

representative in the Alaska Legislature and is currently seeking reelection.

2. Article XII § 4 of the Alaska Constitution provides: “No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.” Accordingly, Mr. Eastman is disqualified from holding public office in Alaska.

JURISDICTION AND VENUE

3. Jurisdiction is proper pursuant to AS 22.10.020(c) and (g).

4. The plaintiff is a resident of the Third Judicial District. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c).

PARTIES

5. David Eastman is an Alaska State House Representative for District 10, seeking election in District 27.

6. The State of Alaska’s Division of Elections is the state agency that administers Alaska’s State and Federal elections.

7. Gail Fenumiai is the Director of Elections for the State of Alaska’s Division of Elections and is sued in her official capacity.

8. Plaintiff Randall Kowalke is an Alaskan citizen and constituent of David Eastman in District 10.

GENERAL ALLEGATIONS

9. Article XII, § 4 of the Alaska Constitution states: “No person who advocates, or who aids or belongs to any party or organization or association which

advocates, the overthrow by force or violence of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.”

10. David Eastman serves as the elected Alaska House Representative for District 10, located in the Matanuska-Susitna Borough.

11. Mr. Eastman was first elected in 2016 and has served in the Alaska House of Representatives representing District 10 from January 2017 through the present.

12. Mr. Eastman is seeking re-election to what is now District 27.

13. Mr. Eastman is a “life member” of the Oath Keepers, a militia organization.¹

14. Mr. Eastman first became a member of the Oath Keepers in 2009.²

15. On January 6, 2021, there was an insurrection against the United States federal government. A large crowd gathered outside the Capitol perimeter until “crowd members forced entry into the Capitol by breaking windows, ramming open doors, and assaulting Capitol police and other law enforcement officers.”³ The Oath Keepers were leaders in this insurrection.

16. Leaders of the Oath Keepers were charged with seditious conspiracy “to

¹ Isaac Arnsdorf, Oath Keepers in the State House: How a Militia Movement Took Root in the Republican Mainstream, Propublica (Oct. 20, 2021), <https://www.propublica.org/article/oath-keepers-in-the-state-house-how-a-militia-movement-took-root-in-the-republican-mainstream>.

² James Brooks, Leaked list shows Alaska state Rep. David Eastman is a ‘lifetime member’ of a leading Capitol-riot group, KTOO (Oct. 21, 2021), <https://www.ktoo.org/2021/10/21/david-eastman-member-oathkeepers-militia/>.

³ *Id.*

oppose by force the lawful transfer of presidential power” through their leadership and participation in the January 6 insurrection.⁴

17. West Point’s Combating Terrorism Center wrote about the Oath Keepers’ activities and their evolution

[. . .] from quasi-law enforcement operations to violent insurrection/domestic terrorism while cloaking its activities in a patriotic veneer that supposedly seeks to guard the republic from unseen malign forces. The evidence set forth by the government alleges that Oath Keepers engaged in a well-organized conspiracy to physically prevent the certification of what they perceived to be a fraudulent election and a harbinger of America’s demise as a democratic country. Ironically, the very conspiracy Oath Keepers are accused of perpetrating targeted the heart of the American democratic process they claimed to have been acting to protect.⁵

18. The Oath Keepers’ actions opposing the peaceful transfer of democratic power on January 6, 2021, is the precise advocacy for “overthrow by force or violence of the United States” which Alaska’s Constitution prohibits public officers to partake in through membership.

19. In addition to membership in the Oath Keepers, Mr. Eastman was present at the rally in Washington, D.C. on January 6, 2021, which preceded the storming of the U.S. Capitol.⁶

⁴ *Id.*

⁵ Matthew Kriner, Jon Lewis, [The Oath Keepers and Their Role in the January 6 Insurrection](https://ctc.westpoint.edu/the-oath-keepers-and-their-role-in-the-january-6-insurrection/), CTC Sentinel, Vol. 14 Issue 10 (December 2021), <https://ctc.westpoint.edu/the-oath-keepers-and-their-role-in-the-january-6-insurrection/>.

