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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOE MILLER, Plaintiff, v. LIEUTENANT GOVERNOR CRAIG CAMPBELL, in his official capacity; and the STATE OF ALASKA, DIVISON OF ELECTIONS, Defendants, And ALASKA FEDERATION OF NATIVES, Intervenor/Amicus.	Case No. 3:10-CV-00252: RRB **ENTRY OF APPEARANCE**

COMES NOW Thomas P. Amodio of the law firm Reeves Amodio LLC, 500 L Street, Suite 300, Anchorage, Alaska 99501, and hereby enters his appearance on behalf of Intervenor/Amicus Alaska Native Federation of Natives in the above-captioned matter and requests that copies of all further pleadings, notices, documents or other papers herein exclusive of process, be made upon Reeves Amodio LLC by serving the undersigned attorneys at 500 L Street, Suite 300, Anchorage, Alaska 99501.

Dated this 15th day of November, 2010 at Anchorage, Alaska.

REEVES & AMODIO, LLC
Attorneys for Intervenor
Alaska Federation of Natives

By: _____
Thomas P. Amodio
Alaska Bar No. 8511142

Certificate of Service

I hereby certify that on the day of November, 2010, a true and accurate copy of the foregoing was sent via U.S. Mail to:

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IN THE UNITED STATES DISTRICT COURT
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JOE MILLER, Plaintiff, v. LIEUTENANT GOVERNOR CRAIG CAMPBELL, in his official capacity; and the STATE OF ALASKA, DIVISON OF ELECTIONS, Defendants, And ALASKA FEDERATION OF NATIVES, Intervenor/Amicus.	Case No. 3:10-CV-00252: RRB **ALASKA FEDERATION OF NATIVES' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND JOINDER IN THE OPPOSITION OF DIVISION OF ELECTIONS**

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The Alaska Federation of Natives ("AFN") opposes Plaintiff Joe Miller's ("Miller") Motion for Preliminary Injunction on the grounds that it would disenfranchise many of AFN's members, all Alaska Natives, whose votes Miller seeks to invalidate because of insignificant misspellings in Lisa Murkowski's name, or imperfections of a similarly minor nature. There is no basis in state or federal election law to impose a "perfection" requirement on a write-in ballot, as Miller claims here. To the contrary, both state law and federal law compel precisely the

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opposite result: state law requires the vote to be counted if the voter's intent can be ascertained, and the federal Voting Rights Act prohibits the kind of wholesale disallowance of validly cast votes that Miller seeks here. *See* discussion below.

Preliminarily, it is worth noting that, though not absolute, the right to vote is one of the fundamental rights found in the U.S. Constitution: "It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" *O'Callaghan v. State*, 914 P.2d 1250, 1253 (Alaska 1996), *cert. denied*, 520 U.S. 1209, *quoting Burdick v. Takushi*, 504 U.S. 428, 433 (1992)(internal citations omitted). But that right is nothing more than an illusion—indeed, it is worthless—unless the person's vote is counted. Under Alaska's election laws, the Division of Election ("Division") must count votes where it can determine the intent of the voter, *i.e.*, for whom the voter intended to vote. *See, e.g., Edgmon v. State*, 152 P.3d 1154, 1156-58 (Alaska 2007).

Less than 3 weeks ago, the Alaska Supreme Court re-affirmed the importance of determining voter intent. *See State v. Alaska Democratic Party ["ADP"]*, Case No. S-14054 (October 29, 2010 Order) ("Order" or "October 29th Order").[1] In its Order, the Court stated: "The decision we reach today is informed by our previous cases regarding the importance of facilitating voter intent." October 29th Order. In that case, the superior court had issued a restraining order requested by plaintiffs which prohibited Division of Elections from providing voters, upon request, with a list of official write-in candidates in the race for U.S. Senate. *Id.* The Alaska Supreme Court

[1] For the Court's convenience, a copy of the October 29th Order is attached hereto.

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reversed the superior court, holding that the Division could properly provide the list to voters who asked for assistance. *Id.*

In reaching its decision, the Court reiterated that "'[w]e have consistently emphasized the importance of voter intent' because the 'opportunity to freely cast [one's] ballot is fundamental.'" October 29th Order, *quoting Edgmon v. State*, 152 P.3d at 1157. The Court also noted that the "'right to vote encompasses the right to express one's opinion and is a way to declare one's full membership in the political community…a true democracy must seek to make each citizen's vote as meaningful as every other vote to ensure the equality of all people under the law.'" *Id., quoting Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995).

