

Write-In Lists

Rudolph v. Fenumiai

(*Ralph R. Beistline, D. Alaska 3:10-cv-243*)

On the day before the 2010 general election, in which Alaska's Senator Lisa Murkowski was up for re-election, five voters sought a temporary restraining order from the U.S. District Court for the District of Alaska proscribing distribution to polling places of lists of write-in candidates.¹ The voters claimed that the write-in candidate lists had not received preclearance from the Justice Department, as required by section 5 of the Voting Rights Act.² The court assigned the case to Judge Ralph R. Beistline.³

Senator Murkowski lost the Republican primary election in August, so she was running as a write-in candidate.⁴ On October 26, Alaska obtained preclearance for a plan to provide polling places with write-in lists.⁵ In state court, both the Republican Party and the Democratic Party objected to the state's efforts to inform voters of the identities of write-in candidates and the spellings of their names.⁶ On October 27, Alaska's supreme court ruled that poll workers could provide voters with a list of write-in candidates only on the voter's request, and the list must not show the candidates' party affiliations as originally planned.⁷ In the federal action, the plaintiffs complained that providing lists without party affiliation had not yet been precleared.⁸

Judge Beistline ordered Alaska to respond to the motion for a temporary restraining order by 1:00 p.m. on the day the suit was filed; the plaintiffs' reply was due at 3:00 p.m.⁹ By the time the reply brief was filed, the amended write-in list

1. Temporary Restraining Order Motion, *Rudolph v. Fenumiai*, No. 3:10-cv-243 (D. Alaska Nov. 1, 2010), D.E. 3; Complaint, *id.* (Nov. 1, 2010), D.E. 1; see Chad Flanders, *How Do You Spell M-U-R-K-O-W-S-K-I? Part I: The Question of Assistance to the Voter*, 28 Alaska L. Rev. 1, 5 (2011) ("the Alaska Division of Elections sent to polling places a written list of write-in candidates and their party affiliations, a move unprecedented in the history of Alaska elections").

2. Complaint, *supra* note 1, at 2, 4–5; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2012).

3. Docket Sheet, *Rudolph*, No. 3:10-cv-243 (D. Alaska Nov. 1, 2010).

Tim Reagan interviewed Judge Beistline for this report by telephone on May 8, 2012.

4. See Erika Bolstad, *Write-In Lawsuit Unites Rivals*, Anchorage Daily News, Oct. 26, 2010, at A1.

5. Complaint, *supra* note 1, at ex. A–B.

6. See Bolstad, *supra* note 4.

7. Order, *Alaska v. Alaska Democratic Party*, No. S-14054 (Alaska Oct. 29, 2010), *attached as* Complaint, *supra* note 1, at ex. C; Order, *id.* (Oct. 27, 2010), *attached as* Alaska Opposition at Ex. H, *Rudolph*, No. 3:10-cv-243 (D. Alaska Nov. 1, 2010), D.E. 10; see Erika Bolstad, *High Court Says Voters Entitled to Write-In Lists*, Anchorage Daily News, Oct. 28, 2010, at A1; William Yardley, *Bipartisanship Fails in Court*, N.Y. Times, Oct. 28, 2010, at A19; see also Flanders, *supra* note 1, at 8 (reporting that by the time of the ruling the list included over 150 names).

8. Complaint, *supra* note 1, at 4–5.

9. Docket Sheet, *supra* note 3.

procedure had been precleared.¹⁰ Judge Beistline, therefore, denied the motion for a temporary restraining order as moot.¹¹ On November 23, Judge Beistline approved a voluntary dismissal of the action.¹² No proceeding was required for this case.¹³

10. Reply Brief at 2–3, *Rudolph*, No. 3:10-cv-243 (D. Alaska Nov. 1, 2010), D.E. 13; Notice, *id.* (Nov. 1, 2010), D.E. 12.

11. Docket Sheet, *supra* note 3.

12. *Id.*

13. Interview with Hon. Ralph R. Beistline, May 8, 2012.