

**SB**

**31**

<TARGET><BILL>SB 31</BILL><SUBJECT>SB  
31</SUBJECT><COMM>HSTA27</COMM></TARGET>

# HOUSE COMMITTEE REPORT

(7)  
Date Referred to Committee: February 16, 2011

FURTHER REFERRALS: Judiciary

Date of Committee Action: 4-7-11

The STATE AFFAIRS Committee considered:

CSSB 31(JUD)

CS FOR SENATE BILL NO. 31(JUD)  
"An Act relating to the counting of write-in votes."

SB 31 COUNTING OF WRITE-IN VOTES

Recommends it be replaced with  HCS or  CS for CSSB 31 (STA)  
For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_  Same Title  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- DHS
- LWF
- LAW
- LEG
- MVA
- DNR
- DPS
- REV
- DOT
- UA

| <u>NEW FISCAL NOTES</u>                  |                  |        |        |      |
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| *FN# is assigned by Chief Clerk's Office |                  |        |        |      |
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| <u>PREVIOUS FISCAL NOTES</u> |                  |        |        |      |
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| <u>Signing with recommendations</u>      | Printed Last Name | DP | DNP | NR | AM |
|--|-------------------|----|-----|----|----|
| <i>Peggy Wilson</i>                      | WILSON            |    |     |    | X  |
| <i>Paul Seaton</i>                       | Seaton            | X  |     |    |    |
| <i>Pat Peterson</i>                      | Peterson          | X  |     |    |    |
| <i>Max Krueger</i>                       | Krueger           | √  |     |    |    |
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| <sup>Vice</sup> Chair: <i>Wes Keller</i> | Keller            |    |     |    | X  |
| Chair:                                   |                   |    |     |    |    |

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 7, 2011

**SUBJECT:** Conceptual amendment to CSSB 31(STA) adopted into HCS CSSB 31(STA) (Work Order No. 27-LS0350\X)

**TO:** Representative Bob Lynn  
Chair of the House State Affairs Committee  
Attn: Nancy Manly

**FROM:** Alpheus Bullard <sup>1243</sup>  
Legislative Counsel

This memorandum accompanies the bill described above. I have one comment.

The House State Affairs Committee adopted a conceptual amendment to the bill's sec. 15.15.365(c).

That subsection provides:

(c) If the director determines that the requirements of (a) of this section have been met, the director shall establish the place and date for counting those write-in votes, and the director, or a designee of the director, shall count all write-in ballots under AS 15.15.360(d).

As conceptually amended, it would provide:

(c) If the director determines that the requirements of (a) of this section have been met, the director shall establish the ~~place and~~ date for counting those write-in votes *which shall occur at the public place where the ballots are physically shipped following the elections*, and the director, or a designee of the director, shall count all write-in ballots under AS 15.15.360(d).

I understand this conceptual amendment to require that write-in ballots be counted in a public place. Other intended effects of the conceptual amendment are less clear to me. It seems that write-in ballots are necessarily going to be counted at a location where the ballots are. Under this CS, can the ballots be sent to the division and then transferred to a public place that will better accommodate the counting of the ballots?

Representative Bob Lynn

April 7, 2011

Page 2

After listening to the minutes of the committee hearing, I've drafted the conceptual amendment as an additional subsection that reads:

(e) Write-in ballots shall be counted by the director, or a designee of the director, in a public place at the location where write-in ballots are sent for counting following an election.

Please let me know if my change is faithful to the intentions of the committee.

TLAB:plm  
11-232.plm

Enclosure

## Nancy Manly

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**From:** Nancy Manly  
**Sent:** Thursday, April 07, 2011 4:34 PM  
**Subject:** CSSB 31 Final CS and Legal Memo  
**Attachments:** FINAL CS for SB 31 Version X 4-7-11.pdf; 4-7-11 Memo Legal Alpheus Bullard SB 31 on conceptual amendments.pdf

HSTA Committee Member Staff:

Attached is the final HCS for CSSB31 Version X and a legal memo from Alpheus Bullard concerning the conceptual amendment for your review. I will be taking the bill to the Chief Clerk's office this afternoon.

Nancy Manly, Chief of Staff and  
House State Affairs Committee Aide *for*  
**Representative Bob Lynn**  
**House District 31**  
907-465-2794 Fax: 907-465-4316

# LEGAL SERVICES

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Representative Bob Lynn  
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Please let me know if my change is faithful to the intentions of the committee.

TLAB:plm  
11-232.plm

Enclosure

**HOUSE CS FOR CS FOR SENATE BILL NO. 31(STA)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS THOMAS, FRENCH, MENARD, AND WIELECHOWSKI**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the counting of write-in votes."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1.** AS 15.15.360 is amended by adding a new subsection to read:

4 (d) Write-in votes shall be counted according to the following rules:

5 (1) writing in the name of a candidate whose name is printed on the  
6 ballot does not invalidate a write-in vote unless the director determines, on the basis of  
7 other evidence, that the ballot was so marked for the purpose of identifying the ballot;

8 (2) in order to vote for a write-in candidate, the voter must write in the  
9 candidate's name in the space provided and fill in the oval opposite the candidate's  
10 name in accordance with (a)(1) of this section;

11 (3) a vote for a write-in candidate, other than a write-in vote for  
12 governor and lieutenant governor, shall be counted if the oval is filled in for that  
13 candidate and if the name of the candidate, as it appears on the write-in declaration of  
14 candidacy, or the last name of the candidate is written in the space provided;

15 (4) if the write-in vote is for governor and lieutenant governor, the vote

1 shall be counted if the oval is filled in and the names of the candidates for governor  
 2 and lieutenant governor, as they appear on the write-in declaration of candidacy, or the  
 3 last names of the candidates for governor and lieutenant governor, or the name of the  
 4 candidate for governor, as it appears on the write-in declaration of candidacy, or the  
 5 last name of the candidate for governor is written in the space provided;

6 (5) in counting votes for a write-in candidate, the director shall  
 7 disregard any abbreviation, misspelling, or other minor variation in the form of the  
 8 name of a candidate if the intention of the voter can be ascertained.

9 \* **Sec. 2.** AS 15.15 is amended by adding a new section to read:

10 **Sec. 15.15.365. Counting of write-in votes in general election.** (a) Write-in  
 11 votes on a general election ballot shall be counted by candidate only if the aggregate  
 12 of all votes cast for all write-in candidates for the particular office is

13 (1) the highest number of votes received by any candidate for the  
 14 office; or

15 (2) the second highest number of votes received by any candidate and  
 16 the difference between the total number of votes received by the candidate having the  
 17 highest number of votes and the aggregate of all votes cast for all write-in candidates  
 18 for the office is less than the percentage necessary for a recount at the state's cost  
 19 under AS 15.20.450.

20 (b) Write-in votes that do not meet the requirements of this section may not be  
 21 individually counted under this section.

22 (c) If the director determines that the requirements of (a) of this section have  
 23 been met, the director shall establish the date for counting those write-in votes, and the  
 24 director, or a designee of the director, shall count all write-in ballots under  
 25 AS 15.15.360(d).

26 (d) This section does not apply to the counting of federal write-in absentee  
 27 ballots submitted under 42 U.S.C. 1973ff.

28 (e) Write-in ballots shall be counted by the director, or a designee of the  
 29 director, in a public place at the location where write-in ballots are sent for counting  
 30 following an election.

31 \* **Sec. 3.** AS 15.15.360(a)(9), 15.15.360(a)(10), 15.15.360(a)(11), and 15.15.360(a)(12) are

1 repealed.

# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Member**  
Judiciary Committee  
Energy Committee  
Joint Armed Services Committee  
Military & Veterans Affairs Committee

**Finance Subcommittees**  
Administration  
Corrections  
Military and Veterans Affairs

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

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**FAX**

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 2

Phone: 907-465-4931  
Fax: 907-465-4316

Re FINAL CS for CS for Senate Bill 31 (27-LS0350\E)

4/07/2011

CSHB 31 moved out of the House State Affairs Committee this morning with changes to Version E. Please draft a final CS with the following amendments included:

**Conceptual Amendment #1 (Seaton)**  
See attached

**Amendment #1 to Conceptual Amendment #1 (Gruenberg)**  
*insert **public*** between the words "the place" so it reads: ... which shall occur at the public place where the ballots are... See the attached written Conceptual Amendment to better understand.

Seaton

passed

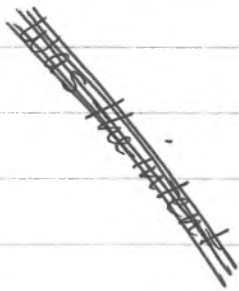
# Conceptual Amendment #1

page 2 line 23 delete "place and"

Page 2 line 24 insert following "votes"  
insert

"which shall occur at the <sup>public</sup> place  
where the ballots are physically  
shipped following the elections"

Bruesberg amend to <sup>conceptual</sup> amend #1  
insert public



# ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

## Senate Bill 31: An Act relating to the counting of write-in votes.

### Sponsor Statement

“We start with the bedrock principle that the right of the citizens to cast their ballot and thus participate in the selection of those who control their government is one of the fundamental prerogatives of citizenship.”

- Alaska Supreme Court, (*Miller v. Treadwell*)

Last fall, Alaskans reelected Lisa Murkowski to the United States Senate as a write-in candidate with nearly 100,000 votes statewide, something not witnessed by our nation in over fifty years. Because of the unique nature of write-in votes and confusion in state statute there was substantial debate over the validity of nearly 12,000 ballots. In the suit that followed, (*Miller v. Treadwell*), Joe Miller argued that these ballots should not be counted because the name written was not *identical* to the way Senator Murkowski’s name appeared on her declaration of candidacy. **Superior Court Judge William Carey and the Alaska Supreme Court both ruled against this argument, finding that judging the validity of a ballot based on the intent of the voter is paramount.**

Much of this case centered on the interpretation of state statute regarding the counting of ballots. Each court, in their findings, including Federal District Judge Ralph Bieistline, found that AS 15.15.360 was badly worded and left open for legitimate debate. **Senate Bill 31 looks to address this language by inserting a section that would place the intention of the voter above minor variations, mismarks or abbreviations.**

Senate Bill 31 follows on over fifty years of consistent precedent in support of a voter’s intent and enfranchisement. In strengthening this statute by inserting federally recognized language from the Uniformed and Overseas Citizens Absentee Voting Act, **SB 31 will reduce potential future litigation while strengthening the public’s perception of Alaska’s democratic process.**

I urge you to join me in supporting Senate Bill 31.



## LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

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(907) 465-3908 fax  
research@legis.state.ak.us

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### Memorandum

TO: Senator Joe Thomas  
FROM: Susan Warner, Legislative Analyst  
DATE: January 21, 2011  
RE: Legal History of Counting Write-in Votes in Alaska  
*LRS Report 11.113*

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***You asked about the history in Alaska of write-in vote counting. You were particularly interested in legal precedents, and you asked for copies of pertinent decisions.***

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Within certain parameters defined by the U.S. Constitution, states have the authority to make their own election laws, and most states allow voters to write in the name of a candidate who is not listed on the ballot. Legal challenges occur most often in close races; courts then attempt to balance the constitutional right of citizens to elect the person of their choice against state laws that are designed to ensure efficient and orderly elections, among other things. The Alaska Supreme Court has consistently held that the right of citizens to select their government representatives is a fundamental prerogative of citizenship and should not be impaired or destroyed by "strained" statutory constructions.<sup>1</sup> As such, the Court in the most recent case (*Miller v. Treadwell*, 2010) held as follows:

Voter intent is paramount, and any misspelling, abbreviation, or other minor variation in the form of the candidate's name on a write-in ballot does not invalidate a ballot so long as the intention of the voter can be ascertained.<sup>2</sup>

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#### ***Alaska Voting Law***

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As you know, Alaska law does not allow write-in voting during primary elections, but provisions must be made for write-in voting on general election ballots. Alaska's rules for counting write-in ballots specify that a vote for a write-in candidate "shall be counted" if the oval is filled in and if the candidate's last name, or the candidate's name as it appears on the declaration of candidacy, is written in the space provided.<sup>3</sup> The law further specifies that the rules on counting ballots are, without exception, mandatory.