Shamefully, Miller seeks precisely the opposite result here: he seeks to make his vote and the votes of his followers more meaningful than the votes of other citizens who have exercised their constitutional right to vote, merely because they voted for a candidate other than Miller. Worse, Miller seeks to ensure the *in*equality of those voters, who invested the time and effort to cast a write-in vote. In Miller's view, voters who have *any* trouble spelling a candidate's name should be disenfranchised, their votes tossed out. Perhaps a voter speaks English as a second language, or struggles with English for some other reason? Perhaps the voter suffers from dyslexia or Parkinson's, or is disabled? Perhaps their handwriting is simply sloppy, or contains personal flourishes? Miller's answer: Throw out all of their votes.

Clearly, this is not the law, nor should it be. As the Alaska Supreme Court recently reiterated, "'[i]n the absence of fraud, election statutes will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disenfranchisement, and to uphold the

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will of the electorate.'" October 29th Order, *quoting Carr v. Thomas*, 586 P.2d 622, 626 (Alaska 1978).

Although Miller relies heavily on a State statute, AS 15.15.360(a)(11), that reliance is both misplaced and misguided. It is misplaced because, despite Miller's many protestations to the contrary, the statute simply does not require perfection in the rendering of a write-in candidate's name. The statute merely requires that a vote write in "the name, as it appears on the write-in declaration of candidacy, of the candidate or the last name of the candidate...." AS 15.15.360(a)(11). Indeed, on the critical issue of the spelling of a candidate's name, the statute is utterly silent.

Miller's reliance is misguided because it ignores Alaska's long history of liberally construing its voting laws to ensure that a citizen's vote is *counted*, not discarded for minor imperfections. Nothing in Alaska law requires "perfection" in the casting of ballots. Although it did not involve write-in ballots, the *Edgmon* decision is instructive here because it involved minor imperfections in the casting of ballots. *Edgmon v. State,* 152 P.3d 1154. In *Edgmon*, the Division rejected several ballots because they were "overvoted." *Id.* at 1155. An overvoted ballot occurs "when a voter 'marks more names than there are persons to be elected to the office.'" *Id., quoting* AS 15.15.360(a)(4). In *Edgmon*, several ballots contained ovals that were completely shaded next to one candidate's names, and ovals that were partially shaded or marked next to a competing candidate's name. *Id.* at 1155. The Division rejected the votes, asserting that the marks in the additional oval invalidated the ballots. *Id.* The Supreme Court overruled the

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Division, and ordered it to count the votes, despite the ballot imperfections, where the voter's intent could be determined.

The *Edgmon* Court correctly held that, if the voter's intent can be reasonably ascertained, his or her vote must be counted. The Court implicitly concluded, therefore, that perfection in casting a vote is not required. Indeed, what good is the fundamental right to vote if a person's vote can be invalidated for inconsequential reasons, such as poor penmanship or minor misspellings?[2] Stated simply, perfectly written and spelled write-in ballots are not required. Minor imperfections of the sort Miller has challenged do not defeat the voter's intent—to cast their ballots for Miller's opponent, Lisa Murkowski.

In addition to being contrary to the Alaska Supreme Court's construction of state election laws, Miller's interpretation of those laws would also violate the federal Voting Rights Act because it would have a disproportionate effect on the votes cast by Alaska Natives and other minorities for whom English is a second (or foreign) language,. *See* 42 U.S.C. § 1971 *et seq.* Under the Voting Rights Act, a person's "race, color, or previous condition" shall not affect that person's right to vote. 42 U.S.C. § 1971(a). Moreover, no person shall "willfully fail or refuse to tabulate, count, and report" the vote of a person who falls within the scope of the Act. 42 U.S.C. § 1973i(a).

In this instance, Miller would have the Division refuse to count thousands of votes of Alaska Natives and others protected by the Act. Throughout Alaska's rural Native communities, voters

[2] In grammar school, the undersigned routinely received Unsatisfactory marks in only one area—"penmanship." Was he therefore required to print "LISA MURKOWSKI" in block letters, rather than cursive script?