⁶ *Supra* note 2.

20. Mr. Eastman remains a member of the Oath Keepers.⁷

21. Mr. Eastman remains proud of his continued membership in the Oath Keepers following the insurrection at the Capitol. Mr. Eastman stated, “**I joined the Oath Keepers when it first started and will always consider it a privilege** to stand with those in the military and first responders who strive to keep their oaths to the Constitution.”⁸

22. Mr. Eastman additionally defends Oath Keepers’ decisions to hold a revolution and overthrow government:

[Question] What about some of the language that certain members of the Oath Keepers have about a revolution when they decide that the government is not following the Constitution, that they have a responsibility to try and do away with the government?

[Mr. Eastman’s answer] In a government that’s based on the consent of the governed, inevitably it’s the people who are going to decide whether or not they consent to anything the government’s doing. And that’s the way this nation was founded.⁹

23. Randall Kowalke is a constituent of Mr. Eastman in District 10.

24. Though he was once a supporter of Mr. Eastman, Mr. Kowalke cannot support the service of anyone in public office who has supported the violent overthrow of the United States government.

⁷ David Eastman, [Here I stand, I can do no other, so help me God](https://daveeastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/), (Jan. 30, 2022), <https://daveeastman.org/articles/here-i-stand-i-can-do-no-other-so-help-me-god/>.

⁸ *Supra* note 2 (emphasis added).

⁹ Peter Segall, [State rep defends Oath Keepers, laments ‘cancel culture’](https://www.juneauempire.com/news/state-rep-defends-oath-keepers-laments-cancel-culture/), Juneau Empire (Feb. 10, 2022) <https://www.juneauempire.com/news/state-rep-defends-oath-keepers-laments-cancel-culture/>.

25. Mr. Kowalke filed a complaint regarding the eligibility of Mr. Eastman as a candidate for House District 27 in this year’s State election.

26. Mr. Kowalke complained that Mr. Eastman was ineligible as a candidate under the Alaska Constitution’s disloyalty clause due to his membership in the Oath Keepers, which is an organization that advocates for the violent overthrow of the federal government.

27. The State Division of Elections received and reviewed Mr. Kowalke’s complaint in June 2022.¹⁰ Gail Fenumiai, in her capacity as Director of the Division of Elections, sent Mr. Kowalke a final determination on June 20, 2022.¹¹ The Division of Elections determined that Mr. Eastman remains eligible to run for State office despite being aware that Mr. Eastman is a member of the Oath Keepers and attended the Washington, D.C. rally on January 6, 2021.¹² The Division of Elections’ analysis made no sense whatsoever. Ms. Fenumiai and her Division failed to properly apply and uphold the Alaska Constitution’s Disqualification for Disloyalty clause and Alaska Statute 24.05.060.

28. Mr. Eastman is ineligible to continue serving in public office for the State of Alaska and is ineligible to be a candidate for future elections so long as he belongs to the Oath Keepers.

¹⁰ Exhibit 1, June 20, 2022 Letter from Fenumiai of Division of Elections to Mr. Kowalke.

¹¹ Exhibit 1.

¹² Exhibit 1.

CLAIMS FOR RELIEF:

FIRST CAUSE OF ACTION – VIOLATION OF THE DISQUALIFICATION FOR DISLOYALTY CLAUSE UNDER ALASKA CONSTITUTION ARTICLE XII

29. The foregoing paragraphs of this Complaint are incorporated herein as though fully set forth.

30. Through his membership in the Oath Keepers, Mr. Eastman violated Alaska Constitution Article XII, Section 4, Disqualification for Disloyalty.

31. This Court should enter against Mr. Eastman and prohibit him from serving in public office due to his membership in the Oath Keepers, an organization which “advocates [for] overthrow by force or violence of the government of the United States.”

