April 12, 2018

Josie Bahnke, Director
Division of Elections
PO Box 110017
Juneau, AK 99811-0017

Dear Director Bahnke,

The Alaska Supreme Court recently ruled that AS 15.25.030(a)(16) is unconstitutional. The court concluded that this statute substantially burdens a Political Party's right to freely associate, and this burden is not outweighed by any significant state interests. The Alaska Republican Party (ARP) fully concurs with this decision, and now seeks your cooperation to implement the law as recently decided, in a manner that is consistent with our rules. As SCOA itself acknowledged, time is of the essence.

I wrote to you on December 4, 2017 (see attached) declaring ARP's internal ruling that Representatives Gabrielle LeDoux, Louise Stutes, and Paul Seaton were ineligible to appear on the Republican Primary ballot in 2018. Your response dated December 7, 2017, declined to act on ARP's request, citing several objections. I chose not to respond at that time in light of the fact that the State had appealed the summary judgment of the Superior Court to the Alaska Supreme Court.

With this correspondence, it is ARP's intent to re-assert what we believe are constitutionally protected rights of association, now affirmed by our Supreme Court.

We further assert the absence of
any legitimate interest which might be invoked to prevent ARP from implementing validly adopted rules regulating our internal affairs—specifically those pertaining to who can, and who cannot run under our party's label in the 2018 Primary election.

To be clear, Representatives LeDoux, Stutes and Seaton are not members in good standing of the Republican Party of Alaska, and are ineligible to appear as candidates representing our party in the 2018 Primary Election, according to our rules. ARP is not asking the Division of Elections to concur with this determination, only to acknowledge it and not to intervene in a manner that frustrates ARP's internal administration of our rules.

ARP rejects the defenses raised in your letter of 12/4/17. First, AS 15.25.014 does
not specifically prohibit, for a period of one year before an election. a validly adopted party rule from having binding effect on a party member with respect to their eligibility to file in a Primary election. Clearly statutes allow, within much shorter timeframes prior
to the general election, challenges to candidate eligibility,
candidate withdrawal, and other "eligibility determinations" such as petition gathering. Thus,

AS 15.25.014 should be construed in light of other statutes that maximize—rather than restrict--party-controlled prerogatives.

Secondly, even if the statute does attempt to pre-empt an adopted party rule, it cannot "trump" a constitutionally protected right, now affirmed by our Supreme Court.

Finally, the authority cited in your letter, Alaska Independence Party vs. Alaska, is not controlling. In that case, the court found that the *Alaska Independence Party* did not have sufficient party rules, bylaws or other criteria in place that could differentiate between what AIP considered to be a qualified vs. unqualified candidate. Therefore, the court concluded, AIP had effectively "waived" its associational rights because it had failed to properly define the terms of association. Thus, there was no way AIP could show that the State law limiting their party's right to distinguish among candidates placed an undue burden on their right to associate.

Here, today, ARP's circumstances could not be more different.

The Alaska Republican Party (ARP) is the largest political party in Alaska, with more than 140,000 members. It is a recognized political party under state law (AS 15.80.008). The Party's rules, bylaws, and platform are extensive, and are laboriously maintained with input from District and grass-roots participants through the convention process. In sum, it is amply clear what ARP stands for, and how its internal affairs are regulated.

AS 15.40.330(b) states that "A member of a political party is a person who supports the political program of a party." This principle is reflected in ARP Rules, Article I, Section 4(b) "No person may use the word Republican on any ballot or in any campaign as part of a description of himself as a candidate unless that person is an ARP candidate, selected according to ARP Rules." This Rule was in effect following the April 2016 State Convention.

Also in effect in 2016 were Rules that allowed us to withdraw <u>all</u> support for candidates who have organized with the opposition party when a majority of our own party has been elected. Of note, these Rules were in effect prior to any statutory deadline cited in your December 7, 2017 letter. We interpret our Rules in a clear and unambiguous manner. There can be no more clear act to separate from our Party than to act in an manner that places the opposition party in power and advances the opposition party agenda. It is a complete absurdity to argue that the State has a superior interest in forcing the ARP to permit such turncoats to seek the nomination of the Alaska Republican Party. The individuals are free to seek election as unaffiliated petition candidates or the nominees of another Party.

The ARP's constitutional right to impose this latter penalty was not affirmed until the October 17, 2017 ruling by Superior Court, which is now affirmed by the April 4 ruling of the Alaska Supreme Court.

Immediately following the Pallenberg ruling, the ARP moved as quickly as practicable to fully enforce our Rules and address the duplicitous behavior of these three legislators. To complement our existing Rule, the ARP amended our Rules on December 2, 2017 to explicitly define the enforcement of existing Rules. Existing Rules provided the authority to withdraw all support for incumbents who had engaged in actions detrimental to the Alaska Republicans or to Republican values and goals, such as forming a coalition in which Democrats hold the majority when a Republican majority has been elected. Those Rules were adopted in April, 2016.

