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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

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.

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By: _____
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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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