32. Plaintiff is entitled to nominal damages.

33. Plaintiff is entitled to full attorney fees.

SECOND CAUSE OF ACTION – VIOLATION OF ALASKA STATUTE § 24.05.060

1. The foregoing paragraphs of this Complaint are incorporated herein as though fully set forth.

2. The Division of Elections and Ms. Fenumiai are required to follow Alaska Statute § 24.05.060 when determining whether a candidate is disqualified from running for office.

3. Alaska Statute § 24.05.060 states:

A person is not qualified for membership in the legislature who is disqualified to hold public office under the provisions of art. XII, Sec. 4, Constitution of the State of Alaska, and as it may be implemented by law.

4. The Division of Elections and Ms. Fenumiai violated Alaska Statute § 24.05.060 when they determined — despite Eastman’s membership in an organization advocating for the violent overthrow of the federal government — that he is nonetheless still eligible to run for legislative office.

5. This Court should reverse the Division of Elections and Ms. Fenumiai’s determination of eligibility, and find that Eastman is not eligible to run for legislative office.

6. Plaintiff is entitled to nominal damages.

7. Plaintiff is entitled to full attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Mr. Kowalke respectfully requests that the Court grant:

1. Declaratory and injunctive relief against Defendant Mr. Eastman;
2. Declaratory and injunctive relief against Defendants Division of Elections and Ms. Fenumiai;
3. An award of nominal damages to plaintiff;
4. The costs and expenses of litigation, including full attorney fees because the defendants violated the plaintiff’s constitutional rights;
5. All other relief as the Court deems necessary.

DATED this 29th day of July, 2022

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STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

June 20, 2022

Mr. Randall Kowalke
PO Box 516
Willow, AK 99668

Dear Mr. Kowalke:

The Division of Elections (DOE) received your complaint regarding the eligibility of Representative David Eastman as a candidate for House District 27. After reviewing public documents, DOE has determined that a preponderance of evidence supports his eligibility. *See* 6 AAC 25.260(e), (f).

When DOE receives a complaint regarding the eligibility of a candidate, it must determine the candidate's eligibility within 30 days. AS 15.25.042(a). Complaints must include certain information and be received by the close of business on the tenth day after the filing deadline. 6 AAC 25.260(a), (b). DOE reviews the relevant evidence it has, including the candidate's registration records and declaration of candidacy, and it can also review public records held by other state agencies. 6 ACC 25.260(d). DOE may only consider "candidate qualifications established by the United States Constitution, the Alaska Constitution, or the Alaska Statutes," excluding Chapter 13 of Title 15. 6 AAC 25.260(c).

You allege that Representative Eastman is disqualified by the state and federal constitutions. The state constitution disqualifies from public office anyone who advocates, or belongs to an organization that advocates, violent overthrow of the state or federal government. AK Const. Art. XII, sec. 4; *see also* AS 24.05.060. The Fourteenth Amendment prohibits anyone from holding state office if they took an oath to support the federal constitution and "engaged in insurrection or rebellion" against the federal government or gave "aid or comfort to [its] enemies." U.S. Const. Am. XIV, sec. 3.

To the extent these constitutional provisions apply, a preponderance of the evidence does not show that Representative Eastman is ineligible. DOE reviewed Representative Eastman's voter registration records and declaration of candidacy and it is unaware of any relevant records held by other state agencies. DOE is aware that Representative Eastman reportedly is a member of the Oath Keepers organization and attended the rally in Washington, D.C. on January 6, 2021. DOE does not have any specific information about these allegations in its possession. But even assuming these allegations are true, DOE has determined that they do not—without more—provide a basis to prevent Representative Eastman from running for state office.

This determination is final and DOE will provide a copy of it and your complaint to Representative Eastman.

Sincerely,

A handwritten signature in blue ink that reads "Gail Fenumiai".

Gail Fenumiai, Director