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#### ***Miller v. Treadwell***

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Voter intent prevailed in litigation over the counting of write-in ballots in Alaska's 2010 U.S. Senate race. Joe Miller, the Republican senate candidate on the general ballot, argued that write-in votes for his opponent should not have been counted unless the candidate's name was spelled flawlessly. The Alaska Supreme Court ruled against Mr. Miller in *Miller v. Treadwell*, and the Court opinion begins with powerful language in support of voter enfranchisement. The Court proclaims that a citizen's right to vote is of *profound importance; key to participatory democracy; and a polar, cardinal, and bedrock principle*. The Court also notes that such longstanding principles have been consistently applied to election issues in Alaska over the past 50 years.

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<sup>1</sup> *Carr v. Thomas*, 586 P.2d 622, 627(1978). We provide this document as Attachment A.

<sup>2</sup> *Miller v. Treadwell*, Alaska Supreme Court No. S-14112, December 22, 2010. Please note the recitation of pertinent case history entitled "Longstanding Alaska Election Principles" on page 2 of that decision (Attachment B).

<sup>3</sup> 15.15.360(a)(11).

Mr. Miller had argued that Alaska statutory language excludes any vote that is not spelled perfectly. The Superior Court held that if the legislature intended a candidate's name to be spelled perfectly, legislators would have used words like *exactly*, *precisely*, or *perfectly*.<sup>4</sup> The Supreme Court agreed and held that Alaska's statutory language is meant to be *inclusive* rather than *exclusive*:

It is designed to ensure that ballots are counted, not excluded. And this inclusiveness is consistent with the overarching purpose of an election: to ascertain the public will. . . . Voter intent is paramount, and any misspelling, abbreviation, or other minor variation in the form of the candidate's name on a write-in ballot does not invalidate a ballot so long as the intention of the voter can be ascertained.

Additionally, the Court noted that Alaskan voters arrive at their polling places with a variety of backgrounds and capabilities, including some being raised without English as their first language, and such issues should not take away a person's right to decide which candidate to elect:

We must construe the statute's language in light of the purpose of preserving a voter's choice rather than ignoring it.

#### Legal Precedents

The decision reached in *Miller v. Treadwell* reflects the tendency for all U.S. courts to favor voter intent over ambiguous statutory language, but election scholar Richard Hasen asserts that the Alaska Supreme Court—even before *Miller*—appears to have gone the furthest in giving emphasis to voter intent.<sup>5</sup> Alaska's 1978 precedent-setting case, *Carr v. Thomas*, involved the question of counting certain ballots, and Alaska's highest court declared that the state would need "clear and unmistakable" statutory language to take away a citizen's right to have his or her voted counted.

Alaska courts have consistently emphasized the importance of voter intent. The decisions for the following Alaska cases are attached to this document:

- *Willis v. Thomas*, 600 P.2d 1079 (1979). The Alaska Supreme Court depended on a determination of voter intent in ruling on the results of a recount of ballots in Senate District F (Attachment D).
- *Fischer v. Stout*, 741 P.2d 217 (1987). The Alaska Supreme Court ruled on whether certain votes or classes of votes were properly counted or rejected in the 1986 race for Senate District H. The Court held that ballots marked with a pen rather than punched still showed clear voter intent and should be counted (Attachment E).
- *Finkelstein v. Stout*, 774 P.2d 786 (1989). The Alaska Supreme Court ruled on a ballot recount for Seat A in House District 13. The Court considered voter intent with regard to questioned signatures on absentee ballots (Attachment F).
- *Edgmon v. Moses*, 152 P.3d 1154 (2007). The Alaska Supreme Court ruled on the results of a recount in the District 37 Democratic primary. Considering ballot markings, the Court found that marks clearly intended as votes should be counted (Attachment G).

<sup>4</sup> *Joe Miller v. Lieutenant Governor Craig Campbell*, Case No. IJU-10-1007CI, Memorandum of Decision and Order on Motion for Summary Judgment and Cross Motions, December 10, 2010. We provide this document as Attachment C.

<sup>5</sup> Richard L. Hasen, "The Democracy Canon," *Stanford Law Review*, Vol. 62, 2009, p. 87.

### Addressing Irregular Write-in Votes in Other States

Although Alaska statute does not address the inevitable misspellings and illegibility of written-in names, many states attempt to clarify how such votes will be counted, and these rules always give primacy to voter intent. There are variations among states, but this directive, by its very nature, is subjective and gives vote-counters the authority to determine who a voter intended to elect. Here are examples from four states:

- California accepts a “reasonable facsimile” of a write-in candidate’s name (Cal. Elec. Code § 15342).
- Nebraska will count a write-in vote without the first name of the candidate, and the write-in name must be “reasonably close to the proper spelling” (Neb. Rev. Stat. § 32-615).
- Delaware allows for a “misspelled or minor variation” of a write-in candidate (Del. Code Ann. Title 15, § 4972 (b)(8)).
- Washington election officials are required to “exercise all reasonable efforts to determine the voter’s intent (WAC 434-262-160).

Some states provide further guidance on counting irregular write-in votes. Washington State has an extensive, pictorial booklet on how election officials are expected to count nearly every deviation from what might be considered a standard marking, including samples of acceptable and unacceptable write-in votes. Attachment H is the portion of the booklet that deals with write-in votes, and the entire document can be viewed at [http://www.sos.wa.gov/\\_assets/elections/2009StatewideStandardsonWhatisaVote.pdf](http://www.sos.wa.gov/_assets/elections/2009StatewideStandardsonWhatisaVote.pdf).

We hope this is helpful. If you have questions or need additional information, please let us know.

## Quotes of significance to Senate Bill 31 from the 2010 United States Senate Race Court Findings

"AS 15.15.360(a)(11) may not be well written, and it is clearly subject to different interpretations...AS 15.15.360, in general, is terse and somewhat unclear in comparison to the other state statutes. The statute, as Miller reveals, does lack the express language that most states have adopted which permits minor misspellings and errors." - Miller v. Campbell, pg. 15 Superior Court Judge William Carey

"While the issue may be moot, the public interest exception applies...this scenario is certainly susceptible to repetition any time a major write in effort for election to a public office in Alaska occurs." - Miller v. Campbell, pg. 8 Superior Court Judge William Carey

"We start with the bedrock principle that "the right of the citizens to cast their ballot and thus participate in the selection of those who control their government is one of the fundamental prerogatives of citizenship." - Alaska Supreme Court Miller v. Treadwell pg. 3

"In light of our strong and consistently applied policy of construing statutes in order to effectuate voter intent, we hold that abbreviations, misspellings or other minor variations in the form of the name of a candidate will be disregarded in determining the validity of the ballot, so long as the intention of the voter can be ascertained." - Alaska Supreme Court Miller v. Treadwell pg. 6

"Our interpretation of AS 15.15.360...is also consistent with the federally mandated standard for counting write in votes for those voters living or serving in uniform overseas. The Uniformed and Overseas citizens Absentee Voting Act provides that in counting the ballot of a uniformed voter or other voter who is overseas "any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or political party shall be disregarded in determining the validity of the ballot if the intention of the voter can be ascertained." - Alaska Supreme Court Miller v. Treadwell pg. 7

"The Alaska Supreme Court did not make a finding clearly contrary to the face of the statute and its findings were entirely consistent with the State's past practices of making voter intent a priority. This is not to say that Miller's technical arguments are frivolous, for it is easy to understand his view as to the proper interpretation of AS 15.15.360 (a)(11). But it is just as easy to accept the interpretation given by the Alaska Supreme Court. What we have before us is a poorly drafted state statute. Wisdom would suggest that the Alaska Legislature act to clarify it to avoid similar disputes in the future." – Federal District Court Judge Ralph Bieistline pg. 7

## About the Disability Law Center

The Disability Law Center of Alaska is a private non-profit, consumer-directed organization incorporated in 1977, and designated as the Statewide Protection and Advocacy agency to promote the legal and human rights of individuals with physical and/or mental disabilities.

Consumers may access our educational, administrative, and legal services through our four offices, located in Anchorage, Juneau, Bethel and Fairbanks. Services are prioritized through a public input process that occurs annually.

Our advocacy is geared toward improving the lives of individuals and toward creating systemic change for all Alaskans with disabilities in six life domains: health care, individual and community supports, education, transportation, employment and housing.

## Disability Law Center Offices

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Juneau, Alaska 99801  
907-586-1627

## Protection and Advocacy for Voting Access



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## Division of Elections

### **Director's Office**

Phone (907) 465-4611  
Fax (907) 465-3203  
TTY (907) 465-3020

Court Plaza Building  
240 Main Street, 4th Floor  
Juneau, AK 99801

## DISABILITY LAW CENTER OF ALASKA

3330 ARCTIC BLVD., SUITE 103  
ANCHORAGE, ALASKA 99503

1(800) 478-1234  
1(907) 565-1002

## What is HAVA?

On October 29, 2002, the Help America Vote Act (HAVA) was signed into law. This law requires states to establish, expand and improve access to voting areas and increase voter participation by individuals with disabilities.

HAVA monies are used by states in collaboration with local governments to enhance accessibility to polling places for individuals with disabilities; provide outreach to the disability community about polling accessibility; and to train poll workers, elections officials and volunteers on methods to promote access and increase voter participation for individuals with disabilities.

## What is PAVA?

HAVA has provided specific funds to Protection and Advocacy Systems to ensure that people with disabilities are able to fully participate in the voting process. With this money, Disability Law Center created PAVA – *Protection and Advocacy for Voter Access*. Access includes registering to vote, casting a vote, and accessing polling places. These funds allow PAVA to:

- Develop a disability awareness training for election officials to focus on how to support a person with a disability to vote privately and independently.
- Provide assistance to election officials in surveying polling places and recommending changes to achieve accessibility.
- Develop informational material for people with disabilities on rights in the voting process. This material will be used to educate people with disabilities about their voting rights.

## Requirements to Vote

*A person may register to vote if that person:*

- Is a citizen of the United States
- Is at least 18 years old or will be 18 within 90 days of registering to vote
- Is a resident of Alaska
- Is not a convicted felon, unless unconditionally discharged
- Has not been deemed incompetent to vote
- Is not registered to vote in another state

*A person is eligible to vote if that person:*

- Is a citizen of the United States
- Is 18 years of age or older
- Has registered to vote in the proper election jurisdiction (neighborhood) at least 30 days prior to the election
- Is not a convicted felon

**Our view: No doubt**

***State smart to review election, need for any changes in law***

(01/03/11 19:17:26)

When federal Judge Ralph Beistline tossed Joe Miller's challenge to Alaska's U.S. Senate election, he granted that Alaska's law could be clearer about the primacy of voter intent.

He was right.

The requirement that a write-in candidate's name be written as it appears in its state-qualified form led to the arguments over spelling and how close voters had to be.

In addition, the state's decision to provide, at voters' request, lists of qualified write-in candidates prompted unsuccessful suits by both the Republican and Democratic parties.

While we disagreed with the Division of Elections on the latter point, state courts upheld their call. And the division ran a straight, fair election.

Lawmakers, however, should revisit the law to make clear that voter intent, not spelling, is the key test in deciding which write-in votes count, and to decide whether write-in lists either will or won't be provided at polling places in the future.

The division did well by Alaskans. But clarity in the law may help keep future elections out of court.

