Defendants argue that instead of fusion candidates, the problem before this Court is fusion ballots. (Defendants' Motion for Summary Judgment pp. 11-15.) In addition, they claim the Timmons court addressed the issue of ballot access, and dismissed it as a non-fundamental interest, when it refused to allow the New Party to endorse Dawkins on the general ballot. (Defendants' Reply p. 2.)

Timmons is not applicable to this situation. Alaska does ban fusion but that is not an issue in this case; the Plaintiffs are not arguing for such a system.[2] Nor did the Timmons court address the ballot access issue. Refusing someone two places on a ballot does not invoke the same concerns that the Plaintiffs raise here. Additionally, Timmons dealt with the general election, not the primary. The general election ballot is a single ballot. For all of these reasons, the Timmons analysis is not relevant to the discussion at hand.

The Defendants also look to Sonneman v. State, to support their position. 969 P.2d 632 (Alaska 1998). In that case, the Alaska Supreme Court, in upholding the state's decision to randomly order the names on the ballot, noted that voting is not an unlimited right, but rather is subject to states' regulations. Id. at 637. It observed that the U.S. Supreme Court has held it would be impossible to afford every voting regulation strict scrutiny. Therefore, the Alaska Court decided that random name placement did not restrict access to the ballot nor deny the voters their choice of candidate. Id.

The problem with this comparison is that the issues facing the Sonneman court are not related to those facing this Court. In Sonneman, the plaintiff tried to argue that the statute impermissibly violated equal protection provisions, in addition to burdening his right to vote. Id. at 636. The Court rejected that argument finding that a managerial decision to randomly place names on the ballot does not restrict ballot

access or "deny voters the right to vote for candidates of their choice." Id. at 638. Here, the statutes in question have significant impact on the rights of the parties to associate and on the rights of party members to vote for candidates of their choice.[3] Under the current statutes, the parties are prohibited from opening their primaries to voters of both their parties. Voters must choose to vote only for Green Party candidates or only for Republican Moderate candidates, thus they are denied the right to vote for the candidates of their choice—a choice that the Plaintiff parties fully support and welcome. Consequently, the statutes at issue here are completely unlike the one challenged in Sonneman.

The interests of individual voters being asserted in this case also are unlike the individuals' interests asserted in Burdick and Jones. In Burdick, an individual wanted the right to write-in a candidate during the primary and general elections. Hawaii had a ban on write-in candidates, but did provide multiple, straightforward ways for a person to be on a ballot, whether a member of an established political party or not. The Supreme Court concluded that any burden placed on the plaintiff-voter was one placed on him only after he failed to recognize the candidate of his choice until mere days before the election. 504 U.S. at 435-37. In Jones, the state tried to assert the rights of individual voters to vote for the candidate of their choice. The Court weighed the interests of the Parties against those of the voters and concluded that the Parties' associational rights were stronger. 530 U.S. at 583-84. Here, the parties support the voters right to vote across party lines. This is not a case like Jones where the *parties* chose to limit which candidates could be on their ballots. Rather, here, the *State* is mandating that the primary ballot be limited over the objection of the parties.

The Defendants also contend that the Plaintiffs, like the New Party in Timmons and the plaintiff in Sonneman, have failed to demonstrate a constitutionally protected interest and have failed to show how they have been denied ballot access. (Defendants' Reply p.4.) They claim that the Plaintiffs wrongly assume that voters are allowed to vote across party lines. They maintain that typically, a person must be affiliated with a party in order to vote in its primary. (Id. at 3.) The Defendants argue there is no case law

or statute that requires a state to provide a combined multi-party ballot. (Id. at 1-2) They maintain that the Plaintiffs are each entitled to open their ballot up to whomever they wish. (Id. at 8.) The Defendants contend the courts have been clear in confining voters to a single nominating act. (Id. at 5)

These arguments miss their mark. The Plaintiffs are not advocating that every voter be allowed to vote in more than one primary. They still support each voter receiving only one ballot when going to the polls; the Plaintiffs just want their ballots to be available to more voters and for voters to be able to exercise their voting choice in primaries over a greater range of candidates. That there is no case law mandating the system the Plaintiffs suggest is true, yet there is no case law specifically prohibiting it either. The case law is quite clear, however, that when the association rights of political parties are restricted in such a degree that endangers the rights guaranteed by the First and Fourteenth Amendments, the challenged statutes are subject to strict scrutiny.

The Defendants also attempt to distinguish the cases the Plaintiffs depend on. The Defendants claim Jones should not be interpreted as broadly as Plaintiffs would suggest because the Jones court acknowledged the state has a significant role in the election process. (Defendants' Motion for Summary Judgment pp. 26-27) In addition, the State argues that the Green and Republican Moderate Parties place too much reliance on Tashjian because Alaska is in full compliance with the law laid out in that case. They claim that the Court, in fact, did consider a system much like the one Plaintiffs champion and dismissed it as involving separate issues from the ones facing them.[4] (Id. at 9-11.) The Defendants also quote a sentence from Am. Party of Tex. v. White, 415 U.S. 767, 786 (1974) (finding, in part, several sections of Texas code relating to ballot qualifications for minor parties constitutional) stating that a state may limit voters to supporting one party.[5] (Defendants' Reply p. 5.)

The Plaintiffs correctly argue that the passages cited by the Defendants were dicta and, as such, are not binding. The Plaintiffs also contend that the quoted language is not on point, rather it refers to the fact that voters are not allowed to vote in multiple primaries. (Plaintiffs' Reply p. 12.) Nowhere in their pleadings

do Plaintiffs assert such a right. The Jones court did acknowledge the state's role in the election process, but it held that when fundamental rights are violated, the deference given to the state's authority lessens. Jones 530 U.S. at 581-82. Even though Alaska is in compliance in some respects with the law set forth in Tashjian, it does not follow that Alaska's current law is necessarily constitutional.

Finally, the Defendants argue the legislature has a right to act proactively rather than reactively. (Defendants' Motion for Summary Judgment p. 23.) They maintain that this is a duly enacted law and as such, is entitled to a presumption of constitutionality. (Id. at 27.) But this argument is beside the point. A presumption of constitutionality does not save a statute if it is indeed unconstitutional.