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cast their votes overwhelmingly in favor of the write-in candidate—Lisa Murkowski—and against Joe Miller. In some rural districts, in fact, the percentage of write-in votes exceeded 70%, while votes for Miller in the same district equaled only about 10 or 11%. *See, e.g.*, results from District 38, Bethel (74% write-in, 9% Miller) and District 39, Bering Straits (70% write-in, 11% Miller).[3] The only way in which Miller could possibly overcome the substantial vote deficit—currently more than 10,000 votes—would be to have an enormous number of votes invalidated. Undoubtedly, many of the votes Miller wants disallowed were cast by Alaska Natives. Thus, Miller's requirement of "perfection" would have a disparate impact on votes cast by Alaska Natives. Inevitably, it would also have a large impact on votes cast by minorities who are not native English speakers. Plainly, such a result would violate the federal Voting Rights Act. It would also produce a result that would as loathsome as it is undemocratic, one on a par with ballot-box stuffing.

In addition, AFN joins in the Division's Opposition to Miller's Motion, and adopts and asserts the arguments and authorities advanced by the Division therein. Miller's Motion should also be denied because he has not asserted a valid federal claim over which this Court has jurisdiction.[4] The only legitimate claim in this case that would give rise to federal jurisdiction would be one under the Voting Rights Act. *See* discussion above. However, that claim does not

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[3] *See* Division of Election's website, http://www.elections.alaska.gov/results/10GENR/. The percentages of write-in votes from two other rural districts were approximately 60% and 63%. *See id.*, results from District 37 (Dillingham) and District 40 (Kotzebue).

[4] Miller's observation that the U.S. Constitution's delegation of election issues to State legislatures, not its executive or courts, is a red herring. The legislature enacts the law, as it did here, and the courts interpret it, precisely as the Alaska court has done on numerous occasions. Miller's real complaint, therefore, is that the Alaska Supreme Court has interpreted state election law in a way that differs from Miller's own, prejudicial interpretation.

even arise unless and until Miller succeeds in invalidating thousands of properly cast ballots, a result which, as a matter of law and of policy, should be rejected. *See* above. Miller's Motion should also be denied because he has failed to establish "irreparable harm," a necessary element of injunctive relief. Once the vote counting is complete, if he remains unhappy with the result, Miller may file an election contest under state law to challenge the result. Thus, Miller cannot establish that he will suffer irreparable harm unless injunctive relief issues here.

For the foregoing reasons, the Court should deny Miller's Motion for Preliminary Injunction.

Dated this 15th day of November, 2010 at Anchorage, Alaska.

REEVES & AMODIO, LLC
Attorneys for Intervenor
Alaska Federation of Natives

By: _____
Thomas P. Amodio
Alaska Bar No. 8511142

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In the Supreme Court of the State of Alaska

State of Alaska, Division of Elections, Gail Fenumiai, in her capacity as Director of the Division of Elections, and Lisa Murkowski for U.S. Senate,	)	
Petitioners,	)	Supreme Court No. **S-14054**
v.	)	**Order**
Alaska Democratic Party and Alaska Republican Party,	)	
Respondents.	)	

Trial Court Case # **3AN-10-11621CI**

Before: Fabe, Winfree, Christen, and Stowers, Justices. [Carpeneti, Chief Justice, not participating.]

1. In preparation for the upcoming November 2, 2010 election, the Division of Elections anticipated a substantial increase in the number of people wanting to vote with write-in ballots. On October 18, 2010, the Division began offering voters a list identifying approved write-in candidates[1] to voters who appeared at the polls and requested assistance. The list contained the names of the write-in candidates, the candidates' party affiliation, and the candidates' registration status with the Division.

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[1] To qualify as an approved write-in candidate, the person must file a letter of intent not later than five days before the general election. AS 15.25.105. Ballots marked in support of candidates who do not meet this requirement may not be counted. AS 15.25.105. The Division's list included only those candidates who had met the necessary requirements; it was updated whenever additional individuals filed a letter of intent within the appropriate deadline.

The list was only provided to those voters who explicitly requested help with write-in voting "beyond the basic assistance provided by the simple instructional poster," including voters who asked how to spell the name of the candidate for whom the voter wished to cast a ballot.