In December 2016, ARP's SCC voted to apply our Rules to three incumbent legislators (Louise Stutes, Paul Seaton and Gabrielle LeDoux) who ran as, and were elected as, Republicans. Immediately after their election in 2016, in willful defiance of the Republican party, these three legislators refused to organize with their fellow elected Republican representatives to form a majority coalition and instead organized the State House with the Democrat minority. As a result of this violation of ARP party rules, they were found in violation of ARP Rules by a vote of 54-4 and we determined, according to our own internal Rules, that they were no longer Republicans in good standing. They were ineligible for support of any kind and we were authorized to recruit new Republican candidafes. They abandoned the political program of the ARP, they betrayed the Republican Party by abandoning the Republican State House majority elected by Alaskans and instead formed a majority with the minority Democrats. Thus, they have no way under our Rules to present themselves as genuine Republican candidates in our primary in 2018.

We explicitly augmented our Rules to enhance our internal authority to prevent these political frauds from our Primary ballot, but we had already determined under existing Rules that they were no longer members in good standing and could receive no support of any kind from the ARP.

We note several of Judge Pallenberg's arguments. He wrote:

"… a state may not constitutionally legislate the means by which a political party goes about achieving its goals and that it is up to a political party to determine "the boundaries of its own association." Because a political party's associational rights include its ability to make decisions about internal affairs, laws that impact a political party's internal structure, governance, and policy-making are generally unconstitutional. "

To understand the full import of ARP's associational rights, it is important to note that the Alaska's Superior Court found precedent at both the Federal and State Supreme Court level. In Tashjian v Republican Party of Connecticut, the U.S. Supreme Court found that: **"A political party possesses the same right to associate with candidates of its choosing as it does to participate with voters of its choosing. A political party's right to associate necessarily includes the ability to identify the individuals with whom to associate."**

On the specific point of whether ARP's ability to select a primary candidate of its choosing constitutes a Constitutionally protected associational right, Judge Pallenberg writes **"precedent in both courts suggest that it is."**

In ***Tashjian v the Republican Party of Connecticut*,** the U.S. Supreme court noted:

"Were the State ... to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals."

Here the courts make clear the distinction that **the State** cannot impose laws which infringe upon a citizen's right of association, unless they can show a compelling public reason to do so. There can be no compelling reason for the State to force turncoat who have joined the opposition Party to control the Legislature onto our Primary ballot.

In **State v Green Party of Alaska,** our own Alaska Supreme Court was emphatic in its view that a political party's right to manage its internal affairs is sacrosanct.

Pallenberg pointed out that *Tashjian* supports the proposition that the right of association:

"presupposes the freedom to identify the people who constitute that association."

The Court went on to note that this right:

"is perhaps nowhere more important than during a primary election," because that is the point at which "political parties select the candidates who will speak for them to the broader public and, if successful, will lead their political party in advancing its interests. "

Pallenberg concludes**,**

"Thus the associational rights of a political party are of paramount importance during the primary election process. Insofar as AS 15.25.030(a)(l6) seeks to interfere with this process, it goes to the heart of a party's internal structure, governance, and policy-making. AS 15.25.030(a)(l6) imposes a substantial burden on the Party's right of association because it limits the Party's ability to select the candidate whom its primary voters believe will fare best among Alaska's unique population of registered voters. "

Under *"Jones",* SCOTUS ruled that blanket primaries were illegal because they ***"force political parties to associate with and have their nominees, and hence their positions, determined by those who, at best, have refused to affiliate with the party and, at worst, have expressly affiliated with a rival".*** Exactly what Representatives Stutes, Seaton and LeDoux have done and what our Rules are designed to address.

We conclude by noting that there is no burden placed upon the State by enforcing ARP's Rules regarding Republican Primary ballot access in 2018 for Representatives Seaton, LeDoux and Stutes.

You have been notified that under ARP Rules, both as amended in December 2, 2017 and as in existence in December 2016, that these incumbents have no support from the ARP, have been

found to be in violation of ARP Rules, and that they are not eligible to receive any support, financial or otherwise, including access to the Republican Primary ballot.

Any forced recognition by the State, on any ballot, that Paul Seaton, Gabrielle LeDoux or Lousie Stutes are Republican candidates is contrary to our very essence as a Political Party, and a clear violation of our constitutional rights.

Please let us know at your earliest opportunity if you will apply or ignore our Rules regarding access to the Republican Primary ballot.

Sincerely,

Tuckerman Babcock
Chairman
Alaska Republican Party