Here, the Plaintiffs want to associate with one another and open their ballots up to members of each other's parties. The current statute excludes them from doing so. It prohibits them from making internal party decisions about how to "broaden the base of public participation." Tashjian, 479 U.S. at 214. Here, as in Tashjian, the statute, "places limits upon the group of registered voters whom the Party may invite to participate in the basic function of selecting the Party's candidates." Id. at 215-26. The Plaintiffs argue,

> [T]he State is seeking to force the political parties to accept state imposed limits upon which categories of voters are allowed to vote in each party's primary election. In this case, as in those cases, the attempted limitation upon the associational rights of the parties occurs right at the very time when the parties are attempting to convert their political programs into concerted political action and power. The statutes in this lawsuit therefore cannot be enforced against the wishes of political parties who seek to join together on a combined primary ballot, unless that restriction is narrowly tailored to serve a compelling state interest.

(Plaintiffs' Motion for Summary Judgment p. 7). This Court finds that the Plaintiffs are correct in their assertion that AS 15.25.010, .014, and .060 affect their fundamental rights to associate and restricts ballot access. Now the State must show compelling interests to successfully support the constitutionality of this statute,

> As we have noted, where such fundamental rights of freedom of speech and association are involved, only compelling governmental interests will justify their encroachment. An essential aspect of this test is an inquiry into whether less restrictive alternatives will adequately protect those interests. That is, only a regulation which impinges on the right to

> speak and associate to the least degree possible consistent with the state's legitimate goals will pass constitutional muster.

Vogler v. Miller, 651 P.2d 1, 5 (Alaska 1982) (internal citations omitted).

**2. Is the Statutory Scheme Narrowly Tailored to Serve a Compelling State Interest?**

Once the courts have determined the rights at stake, they apply various levels of scrutiny to determine if the states' interests can validate the infringement of rights. For example, the Jones court applied strict scrutiny when it required the State to show compelling interests that would justify the infringements on the political parties' first amendment rights of association. It ultimately found the State's proffered interests (producing elected officials who best represent the electorate, expanding candidate debates beyond the scope of partisan concerns, ensuring disenfranchised voters the right to vote, promoting fairness, affording voters more choice, increasing voter participation, and protecting privacy) unsatisfactory. Jones 530 U.S. 582-84.

The Alaska Court in Vogler v. Miller found the state's purported interests— making ballot requirements uniform for all offices, avoiding having to amend the statute every few years, and eliminating voter confusion— insufficient justifications for abridging the Plaintiff's rights of association and ballot access. 651 P.2d at 6. In so holding, the Vogler court also noted, "Restrictions on ballot access impinge not only on the rights of the potential candidates, but on those of the voters as well. . . It is well accepted that in ballot access cases, the state must show a compelling interest in order to justify infringements of these rights." Id. at 3.

> We have stated that in ballot access cases, the state must show a compelling interest in order to justify the infringements of these rights. Vogler v. Miller, 651 P.2d 1, 3 (Alaska 1982) . . . Strict Scrutiny review is necessary in ballot access cases because the burden placed on the right to vote is severe when the right to vote is denied or limited to certain candidates or parties.

Sonneman, 969 P.2d at 638 (internal quotations omitted).

While maintaining their position that strict scrutiny should not apply, the Defendants assert several state interests promoted through the current primary system that they claim are compelling and narrowly tailored to protect the Plaintiffs' rights. These include: 1) complying with the Supreme Court's holding in Jones; 2) enforcing the laws passed by the state legislature; 3) avoiding voter confusion; 4) preventing ballot overcrowding; and 5) promoting the stability of Alaska's political system. (Defendants' Motion for Summary Judgment pp. 17-19.)

Only the first of these purported state interests is mentioned in the preamble to the underlying bill. 2001 Temporary and Special Acts § 1 ch. 103, SLA 2001. The rest of these justifications were suggested by various legislators while debating the bill. Some jurists have questioned whether the remarks of individual legislators are sufficient legislative history to justify the interests of the State in enacting legislation unless these remarks were identified by the legislature as a whole as the purpose of such legislation,

> The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators. As the Court said in 1844: 'The law as it passed is the will of the majority of both houses, *and the only mode in which that will is spoken is in the act itself....*' But not the least of the defects of legislative history is its indeterminacy. If one were to search for an interpretive technique that, *on the whole*, was more likely to confuse than to clarify, one could hardly find a more promising candidate than legislative history.

Conroy v. Aniskoff, 507 U.S. 511, 519 (1993) (emphasis in the original, internal citations omitted) (Scalia, J. concurring). Nevertheless, this Court will discuss each of the interests identified by the State in support of the primary system at issue in this case.

While ensuring that Alaska's laws comply with U.S. Supreme Court decisions is the correct thing for the legislature to do, the legislation is not narrowly tailored to this purpose. Jones did not sound the death knell for blanket primaries. As the Vogler court noted, "An essential aspect of this test is an inquiry into whether less restrictive alternatives will adequately protect those interests." 651 P.2d at 5. Here, the Defendants conceded at oral arguments that if the legislature had passed a law that allowed for combined

primaries it would be constitutional and the Attorney General's Office would vigorously defend it.[6] It would be fully consistent with Jones to allow whichever parties wishing to share a primary ballot to do so while allowing those who wanted to remain on separate ballots to do that. Such a law seems to this Court a perfect example of a less restrictive alternative that protects the Plaintiffs' constitutional rights but still complies with the Jones decision.

The Defendants' next claim they have an important interest in enforcing the laws passed by the legislature. The constitutionality of a law is not determined by whether the executive branch enforces it. Plaintiffs are correct when they refer to this argument as employing circular reasoning, "[The Defendants are] saying in effect 'we are obligated to enforce these statutes because they are valid laws,' and then turning around and saying in effect 'the law is constitutional because we have an interest in enforcing it.'" That the legislature has passed an unconstitutional law provides no justification for the statutes' constitutionality.