**BOTTOM LINE:** Election law should leave no room for doubt.



ALASKA FEDERATION  
OF NATIVES

## Memorandum

**To:** Grier Hopkins, Aide to Senator Joe Thomas  
**From:** Adrian LeCornu, Special Assistant AFN  
**Date:** 1/26/2011  
**Re:** Testimony in regards to SB 31

---

Attached to this is the Testimony of Ralph Anderson, Co-Chair of Alaska Federation of Natives. Alaska Federation of Natives is the largest Alaska Native group within the state of Alaska, representing over 190 villages and tribal councils, 11 non-profits and 12 of the largest corporations in the state.

While we do not take a position on SB 31, we do support the language within the bill and believe that it strikes the right tone. If this bill were to be merged with others or amended, we would like a chance to review the resulting bill to insure that the tone of this bill is not lost.

We would like to submit the attached document for the Alaska Senate State Affairs committee's consideration. We thank you for taking up this issue.



ALASKA FEDERATION  
OF NATIVES

**Testimony of  
Ralph Andersen, Co-Chair  
Board of Directors  
Alaska Federation of Natives**

TESTIMONY before State Affairs Committee, Senate Bill 31, 27<sup>th</sup> Alaska Legislature

For the record, my name is Ralph Andersen. I am Co-Chair of the Alaska Federation of Natives' Board of Directors. AFN is the largest and oldest statewide Alaska Native organization in Alaska. Its membership includes the 13 regional Native corporations, 12 regional non-profits that contract and run federal and state programs and over 200 villages and tribes throughout the State. Our organization represents about 100,000 Alaska Natives from all around this state.

I would like to preface my comments today by noting that the AFN Board has taken no formal position on this bill. With that being said, we do believe that a bill that addresses our concerns and the concerns of many Alaska residents should be moved along and passed. The events that prompted this bill were historic and are now well documented, not only politically, but also legally with the action of the Alaska Supreme Court.

Our belief has always been and will continue to be the enfranchisement of those we represent. We would hope that the committee would consider the demographics in Alaska, and especially those in rural Alaska. There are many diverse cultures in this State and many Alaska residents whose first language is not English. In parts of rural Alaska one primary Alaska Native language is spoken with a rudimentary knowledge and use of English. Members of the Committee should also consider the population dynamics of their own districts. In Anchorage, for example, you could find over 87 different languages spoken in homes, and not everyone has achieved total fluency of the English language.<sup>1</sup>

There are also questions around education, and the ability to read and write in English. Reading and writing for some is challenging, not to mention the additional challenges faced by those with learning disabilities. We want to avoid creating a law that disenfranchises people because of their education, being impaired or handicapped, and as a result unintentionally or mistakenly placing the wrong vote.

With these considerations, I am certain you understand that memorizing the exact correct spelling of candidates' names may be difficult, even for those with a good education. We support the language on Page 2, Line 27-29 of the bill that "In counting votes for a write-in candidate, the election board shall disregard any abbreviation, misspelling, or other minor variation in the form of the name of a candidate if the intention of the voter can be ascertained." We believe this language is affirmative on the rights of the voter. I thank you for allowing these comments to be included for the record.

---

<sup>i</sup> Anchorage School District

Politics

Print

# No 'spelling bee' election in Alaska

Ruth Walker | Christian Science Monitor | Dec 7, 2010

The 2010 elections, the gift that keeps on giving, have imparted new meaning to the phrase "all over but the shouting."

At this writing, Lisa Murkowski looks likely to be headed back to Washington as Alaska's senior senator and into the history books as the first candidate since Strom Thurmond in 1954 to win election to the Senate as a write-in. Her victory, if confirmed, as is now expected, will turn in part on a decision to honor ballots from voters who merely approximated the correct spelling of her name.

How should we feel about that? Are standards slipping irretrievably in the republic?

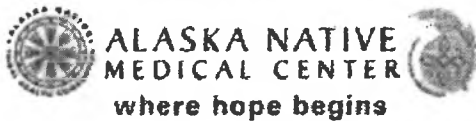
Her Democratic opponent has conceded defeat. But her Republican opponent, Joe Miller, whose own name was easier to spell and was, moreover, actually on the ballot, has had other ideas.

His campaign has challenged all ballots that fall short orthographically. State authorities, on the other hand, have been counting as valid all those who came close to spelling "Murkowski" right.

Alaskan law requires electoral officials to take into account "voter intent" when counting write-in votes. This standard is common across the country, it turns out. The Los Angeles Times quoted Richard Winger, editor of the election law journal Ballot Access News: "I am not aware of any state that says write-ins can't be counted unless the spelling is perfect."

## Anchorage's only Trauma Center

at the University of Alaska Anchorage



As a copy editor, I'm with Mr. Miller. What kind of democracy can't spell its leaders' names right?

As a student of language, though, I understand that spoken language came first, and that the written form of any word is an approximation of the spoken form; it's not the other way around. After all, there's a reason we call it "language" - from the Latin word for "tongue" - and not "scribble," or something like that.

The case for a more generous interpretation of what counts as a valid vote for a write-in candidate starts with this primacy of spoken language.

Much of what we recognize as democracy began

with spoken language, conversations, and debates in halls of assembly and the public square. Democracy was then furthered by written communication, especially after the development of the printing press.

More recently, speech has gained a boost from new forms of communication - from FDR's fireside chats to YouTube - that have let us hear, and hear repeatedly, what we otherwise might only have read.

Of course we need both modes: Writing - "print" - allows for rereading, for reflection and the consideration of nuance. Speech, especially live, in-person speech, provides immediacy and the expression of feelings.

[print](#)

## **Fix the law: Write-in ballot statute needs repair by Legislature**

---

12.30.10 - 11:53 pm

### **Editorial**

Federal Judge Ralph Beistline wrote in his Tuesday ruling dismissing Joe Miller's amended federal lawsuit in the U.S. Senate race that he can understand Mr. Miller's viewpoint regarding the wording of state election law.

Judge Beistline also said he can easily see the state's view when it comes to the law governing how a write-in candidate's name must appear on the ballot in order to be considered a valid vote.

The judge ultimately deferred to the Alaska Supreme Court, which ruled in Mr. Miller's state lawsuit that the name of Sen. Lisa Murkowski didn't have to be spelled correctly. Mr. Miller argued, in both state and federal court, that Alaska law required a precise spelling.

But Judge Beistline found the Alaska Supreme Court "did not make a finding clearly contrary to the face of the statute and its findings were entirely consistent with the state's past practice of making voter intent a priority."

But the judge, in his ruling, pointedly noted a problem:

"This is not to say that Miller's technical arguments are frivolous, for it is easy to understand his view ...

"What we have before us is a poorly drafted state statute. Wisdom would suggest the Alaska Legislature act to clarify it to avoid similar disputes in the future. For now we have to work with what we have and that is what the Alaska Supreme Court has done."

Judge Beistline's message is clear and sound: The Legislature should clarify the law. It should do so this coming session while the subject is fresh.

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## Supreme Court takes reasonable approach in election challenge

by Dermot Cole / [cole@newsminer.com](mailto:cole@newsminer.com)

Dec 22 2010 | 757 views | 0 comments | 5 shares

**FAIRBANKS** — The Alaska Supreme Court said it relied on principles applied consistently during the past 50 years to reject Joe Miller's court case and approve the state's approach to counting ballots.

The decision Wednesday helps clear the way for Sen. Lisa Murkowski's re-election to be certified before the next Congress. Miller may pursue a federal court fight, however.

This unanimous ruling is not surprising, given the numerous decisions the court has made in contested elections over the years. The ruling also is reasonable.

The court declared that Miller is dead wrong in claiming state law requires the names of write-in candidates be spelled correctly.

"Our prior decisions clearly hold that a voter's intention is paramount," the four justices said. "In light of our strong and consistently applied policy of construing statutes in order to effectuate voter intent, we hold that abbreviations, misspellings or other minor variations in the form of the name of a candidate will be disregarded in determining the validity of the ballot, so long as the intention of the voter can be ascertained."

The court rejected Miller's argument that anything less than his point of view, supporting correct spelling, would threaten the integrity of the election process.

"But it is Miller's interpretation of the statute that would erode the integrity of the election system, because it would result in disenfranchisement of some voters and ultimately rejection of election results that constitute the will of the people," the judges said. "We have consistently construed election statutes in favor of voter enfranchisement."

The court also found its interpretation of state law is consistent with federal and state rules allowing misspellings on the federal write-in absentee ballot for military voters and civilians overseas.

"Miller's proposed construction of the statute would require us to impose a different, and more rigorous, voting standard on domestic Alaskans than on those who are serving in the military or living abroad," the court said.

Other states use the same approach as Alaska in counting ballots and "we see no basis for Miller to argue that the application of the standard in this election violates equal protection under either the state or federal constitution."

The portion of state law Miller said requires perfect spelling really applies to pseudonyms, the court said.

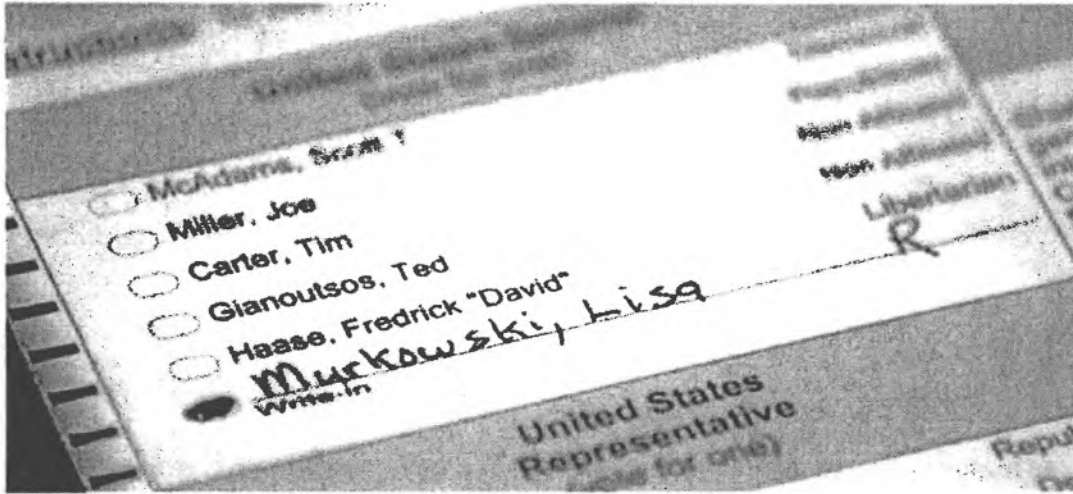
"The 'nickname' field allows a candidate to ensure that his or her pseudonym 'appears on the write-in declaration of candidacy' so that the write-in votes listing that pseudonym will count. Thus, the word 'appears' relates to a pseudonym's possible presence on the ballot, not the particular form of the vote and demonstrates that the statute is inclusive — it is designed to include, rather than exclude, votes."

...

**GIVING THANKS:** The Mariutto family wants to pass along thanks to the people of Fairbanks for prayers and support for Sabrina, the Monroe High School student who has been stricken with cancer.

Fabio Mariutto, her father, said he is grateful for the more than \$17,000 raised at a spaghetti feed fundraiser Dec. 12 and for the daily notes, cards, prayers and "all the other little but important things necessary for life."

"For Sabrina's friends, thank you for being there for her despite the distance of thousands of



Instructions: To vote, completely fill in...

