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*Attorneys for Appellee Daniel J. Sullivan, Jr.*

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

STATE OF ALASKA, DIVISION OF  
ELECTIONS,

Appellant,

v.

DANIEL J. SULLIVAN, JR.

Appellee.

Supreme Court Case No. S-19935  
Trial Court Case No. 3AN-26-07485

**DANIEL J. SULLIVAN, JR.’S MOTION FOR ATTORNEY FEES**

**I. INTRODUCTION**

Pursuant to Appellate Rules 508(e) and 508(f)(2) and Alaska Statute 09.60.010(c), Appellant Daniel J. Sullivan, Jr. (“Mr. Sullivan”) requests an award of his attorney fees and costs as the prevailing party in this appeal from a final order of the Superior Court reversing the decision of Appellant the State of Alaska, Division of Elections (“Division”) to exclude Mr. Sullivan from the ballot for the office of United States Senator.

This matter, like that below, arise from a June 15, 2026 final order by the Division, by and through its director, Carol Beecher (“Director Beecher”) de-certifying Mr. Sullivan’s candidacy for the office of United States Senate. The appeal was prepared and litigated on an extremely expedited timeline in which Mr. Sullivan and his counsel were afforded approximately a day and a half to draft his merits brief and ready a presentation for oral argument. The parties addressed numerous complex issues, and the stakes were significant – addressing the legality of an unprecedented decision by the Division to strip Mr. Sullivan, a candidate who met all qualifications imposed by state and federal law to run for the office of United States Senator, from his right to appear on the ballot based on the Division’s subjective determination that Mr. Sullivan was not a “good faith” candidate.

On June 29, 2026, this Court confirmed that the Superior Court got it right and affirmed its order requiring the Division to include Mr. Sullivan as a candidate for United States Senate on the primary election ballot. Mr. Sullivan is thus the prevailing party and, under the appellate rules and Alaska Statute 09.60.010(c), is entitled to an award of his full reasonable attorney fees as a constitutional litigant. Those fees, as reflected in the concurrently-filed Affidavit of Counsel, total \$43,620.00. Aff. of Counsel in Supp. of Mot. for Attorney Fees at ¶ 14. In the alternative, if the Court finds that Mr. Sullivan is *not* properly characterized as a constitutional litigant, the Court should either award Mr. Sullivan his full or heightened fees “in the interest of justice,” or award 20 percent of his full reasonable attorney fees.

## II. DISCUSSION

Ordinarily, attorney fees are not awarded in appeals. However, Alaska Rule of Appellate Procedure 508 lists a number of exceptions to that rule, three of which are applicable here. First, subsection (e)(1) allows for an award of fees where fees “are provided by statute, caselaw, or contract.” Here, there is a statute directly on point, Alaska Statute 09.60.010(c), which allows for such fees. Second, subsection (e)(3) includes a catch-all, allowing an award of attorney fees in an amount within the discretion of the court where “an award of fees is necessary in the interest of justice.” Third, subsection (e)(4) allows for a prevailing party in administrative appeals like the instant matter to be awarded 20 percent of his actual attorney fees that were necessarily incurred, except in cases where the other subsections of Rule 508(e) apply.

### **A. Mr. Sullivan Is a Constitutional Litigant Entitled to a Full Award of His Reasonable Attorney Fees**

Mr. Sullivan is the prevailing party in this action, having secured affirmance of the Superior Court’s final order, which found in Mr. Sullivan’s favor. *See Progressive Corp. v. Peter*, 195 P.3d 1083, 1092 (Alaska 2008) (“The prevailing party is the one who successfully prosecuted or defended against the action, the one who is successful on the ‘main issue’ of the action and in whose favor the decision or verdict is rendered and the judgment entered.” (internal quotation omitted)).

Alaska Statute 09.60.010 entitles Mr. Sullivan, as prevailing party, to an award of his full reasonable attorney fees. The statute provides, in pertinent part, as follows:

(c) In a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the Constitution of the State of Alaska, the court

(1) shall award, subject to (d) and (e) of this section, full reasonable attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting the right . . .

(d) In calculating an award of attorney fees and costs under (c)(1) of this section,

(1) the court shall include in the award only that portion of the services of claimant's attorney fees and associated costs that were devoted to claims concerning rights under the United States Constitution or the Constitution of the State of Alaska upon which the claimant ultimately prevailed; and

(2) the court shall make an award only if the claimant did not have sufficient economic incentive to bring the suit, regardless of the constitutional claims involved.

