

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

SUNNY GUERIN, ELIZABETH
ASISAUN TOOVAK, and
VERA LINCOLN,

Plaintiffs,

vs.

KEVIN MEYER, in his official capacity
as Lieutenant Governor of the State of
Alaska; GAIL FENUMIAI, in her official
capacity as the Director of the Division of
Elections, and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

CASE NO. 3AN-22-06795 CI

ORDER

*Motion for Summary Judgment
Cross-Motion for Summary Judgment*

After the sudden death of Congressman Don Young, the State of Alaska held a special primary election on 11 June 2022 to determine who the four candidates would be on the special general election ballot on 16 August 2022 using the new ranked voting system. The four candidates who got the most votes in the special primary included Al Gross.

On 20 June 2022 Gross announced that he was withdrawing from the special general election. On 21 June 2022, in response to an inquiry, Division of Elections Director Gail Fenumiai, announced that the fifth-place candidate would not be substituted for Gross on the general election ballot. Instead, only the

remaining three top vote getters would be on the ballot. Fenumiai explained that her decision was based upon the directive of AS 15.25.100(c) which provides, in part:

[I]f a candidate nominated at the primary election ... withdraws ... after the primary election and 64 or more days before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

Because Gross withdrew on the 56th day before the special general election Fenumiai declined to substitute the fifth-place vote getter for Gross on the ballot.

The three Plaintiffs filed their complaint on 23 June 2022. The Court held a hearing at 3:30 p.m. that day. The Plaintiffs indicated that they had filed their motion for summary judgment earlier that afternoon. They provided the Court with a copy at the hearing. The Defendants had received it roughly 30 minutes earlier.

At the hearing all parties agreed that the question posed by the complaint and motion was a matter of law, concerning statutory construction. There were no disputed facts. Because of the need to meet imminent federal election guidelines and to allow for a likely appeal of the Court's decision, the parties presented oral arguments at the hearing despite the incomplete pleadings.

The Court issued a tentative ruling upholding the Director's decision. But it set deadlines for further pleadings and the possibility of further oral argument the next day so that a final decision could be issued before noon on 24 June 2022.

The Defendants filed their opposition to the motion for summary judgment and their own cross-motions later in the evening of 23 June 2022. The Plaintiffs filed their reply and opposition to the cross-motion the next morning. At the Defendants' request, the Court held additional oral argument at 11:00 a.m. on 24 June 2022.

The Court notes that AS 15.40.220 specifies what statutory provisions pertaining to general elections also apply to special elections. It provides:

Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

There is no statute that specifically states that the temporal window set by AS 15.25.100(c) for the substitution in a general election of another candidate when one of the top four vote getters withdraws after a primary election does not apply to a special election. Therefore, the Court concludes that AS 15.25.100(c) governs this dispute.

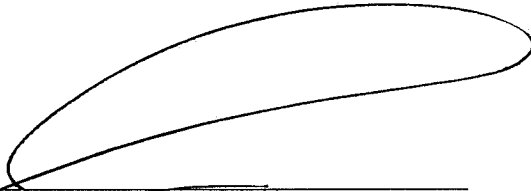
The Plaintiffs argue that the admittedly somewhat arbitrary cutoff deadlines established for general elections may fit awkwardly within the more

compressed timelines of a particular special election. The Court does not disagree with that observation. Indeed, the limitation of AS 15.25.100(c), that substitutions of a new candidate for a withdrawn candidate, may only occur if the withdrawal occurs before 64 days before the special general election, creates an extremely narrow window for a substitution in this special election. The special primary election was held on 11 June 2022 and the special general election will be held on 11 August 2022. In order for the substitution to be permissible, the withdrawal must occur after the special election (11 June 2022), but before 13 June 2022, (64 days before 11 August 2022). That two-day window could hardly be briefer. Nonetheless, that is the period set by statute and the one the Division must apply.

Despite the extremely narrow window of opportunity for a substitution in this special election, the Court finds that AS 15.25.100(c) applies and establishes that window. The Division of Elections need not replace Al Gross with the fifth-place vote getter on the special general election ballot.

The Motion for Summary Judgment is DENIED. The Cross-Motion for Summary Judgment is GRANTED.

DONE this 24th day of June 2022, at Anchorage, Alaska.

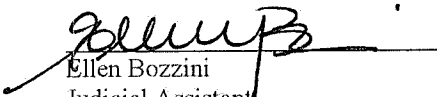


William F. Morse
Superior Court Judge

CERTIFICATE OF SERVICE

I certify that on 24 June 2022
a copy of the above was emailed/mailed to each of the
following at their addresses of record:

H. Wells
K. Demarest
R. Moses


Ellen Bozzini
Judicial Assistant