United States Senator  
(vote for one)

McAdams, Scott T.      Democrat

Miller, Joe      Republican

Carter, Tim      Non-Affiliated

Gianoutsos, Ted      Non-Affiliated

Haase, Fredrick "David"      Libertarian

**MURKOWSKI, LISA MURKOWSKI**      **Write-in**

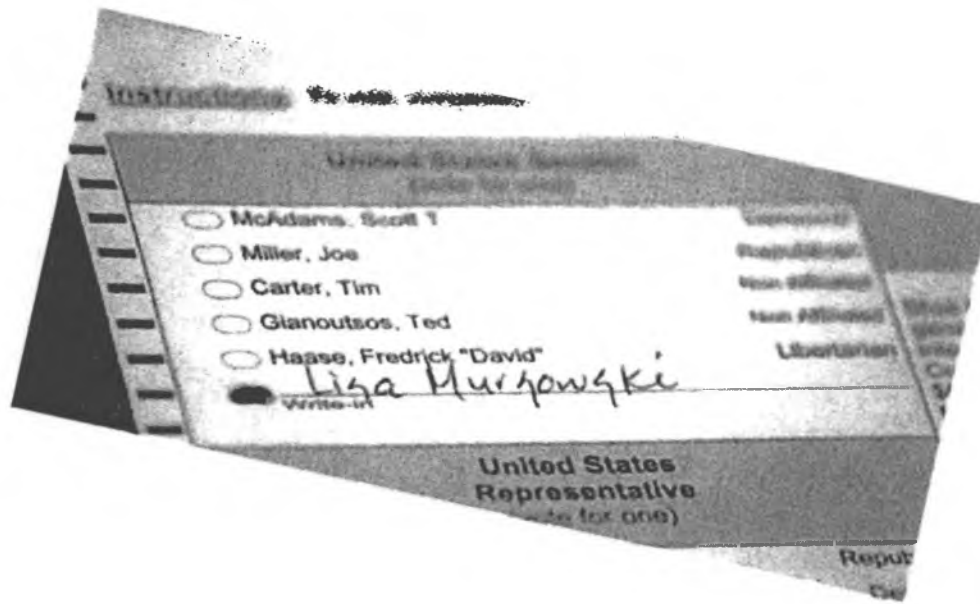
United States Representative  
(vote for one)

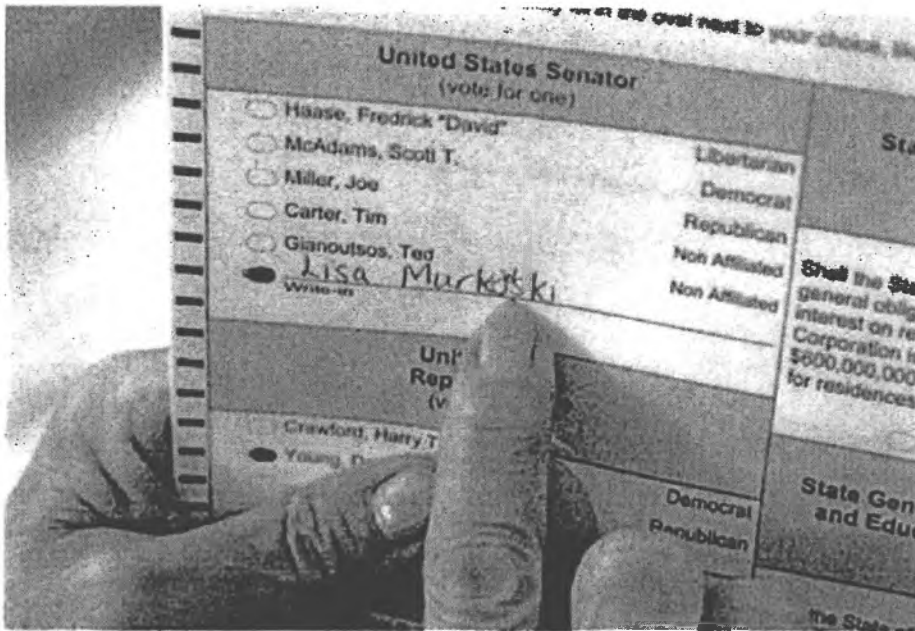
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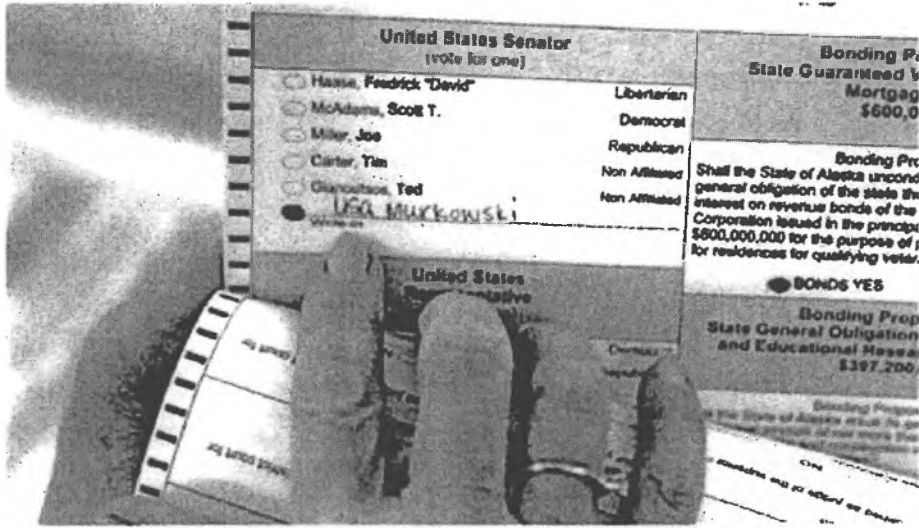
**United States Senator**  
(vote for one)

- Miller, Joe Republican
- Carter, Tim Non Affiliated
- Gianoutsos, Ted Non Affiliated
- Haase, Fredrick "David" Libertarian
- McAdams, Scott T. Democrat

No confidence  
Write-in







# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number 1  
 Bill Version CSSB 31(STA)  
 (S) Publish Date 1/28/11

Identifier (file name) SB031-OOG-DOE-1-23-11 Dept. Affected Office of the Governor  
 Title "An Act relating to the counting of write-in votes" Appropriation Elections  
 Allocation Elections  
 Sponsor Senators Thomas, French, Menard, Wielechowski  
 Requester (S) STA OMB Component Number 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

|                               | Appropriation<br>Required | Information |            |            |            |            |            |            |
|-------------------------------|---------------------------|-------------|------------|------------|------------|------------|------------|------------|
|                               |                           | FY 2012     | FY 2012    | FY 2013    | FY 2014    | FY 2015    | FY 2016    | FY 2017    |
| <b>OPERATING EXPENDITURES</b> |                           |             |            |            |            |            |            |            |
| Personal Services             |                           |             |            |            |            |            |            |            |
| Travel                        |                           |             |            |            |            |            |            |            |
| Contractual                   |                           |             |            |            |            |            |            |            |
| Supplies                      |                           |             |            |            |            |            |            |            |
| Equipment                     |                           |             |            |            |            |            |            |            |
| Land & Structures             |                           |             |            |            |            |            |            |            |
| Grants & Claims               |                           |             |            |            |            |            |            |            |
| Miscellaneous                 |                           |             |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>0.0</b>                | <b>0.0</b>  | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|--|--|

|                           |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES</b> |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                            |            |            |            |            |            |            |            |            |
|----------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts      |            |            |            |            |            |            |            |            |
| 1003 GF Match              |            |            |            |            |            |            |            |            |
| 1004 GF                    |            |            |            |            |            |            |            |            |
| 1005 GF/Program Receipts   |            |            |            |            |            |            |            |            |
| 1037 GF/Mental Health      |            |            |            |            |            |            |            |            |
| Other Interagency Receipts |            |            |            |            |            |            |            |            |
| <b>TOTAL</b>               | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

|           |  |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |  |

**Why this fiscal note differs from previous version**

Prepared by Gail Fenumiai, Director  
 Division Division of Elections  
 Approved by Linda J. Perez, Administrative Director  
Office of the Governor

Phone 465-2644  
 Date/Time 1/23/11, 10:18pm  
 Date 1/23/2011

FISCAL NOTE #1

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. CSSB 31(STA)

**Analysis**

**This legislation has no fiscal impact on the Office of the Governor, Division of Elections.**

**State of Alaska**

**Office of Lieutenant Governor Mead Treadwell**



**2010 General Election Review**

**April 1, 2011**

2010 General Election Review  
Office of Lieutenant Governor Mead Treadwell  
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## 2010 General Election Review Executive Summary Office of Lieutenant Governor Mead Treadwell

In December 2010, after Governor Sean Parnell and Lieutenant Governor Mead Treadwell signed final paperwork to certify the 2010 United States Senate election, the Lt. Governor announced he would conduct a review of the state's election procedures and statutes. The historic write-in campaign by Senator Lisa Murkowski revealed sections of election law and procedures that were yet untested, and many Alaskans became more aware of election procedures.

The following 2010 Election Review report by the Office of the Lieutenant Governor, the Division of Elections and the Department of Law, includes an analysis of election law and procedures as well as feedback from stakeholders, political parties, and most importantly, Alaska's voters. The report responds to observations and concerns made by Alaskans, and offers a recommendation for change or retraction of current procedures, Alaska State Statute and or regulation for each issue.

A key change recommended as a result of this review is intended to make it easier for Alaskans serving in the military to vote. Those recommendations include changing the date of the primary to make sure ballots for a general election can be in the mail in time for service members overseas, allowing other electronic forms of transmission -- besides faxes -- of ballots back to Alaska, and working with the Redistricting Board and the Department of Defense to facilitate reopening of polling places on Alaska's military bases.

Other key recommendations include changes to state law to clarify procedures for counting write-in ballots and making the declaration of candidacy for a write-in candidate voluntary. Perhaps the single most important finding in the review is that no change in procedure or state law recommended would have changed the outcome of the 2010 General Election.

Our heartfelt thanks goes out to those who worked so tirelessly on the 2010 General Election, including former Lieutenant Governor Craig Campbell, division personnel, attorneys from the Department of Law, candidates, and especially the volunteers who so selflessly gave their time and energy to bring the election to a conclusion. And thanks are due to Alaskans for taking their time to submit comments, to stakeholders for meeting with the Lieutenant Governor, and to the Division of Elections, with special thanks to Director Gail Fenumiai, and Department of Law for their assistance in this review.

The following is a summary of the recommendations detailed in the full report:

### **Recommended amendments to Alaska State Statute:**

- Amend Alaska State Statute to allow a U.S. citizen, 18 years or older, who has never been a resident of another state, to register to vote in Alaska so long as the child's parent is eligible to register and vote in Alaska.
- Amend Alaska State Statute to add a new subsection clarifying the rules for counting write-in votes, and allowing the director of elections to disregard misspellings or other minor

variations in the form of a candidate's name if the intention of the voter can be ascertained. This change would have Alaska law conform to recent Supreme Court rulings on voter intent.

- Amend Alaska State Statute to add a new section setting out the process for counting write-in votes. This information is currently set out in regulation.
- Amend Alaska State Statute to extend the time a voter may apply to an election supervisor for an absentee ballot to the 22<sup>nd</sup> day before the election rather than the 15<sup>th</sup> day.
- Amend Alaska State Statute to extend the time for early voting to 22 days before an election, rather than 15 days.
- Amend Alaska State Statute to allow an absent uniformed services voter or an overseas voter to apply to vote by electronic transmission any time during the calendar year, and to return the ballot in a manner established by the director in regulation.
- Amend Alaska State Statute to allow the director to establish in regulation the method of electronic transmission for delivery of an absentee ballot by electronic transmission. This would allow receipt of ballots by electronic means other than fax.
- Amend Alaska State Statute to reference the federally-mandated exception for absent uniformed services voters and overseas voters being sent their ballots no later than 45 days before election day.
- Amend Alaska State Statute to clarify that those voters who are traveling or working outside of the United States at the time of the election would receive special absentee ballots.
- Amend Alaska State Statute to move up the date of the primary election to the second Tuesday in August of every even-numbered year, rather than the fourth Tuesday in August of every even-numbered year.
- Amend Alaska State Statute to change the deadline for candidate withdrawal from the primary election to “before June 22 of the election year” rather than “at least 48 days before the date of the primary election.”
- Amend Alaska State Statute to remove the prohibition that votes for a write-in candidate not be counted unless that candidate has filed a letter of intent with the director.
- Amend Alaska State Statute to change the deadline for filing a letter of intent to run as a write-in candidate to 21 days before the General Election, so the division can more effectively provide assistance to voters.
- Amend Alaska State Statute on filling candidate vacancies by party petition to extend the deadline to before September 3 of the election year, rather than 48 days or more before the general election.