AS 09.60.010(c)-(d).

On appeal, the Division sought reversal of Mr. Sullivan's victory below, which concerned, in its entirety, the protection of fundamental rights established by the United States Constitution. To determine whether a claim is constitutional, courts look "'not at the source of the rule of law,' but instead at the 'source of the right asserted.'" *Pruitt v. State*, 526 P.3d 136, 142 (Alaska 2023) (quoting *Lake & Peninsula Borough Assembly v. Oberlatz*, 329 P.3d 214, 226 (Alaska 2014)) (emphasis added). In the *Pruitt* case, the Court provided a helpful example: "while voter residency requirements are defined by statute, the right to vote itself is a constitutional right. Thus, in a case where voters asserted that a voter residency statute deprived them of the right to vote . . . the claims were properly classified as constitutional claims." 526 P.3d at 142 (citing *Oberlatz*, 526 P.3d at 227). By

way of contrasting example, the right to legislate by municipal initiative derives from Alaska Statute 29.26.100, not the Alaska Constitution or United States Constitution, and a non-prevailing plaintiff is therefore not protected from an attorney fee award under AS 09.60.010(c)(2) after losing a case seeking to vindicate that right. *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1138-39 (Alaska 2012).

This case is like *Pruitt* and *Oberlatz* and unlike *Alliance of Concerned Taxpayers*. Mr. Sullivan’s overarching argument to the Superior Court was that the Division had no right to exclude him from the ballot; within this main point, he alleged that the Division’s decision was inconsistent not only with the Qualifications Clause, but also with the Division’s enabling statutes and agency regulations. The Division’s appeal involved the same issues. All of Mr. Sullivan’s positions sought to protect and enforce constitutional rights. Restrictions on ballot access implicate “at least two fundamental rights”: “the right to vote and the right to associate freely in pursuit of political beliefs.” *State, Division of Elections v. Metcalfe*, 110 P.3d 976, 979 (Alaska 2005). Mr. Sullivan thus initially appealed the Division’s final decision in an effort to vindicate these two rights. While Mr. Sullivan argued below both that the Division’s decision to exclude him from the ballot was violative of the United States Constitution, as well as State law and regulation, his overarching argument was that the State’s restriction of his ballot access was violative of his own fundamental rights and the rights of Alaska voters, and he unquestionably prevailed on those issues. Mr. Sullivan is therefore entitled to an award of full fees and costs.

Nor, for at least two reasons, did Mr. Sullivan have a “sufficient economic incentive” to bring this action that would strip him of his status as a constitutional litigant.

First, this was the Division’s appeal, not his. It was the Division’s decision to seek this Court’s expedited review after it was unsuccessful in persuading the Superior Court that it lawfully could keep Mr. Sullivan off the ballot. Second, as a matter of law, the potential that Mr. Sullivan might be elected and serve office is not a “sufficient economic incentive” to strip Mr. Sullivan as his status as a constitutional litigant.

“A litigant has sufficient economic incentive to bring a claim when it is brought primarily to advance the litigant's direct economic interest, regardless of the nature of the claim.” *Alaska Conservation Found. v. Pebble Ltd. P'ship*, 350 P.3d 273, 281-82 (Alaska 2015). The Court determines “the claim’s primary purpose by looking to the facts of the case and by examining ‘the nature of the claim and relief sought and the direct economic interest at stake.’” *Id.* at 282. An “[e]conomic interest need not take the form of damages,” but “courts must ‘look to the facts of the case to determine the litigant’s primary motivation for filing the suit.’” *Id.* (quoting *O’Callaghan v. State*, 920 P.2d 1387, 1390 (Alaska 1996)). The Alaska Supreme Court has “reiterate[d] and emphasize[d] the necessity of direct economic benefit from constitutional litigation for ‘sufficient economic incentive’” and cautioned that “[f]ocusing on the funding of constitutional litigation rather than on the litigation itself to determine primary purpose . . . can lead easily to the wrong result.” *Id.* at 285. Likewise, “it [i]s error for the superior court to look at future possibilities and contingencies well outside the contours of the litigation.” *Id.* at 284. In short, the Alaska Supreme Court has “never required that parties seeking constitutional claimant status . . . be completely disinterested in the case.” *Alaska Miners Ass’n v. Holman*, 397 P.3d 312, 317 (Alaska 2017).