The Defendants next claim that allowing parties to combine their primary ballots would create voter confusion. While voter confusion was found to be a legitimate concern for the Timmons court (after having found that no fundamental rights were restricted and thus only looking to see if the state has a legitimate interest), the Tashjian court specifically discounted it (after having found that fundamental rights were being violated and applying the compelling interest test), as did the Vogler court (again finding the infringement of fundamental rights). 479 U.S. at 222; 651 P.2d at 4. In the case at bar, the Court has decided that fundamental rights are at risk and therefore, by applying Tashjian and Vogler, concludes that avoiding voter confusion is not a sufficient reason for the State's actions. This Court also has difficulty in understanding how voters would be confused by combined party ballots. Given the long history of the blanket primary in this state, the existence of a combined ballot does not appear unduly confusing.

The fourth reason given by the Defendants is that the State wants to ensure a sufficient demonstration of support is shown for the Candidates to prevent ballot overcrowding. The problem with this argument is that it has nothing to do with whether or not combined ballots are appropriate. The Plaintiffs will still have to adhere to valid laws governing placement on the ballot. Those laws are the ones controlling ballot overcrowding. As the Plaintiffs correctly point out, prohibiting combined ballots does not reduce the number of candidates who will be appearing on the ballots.

The final interest the Defendants promote is that of the stability of the state's political system. The Defendants have not shown, or even attempted to show, how a combined ballot threatens the stability of the political system, especially in a state that has had a long history with the blanket primary. They merely cite certain legislators' opinions that the blanket system has weakened the political system. (Defendants' Reply p. 7.) As stated above, this is by no means compelling. Indeed, the stability of the political system would appear to be enhanced by a system that allows voters to vote for candidates in whom they are most interested, regardless of party affiliation, so long as the parties are willing to allow this. The personal concerns of individual or groups of state legislators should not be imputed onto the State as compelling interests for taking away the Constitutional rights of citizens and groups. A speculative concern about the stability of Alaska's political system is not a sufficient justification to allow infringement of fundamental rights of political association and ballot access.

## Conclusion

Alaska's broad interpretation of the doctrine of standing and the interests asserted by the Plaintiffs require a finding that Plaintiffs have standing to bring this case. Alaska has had a strong history of using blanket primaries. When the U.S. Supreme Court overturned California's blanket primary statute in Cal.

Democratic Party v. Jones it did so because certain parties no longer wanted to be listed together on the primary ballot. It did not base its holding on the understanding that combined ballots are unconstitutional per se. When states regulate the internal processes of political parties, they must act within the limits imposed by the Constitution. The challenged statute does indeed violate the Plaintiffs' associational rights and their right to ballot access. Thus, strict scrutiny must be applied. The Defendants' purported interests are not sufficient to justify this infringement of Plaintiffs' rights.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiffs' Motion for Summary Judgment is GRANTED; Defendants' Motion for Summary Judgment is hereby DENIED. Plaintiffs shall submit an appropriate judgment to the court within 10 days of this order.

DATED this ___ day of October 2003, in Anchorage, Alaska.

Mark Rindner
Superior Court Judge

---

[1] The Green Party is currently challenging the constitutionality of these requirements in a separate lawsuit, *Green Party v. State of Alaska*, 3AN-03-09936CI.

[2] The Supreme Court specifically did not make a decision regarding the validity of fusion in Timmons, rather it specifically limited its holding to the concept that the Constitution does not require fusion. Timmons, 520 U.S. at 370.

[3] The hypothetical ballots attached to this opinion (which were used at oral argument) demonstrate the impact of the laws at issue on the rights of party members to vote for the candidates of their choice. Under current law, a person must choose to vote either for Green Party candidates or Republican Moderate Party candidates. They cannot vote for the Green Party candidates for some offices and the Republican Moderate candidates for others. A combined ballot would allow voters to do so.

[4] The quoted footnote (13) from Tashjian states, in relevant part, "Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects, which the statutes in *Storer v. Brown* and *Rosario v. Rockefeller*, were designed to prevent. We have observed on several occasions that a State may adopt a 'policy of confining each voter to a single nominating act,' a policy decision which is not involved in the present case." (citations omitted, emphasis added by Defendants.)

[5] The quotation from Am. Party of Texas v. White, 415 U.S. 767, 786 (1974) states, in relevant part, "Likewise, it seems to us that the State may determine that it is essential to the integrity of the nominating process to confine voters to supporting one party and its candidates in the course of the same nominating process."

[6] Indeed, such a law was proposed by the Governor's Office but ultimately rejected by the legislature. See Plaintiffs' Motion for Summary Judgment p. 8 and Attached Exhibit C.

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Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

**Sponsor Statement**
**HB 414**

**"An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party'"**

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution.

Last year a group of Alaskans calling itself "Trust the People" began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. This group was successful in obtaining enough signatures, which allowed the Division of Elections to certify the petition, and prepare to place the initiative on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing some one to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB 414 is a clear way to implement the will of a large number of Alaskan voters.

The second part of HB 414 addresses a lawsuit brought by the Green Party of Alaska against the State Division of Elections. The case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. In order to obtain political party status, the current definition requires a party to have nominated a candidate for Governor who received at least three percent of the popular vote in the preceding gubernatorial election. Alternatively, a party is recognized if

it has registered voters under its banner equal in number to three percent of the total number of votes cast for Governor in the immediately preceding general election.

In 2002, the Green Party candidate for Governor garnered less than the minimum three percent needed to maintain the Green's status as a political party and, thus, the party sought an injunction of the law. The court acceded to the Green Party's request and enjoined enforcement of the law so that the Greens could avoid irreparable harm by continuing to participate in politics with the benefits of being a full political party. The order accompanying the court's injunction noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator, and instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to the court's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes. The changes to the Alaska Elections Act wrought by the second half of HB 414 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

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Member
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

**Sectional Analysis**
**HB 414**

**"An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party'"**

**Section 1:** This bill section adds "United States senator" to the language that currently governs special elections held to replace vacancies in the office of U.S. representative. This bill section further clarifies the language controlling when a special election is not to be called, when a vacancy occurs 60 days or less before a primary election in a general election year.