2. On October 27, 2010, at the request of the Alaska Democratic Party, joined by the Alaska Republican Party, the superior court entered a restraining order prohibiting the Division from providing a list of write-in candidates to voters requesting assistance at the polls. The Division filed an emergency motion for stay, a petition for review, and a motion for expedited consideration. To avoid disruption at the polls, we stayed the superior court's order, granted expedited consideration of the Division's petition for review of the restraining order, and received additional information and argument from the parties.[2] We now grant the Division's petition for review and issue this brief order to provide guidance regarding the appropriate use of the "write-in candidate list" for the 2010 general election.

3. The legislature provided in AS 15.15.240 that, if a voter requests assistance, the Division "shall assist the voter."[3] But 6 AAC 25.070(b) adopted by the

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[2] We acknowledge the efforts of the parties and amicus curiae Alaska Federation of Natives in presenting this briefing and oral argument to us in such expeditious fashion.

[3] In an earlier form, AS 15.15.240 required that, "A qualified voter *who cannot read, mark the ballot, or sign the voter's name* may request an election judge, a person, or not more than two persons of the voter's choice to assist." (Emphasis added.) But in 2000, the Alaska State Legislature amended AS 15.15.240 by removing the phrase

Division, provides that "[i]nformation regarding a write-in candidate may not be discussed, exhibited, or provided at the polling place, or within 200 feet of any entrance to the polling place, on election day." The Division asserts that it has authority to provide a list of write-in candidates and their party affiliations under its statutory obligation to assist voters. The Alaska Democratic Party and the Alaska Republican Party respond that the Division's decision violates the regulation.

4. The decision we reach today is informed by our previous cases regarding the importance of facilitating voter intent. "[W]e have consistently emphasized the importance of voter intent" because the "opportunity to freely cast [one's] ballot" is fundamental.[4] "The right to vote encompasses the right to express one's opinion and is a way to declare one's full membership in the political community

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"*who cannot read, mark the ballot, or sign the voter's name*" and replaced it with the broader phrase "needing assistance in voting." Thus, AS 15.15.240 now reads, "A qualified voter needing assistance in voting may request an election official, a person, or not more than two persons of the voter's choice to assist." Qualified voters requiring assistance *may* include those covered by the old version of the statute, those "who cannot read, mark the ballot, or sign the voter's name," but they *also* include voters who require assistance for other reasons.

[4] *Edgmon v. State, Div. of Elections,* 152 P.3d 1154, 1157 (Alaska 2007); *see also Sonneman v. State,* 969 P.2d 632, 636-37 (Alaska 1998) ("[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil rights, any alleged infringement of the right of the citizens to vote must be carefully and meticulously scrutinized."); *Carr v. Thomas,* 586 P.2d 622, 626 (Alaska 1978) ("In the absence of fraud, election statutes will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disenfranchisement, and to uphold the will of the electorate.").

. . . a true democracy must seek to make each citizen's vote as meaningful as every other vote to ensure the equality of all people under the law."[5]

5. The legislature's statutory mandate that the Division assist voters who request assistance is paramount. Our decisions have consistently held that when a regulation conflicts with a statutory requirement, "it is the regulation that must yield."[6] And we have consistently held that we should "defer to an agency's interpretation of a statute if undefined or ambiguous terms appear in the statute."[7] Regarding regulations we have held, "[w]here an agency interprets its own regulation . . . a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue."[8]

6. We recognize there are myriad reasons why a qualified voter in Alaska may require assistance casting a write-in ballot. Some voters require assistance for medical difficulties or conditions that make spelling or memory recall difficult. Some voters suffer from learning disabilities that interfere with word retrieval, such as aphasia

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[5] *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995).

[6] *Bradshaw v. State, Dep't of Admin., Div. of Motor Vehicles*, 224 P.3d 118, 122 (Alaska 2010).

[7] *Id.*

[8] *Alaska State Emps. Assoc./AFSCME Local 52, AFL-CIO v. State*, 990 P.2d 14, 19 (Alaska 1999).

and dyslexia.[9] Further, some voters may need assistance remembering or spelling the name of a candidate due to conditions impacting their memory or comprehension, including stroke victims who may have word retrieval problems. Other qualified voters may need assistance spelling the name of a candidate for a variety of reasons, including language barriers.[10] Providing the proper spelling of names written in English could assist those voters who want to vote for a particular candidate and need assistance in ensuring that they write the candidate's name correctly.