Applying this precedent, the Alaska Supreme Court found in *Alaska Miners Association v. Holman* that a mining industry group was properly considered a constitutional litigant where it commenced litigation pertaining to a constitutional question relating to a ballot initiative for the Pebble Mine Project, despite the fact that members of the group had direct economic interests in the advancement of the Pebble Project. *Id.* Likewise, although candidates for public office may receive a salary if elected and appointed, the Court has repeatedly held that “the strong public interest in fair and honest elections justifies according public interest litigant status to officeholders or candidates pursuing a claim of error in an election.” *Pruitt*, 526 P.3d at 140 (citing *Mun. of Anchorage v. Citizens for Representative Governance*, 880 P.2d 1058, 1062-63 (Alaska 1994) (citing strong public interest in fair and honest elections when concluding that normal compensation of elected office is not sufficient economic incentive to defeat political candidate's status as public interest litigant)). Mr. Sullivan did not seek an award of damages at any point in this action – he was seeking to regain and, on appeal, to preserve, the ballot access that was wrongfully taken from him. Even if there is some possibility that Mr. Sullivan could be elected to the United States Senate and receive compensation associated with such office, that future possibility or contingency is well outside the contours of this action, which relates only to the protection of the constitutional rights of Mr. Sullivan and Alaska voters. As a matter of law, the normal compensation of a United States Senator is not a sufficient economic incentive to defeat Mr. Sullivan’s status as a public interest litigant.

**B. Even if Not a Constitutional Litigant, the Court Should Award Mr. Sullivan His Full Fees or Heightened Fees in the Interest of Justice.**

If the Court finds that Mr. Sullivan was *not* a constitutional litigant, a heightened fee award “in the interest of justice” pursuant to Rule 508(e)(3) would remain appropriate. This Court has suggested that the factors laid out in Rule 82(b)(3) – among them the complexity of the litigation, the reasonableness of the attorneys’ hourly rates and the number of hours expended, the reasonableness of the number of attorneys used, the attorneys’ efforts to minimize fees, the reasonableness of the claims and defenses pursued by each side, and any vexatious or bad faith conduct – are relevant to determining whether the “interest of justice” supports an appellate fee award. *Stalaker v. Williams*, 960 P.2d 590, 598 n.14 (Alaska 1998) (“The author of this opinion believes that Appellate Rule 508(e) contemplates partial fees . . . . Although Civil Rule 82 does not govern such awards, recent amendments to that rule suggest an analytical structure that appears equally applicable to fees incurred on appeal.”).

Each of these factors supports an award of heightened attorney fees to Mr. Sullivan. As noted above, this matter was litigated on an extraordinarily compressed timeline, which required Mr. Sullivan’s three-attorney counsel to devote nearly all of their attention to this matter around the clock during the extremely expedited briefing schedule necessitated by ballot printing deadlines. Aff. of Counsel in Supp. of Mot. for Attorney Fees at ¶ 12. The rates that were charged in connection with this matter were reasonable, commensurate with counsel’s experience, and a substantial reduction from the rates charged in other matters. *Id.* at ¶ 11. Further, the Division’s position on appeal, like its underlying Final Decision,

was unprecedented and completely unsupported by any law, which required undersigned counsel to carefully research the issues which it advanced on appeal. *Id.* at ¶ 13. The Division's decision to and position on appeal also appeared motivated in large part by partisan objectives which are unusual for a public entity. It would be unfair and contrary to the interests of justice for the Court to allow candidates who have been the subject of unlawful conduct by the Division to be forced to bear the economic brunt of the Division's unsuccessful appeal from the Superior Court's well-reasoned decision.