**Section 2:** This bill section adds a new statutory section that specifies that a U.S. senator elected in a special election will hold office for the remainder of the unexpired term of the U.S. senator who previously held the U.S. Senate seat. This section further states when a specially elected U.S. senator will take office.

**Section 3:** This bill section adds "United States senator" to the language that currently governs political party petitions submitted on behalf of candidates for U.S. representatives in special elections.

**Section 4:** This bill section adds "United States senator" to the language that currently governs the provisions for the conduct of special elections for U.S. representative, and further enumerates what these provisions are, deleting a reference to a statutory section relating to special elections for U.S. Senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 5:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 6:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 7**: This bill section expands the definition of "political party" to include results of statewide elections for U.S. senator or U.S. representative as secondary and tertiary criteria, respectively, that may enable an organized group of voters that represents a political program to qualify as a political party.

**Section 8**: This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH
HOUSE DISTRICT 4

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# Fax

To: Chris Knight From: Ginney

Fax: 3472 Date: 2/12/04

Phone: Pages:

Re: CS HB 414 (STA) CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

•Comments:

Chris —

For your file.

Ginney

Representative_Bruce_Weyhrauch@legis.state.ak.us

faxed 2/12/04 /ca

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## Representative Lesil McGuire

*House District 28*

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**Section 5:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

**Section 6:** This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 8 of the bill.

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**Section 8**: This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

# LEGAL SERVICES

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**MEMORANDUM** February 6, 2004

**SUBJECT:** HB 414 and Initiative Relating to Filling Vacancies in the U.S. Senate (Work Order No. 23-LS1514)

**TO:** Representative Lesil McGuire
Attn: Vanessa Tondini

**FROM:** Kathryn Kurtz
Legislative Counsel

You have asked whether HB 414 would be considered "substantially the same" as the proposed initiative to fill U.S. Senate vacancies exclusively by election for purposes of art. XI, sec. 4 of the Constitution of the State of Alaska. The two are substantially the same.

**Constitutional and statutory provisions**

The state constitution and statutes address what happens if legislation is enacted that addresses the subject matter of a proposed initiative. Under art. XI, sec. 4, of the Constitution of the State of Alaska, a proposed initiative is void if the legislature passes a law that is "substantially the same measure" as the proposed initiative.[1] Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an Act of the legislature is substantially the same as a proposed initiative.[2]

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[1] Article XI, sec. 4, Constitution of the State of Alaska states:

> INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

[2] AS 15.45.210 states:

> **Determination of void petition.** If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of

The test of how similar a measure enacted by the legislature and an initiative must be for the legislative measure to operate to invalidate the initiative was set out in Warren v. Boucher, 543 P.2d 731 (Alaska 1975). The Warren court noted:

> . . . [T]he legislative act need not conform to the initiative in all respects, and . . . the [constitution's] framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.
>
> Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. . . .

The court fashioned the following as a general test:

> . . . [i]f in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative.

543 P.2d at 736.

**Analysis**

The text of HB 414 mirrors that of the initiative except in two respects. The initiative has an effective date of January 1, 2005; HB 414 does not have an effective date. HB 414 has a section that amends the definition of political party; the initiative does not. These differences do not detract from the substantial similarity of the measures. HB 414, if enacted as introduced, would presumably take effect before January 1, 2005. But the changes proposed in the manner of filling vacancies would be exactly the same as if the initiative had been passed by the voters. That the bill contains additional material does not change this fact. If HB 414 is enacted as introduced, then the initiative would be void.

KLK:med
04-146.med

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> the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee.

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**STATE OF ALASKA**
**Division of Elections**
**Office of the Lieutenant Governor**

**TO:** The House State Affairs Committee

**THRU:** Representative Bruce Weyhrauch, Chairman

**DATE:** February 4, 2004

**FROM:** Laura A. Glaiser, Director
Division of Elections

**SUBJECT:** Questions posed during House State Affairs hearing on HB 414 (February 3, 2004).

---

1) **Representative Seaton** asked for clarification about the proposed text in HB 414, Sec 7. AS 15.60.010 (21) regarding the definition of " political party". Due to the complexity of the answer, I would be pleased to discuss this with the Committee.

2) **Representative Berkowitz** asked two (2) questions:

- ***What is the cost to the State to conduct primary elections?***

- The cost to conduct the 2002 primary elections was $1,263.5.

- ***What is the cost to the State related to collecting and maintaining party affiliation data?***

- It is difficult to isolate direct costs related with the collection of party affiliation data, as it is a component engrained in the voter registration system as a whole.

*USCS Const. Amend. 17*



CONSTITUTION OF THE UNITED STATES OF AMERICA
**AMENDMENTS**
**AMENDMENT** 17

◆ Review Court Orders which may amend this Rule.

USCS Const. Amend. 17 (2003)

Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This **amendment** shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The **Seventeenth Amendment** of the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-second Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of the following states: Arizona, June 3, 1912; Arkansas, February 11, 1913; California, January 28, 1913; Colorado, February 5, 1913; Connecticut, April 8, 1913; Idaho, January 31, 1913; Illinois, February 13, 1913; Indiana, February 19, 1913; Iowa, January 30, 1913; Kansas, January 17, 1913; Maine, February 11, 1913; Massachusetts, May 22, 1912; Michigan, January 28, 1913; Minnesota, June 10, 1912; Missouri, March 7, 1913; Montana, January 30, 1913; Nebraska, March 14, 1913; Nevada, February 6, 1913; New Hampshire, February 19, 1913; New Jersey, March 17, 1913; New Mexico, March 13, 1913; New York, January 15, 1913; North Carolina, January 25, 1913; North Dakota, February 14, 1913; Ohio, February 25, 1913; Oklahoma, February 24, 1913; Oregon, January 23, 1913; Pennsylvania, April 2, 1913; South Dakota, February 19, 1913; Tennessee, April 1, 1913; Texas, February 7, 1913; Vermont, February 19, 1913; Virginia, February 4, 1913; Washington, February 7, 1913; West Wisconsin, February 18, 1913; and Wyoming, February 8, 1913.

