IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA, DIVISION OF ELECTIONS, and Gail Fenumiai, Director of the Division of Elections Petitioners, v. ALYSE S. GALVIN, Respondent.	Superior Court Case No. 3AN-20-07991 CI Supreme Court Case No. S-17887

RESPONDENT'S SUPPLEMENTAL BRIEFING

The superior court misapplied this Court's precedent in concluding that the right to freedom of association discussed in *Green Party I* and *ADP* belongs only to political parties, and that candidates may not assert those same rights. But this cannot be the case. The Alaska Constitution grants ***every person*** the right to "freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Alaska Const. art. I, § 5. This inherently guarantees the rights of people—and political parties—to associate together to achieve their political goals. *See State, Div. of Elec. v. Green Party of Alaska*, 118 P.3d 1054,1064-65 (Alaska 2005); *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982). This Court has recognized this right *extends* to political parties. But this Court has never suggested that the constitutional guarantee of freedom of association is afforded only to political parties *and not* to individuals running for office. No, Galvin is afforded at least the same constitutional right to associate as any political party—our Constitution makes that clear. And the harm to Galvin's constitutional right at issue here is severe—the

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Superior Court in effect held that the State may *compel* Galvin to associate with only her designating party, which misleads voters and thereby impinges upon their constitutionally guaranteed associational rights as well. That is, the challenged ballot design misleads voters by *misrepresenting* Galvin's association. The State argued that it is not the job of a ballot to inform the voter, but that's not the issue here: the issue here is that the ballot *misinforms* voters about Galvin's association. This is an unintended consequence of open primaries, as now allowed in Alaska, that cannot be left unaddressed now.

And while the Alaska Constitution is, per this Court's precedent, *more protective* than that of the federal constitution, even the federal constitution prohibits compelled associations such as the one Petitioner challenges here. *See, e.g.*, *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001) ("Just as the First Amendment may prevent the government from prohibiting speech, the Amendment may prevent the government from compelling individuals to express certain views . . . ."); *Keller v. State Bar of California*, 496 U.S. 1, 16 (1990) (prohibiting the expenditure of compulsory bar association dues on political or ideological activities as such expenditure would constitute forcing compelled political association on bar members); *see also McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995) (noting that the regulation of pure political speech is subject to strict scrutiny).

The Superior Court also declined to find Ms. Galvin was likely to succeed on the

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merits of her argument that AS 15.15.030(5) requires that the ballot accurately reflect both the party designation of a candidate as well as the candidate's party affiliation, despite Title 15's repeated use of the term "party affiliation" to connote voter registration, and both this Court's and the State's understanding of that term as articulated in *ADP*.[1] There is no way to reconcile that interpretation with this Court's holding in *ADP*, in which this Court recognized the complexity of the Alaska electorate and, for the first time, the rights of candidates and political parties to appeal to *voters* not registered as members of any designating party.

If AS 15.15.030(5) does not distinguish between the party under which a candidate registers as well as the party by which the candidate is nominated, and this Court has recognized that there is a right under Article I, Section 5 of the Constitution to associate differently, *then* the statute is unconstitutional because it violates that fundamental right. And our precedent clearly establishes that "courts should if possible construe statutes so

[1] *See* Galvin's Opposition to Petition for Review at 14-15 (citing AS 15.07.050; AS 15.07.070(k)(1)(C); AS 15.07.075; AS 15.25.010; AS 15.25.060). This Court's interpretation is guided by a classic canon of construction—the presumption of consistent usage—which is relevant here based on numerous other uses of the term "party affiliation" in Title 15 of the Alaska Statutes. "The presumption of consistent usage, which states that words are 'presumed to bear the same meaning throughout a text,' is not a canon of construction [this Court] cast[s] aside lightly — especially when those terms appear multiple times within the same [body of law]." *Forrer v. State*, No. S-17377, 2020 WL 5269487, at *22 (Alaska Sept. 4, 2020) (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 170-73 (2012)); *see also Fancyboy v. Alaska Vill. Elec. Coop., Inc.*, 984 P.2d 1128, 1133 (Alaska 1999) ("We assume as a rule of statutory interpretation that the same words used twice in the same statute have the same meaning."); 73 AM. JUR. 2D Statutes § 140 (database updated May 2020).

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as to avoid the danger of unconstitutionality." *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007); *see also State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978) (citations omitted) (explaining that "the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits")).

Ms. Galvin ultimately requests a ruling on the merits. The State needs to put in the work to correct its mistake, which the record evidence suggests it has not done. To wit, Ms. Fenumiai testified that she has not pursued alternative printing options, even though the Alaska procurement code provides for emergency contracting. *See* AS 36.30.310 (allowing for procurements under emergency conditions when competitive sealed proposals impracticable). But even if it were not possible to print new ballots on a rushed basis, the UOCAVA hardship extension allows for an extension of time on back end for UOCAVA voters to return their ballots, so there is no risk of disenfranchisement if ballot mailing is delayed in order to get this right.

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I hereby certify that on September 18, 2020 a true and correct copy of the foregoing document was sent via Email to:

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