**C. If the Court finds Mr. Sullivan to Neither be a Constitutional Litigant Nor Entitled to Full or Heightened Fees in the Interest of Justice, It Should Enter an Award of 20% of his Fees**

In the alternative, Mr. Sullivan requests that the Court award him 20 percent of the attorney fees necessarily incurred in this proceeding pursuant to Alaska Rule of Appellant Procedure 508(e)(4). Counsel's fees were reasonable and necessary to defend against the Division's appeal, particularly given the novelty and significance of the issues being litigated. Never before had the Division taken the position that it may exclude candidates it does not like from a ballot simply because it determined that a candidate had not declared candidacy in "good faith." Mr. Sullivan was placed in the difficult position of having to defend against novel and creative appellate arguments which were unsupported by established law. In defending against the Division's appeal, Mr. Sullivan acted to protect not only his constitutional right to run for office, but also the public's interest in participating in elections in which the Division complies with the laws it is tasked with administering, and in which voters may choose from among all qualified candidates.

### **III. CONCLUSION**

Mr. Sullivan respectfully requests that the Court enter an award of attorney fees as set forth herein.

DATED: July 9, 2026

BALLARD SPAHR LLP  
*Attorneys for Appellee Daniel J. Sullivan,  
Jr.*

By: /s/ Jeffrey W. Robinson  
Jeffrey W. Robinson, ABA No. 0805038  
Bryn R. Pallesen, ABA No. 1810104  
Zoe A. Eisberg, ABA No. 1911094

**CERTIFICATE OF SERVICE**

I certify that on July 9, 2026, a true and correct copy of the foregoing was served  
via email on:

Alaska Department of Law (attorney.general@alaska.gov)

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**AFFIDAVIT OF COUNSEL IN SUPPORT OF DANIEL J. SULLIVAN, JR.'S  
MOTION FOR ATTORNEY FEES**

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ss.

1. I, Jeffrey W. Robinson, being first duly sworn, state as follows:
2. I am a partner with Ballard Spahr LLP, counsel for Appellee Daniel J. Sullivan, Jr. ("Mr. Sullivan").

3. Ballard Spahr LLP is a highly-regarded national law firm with lawyers across 18 U.S. offices. I am the managing partner of our firm's Anchorage office.

4. I make this Affidavit in support of Mr. Sullivan's Motion for Attorney Fees. I have personal knowledge of the facts set forth herein and am competent to testify to the same.

5. I am a shareholder in the Commercial Litigation and Dispute Resolution group of Ballard Spahr. In my career, I have tried over 50 cases to verdict, and I regularly handle complex civil matters, including high-profile matters, matters of public interest, and cases involving constitutional questions and issues of first impression. I am routinely ranked by Chambers USA, The Best Lawyers in America, and other top-tier legal publications regarding my skills and expertise as a litigator. I served as lead counsel in this matter.

6. My billable rate is generally set between approximately \$600 and \$1,000 per hour depending on the complexity of the matter and the case needs. For this matter, my rate was \$700 per hour, which is well within the market range for an attorney of like skills, competence, and experience.

7. Attorneys Bryn R. Pallesen and Zoe A. Eisberg, both accomplished commercial litigators, also worked extensively on this case.

8. Ms. Pallesen has worked for several national and international law firms and regularly handles commercial disputes in state and federal court. She has extensive administrative law experience. Ms. Pallesen's hourly rate is generally between \$500-\$750 per hour, typically set in a manner that depends on the complexity of the matter and the case needs. Her rate for this matter, \$500, was well within the market range for an attorney of like skills, competence, and experience.

9. Ms. Eisberg, a commercial litigator, has a notable track record in Alaska civil matters, including election matters, and she has argued and tried numerous cases. Ms. Eisberg's hourly rate is generally between \$500-\$700 per hour, typically set in a manner that depends on the complexity of the matter and the case needs. Her rate for this matter, \$500, was well within the market range for an attorney of like skills, competence, and experience.

11. Our team's rates in this matter were heavily discounted from our standard rates, and were implemented based on the scope of the representation and public interest nature of this case. These rates are commensurate with our team's and our firm's experience and skills and are within the Anchorage-market rate for litigation cases of this nature undertaken by attorneys with similar levels of skill and experience.

12. This matter was briefed and argued on an extraordinarily compressed time frame set first by agreement of the parties and then further compressed by the Court which required me, Ms. Pallesen, and Ms. Eisberg to devote the bulk of our energy to this case and work nearly around-the-clock.

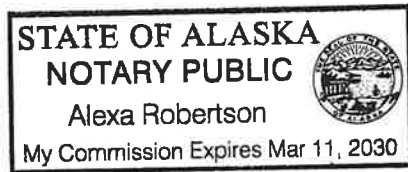
13. Moreover, because of the unprecedented and unsupported nature of the Division's arguments on appeal (at least one of which was not raised below), we were forced to devote additional time and energy to researching and briefing unexpected issues.