Ratification was completed on April 8, 1913.

The **amendment** was subsequently ratified by Louisiana on June 11, 1914.

The **amendment** was rejected, and not subsequently ratified, by Utah on February 26, 1913.

**NOTES:**

RESEARCH GUIDE

Am Jur:
16A Am Jur 2d, Constitutional Law § 402.
25 Am Jur 2d, Elections § 103.
26 Am Jur 2d, Elections § 239.
77 Am Jur 2d, United States § 9.

Law Review Articles:
Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Primary elections
3. Special elections

1. Generally

Requirement that United States senators from each state be "elected by the people thereof" does not require that candidate receive majority of votes cast at general election in order to be elected. Phillips v Rockefeller (1970, CA2 NY) 435 F2d 976.

Despite presumption of enfranchisement, there is no per se rule against disenfranchisement; rather Supreme Court has recognized that in special interest elections government can limit franchise to those who have required special interest. Duncan v Coffee County (1995, CA6 Tenn) 69 F3d 88, 1995 FED App 321P.

Word "qualifications" in constitutional provisions concerning election of members of the House of Representatives and Senators means natural endowments or requirements which fit person for place, office, or employment, or as elector; restrictions on right of voter to vote because of his failure to register or to vote in particular manner at certain time and place are limitations on right, and not on qualification to exercise it. Commonweath ex rel. Dummit v O'Connell (1944) 298 Ky 44, 181 SW2d 691.

2. Primary elections

Political party's rule permitting registered voters not affiliated with any party to vote in that party's primary election for U.S. House of Representatives and Senate while remaining silent as to voting in that party's primary elections for state legislature, did not violate federal constitution under qualifications of federal congressional electors clause (Art I, § 2, Cl 1) and **Seventeenth Amendment,** since rule did not disenfranchise any voter in federal congressional election who was qualified to vote in primary or general election for more numerous house of that state's legislature, and **Seventeenth Amendment** and qualification of congressional electors clause do not require perfect symmetry of qualifications of voters in state and federal legislative elections. Tashjian v Republican Party (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544.

**Seventeenth Amendment** does not require state to hold primary for nominations to fill senatorial vacancy. Trinsey v Pennsylvania (1991, CA3 Pa) 941 F2d 224, cert den (1991) 502 US 1014, 116 L Ed 2d 750, 112 S Ct 658.

State executive committee of recognized political party may call special primary election for nomination of its candidate or candidates to be voted for in ensuing general election when, by reason of death, resignation, or otherwise, office of United States Senator becomes vacant at time when it is too late for candidate to qualify to be voted for in general primary elections held biennially, and when there is sufficient time intervening between happening of condition creating vacancy and date of ensuing general election in which to call and hold such special primary election; when such special primary election is called by state executive committee of recognized political party, it becomes duty of state and county officers to function in connection

with such special primary election in same manner and to same extent that they would function in connection with general primary election. State ex rel. Andrews v Gray (1936) 125 Fla 1, 169 So 501.

3. Special elections

Election directed to be held by writ of election issued by governor of state to fill vacancy in office of United States Senator, which election was to be held on same day as primary election, was special election at which absent voters ballots could not be cast. State ex rel. Lanier v Hall (1946) 74 ND 426, 23 NW2d 44 (superseded by statute on other grounds as stated in State ex rel. Kusler v Sinner (1992, ND) 491 NW2d 382).

Under **Seventeenth Amendment,** governor of state would be authorized to issue writ of election to fill vacancy caused by death of senator; such writ may be defined as written order from governor directed to proper authority commanding it to hold state-wide election on day certain, as provided by law, for purpose of electing senator for unexpired term of deceased senator. Advisory Opinion to Governor (1946) 157 Fla 885, 27 So 2d 409.

# FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 414
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: OOG
Title: An Act relating to filling the vacancy in the office of United States senator, and to the definition of 'political party'.
RDU: Elections
Component: Elections
Sponsor: House Judiciary
Requester: House State Affairs
Component No.: 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|---|---|---|---|---|---|---|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**Estimate of any current year (FY2004) cost:** 0.0
**Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:**

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

**ANALYSIS:** *(Attach a separate page if necessary)*

This bill has no fiscal impact on the division, however, if a special election were required, the division would need to seek a special appropriation for that purpose. ** During the 1999 Legislative Session HB SCS CSHB 231 a GF appropriation of 939.0 was allocated to conduct a special election.

Prepared by: Leonard G. Jones
Phone 465-3051
Division: Division of Elections
Date/Time 2/2/04 9:45 AM
Approved by: Laura A. Glaiser, Director
Date 2/2/2004
Agency: Office of the Lt. Governor, Division of Elections

(Revised 12/2003 OMB)

# ALASKA STATE LEGISLATURE

**Rep. Lesil McGuire, Chair**
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg


State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

## House Judiciary Committee

**Sponsor Statement**
**CSHB 414 (JUD)**

**"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'"**

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution.

Last year a group of Alaskans calling itself "Trust the People" began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. This group was successful in obtaining enough signatures, which allowed the Division of Elections to certify the petition, and prepare to place the initiative on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing some one to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB 414 is a clear way to implement the will of a large number of Alaskan voters.

The second part of HB 414 addresses a lawsuit brought by the Green Party of Alaska against the State Division of Elections. The case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of "political party" in the Alaska Elections Act. In order to obtain political party status, the current definition requires a party to have nominated a candidate for Governor who received at least three percent of the popular vote in the preceding gubernatorial election. Alternatively, a party is

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## House Judiciary Committee

recognized if it has registered voters under its banner equal in number to three percent of the total number of votes cast for Governor in the immediately preceding general election.