## Recommended changes in election procedure:

- Provide multiple notices to the political parties to ensure the parties are aware of their ability to nominate election workers. After the nomination deadline, the division will, if necessary, request assistance from the political parties in locating workers to keep the election board balanced.
- As more Alaskans are taking advantage of early and absentee voting, the division will examine how and whether it can report all results by precinct in future modifications of ballot counting and reporting software.
- Improve training and written instructions to election workers about the need to mark the type of identification presented by the voter on the polling place register.
- Add instructions to the voted ballot envelopes to remind workers to sign across the seal and improve election worker training relating to ballot security.
- To improve election management, the division will replace the voter registration and election management database system with a more technologically advanced system.
- The division will also implement additional security measures of using tamper-proof seals on archive boxes and numbering envelopes sent out prior to transporting ballots to a counting center.
- To improve how unvoted ballots are handled and accounted for, the division will make changes to the ballot statement to specifically include the number of ballots received, used and destroyed. The division will also report the return of the ballot stubs from unvoted ballots that would prevent any use of ballots for fraudulent activity.
- To address concerns that more write-in votes were counted than initially reported on the election results. In the future, the division will ensure that blank ballots that get challenged but that are not counted are not included in the overall results.
- The division will work to research systems to provide “real-time” or electronic updates identifying which voters have voted.
- The division will also post information to the website that indicates the date when absentee ballots are being mailed, filing deadlines, withdrawal deadlines, state review board dates.
- To ensure ineligible felons do not vote, the division will complete the data match between the Department of Corrections and the state voter registration file immediately prior to each election.
- In the case of an election which may be contested the division will re-brief election officials on the need to maintain objectivity and non-partisanship.

- To make it easier for military members to vote, we recommend changing the date of the primary to make sure ballots for a general election can be in the mail in time for service members overseas, allowing other electronic forms of transmissions of ballots back to Alaska (the law currently limits electronic transmission to faxes). The division suggests the under the new redistricting plan, the precinct boundaries be changed so that only installation boundaries are included in the precinct. When precincts are wholly contained within the installation, the division can once again work with the military to establish polling places on the bases. This report recommends this change to the Redistricting Board.

#### **Recommendations to other parties:**

- Suggest that the Redistricting Board redraw precinct boundaries specific to military installation in order to move the polling places back to the bases.
- The report discusses a proposal Alaska is considering to further exchange information on Alaska state voters with several data sources in other states in a bonded, confidential manner, in order to identify the names of voters who may be registered in more than one state.

#### **Recommendations for third party review:**

- Review of division's audit procedures and hand count verification of election results
- Audit to ensure non-U.S. citizens are not voting
- Audit to ensure that felons are not voting.
- Explore system or methods that can provide for real-time voter history.

## 2010 General Election Review Office of Lieutenant Governor Mead Treadwell

The 2010 General Election in Alaska was historic. Only on two other occasions has a significant statewide write-in campaign been conducted. The election revealed sections of election law and procedures that were yet untested, and many Alaskans became more aware of election procedures. Alaska's write-in process was widely publicized, and the state was pleased to see that process upheld by the state and federal courts.


After Governor Sean Parnell and I signed the final paperwork to certify the 2010 General Election, I announced we would conduct an election review to examine lessons learned in the way the election was conducted. A review could also help fully explain the election process to Alaskans. This review, by the Office of the Lieutenant Governor, the Division of Elections and the Department of Law, includes an analysis of election laws and procedures as well as feedback from stakeholders, political parties, and most importantly, Alaska's voters. The resulting report responds to observations and concerns made by Alaskans, and offers a recommendation for change or retraction of current procedures, Alaska State Statute, and/or regulation for each issue.

A key recommendation as a result of this review is intended to make it easier for Alaskans serving in the military to vote. Those recommendations include changing the date of the primary to ensure ballots for a general election can be in the mail in time for service members overseas; allowing other electronic forms of transmissions of ballots back to Alaska (the law currently limits electronic transmission to faxes); and working with the Redistricting Board and the Department of Defense to facilitate reopening of polling places on Alaska's military bases.

Other key recommendations include changes to state law to clarify procedures for counting write-in ballots and making the declaration of candidacy for a write-in candidate voluntary. Perhaps the single most important finding in the review is that no change in procedure or state law recommended would have changed the outcome of the 2010 General Election.

To maintain objectivity in the examination of certain questions aimed at the Division of Elections, the report recommends third party review on specific issues.

Our heartfelt thanks goes out to those who worked so tirelessly on the 2010 General Election, including former Lieutenant Governor Craig Campbell, division personnel, attorneys from the Department of Law, candidates, and especially the volunteers who so selflessly gave their time and energy to bring the election to a conclusion. And thanks are due to Alaskans for taking their time to submit comments, to stakeholders for meeting with the Lieutenant Governor, and to the Division of Elections, with special thanks to Director Gail Fenumiai, and Department of Law for their assistance in this review.



Mead Treadwell  
Lieutenant Governor

## I. Overview of Processes

### I. (A) Polling Place Procedures and Election Worker Training

#### 1. Election Worker Recruitment

Election worker recruitment is one of the more time consuming tasks in conducting a successful election. Recruitment begins around March of an election year and continues, in some cases, right up to election day. As part of the recruitment process, the division notifies the political parties that they are eligible to nominate election workers as outlined in AS 15.10.120. By law, political party nominations are due by April 15<sup>th</sup> of the election year.

Depending on the size of the precinct, each polling place has approximately three to six election workers. In an effort to maintain consistency within the polling places, the division requests workers to work both the primary and general elections and to work the entire time the polls are open, 13 hours. Whenever possible, the division attempts to find workers who are registered voters of the precinct. If the division is unable to locate voters within the precinct who are willing to serve, the division will recruit any qualified voter.

The first worker recruited for each precinct is the chairperson. The chairperson is then requested to assist the division in locating the remaining workers for the precinct. Public comments were received suggesting that allowing the chairperson to recruit other board members is conducive to partisanship or fraud. Others suggest that there should always be a representative from each political party on the election board. The division has not found any evidence of fraud on the part of election workers. Having the chairperson assist with the recruitment of other election board workers helps to create a positive experience for the workers which in turn allows for a positive voting experience for the public. It also allows a wider pool of potential workers to be contacted. The division has also found that when workers enjoy those whom they are working with, they are more likely to continue to be election workers from one election to another, which creates a more experienced election worker pool.

When recruiting the election board workers, the division and the chairperson attempt to ensure the election board is politically balanced and that there is political party representation on the election board. Although the division sends political parties a notice of the deadline for them to nominate election board members, comments were received that the division does not provide sufficient notice. For future elections, the division will provide multiple notices to the political parties to ensure the parties are aware of their ability to nominate workers. After the nomination deadline, the division will, if necessary, request assistance from political parties in locating workers to keep the election board balanced.

The chairperson is paid \$10 per hour for their time at the polls and the other election workers are paid \$9.50 per hour. Workers are compensated for their time spent in training if the trainee works in the election. The division has received comments from

workers that it would be easier to find election workers if the pay was increased.

The last increase for election workers of \$2/hour was in 2004.

Any increase to election worker pay would require a budget increase to the division in an election year. There is no provision for an increase in FY12 budget as any change for the 2012 Primary or General Elections would be appropriated in the 2013 fiscal year beginning July 1, 2012.

The division has approximately 2500 precinct election workers (those that work at polling places on election day). They work 15 hours per election.

$$\$9.50 \times 15 = \$142.50$$

If they were to get a raise to \$15/hour:

$$\$15 \times 15 = \$225$$

For a difference of \$82.50 per election worker per election.

$$\$82.50 \times 2500 \times 2 \text{ elections} = \$412,500 \text{ budget increment}$$

An increase to \$12/hour would result in a budget increment of **\$187,500**.

This report makes no recommendation on salary increases; however, recommendations will be made in time for the Governor's 2013 fiscal year budget proposal.

## **2. Election Worker Training**

The division's four regional offices are responsible for training precinct election board workers in their respective regions. In-person training is conducted prior to each primary election for the election board workers across the state. It is the division's goal to train workers as close to the election as possible. However, with the large number of rural precincts, some regions have to begin their worker training in early June and continue until early August.

Concerns and comments were received about the division not using standardized training materials throughout the state. Although there are differences between urban and rural, hand-count and optical scan count precincts, the division does in fact use a standardized set of training materials and handbooks to train all precinct election workers depending on the type of precinct they work in (optical scan or hand-count). There is a standardized set of instructions and handbooks for all optical scan precincts and there is a standardized set of instructions and handbooks for all hand-count precincts. In addition, there is a standardized set of instructions and materials developed for the touch screen equipment that is provided to all precincts.

In-person training sessions are approximately four to six hours in length and are broken

into two modules: election procedures and equipment procedures. The election procedures module covers areas such as opening the polls, providing voter assistance, disability awareness, language assistance, processing voters, issuing ballots, questioned voting, special needs voting, closing the polls, completing the ballot statement and returning election materials.

For precincts that hand-count their ballots, this module also includes instructions on how to count ballots and report election results. The equipment module covers functions necessary to set up the equipment (optical scan and touch screen) and prepare it for voting. The training also covers the process for how to maintain security of the equipment, functionality and operation of the equipment, and the process for transmitting results. The equipment procedures module gives workers hands-on experience and practice setting-up, voting, printing election results and disassembling the equipment.

The division conducts training for workers in rural areas of the state in several “hub” cities. Election workers from selected rural precincts travel to a larger, more “central” community to receive training as a group. Since Alaska has a very large number of precincts that are not on a road system, utilizing hub training enables the division to train rural workers closer to election day and reduces the amount of travel time needed by division staff. Urban-based training is generally conducted closer to election day and is conducted with workers from multiple election boards present.

Although in-person training is conducted before the primary election, the division offices in Anchorage, Fairbanks, Juneau, Mat-Su and Nome review election procedures with precinct chairpersons when they pick up their materials from the regional offices. A written review is sent to all other precincts.

The division faces many challenges with information retention between the time of the training and the election, especially in rural areas of the state where training is usually conducted more than a month before the primary. In addition, workers quit and are replaced after the training takes place. The division’s standardized set of instructions and handbooks is critical to the workers’ ability to perform their duties correctly. In 2010 the division created a training video to send with election supplies that covers the same topics as the in-person training sessions.

Although the division provides a comprehensive training program for workers and uses a standardized set of instructions and training materials across the state, there will inevitably be times when election board workers simply forget to perform an outlined process or procedure. When the division becomes aware of those situations, its managers will take steps to address the issue.

### **3. Polling Place Procedures**

On election day, election board workers have a standardized set of instructions to follow when opening the polls, processing voters, and closing the polls. When the division receives comments, concerns or complaints about problems in a polling place on election day, the division makes contact with the workers to address or correct those issues.

a) **Voter Identification**

Under AS 15.15.225, election workers are required to request identification from voters. However, workers can waive the identification requirement if the voter is personally known, unless the words “Must Show ID” appear in the signature box on the precinct register. Workers are also instructed to check the box on the register indicating the type of identification presented. If a voter does not have identification and does not meet the waiver requirements, the voter must vote a questioned ballot.