7. We conclude that when a voter requests assistance in casting a write-in vote and that request for assistance cannot be addressed by the posted general instructions for completing a write-in ballot,[11] the assistance provided to the voter must

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[9] Aphasia is defined as a defect or loss of the power of expression by speech, writing, or signs, or of comprehending spoken or written language, due to injury or disease of the brain. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 105 (28th ed.1994). Dyslexia is defined as the inability to read, spell, and write words, despite the ability to see and recognize letters. *Id.* at 516.

[10] There are twenty different Native Alaskan languages still spoken in Alaska: Aleut, Alutiiq, Iñupiaq, Central Yup'ik, Siberian Yup'ik, Tsimshian, Haida, Tlingit, Eyak, Ahtna, Dena'ina, Deg Hit'an, Holikachuk, Upper Kuskokwim, Koyukon, Tanana, Tanacross, Upper Tanana, Gwich'in and Han. U.S. Census Bureau, Table 4. Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over by State (2000) (available at http://www.census.gov/population/cen2000/phc-t20/tab04.pdf). In addition, the 2000 Census reports that 82,758 Alaskans "speak a language other than English at home," and of those 30,842 "do not speak English very well."

[11] 6 AAC 25.070(d) provides that "[i]nstructions for indicating a write-in choice will be posted in each polling place . . . ."

be related to and commensurate with the voter's request. The Division may provide the list only when its use is tailored to address a voter's request for specific assistance. There will be some circumstances where providing the list will not be necessary to address a voter's request for assistance and other circumstances where providing the list will be necessary to address a voter's request for assistance. For example, if a voter requested the correct spelling of a specified registered write-in candidate's name, it would be unnecessary to provide the entire list to that voter in order to provide the requested spelling assistance.

8. We do agree with the Alaska Democratic Party and Alaska Republican Party that providing information about a write-in candidate's party affiliation is prohibited because party affiliation is "information regarding" a write-in candidate that is not necessary to address a voter's request for assistance. Thus we reiterate our previous order that the "write-in candidate list" shall not include any information other than the write-in candidates' names.

9. We vacate our previous order requiring the Division to mark and segregate ballots cast by voters who use the "write-in candidate list."

Entered at the direction of the court.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOE MILLER, Plaintiff, v. LIEUTENANT GOVERNOR CRAIG CAMPBELL, in his official capacity; and the STATE OF ALASKA, DIVISON OF ELECTIONS, Defendants, And ALASKA FEDERATION OF NATIVES, Intervenor/Amicus.	Case No. 3:10-CV-00252: RRB **MOTION TO INTERVENE OF THE ALASKA FEDERATION OF NATIVES AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

COMES NOW the Alaska Federation of Natives ("AFN") and hereby moves to intervene in this proceeding. Alternatively, AFN requests the Court's permission to submit a brief opposing Plaintiff's motion for injunctive relief. (Due to filing deadlines in this case, AFN has already filed such an opposition.)

Federal Rule 24 governs a party's ability to intervene in a court action such as this one. Fed. R. Civ. P. 24.

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Intervention as a matter of right is governed by Federal Rule 24(a). Fed. R. Civ. P. 24(a). In the Ninth Circuit, courts apply a four-part test to determine if a party has the right to intervene under Rule 24(a)(2):

> (1) the application for intervention must be timely; (2) the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

Southwest Center for Biological Diversity v. Berg, 268 F.3d 810, 817-18 (9th Cir. 2001). *See also United States v. City of Los Angeles,* 288 F.3d 391, 397 (9th Cir. 2002).

The Ninth Circuit has determined that a federal district court must grant a motion to intervene if the applicant satisfies these four requirements. *Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.* [*CRP*], 309 F.3d 1113, 1119 (9th Cir. 2002), *citing United States v. State of Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

As a general rule, moreover, Federal Rule 24(a)(2) is liberally construed in favor of "potential intervenors," *Southwest Center for Biological Diversity*, 268 F.3d at 818, because it "'serves both efficient resolution of issues and broadened access to the courts,'" *U.S. v. L.A.,* 288 F.3d at 397-98, *quoting Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (internal quotation omitted). In applying the test, federal courts are guided primarily by "'practical considerations,' not technical distinctions." *Southwest Center for Biological Diversity*, 268 F.3d at 818, *quoting United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986). As the Ninth Circuit has observed: "'By allowing parties with a *practical* interest in the outcome of

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a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.'" *U.S. v. L.A.*, 288 at 398, *quoting Forest Conservation Council*, 66 F.3d at 1496 n.8 (internal quotation omitted). Thus, where a party seeking intervention will be substantially affected in a practical sense by the determination made in the action, the party is generally entitled to intervene. *U. S. v. Stringfellow*, 783 F.2d at 826.