In 2002, the Green Party candidate for Governor garnered less than the minimum three percent needed to maintain the Green's status as a political party and, thus, the party sought an injunction of the law. The court acceded to the Green Party's request and enjoined enforcement of the law so that the Greens could avoid irreparable harm by continuing to participate in politics with the benefits of being a full political party. The order accompanying the court's injunction noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator, and instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to the court's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes. The changes to the Alaska Elections Act wrought by the second half of HB 414 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

MEMORANDUM.

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Vanessa M. Tondini, Committee Aide
House Judiciary Committee

RE: The legal history of Alaskan law relating to filling vacancies in U.S. Senate seats; and, the law governing political party status in Alaska.

DATE: January 27, 2004

HB 414 seeks to redress two current shortcomings in Alaska's Elections Act. There are two primary components to HB 414, each a response to a clear call for changes to Alaska Statutes so as to provide: firstly, for the fairest method of selecting individuals for a vitally important public office; and, secondly, to respect the will of the Alaskan people regarding choices they make to associate as political parties.

HB 414 will change the way a vacancy in one of Alaska's two seats in the United States Senate is filled when such a vacancy occurs. Currently, Alaska law provides that the Governor appoints a person of his or her choice from the same political party as the person who vacated the seat, when one of Alaska's two U.S. Senate seats becomes vacant, a process governed by the 17th Amendment to the U.S. Constitution. The pertinent part of this section of the Constitution reads as follows:

> When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

Pursuant to this amendment to the U.S. Constitution, the Alaska Legislature determined when adopting statutes at statehood to allow the Governor of Alaska to appoint some one to serve out the remaining term of a U.S. Senator who vacates that office. The law as then written specified that party affiliation had to be taken

into account when making such an appointment. The law was changed to delete the reference to party affiliation in 1967. U.S. Senator Ted Stevens, a Republican, obtained his seat upon the death of Democrat Bob Bartlett in 1968, when appointed by Governor Wally Hickel.

Democrat Representative Mike Miller of Juneau introduced a bill back in the 1970s that would have required that a person appointed to serve out a partial U.S. Senate term would have to be from the same political party as the former Senator, but after passing the State House, this bill failed to pass the State Senate, with Democrat opposition playing a crucial role in its defeat.

The 20th Alaska State Legislature went on to change the party-affiliation component of the statute in 1998, with a bill that engendered both bipartisan support and opposition as it changed form moving through the legislative process. The final version of HB 307 required the Governor to appoint a person who had for six months been a member of the same political party if the person whose vacancy was being filled had been nominated by a political party. HB 307 mandated a special election if the unexpired term of the vacant seat was to last more than 30 months, and allowed a person not affiliated with a political party to be nominated by petition to run in a special election.

After passing both the House and the Senate, Governor Knowles chose to veto HB 307. In his veto letter he wrote, "I see no reason to change the current practice for appointing U.S. Senate vacancies, which has historically served Alaskans well." The House and Senate overrode Governor Knowles's veto and HB 307 became law.

In the 22nd Alaska Legislature the laws controlling the way a vacant seat in the U.S. Senate is filled were further changed. Senate Bill 166 imposed a five-day waiting period upon the Governor before he or she can appoint a person to fill a vacancy in the U.S. Senate. This bill passed both bodies of the Legislature, and was subsequently vetoed by Governor Knowles. The Legislature overrode Governor Knowles's veto, and SB 166 became law.

Last year a group of Alaskans calling itself 'Trust the People' began gathering signatures to place an initiative on the ballot this year that would change Alaska Statutes to allow for a special election in the case of any vacancy in one of Alaska's two U.S. Senate seats. This group was successful in obtaining enough signatures, which allowed the Division of Elections to certify the petition, and prepare to place the initiative on the November 2004 ballot.

HB 414 listens to the will of the many Alaskans who signed petitions in favor of electing some one to fill a vacancy in one of Alaska's two U.S. Senate seats. The sections of the bill that change Alaska law relating to filling such vacancies are exactly the same, word for word, as the language of the initiative. Supporting HB is a clear way to implement the will of a large number of Alaskan voters.

As to the second part of HB 414 the Green Party of Alaska brought suit against the State Division of Elections in case number 3-AN-03-09936 Ci. This case grew out of the Green Party's dissatisfaction with the interplay between the results of the 2002 gubernatorial election and the definition of 'political party' in the Alaska Elections Act. That definition requires a party to nominate a candidate for Governor who manages to receive at least three percent of the popular vote in the gubernatorial election. Alternatively a party can register voters under its banner in number equal to three percent of the total number of votes cast for Governor in the immediately preceding general election.

Diane Benson was the Green Party candidate for Governor in 2002, but she garnered less than the minimum three percent needed to maintain the Greens status as a political party. In the Green Party's lawsuit its members asked the court to enjoin enforcement of the law for the period through the 2004 election so they could continue to participate in politics with the benefits of being a full political party.

Judge Reese, of Anchorage Superior Court, acceded to the Green Party's request and granted a preliminary injunction on November 3, 2003. In his order accompanying the injunction Judge Reese noted that the Green Party had been successful in winning over six percent of the vote in races for federal elective positions, namely U.S. Representative and U.S. Senator. Judge Reese went on to find that the Green Party faced irreparable harm if it was denied party status for the 2004 election cycle, and that the question about how fairly it was being treated was both serious and substantial. Judge Reese's order instructed the State to continue treating the Green Party with the deference due to a statutorily-defined political party until the General Election in November 2004 or until the Legislature, "corrects the problems with party eligibility in the statutes."

HB 414 responds directly to Judge Reese's order by expanding the types of statewide races to which the Division of Elections can look in ascertaining whether a party enjoys enough popular support to merit official status. It adds two different gauges to the law, so that if there is not a gubernatorial election, then an

assemblage of voters can refer to its success in the most recent U.S. Senate or U.S. House race to earn official political party status under the statutes.

The changes to the Alaska Elections Act wrought by the second half of HB ~~44~~ 11 will inject fairness to the process of obtaining political party status in Alaska. Parties will be able to refer to their good showing in the most recent statewide race, never more than two years in the past, in order to demonstrate that they are supported by the voting public and deserve the statutory benefits conferred on political parties.