After the 2010 General Election, there were concerns that election workers allowed voters to vote without requiring identification because boxes were not checked to indicate the type of identification shown.

The division contacted 24 precincts where the “Identification Presented” box was not checked either for 100% of the voters or for some portion of the voters, to determine if the workers allowed voters to vote without requiring identification. Each precinct confirmed that they did require voters to show identification unless the voter was personally known. If the voter didn’t have ID, they had the voter vote a questioned ballot. When asked why they did not check the “Identification Presented” box, the workers responded with comments such as:

- i. We simply forgot.
- ii. We were unaware this was necessary.
- iii. We were too busy and must have overlooked the box.
- iv. We were asked to highlight signatures and this caused extra time and work, and we must have just gotten too busy with the extra requirement.
- v. We don’t have to mark the box for municipal elections so we didn’t think we needed to for state elections.

In contacting the precincts the division found no indication of misconduct on the part of the workers and concludes that blank “Identification Presented” boxes were simply an oversight. The division is committed to improved training and written instructions about the need to mark on the register the type of identification presented.

b) **Ballot Security**

When the polls close, election workers seal the voted ballots in special tyvek envelopes. After the tyvek envelope is sealed, an opened envelope becomes evident because the seal is broken. As an added security measure, after sealing the envelope(s), workers are instructed to sign across the seal before returning the ballots to the Division of Elections.

After the 2010 General Election, the division received voted ballot envelopes that were sealed but that did not have election worker signatures across the seal. After working a 13+ hour day, workers are ready to go home and sometimes overlook signing across the seal.

In no case had the initial seal on the envelopes been broken, but the division recognizes the absence of signatures caused the perception of compromised ballot security during the tabulation of the write-in votes.

Public comments were received related to the improvement of ballot security. Although ballots are sealed in tyvek envelopes, improvements are needed to ensure that workers sign across the seal. The division takes ballot security seriously, and will add instructions to the voted ballot envelopes to remind workers to sign across the seal. The division will also make improvements to election worker training relating to ballot security.

c) **Unvoted Ballots**

When the polls close, election workers in precincts outside of Anchorage, Fairbanks, Juneau, Mat-Su and Nome are instructed to destroy their unvoted ballots. Precincts in Anchorage, Fairbanks, Juneau, Mat-Su and Nome bring their unvoted ballots back to the division's regional offices to be destroyed.

Public comments were received relating to the handling of unvoted ballots. One suggestion was that election workers should be required to sign documentation indicating the ballots were destroyed. The division instructs the election workers to complete a ballot statement indicating how many ballots were used after the polls close. This statement, along with the signatures in the precinct registers, allows the division to account for all ballots and to ensure that the election results do not include extra ballots. In an effort to improve how unvoted ballots are handled and accounted for, the division will make changes to the ballot statement to specifically include the number of ballots received, used and destroyed. The division will also investigate whether it is possible logistically for the return of ballot stubs from unvoted ballots to further prevent any use of ballots for fraudulent activity.

## **I. (B) Impacts on Process Relating to Distribution of Write-In List**

There have been two major write-in campaigns for a statewide election in the past two decades. In 1998, Robin Taylor ran as a write-in candidate for governor. In 2010, Lisa Murkowski ran as a write-in candidate for United States Senate. The difference between the two elections was that in 1998 Alaska Statutes did not require write-in candidates to file any form of declaration with the Division of Elections. After the 1998 election, the statutes were changed to require write-in candidates to file a letter of intent with the division at least five days prior to the election.

The division consulted with the Department of Law to determine what assistance by an election worker was allowable to those voting for a write-in candidate. The division and Department of Law concluded that a list of declared write-in candidates should be distributed to election workers in order to ensure that workers provide consistent, standardized assistance to voters on write-in questions. The division also believed that providing a list would help minimize disruption in the polling place that might result from conversations between poll workers and voters regarding write-in candidates. Election workers were instructed not to post the list, but to have it available for reference upon request of the voter.

Since providing a list of write-in candidates to the election workers was a new procedure, the division submitted the change in practice to the United States Department of Justice (DOJ) for preclearance as required by Section 5 of the Voting Rights Act. DOJ precleared the change prior to the distribution of the list.

### **1. Impacts on Public Perception**

The implementation of a write-in list triggered a lawsuit filed against the division, and the Alaska Supreme Court ruled in favor of the division's use of the list. As a protest to the Supreme Court's order allowing the write-in list, a radio talk-show host went on air and encouraged listeners to file paperwork with the division to become declared write-in candidates so that poll workers would have a difficult time finding Lisa Murkowski's name on the list.

Prior to the radio broadcast, there were only a few declared write-in candidates for the U.S. Senate race. The broadcast resulted in 168 write-in candidates for U.S. Senate.

Several public comments were received both prior to and after the election indicating that the division should not have distributed a write-in list. Some members of the public also made comments to the division that they believed the division provided the list as a way to help one candidate over another. The division implemented the list as a way to ensure that effective voter assistance could be provided, and this decision was affirmed by the Alaska Supreme Court.

The requirement for a write-in candidate to file a letter of intent restricts a time-honored tradition voters have in most states. The right to cast a write-in vote exists as a “release valve” in the event a voter is not happy with the choices available on the ballot. The Division of Election’s job is to empower voters. Therefore, the recommendation is to change Alaska State Statute to make it voluntary for write-in candidates to file a letter of intent. At the same time, we recommend making the voluntary write-in letter of intent dealing 21 days prior to the general election day.

## **I. (C) Processes and Procedures for Counting Write-In Votes**

### **1. Internal Preparation and Procedures**

#### **a) Establish date/time for counting of write-in votes**

6 AAC 25.085 establishes the criteria used to determine when the counting of individual write-in votes must be performed. This regulation further outlines that the director will establish the place and date for counting write-in votes.

For 2010, the director initially established that if the number of write-in votes cast in the election was sufficient to trigger counting, the counting would take place in Juneau beginning the 16<sup>th</sup> day following the election. The date was selected based on the fact that the last count of absentee ballots is performed on the 15<sup>th</sup> day following the election, and the division might not know if the threshold requirement for conducting the count of individual write-in votes would be met until all ballots were counted. It was initially reported to candidates and the public that the date would be the 16<sup>th</sup> day following the election.

After results were posted on election night, it was clear that the division would be required to separate and count the individual write-in votes. Lieutenant Governor Campbell indicated it would be in the best interest of the state and public if the write-in votes were individually counted sooner than initially planned. It was determined that the division would begin counting the write-in votes on November 10<sup>th</sup>, and candidates were notified. The Department of Law advised that the lieutenant governor's decision was legal and appropriate, and the court backed this up.

#### **b) Establish location and secure workers**

AS 15.15.370 requires all ballots to be sent to the director. The division also relied on 6 AAC 25.200, which requires all recounts to be conducted in Juneau, because a recount is a similar procedure to counting write-in votes. Since all ballots are sent to Juneau following an election, the separation and counting of write-in votes was conducted in Juneau.

The division secured a counting facility that could accommodate 15 teams of counters consisting of two people using two 3' x 5' tables, press, public viewing and observers. In addition, a vendor was secured to transport the tables and chairs necessary for the workers.

The location established allowed for a secure counting area and ballot storage area with limited access. There was also a designated area set up for press and a designated area for the public to observe the counting process without being in the immediate counting area.

c) **Recruit and train workers**

It was determined that 15 teams of two workers would be used to perform the separation of the write-in ballots. In addition, alternate workers were identified in the event that an appointed worker was unavailable during counting times.

The division required all workers to attend a pre-counting training session. The training covered the processes and procedures that would be used when separating ballots.

Each day of the counting, the workers had to sign in and out and were given badges to gain access to the immediate counting area. The workers' political party affiliation was taken into consideration when pairing the teams so that there would not be a team consisting of two workers of the same party affiliation. Each team was assigned a table number, and the division maintained a list of table assignments.

d) **Ballot security**

Counted ballots are sealed in tyvek envelopes by the precinct election board or counting boards before being transported to Juneau for storage and archiving. The outside of the ballot envelopes indicate the district/precinct of the ballots. Election workers are instructed to sign across the seal on each ballot envelope.

When ballots arrived in Juneau, division staff recorded the ballots received, and indicated the number of ballot envelopes for each district/precinct. After the ballots are recorded, the sealed envelopes are placed in archive boxes by district and secured in an alarmed ballot room.

The division contacted several security contractors and ultimately, secured the services of the only company that had transportation available and could meet the division's request. The security contractor was hired to transport the sealed ballot envelopes contained within archive boxes to the counting center. Each time the ballots were transported, the security contractor and the division recorded each ballot envelope on a transport log. The log was completed and signed when the ballot envelopes left the alarmed ballot room, when they arrived at the counting center, when they left the counting center, and again when they were received back in the ballot room.

While in the counting center, the ballots were stored in an open, cordoned-off area that allowed access only by division personnel and the security contractor. Before taking ballots from this area to a counting table, they were checked-out and recorded on a table assignment list, and they were checked back in upon their return.

Comments were received from the public regarding the transportation of ballots to/from the counting center in archive boxes. Comments were also received about division personnel and the security contractor having sole access to the ballots. Since the ballots in the archive boxes are sealed inside ballot envelopes, they are secure during transportation. And to further ensure security, the division already numbers the envelopes. The division will implement additional security measures of using tamper-proof seals on archive boxes sent out prior to transporting ballots to a counting center.

e) **Recording write-in vote results**

In order to record the write-in results for the large number of declared write-in candidates, the division created an election database using the GEMS ballot tabulation system software. The write-in database included the names of each write-in candidate. The division believed there would be a large number of challenged ballots, so it also decided to create a category in the database to record the number of “challenged counted” and “challenged – not counted” ballots. The “challenged – not counted” category was created because the division felt there would be ballots that could not be counted for a write-in candidate but that would be challenged. In addition, the database included a category to record the names of write-ins for candidates who did not file a letter of intent. The division also included in the database write-in votes for names appearing on the ballot, because it is not uncommon for a voter to write in the name of a candidate appearing on the ballot.

Many ballots were discovered during the write-in count process in which the voter failed to mark the write-in oval, but wrote in the name of candidate Lisa Murkowski. When sorting and counting the individual write-in votes, the division followed Alaska State Statute, which indicates that if the oval was not marked, the write-in vote cannot be counted. These are considered blank ballots and were not included in the initial write-in vote totals.

Prior to separating and counting the individual write-in votes, the election results did not include write-in ballots in which the oval was unmarked though a name was written in. These are considered blank votes for that race. After challenges by the Murkowski campaign, these ballots were recorded with the “challenged – not counted” ballots, because there was no category specifically for recording write-in ballots with unmarked ovals. This category, however, included other ballots where the write-in oval was marked but were recorded as “challenged – not counted” for other reasons.

Since the write-in results for the US Senate Race included these blank ballots which were challenged by the Murkowski campaign, the results appeared to have more write-in votes than originally reported. However, the additional ballots were never valid votes, but were later recorded with other uncounted ballots when the Murkowski campaign challenged them.

In the future, the division will ensure that blank ballots that get challenged but that are not counted are not included in the overall results.

**f) Access to counting area**

The division established a sign-in/sign-out process to control access into the immediate counting area. In order to gain access to the counting area, each counting worker and observer had to sign-in and each was given a badge.

The division allowed one observer from each campaign to be present at each table in the counting area. In addition, each campaign was allowed to have a lead observer present in the counting area.

In addition to the workers and observers, the division required press members to sign in and wear a press badge. Press members had their own area with full viewing access of the counting. As requested, the division allowed a limited number of press members in the immediate counting area for short periods of time to take pictures or film footage. When press members were in the immediate counting area, they were accompanied by division personnel.

Division personnel and Department of Law personnel also wore badges.