This test is plainly satisfied here. First, intervention is timely. This issue cannot be disputed: the lawsuit has just been filed. Second, AFN has a real and substantial interest in the subject matter of this action – to protect the voting rights of its members. Third, AFN's interest may be impaired as a consequence of this action. As discussed in its opposition to motion for injunctive relief, many AFN members cast write-in votes, some of which Plaintiff seeks to invalidate. Finally, no other party can adequately represent AFN's interest here. The other parties represent the State and the candidates. AFN speaks for its members, all of whom are Alaska Natives. Accordingly, AFN is entitled to intervene as a matter of right under Rule 24(a).

Alternatively, the Court should permit AFN to intervene in this case. Permissive intervention is governed by Federal Rule 24(b)(2), which provides:

> Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original party.

Fed. R. Civ. P. 24(b). *See* 7C C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil* 2d § 1911 at 354-407 (2d ed. 1986), and 3B J. Moore and J. Kennedy, *Moore's Federal*

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Practice ¶ 24.10 (2d ed. 1987). An applicant seeking permissive intervention must satisfy three threshold requirements. *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). The applicant must show:

> (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims.

Id. Finally, courts will consider whether granting intervention will unduly delay the proceedings, or prejudice adjudication of the rights of plaintiffs or defendants. *See id.*

As discussed above, AFN and its members have a significantly protectable interest in the subject of this action, an interest which may be impaired as a result of the action. At a minimum, therefore, this Court should permit AFN to intervene under Rule 24(b)(2) so that AFN may protect that interest.

The test for permissive intervention is clearly met here as well. First, AFN's issues and arguments and the main action involve the very same questions of law and fact. Second, it cannot be disputed that the motion is timely, inasmuch as the lawsuit has just been filed. Third, the issue of jurisdiction over AFN's claims does not apply here, because AFN asserts no independent claims in this action.[1] Finally, intervention will not unduly delay these proceedings, nor will it prejudice adjudication of the rights of Plaintiff or Defendants. AFN will abide by any briefing schedule agreed to by the parties.

Accordingly, AFN should also be permitted to intervene under Civil Rule 24(b).

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[1] In fact, AFN agrees with the Division of Elections that Miller has failed to state any claims that would provide this Court with jurisdiction. *See* Division of Elections' Motion to Dismiss. *See also* AFN's Joinder in the Division's Motion, and its Opposition to Miller's Motion for Preliminary Injunction.

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Finally, even if it denies AFN's motion to intervene, the Court should allow AFN to participate in this proceeding as amicus curiae ("Amicus"). For the reasons discussed above, AFN should be given the opportunity to protect its interests and those of its members to have their ballots cast for a write-in candidate counted along with the tens of thousands of other votes cast in the race to elect one of Alaska's Senators.

Dated this 15th day of November, 2010 at Anchorage, Alaska.

REEVES & AMODIO, LLC
Attorneys for Intervenor
Alaska Federation of Natives

By: _____
Thomas P. Amodio
Alaska Bar No. 8511142

Certificate of Service

I hereby certify that on the day of November, 2010, a true and accurate copy of the foregoing was sent via U.S. Mail to:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOE MILLER, Plaintiff, v. LIEUTENANT GOVERNOR CRAIG CAMPBELL, in his official capacity; and the STATE OF ALASKA, DIVISON OF ELECTIONS, Defendants, And ALASKA FEDERATION OF NATIVES, Intervenor/Amicus.	Case No. 3:10-CV-00252: RRB **AFN'S JOINDER IN THE DIVISION'S MOTION TO DISMISS**

COMES NOW Intervenor/Amicus Alaska Native Federation of Natives and hereby joins in the Division of Election's Motion to Dismiss and adopts and asserts the arguments and authorities advanced by the Division therein. *See also* AFN's Opposition to Miller's Motion for Preliminary Injunctions. Accordingly, the Court should dismiss Miller's complaint in this matter for the reasons set forth in the Division's Motion.

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Dated this 15th day of November, 2010 at Anchorage, Alaska.

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