Public Comment to the House Judiciary Committee
Concerning HB 414
Donald E. Roberts, Jr.
Kodiak, Alaska

My greatest criticism of HB 414 concerns the definition of "political party" – it calls for a party's candidate to receive 3% of the vote for Governor, United States senator, or United States representative. This is unacceptable – a political party is nothing more than an organization with a particular political agenda – whether it fields a candidate at all is irrelevant. No party should be required to field a candidate just to retain their party status.

Also, a vote for a candidate should not necessarily be considered support for any particular party. There are a number of reasons a person would vote for a candidate and party support may not even be a part of that decision.

The democratic process demands many perspectives, requiring partys to use resources to field candidates before they are ready to do so can deprive Alaska of important perspecitives.

I urge the committee to change the definition of political party to one that is more befitting of a democratic society.

Donald R. Roberts Jr.
264 Lilly Drive
Apt C-2
Kodiak, Alaska 99615
(907) 486-7629
deroberts jr@gci.net

Democracy is about ideas not people ~~We don't need parties~~ should be free to foster ideas that will contribute to the political dialogue.

# HB

# 421

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM** April 22, 2004

**SUBJECT:** CSHB 421(JUD) relating to reconveyances of deeds of trust (Work Order No. 23-LS1315\I)

**TO:** Representative Lesil McGuire
Chair, House Judiciary Committee
Attn: Vanessa

**FROM:** Theresa L. Bannister
Legislative Counsel

This memo accompanies the committee substitute described above.

1. Stylistic and other changes. Please review for stylistic and other changes made throughout the bill to incorporate the amendments into the bill.

2. Mailings to include servicer. The language of sec. 34.20.115(b) was adjusted to accommodate notices going to both the beneficiary and the servicer.

3. Addition to form. A reference to mailing to personally known addresses (now required by (b)) has been added to the reconveyance form's recital about mailings.

4. Civil penalty. The penalty language was changed to "civil penalty" to more clearly indicate what appeared to be the intent. Also, exceptions were added at the beginning of subsection (i).

5. Identification of department. It was not evident which department is to receive the penalty under (i) of the section, so the draft was changed to read "liable to the state."

6. Definition of "satisfactory evidence." The definition was not entirely clear, so please examine the break-out of the forms of proof of payment to determine if it is what you intended.

If I may be of further assistance, please advise.

TLB:mdr
04-180.mdr

Enclosure

# HOUSE COMMITTEE REPORT

(7)
**Date Referred to Committee: March 25, 2004** **FURTHER REFERRALS:**

**Date of Committee Action:** April 21, 2004

**The JUDICIARY Committee considered:** **HB 421**

**HOUSE BILL NO. 421** **DEED OF TRUST RECONVEYANCE**

**"An Act relating to reconveyances of deeds of trust."**

**Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 421 (JUD)**
***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____*** **[X] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

*List of Abbrev for Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

| ***NEW*** **FISCAL NOTES** *Assigned by Chief Clerk's Office | | | | |
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| List by Dept(s): | *FN# | Fiscal | Indet. | Zero |
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| ***PREVIOUS*** **FISCAL NOTES** | | | | |
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| Signing with recommendations | Printed Last Name | DP | DNP | NR | AM |
|---|---|---|---|---|---|
| | Holm | | | ✓ | |
| | Cara | | | ✓ | ✓ |
| | SAMUELS | | | X | |
| | Gruenberg | ✓ | | | ✓ |
| | Oda | | | ✓ | |
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| Chair: | Meyer | ✓ | | | |
| Chair: | | | | | |

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# HOUSE COMMITTEE REPORT

3.25.04

(7)

**Date Referred to Committee: February 2, 2004** **FURTHER REFERRALS: Judiciary**

**Date of Committee Action:** March 24, 2004

**The LABOR AND COMMERCE Committee considered:** **HB 421**

**HOUSE BILL NO. 421** **DEED OF TRUST RECONVEYANCE**

**"An Act relating to reconveyances of deeds of trust."**

**Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 421 (LBC)**
***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____*** **[X] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

*List of Abbrev for Depts.:*
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

| ***NEW*** **FISCAL NOTES** *Assigned by Chief Clerk's Office | | | | |
|---|---|---|---|---|
| List by Dept(s): | *FN# | Fiscal | Indet. | Zero |
| DNR | 1 | | | X |
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| ***PREVIOUS*** **FISCAL NOTES** | | | | |
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| Signing with recommendations | Printed Last Name | DP (7) | DNP | NR | AM |
|---|---|---|---|---|---|
| Harry Z Crawford | CRAWFORD | X | | | |
| | LYNN | X | | | |
| | GATTO | X | | | |
| Robert | ROKEBERG | X | | | |
| | DAHLSTROM | X | | | |
| | GUTTENBERG | X | | | |
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| Chair: Tom Anderson | ANDERSON | X | | | |
| Chair: | | | | | |

# FISCAL NOTE

**STATE OF ALASKA**
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1
Bill Version: CSHB 421(L&C)
(H) Publish Date: 3/25/04

Revision Date/Time (Note if correction):
Dept. Affected: Natural Resources
Title: Deed of Trust Reconveyance
RDU: Resource Development
Component: Recorder's Office
Sponsor: Rep. Anderson
Requester: (H) L&C
Component No.: 802

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|---|---|---|---|---|---|---|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type–Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**Estimate of any current year (FY2004) cost:** 0.0
**Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:**

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

**ANALYSIS:** *(Attach a separate page if necessary)*

There is no fiscal impact for the Recorder's Office associated with implementation of this legislation.