Although the public was not allowed in the immediate counting area, the division did establish an area for the public that allowed full viewing access.

Comments were received that the division politicized the write-in count process by roping off areas after challenges to ballots began. The division provided equal access to the counting area for both the Murkowski and Miller campaigns. Access was established on the very first day and remained consistent throughout the counting process.

Access to the cordoned-off area where the ballots were being held, which was visible to all parties, was limited to division personnel, Department of Law personnel and the security contractor. At no time did observers for either candidate have access to this area.

**2. Counting Individual Write-In Votes – U.S. Senate Race**

When separating ballots to count the individual write-in votes, the ballots were first sorted. After the initial sort, the director, with the assistance of the Department of Law, made a determination on voter intent. Once voter intent was determined, the ballots were counted and the individual write-in results recorded.

Below is an outline of the process:

**a) Initial Ballot Sort**

There were five boxes used to sort ballots. The boxes were used to initially sort the ballots as follows:

- i. All ballots where the oval is marked next to a candidate's name that is printed

on the ballot (those other than the "Write-In" category) were placed in box #1.

- ii. All ballots where the U.S. Senate Race is left blank (no oval marked) or more than one oval is marked were placed in box #2.
- iii. All ballots where the oval is marked for the "Write-In" category and the name is written as "Lisa Murkowski" or "Murkowski" and spelled correctly that were not challenged were placed in box #3.
- iv. All ballots where the oval is marked for the "Write-In" category and the name written in is "Lisa," "Lisa M" or other variations that demonstrated the voter is casting a ballot for Lisa Murkowski were placed in box #4. This box was also used for workers to place any ballot voted for Lisa Murkowski that an observer challenged so that the director could make a determination on voter intent.
- v. All ballots where the oval is marked for "Write-In" category and the name written in is for a candidate other than Lisa Murkowski or variation of Lisa Murkowski were placed in box #5.

During the first day of sorting, some teams sorted the ballots into the five boxes so that the candidate names were facing the sorting team, and some sorted so that the candidate names were facing the observers. The division received comments from the observers that they would like all sorting teams to sort the ballots so that the candidate names printed on the ballot faced the observers. The division implemented this change on the second day of sorting. Although comments were received that ballots were sorted upside down, this only happened on the first day and was corrected by the division at the request of observers and had no effect on the result of the election.

#### **b) Director Determination**

- i. Each ballot in box #2 (blank and overvoted ballots) was reviewed to verify the ballot is truly blank or overvoted.
- ii. Each ballot in box #4 was reviewed to determine voter intent. When reviewing these ballots, they were sorted into three categories as follows:
  - 1) Determination made to count as vote for write-in candidate Lisa Murkowski and determination is not challenged. (These ballots were placed in box #3 for counting.)
  - 2) Determination made to count as vote for write-in candidate Lisa Murkowski and determination is challenged. These ballots were segregated and placed into an envelope labeled "Challenged – Counted for Murkowski." The total number of votes from these ballots was recorded on the results sheet as votes for "Murkowski – Counted Challenged."
  - 3) Determination made to not count the vote for write-in candidate Lisa Murkowski and determination is challenged. These ballots were segregated and placed into an envelope labeled "Challenged – Not Counted for Murkowski." The total number of votes from these ballots were added to the results sheet as "Murkowski – Not Counted Challenged."

### c) Recording Results

- i. The ballots from box #3 (votes for Murkowski) were hand counted and the total number of votes was recorded on the results sheet for "Lisa Murkowski."
- ii. The number of ballots in the "Challenged – Counted for Murkowski" envelope was hand-counted and recorded on the results sheet line "Lisa Murkowski – Counted Challenged." After counting, these ballots were returned to the envelope.
- iii. The number of ballots in the "Challenged – Not Counted for Murkowski" envelope was hand-counted and recorded on the results sheet line for "Murkowski – Not Counted Challenged. After counting, these ballots were returned to the envelope.
- iv. For the ballots in box #5 (write-in votes for candidates other than Murkowski), the workers sorted the by name. Once the ballots were sorted, the workers counted and recorded the individual results for candidates appearing on the write-in candidate list. If the name written in did not appear on the certified write-in candidate list, workers recorded the votes on the line for "Other Write-In."
- v. After the workers recorded the write-in votes on their results sheet, division personnel compared the total number of individual write-in votes to the write-in category on the initial statement of votes cast. This was done to make sure counting workers did not accidentally place write-in votes in box #1.
- vi. Once the total number of write-in votes was verified, the workers sealed the ballots in the original voted ballot envelope(s) and the results sheet used to record the individual write-in votes was given to division personnel to enter into the GEMS database.

### 3. Timeline

The division began the individual counting of write-in votes on Wednesday, November 10<sup>th</sup>. Initially, the division thought that it would take three to four days to conduct the count. However, due to the large volume of challenged ballots, the division did not complete the counting of write-in votes until November 17<sup>th</sup>. This fact alone confirmed Lieutenant Governor Campbell's decision to begin the count earlier.

Each day, the counting began at 9am and went to approximately 4-5pm. On Sunday, November 14<sup>th</sup>, the division did not begin the counting until noon.

On November 19<sup>th</sup>, the division counted the write-in votes from special advance and overseas ballots. The initial count of these ballots took place in the regional offices on the 15<sup>th</sup> day following the election, and the ballots were shipped to Juneau. The division notified the campaigns and press that the write-in separation from these ballots would take place in the Division of Elections director's office on November 19<sup>th</sup>.

### 4. Cost

The total cost to individually count the write-in votes was \$60,440.

## **I. (D) Successes**

Alaska faces logistical challenges to ensure that all 438 precinct polling places across the state are open and staffed, and receive their ballots, supplies and equipment. Accomplishing this is a success in its own. There were other notable successes relating to the 2010 General Election:

### **1. Litigation**

During the 2010 General Election, there were several lawsuits filed against the division in both state and federal courts.

The main issue in the litigation was related to the division's decision to provide a list of write-in candidates to the poll workers and the division's process to count write-in votes, including determining voter intent.

The state and federal courts ruling in the division's favor was the most notable success of the 2010 General Election.

### **2. Implementation of the MOVE Act**

Under the new requirements of the MOVE Act, the division was required to mail ballots to military and overseas voters at least 45 days prior to the general election and late candidate withdrawal deadline. Due to the short time frame between the primary and general elections, the division initially applied for a waiver to this requirement. The division was notified the waiver was denied and the division was required to develop a process that would allow ballots to be mailed 45 days before the general election.

The statutory candidate withdrawal deadline of 48 days prior to the general election made it impossible to have official ballots printed in time to meet the MOVE Act 45-day ballot mailing requirement. The division developed a process to produce an in-house paper ballot which was mailed to over 8,000 UOCAVA voters by the deadline.

To count the ballots using the division's optical scanners, the absentee ballot review boards had to produce a facsimile of the ballot using an official ballot printed on ballot stock. Although this caused extra work for the review boards, the division was able to meet the statutory deadline for reviewing and counting ballots.

### **3. Election Worker Training Video**

In an effort to supplement in-person training, the division created an election worker training video that covered the same components as the in-person training sessions. The video provided workers with an opportunity to be trained even if they were unable to attend the in-person training. The division received positive feedback from election workers who found the video valuable.

#### **4. Federal Observers in Bethel**

The division was notified approximately one week before the general election that the Department of Justice would be sending federal observers to Bethel. In order to prepare for the observers, the division worked with Lori Strickler, Bethel City Clerk, to set up a training session for the poll workers the weekend before the election to go over election procedures and to inform the workers about the observers. The division's Yup'ik Language Assistance Coordinator was on-site in Bethel for election day.

Although it was intimidating for poll workers to have federal observers watching them, the division and poll workers were prepared and successfully conducted the election in Bethel. There is, however, no after action report available from the Department of Justice.

#### **5. Counting Write-In Votes**

In addition to the normal post-election processes, in 2010 the division had to prepare for and count the individual write-in votes for United States Senate. The counting was high-profile, with both national news media and campaign observers present.

The division created a process to separate and count write-in votes from 258,746 ballots cast in the 2010 General Election. Throughout the process, the division was able to maintain security and organization of a very large volume of ballots and election materials.

The division updated the press, campaigns and the public each day with ballot counts and results.

## **I. (E) Issues for Improvement**

### **1. Implementation of MOVE Act Requirements**

The division was successfully able to meet the 45-day deadline to mail absentee ballots to military and overseas voters by preparing a paper copy of the ballot. Although this allowed the division to meet the requirement, it impacted the amount of time to count absentee ballots and resulted in a large number of facsimile ballots. Statutory changes should be pursued that will allow for the official ballot, rather than a facsimile, to be sent by the 45-day deadline.

Currently, absentee ballots must be mailed or faxed to voters. The division received numerous comments from military and overseas voters that they do not have ready access to fax machines and requested their ballots be sent via email. Statutory changes should be pursued to allow blank ballots to be transmitted via email.

It is recommended that legislation be introduced to change the date of the primary election; change the candidate withdrawal deadlines for the primary and general elections and change the party replacement deadlines for the primary and general elections.

### **2. Voter Registration Database**

The division's voter registration and election management database was developed in 1985 and is a mainframe-based system. Because the technology is antiquated, there are a limited number of programmers available that have experience in this programming language. In addition, it is costly to maintain at an annual fee of over \$100,000 per year. The division needs to replace this system with a more technologically advanced, PC-based system.

### **3. Election Worker Pay**

Each election, the division struggles to recruit poll workers. These workers are required to work a 13+ hour day with a great deal of responsibility. A pay increase could result in more people willing to serve as poll workers and result in more participation from political parties.

This report makes no appropriation recommendations.

### **4. Hand Counting Ballots**

There are 133 precincts in Alaska that hand count their ballots after the polls close and call the regional offices with their election results. Once received, the regional offices enter the results into the regional tabulation server which is then uploaded to the host server in Juneau. If the election board calls in the wrong number of voters, or wrong results, the regional offices enter incorrect information which then has to be corrected by the State Ballot Counting Review Board. Although improvements have been made to training methods, the division will need to continue to improve materials to address hand counting of ballots.

## 5. Voter History

Prior to opening and counting absentee and questioned ballots, the division conducts a duplicate analysis to verify that the voter did not vote more than once. This duplicate analysis cannot be performed until all voter history is completed from the precinct registers used in the polling places. Until the duplicate analysis is complete, absentee ballots cannot be opened and counted. This causes a delay in opening and counting the absentee ballots.

To enhance the voter history process, the division will research the feasibility of implementing the use of electronic poll books. Electronic poll books could potentially expedite the counting of absentee and questioned ballots by more quickly recording voter history and conducting duplicate voter analysis.

An online real-time voter history system would have several advantages:

- a) It would expedite the counting of absentee and questioned ballots
- b) It would identify individuals attempting to vote more than once in any given election, avoiding potential fraud
- c) It could allow observers, candidates and parties to focus their get-out-the-vote efforts more effectively, and perhaps increase turnout altogether.

## **I. (F) Statistics and Analysis**

There are 438 precincts in Alaska. In order to conduct an election, the Division of Elections ensures each precinct has a polling location, workers to run the polling place and that each location has the ballots, supplies and equipment needed for the election.

There are 305 precinct polling places that use an optical scan machine to count ballots. There are 133 precinct polling places, located in rural areas of the state, that hand-count their ballots when the polls close. During the primary and general elections, there is also a touch screen voting unit in each precinct polling place that is intended for use by voters who have visual impairments, disabilities or have difficulty reading.

### **1. How many people voted**

260,976 voters voted in the 2010 General Election, of which, 258,746 ballots were counted and 2,230 ballots were rejected.