14. Appended hereto as **Exhibit A** is an itemized tabulation of the fees charged in connection with this matter for which our client is seeking reimbursement as prevailing party. These fees total \$43,620.00. All fees were reasonably and necessarily incurred. It would not have been possible to competently prepare, litigate, and successfully argue this matter without the participation of all members of our team and their collaborative efforts.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Jeffrey W. Robinson

SUBSCRIBED AND SWORN TO this 9<sup>th</sup> day of July, 2026.



Alexa Robertson  
Notary in and for the State of Alaska  
My commission expires: 3/11/2030

**CERTIFICATE OF SERVICE**

I certify that on July 9, 2026, a true and correct copy of the foregoing was served  
via email on:

Alaska Department of Law (attorney.general@alaska.gov)

Carol Beecher (carol.beecher@alaska.gov)

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By: /s/ Jeffrey W. Robinson

Jeffrey W. Robinson, ABA No. 0805038

Bryn R. Pallesen, ABA No. 1810104

Zoe A. Eisberg, ABA No. 1911094

**EXHIBIT A**

<b>Timekeeper Name</b>	<b>Date</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>	<b>Narrative</b>
<b>Jeffrey W. Robinson</b>	6/26/2026	0.50	700.00	\$350.00	Work on expedited appeal stipulation
<b>Zoe A. Eisberg</b>	6/26/2026	2.60	500.00	\$1,300.00	Review favorable trial court decision and decision denying ARP intervenor status (1.0); confer with B. Pallesen and J. Robinson re: same and Division's potential arguments on appeal (0.6); begin outlining arguments for appellee's brief (1.0)
<b>Bryn R. Pallesen</b>	6/26/2026	4.50	500.00	\$2,250.00	Review Superior Court decision (1.0); outline facts section of appellee brief (3.5)
<b>Jeffrey W. Robinson</b>	6/26/2026	4.00	700.00	\$2,800.00	Review amicus status issues (2.0); research standard of review (2.0).
<b>Jeffrey W. Robinson</b>	6/26/2026	0.60	700.00	\$420.00	Review superior court order.
<b>Bryn R. Pallesen</b>	6/27/2026	8.10	500.00	\$4,050.00	Draft Alaska Supreme Court appellee brief (6.1); review Alaska Supreme Court appellant brief (2.0)
<b>Jeffrey W. Robinson</b>	6/27/2026	7.00	700.00	\$4,900.00	Prepare for argument before Alaska Supreme Court
<b>Zoe A. Eisberg</b>	6/27/2026	6.50	500.00	\$3,250.00	Review and analyze Division's statement of points on appeal (1.0); continue outlining appellate brief (3.5); begin drafting argument distinguishing between substantive and procedural requirements for candidates (2.0)
<b>Bryn R. Pallesen</b>	6/28/2026	9.10	500.00	\$4,550.00	Revise Alaska Supreme Court appellee brief (6.1); prepare for oral argument (3.0)
<b>Jeffrey W. Robinson</b>	6/28/2026	12.00	700.00	\$8,400.00	Review and edit brief (2.0); prepare for oral argument (10.0).
<b>Zoe A. Eisberg</b>	6/28/2026	4.80	500.00	\$2,400.00	Incorporate citations to superior court decision into draft appellee's brief (2.8); revise and finalize same (2.0)
<b>Zoe A. Eisberg</b>	6/28/2026	1.00	500.00	\$500.00	Summarize amicus briefs in preparation for oral argument

					and identify counterarguments to same
<b>Bryn R. Pallesen</b>	6/29/2026	2.00	500.00	\$1,200.00	Prepare for and participate in oral argument before the Alaska Supreme Court
<b>Jeffrey W. Robinson</b>	6/29/2026	7.50	700.00	\$5,250.00	Prepare for argument (3h); argue (1); research TRO re: agency action (3.5).
<b>Zoe A. Eisberg</b>	6/29/2026	4.00	500.00	\$2,000.00	Continued preparation for oral argument (2.5); attend oral argument (1.5)
	<b>TOTAL</b>	<b>74.20</b>		<b>\$43,620.00</b>	