Write-In Lists

Rudolph v. Fenumiai
(Ralph R. Beistline, D. Alaska 3:10-cv-243)

Voters challenged Alaska's providing polling places with lists of write-in candidates so that voters could refresh their recollection about who was running and how to spell their names. While a motion for a temporary restraining order was pending, the Justice Department precleared the procedure, so the motion was denied as moot.

Subject: Voting procedures. *Topics:* Section 5 preclearance; write-in candidate.

On the day before the 2010 general election, in which Alaska's Senator Lisa Murkowski was up for reelection, 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]

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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"). *See generally* Justin Levitt, *Fault and the Murkowski Voter: A Reply to Flanders*, 28 Alaska L. Rev. 39 (2011); Justin Levitt, *Resolving Election Error: The Dynamic Assessment of Materiality*, 54 Wm. & Mary L. Rev. 83, 89–90, 133 (2012).

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*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

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. Exs. A–B, Complaint, *supra* note 1.

6. *See* Bolstad, *supra* note 4.

7. Order, Alaska v. Alaska Democratic Party, No. S-14054 (Alaska Oct. 29, 2010), *at-*

Judge Beistline ordered Alaska to respond to the motion for a temporary restraining order by 1:00 p.m. on the day that 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 procedure had been precleared.[10] Judge Beistline, therefore, denied the motion for a temporary restraining order as moot.[11] On November 23, he approved a voluntary dismissal of the action.[12] No proceeding was required for this case.[13]

tached as Ex. C, Complaint, *supra* note 1; Order, *id.* (Oct. 27, 2010), *attached as* Ex. H, Alaska Opposition, *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.

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.