Prepared by: Vicky Backus
Phone 907-269-8882
Division: Recorder's Office
Date/Time 3/9/04
Approved by: Thomas Irwin, Commissioner
Date 3/9/04
Agency: Natural Resources

(Revised 9/2003 OMB)

# ALASKA STATE LEGISLATURE

**Rep. Lesil McGuire, Chair**
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg


State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

## House Judiciary Committee

# Memorandum

**To:** Leg. Legal

**From:** Vanessa Tondini, Committee Aide
House Judiciary Committee

**Date:** April 21, 2004

**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1315\H, HB 421 incorporating the attached eight amendments (A.# 1A, 1B, 2B as amended, 2C as amended, 2D, 2E, 2F as amended, and 2G). The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

4/21/2004
jwb#

**AMENDMENT**
TO: CS for House Bill 421 (L&C)
SPONSOR: Rep. Anderson

A#1A PASSED

DESCRIPTION
Currently the bill requires the title insurance company to notify the beneficiary or the servicer of the deed before a reconveyance can be recorded. This amendment will change the "or" to "and" so that notification must be sent to both parties.

On page 1, line 13
Delete "or a"

Insert "and the"

On page 1, line 14
Delete "or"

Insert "and"

On page 1, line 15
Delete "or"

Insert "and"

On page 2, line 1
Delete "or"

Insert "and"

On page 2, line 3
Delete "or"

Insert "and"

On page 3, line 29
Delete "or" twice

Insert "and" twice

A#1B PASSED

DESCRIPTION
Amendment the number of days that must elapse after mailing a notification from 60 days up to 90 days. The change from 60 to 90 days should occur in the following places:

Page 2, line 24
Page 3, line 4
Page 4, line 1

4/21/2004
jwb#

**AMENDMENT**
TO: CS for House Bill 421 (L&C)
SPONSOR: Rep. Anderson

A.2A Withdrawn On page 1, line 8
Delete "the"

Insert "any"

A.2B PASSED On page 2, line 2, after the word "section", insert the following:

", and to ~~the~~ any address for a beneficiary and servicer personally known to the title insurance company"

A.2C PASSED On page 2, line 16, following the word "information"
Insert "for ~~a~~ the trust deed"

A.2D PASSED On page 2, following line 20
Insert " Recording information for current assignment of trust deed:
Serial number:.....
or
Book number:.....
Page number:....."

A.2E PASSED On page 3, following line 3
Insert "(Phone number)"

A.2F PASSED On page 4, following line 27, insert a two new definition as follows:
" 'beneficiary' means both the record owner of the beneficiary's interest under a trust deed ~~including~~ and its successors in interest."

" 'satisfactory evidence' of the full payment of an obligation secured by a trust deed means a payoff letter, the original cancelled check or a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed."

Renumber the new and existing definitions accordingly.

A.2G PASSED On page 5, following line 1, insert a new section as follows:

(j) If a title insurance company reconveys a trust deed without having satisfactory evidence of payment required under (b) or without providing the prior notice to the beneficiary and servicer as required under this section, the title insurance company is liable to the beneficiary, the heirs, successor interest, representatives and assigns of the

beneficiary, for all damages occasioned by such neglect or willful act. A title insurance company shall pay a penalty of $300 to the department."

# ALASKA STATE LEGISLATURE
## House of Representatives

COMMITTEE ASSIGNMENTS:
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG. AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: http:\\www.akrepublicans.org\Anderson.htm

INTERIM:
716 WEST 4TH AVENUE, SUITE 650
ANCHORAGE, AK 99501
PHONE: (907) 269-0265
FAX: (907) 269-0264

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4939
1-800-465-4939
FAX: (907) 465-2418

# Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

Date: April 14, 2004

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Representative Tom Anderson Tom

Re: HB 421

---

This memo is to request a hearing by the House Judiciary Committee on HB 421, "An Act relating to reconveyances of deeds of trust, at the earliest possible convenience."

At it's hearing in the House Labor & Commerce Committee, HB 421 received a "do pass" recommendation from every member of the Committee. The Alaska Land Title Association, the Alaska State Home Building Association, and the Alaska Mortgage Bankers Association support HB 421.

Thank you for your time and attention to this request. Please contact me if you have any questions or need additional information.

# Alaska State Legislature
## House of Representatives

Official Business

State Capitol
Juneau, AK 99801-1182

**SPONSOR STATEMENT FOR HB 421**
**BY: Representative Tom Anderson**

**TITLE**: An Act relating to reconveyances of deeds of trust.

HB 421 is legislation proposed and requested by the Alaska Land Title Association (ALTA). The legislation would help to clear land records of paid off mortgage liens. In other words, after a mortgage (or deed of trust) has been paid off, a title insurance company could, through the procedures established in HB 421, record the reconveyance.

A title insurance company, acting as trustee under a deed of trust, could release (by deed of reconveyance) a lien after notice to the lender, if the title company paid off the deed of trust through a closing. The lender would be given 60 days to object to the proposed release of the lien.

HB 421, based on a law from the State of Idaho, would be helpful in "cleaning up" many old liens left unreleased by lenders who may be from out-of-state, or have closed. In Alaska, it is very common for the company servicing a mortgage on a home to be located outside of state.

By having this sort of law in place, the net result is a quicker closing and fewer hassles for sellers, lenders and agents. For example, any previous liens on the deed could be cleared away before they become burdensome on any future transactions or sales of the property.

The intent of this bill is to provide a clear and clean process allowing liens to be cleared from deeds after satisfactory evidence of payment has been presented to the title company. This does not establish any additional risks or opportunities for fraud, and it is not intended to create any unnecessary burdens upon mortgage lenders in Alaska.

# FISCAL NOTE

**STATE OF ALASKA**
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1
Bill Version: CSHB 421(L&C)
(H) Publish Date: 3/25/04

Revision Date/Time (Note if correction):
Dept. Affected: Natural Resources
Title: Deed of Trust Reconveyance
RDU: Resource Development
Component: Recorder's Office
Sponsor: Rep. Anderson
Requester: (H) L&C
Component No. 802

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|---|---|---|---|---|---|---|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**Estimate of any current year (FY2004) cost:** 0.0
**Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:**

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

**ANALYSIS:** *(Attach a separate page if necessary)*

There is no fiscal impact for the Recorder's Office associated with implementation of this legislation.

Prepared by: Vicky Backus
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Division: Recorder's Office
Date/Time 3/9/04
Approved by: Thomas Irwin, Commissioner
Date 3/9/04
Agency: Natural Resources

(Revised 9/2003 OMB)