Following is a breakdown of the ballots cast:

192,940 cast ballots on Election Day and counted at the polls  
11,698 counted questioned ballots  
1,297 rejected questioned ballots  
40,843 counted absentee ballots  
933 rejected absentee ballots  
13,265 counted early ballots

There were 494,876 registered voters qualified to vote in the election. Overall percentage turnout based on the counted ballots was 52.29%. The percentage turnout in the 2010 election is slightly higher than in previous gubernatorial election years.

### **2. How many people cast write-in votes**

Out of the 258,746 cast ballots, there were 102,234 votes cast for write-in for the U.S. Senate race.

Although there were write-in votes for each race on the ballot, only the write-in votes cast in the U.S. Senate race met the required threshold to count the individual write-in votes.

### **3. Cost and length of time to count write-in votes**

It cost the division \$60,440 to conduct the counting of the write-in votes for the U.S. Senate race.

The counting of the write-in votes started on November 10<sup>th</sup> and concluded on November 17<sup>th</sup> with a small number of ballots being counted on November 19<sup>th</sup>.

#### **4. Reporting absentee and early vote results by precinct**

Comments were received indicating that results from absentee and early voting should be reported by precinct. Unlike precinct polling place ballots, absentee and early ballots are issued at the house district level, not at the precinct level. Alaska State Statute 15.20.201 requires the district absentee ballot counting board to review and count absentee ballots. The division's existing voter registration and election management database is programmed and designed to track absentee and early ballots by house district.

Having both systems designed to manage absentee and early ballots by house district allows for the public and candidates to get a list of all absentee and early voters and to see election results by house district. This also allows the division to verify that the number of ballots accepted for counting matches the number of actual ballots reported in the election results which is critical to the ballot accountability process.

As more Alaskans are taking advantage of early and absentee voting, the recommendation is for the division to examine how and whether it can report all results by precinct in future modifications of ballot counting and reporting software.

#### **5. Providing information on absentee voters**

Comments were received that it is difficult to get information from the division about voters who requested absentee ballots and that the division mailed ballots to voters earlier than the announced date.

The division's absentee office produces an updated absentee voter report following each mailing. If an organization has purchased the initial absentee list, their name is kept and they are automatically sent subsequent lists. The division's absentee office consistently provides lists to candidates and parties.

The division believes that mailing absentee ballots to voters as soon as they are available is critical to the voter's ability to receive a ballot in time to vote. Once ballots are sent, the updated absentee voter report provided to the candidate and parties includes the date the ballot was mailed. In an effort to ensure this information is more readily available, the division will post information to the website that indicates the date when ballots are being mailed, or mesh this system with a planned online real-time voter history system.

## 2010 Election Review

### II. Answering Alaskans' Questions

#### II. (A) Voter Intent

**Question: Should voter intent be included as part of the rules for counting write-in votes?**

This report recommends yes.

There is legislation pending in the 2011 legislative session that considers this question. Senate Bill 31 has passed the State Senate and is awaiting hearings in the State House. This legislation codifies the decision of the Alaska Supreme Court that voter intent must be considered when counting ballots.

There were public comments received that voter intent should not be included in determining whether or not a ballot should be counted. The Alaska Supreme Court has historically and repeatedly encouraged the division to implement and honor voter intent in counting ballots. This was again the case with their order in December 2010.

## II. (B) Letter of Intent for Write-In Candidacy

**Question: Should there be continued requirements for individuals to file their intent to be a write-in candidate and if so, what is realistic time requirement for filing such intention?**

Today, Alaska State Statute requires a write-in candidate to file a letter of intent to run for public office within five days of a general election. The requirement is relatively new in Alaska law and had never been tested before the 2010 General Election, when the list of write-in candidates itself and its use in voting locations was challenged in State courts.

As a result of this review, it is recommended that the requirement for filing a write-in letter of intent be voluntary, not mandatory. This would maintain the voters' freedom to use the write-in process to vote for whomever they choose. However, if a candidate desires to file a write-in letter of intent, the division could more effectively provide assistance to voters if the requirement is changed so that the letter of intent must be received by the division no later than 21 days before the general election. If appropriate thresholds are met to require the individual counting of write-in votes, nothing should preclude a candidate who has not filed a write-in letter of intent to have his or her votes counted.

With the understanding that the circumstance for a write-in candidate to run and not file a letter of intent is rare, yet may be necessary to ensure each party has a candidate in the election, the division will continue to encourage write-in candidates to file a letter of intent for election for the following reasons:

1. Filing a letter of intent verifies that the individual running for office meets the constitutional and state requirements for the office.
2. The letter of intent provides the division with the framework for how the candidate's name should be written.
3. Without knowing in advance, the names of write-in candidates, voters who wish to vote for a write-in candidate could be disenfranchised if they needed assistance in voting for a candidate.
4. The candidate filing requirement is helpful for the division's preparation of the write-in candidate list for use in the polling places on Election Day. This list helps with voter assistance, which is required by both Alaska Statute and by federal law.
5. The write-in candidate list was precleared by the U.S. Department of Justice (DOJ) last year. To discontinue using the list would require preclearance.
6. Registration also allows the state to enforce financial disclosure laws and electioneering laws against all candidates equally.

## II. (C) Felons Voting

### **Question: What additional precautions, if any, are necessary to prevent felons from voting?**

The division has a process in place to remove voters that have been convicted of a felony involving moral turpitude for the voter rolls.

The division receives a list from the Department of Corrections and processes the names on the list. Prior to removing a voter, the division must verify the conviction is for a felony involving moral turpitude. This process is conducted, at minimum, on a bi-weekly basis.

The division seeks the assistance of the Department of Law to determine if a crime meets the legal definition of "moral turpitude" if the crime listed is not found in AS 15.80.010(9).

There were allegations made in court documents that the division allowed felons to vote. This was a direct result of a data match performed using the Sex Offender Registration Central Registry and the statewide voter registration list by a third party. Names that appeared to be a match, based on criteria unknown, identified that there were registered voters whose names were on the Sex Offender Registration Central Registry and that some of these individuals voted in the 2010 general election. The division did not receive any names of potential felon voters from a third party.

An individual who has been convicted of a crime that requires registration with the Sex Offender Registration Central Registry may remain on the registry for an extended period of time, up to life. Being named on the list doesn't preclude those individuals from registering to vote, as long as they have been unconditionally discharged from their conviction.

When an individual has been unconditionally discharged from incarceration, parole and probation, they are eligible to register to vote.

As of March 31, 2011, there are 6,107 voters inactive due to felony conviction and 1,271 voters inactive who have been unconditionally discharged but have not re-registered to vote.

To ensure that felons who are ineligible to vote, do not vote, the division will ensure that a data match between the Department of Corrections and the state voter registration file is conducted immediately prior to each election.

## II. (D) MOVE Act Compliance

### 1. Election Dispute

**Question: Does the interval between Alaska's primary and general election allow compliance with the MOVE Act in case of an election dispute, when primary results can be delayed by law, and general election ballots must be mailed 45 days before an election?**

Federal law (MOVE Act) requires that ballots for the 2012 primary and general election must be mailed to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters no later than 45 days prior to a federal election.

The difficulty with meeting this mailing deadline for the primary election revolves around the candidate withdrawal deadline. Currently, a candidate may withdraw up to 48 days prior to the election. This allows the division only three days to print and mail ballots for the primary election.

The division was able to meet the 45-day ballots mailing time for UOCAVA voters during the 2010 General Election. However, it was extremely difficult and could have been derailed by factors outside the division's control.

It is recommended that legislation change the date of the primary election; change the candidate withdrawal deadlines for the primary and general elections; change the party replacement deadlines for the primary and general elections.

These changes will allow the state to more reliably meet the 45-day ballots mailing requirement for UOCAVA voters.

### 2. Electronic Voting

**Question: With the passage of the MOVE Act, should Alaska eliminate the 60-day special advance ballot and expand electronic voting to allow the division to transmit blank ballots to voters?**

The division should eliminate the 60-day special advance ballot for UOCAVA voters but continue to send to those voters residing in remote areas of the state and those traveling and working outside the United States.

The MOVE Act requires the division to send ballots electronically to voters, if requested by the voter.

Currently, the regulatory definition of electronically transmitted ballots is by facsimile machine. However, this is an antiquated method of electronic voting. In a review of the

legislative committee history for HB42, which implemented electronic transmission of ballots, it is clear that the intention of the statute's use of the term "electronic transmission" was meant to allow the division to use whatever means is modern and available. The bill was intended to make use of modern technology to encourage people to vote.

The use of fax machines is no longer considered modern technology. There are effective and secure ways to electronically transmit a ballot to voters. Many states implemented these types of procedures during the 2010 general election.

The division is continuously being asked by voters (both UOCAVA and non-UOCAVA) if they can receive their ballot by email.

The division is researching secure electronic ballot transmission methods. The recommendation is to amend state law to allow for this opportunity.

## II. (F) Requirement to Show ID and Citizenship

### **Question: Should voters be required by law to show their ID, and what proof of citizenship should be necessary to register?**

State law currently requires voters to present ID prior to voting. If the voter is personally known to an election worker, ID does not need to be shown.

Some Alaskans have urged a proof of citizenship requirement to register to vote. Today, Alaska requires a prospective voter to sign an affidavit attesting to his or her citizenship in the United States and in the State of Alaska.

If information is received that a voter is not qualified because they are not a U.S. citizen, the division requests verification of U.S. citizenship through the voter and/or the Immigration and Naturalization Service. If it is found that the voter is not a U.S. citizen, the division will inactivate the voter registration record.

Proof of citizenship is a sensitive area. In October 2010, Ninth Circuit Court of Appeals (*Gonzales v. Arizona*, 624 F.3d 1162, 9<sup>th</sup> cir. 2010) ruled that the Arizona Division of Elections could not require documents proving citizenship for new voter registrations. The court ruled that this violates federal law. The National Voter Registration Act (NVRA) allows voters to register without documentation but stipulates that lying about citizenship is perjury. The case is not resolved by the courts, but could have implications in Alaska. The division and the Department of Law will continue to monitor proceedings carefully.

When a voter registers to vote before a registrar, they must show identification. If no identification is provided, the registrar notes on the registration form that no ID was presented. When the division processes this form, the voter's identity is verified through the Division of Motor Vehicles (DMV) database and/or through a direct application between DMV and the Social Security Administration (SSA).

When a voter registers to vote by mail, their identity is verified through the DMV database and/or the SSA database.

If the identity of a voter who registered by mail or through a registrar without presenting ID cannot be verified through DMV or SSA, there is a notation made next to the voter's name on the precinct register that the voter must show identification. A voter who is personally known by an election worker cannot have the identification requirement waived if this notation is next to the voter's name on the precinct register.

## II. (G) Election Contest – Certification

**Question: Should the ground rules for defining an election contest be revised, since we've learned in 2010 that an election can be challenged before certification takes place?**

Under Alaska State Statute, any defeated candidate or ten qualified voters may request a recount. The recount application must be received within five days following the completion of the state review board. The deadline for a recount involving a gubernatorial race is three days.

Currently, the statute regarding the timeline for bringing an election contest action says: "The action may be brought in the superior court within 10 days after the completion of the state review" (AS 15.20.550). Technically, an election contest action may be brought before certification now, so long as it is brought after state review. AS 15.15.440 sets out the process for state ballot review, and then AS 15.15.450 sets out the process for certification of the election after ballot review.

Election contest actions are entirely delineated in statute, so a change could be made, but the question remains whether it makes sense to make a change. The division needs to have the state review of an election complete so there is an official election result for the plaintiff to challenge in an election contest action.

Joe Miller challenged a state election in federal court. The federal court delayed state certification and neither the State of Alaska nor the state courts had control to lift the stay. The federal court did not "toll" or delay Mr. Miller's right to seek a recount, and he missed the opportunity to do so.

The situation that arose with the 2010 U.S. Senate litigation could have cost the state representation in the U.S. Senate. Changing the recount, recount appeal and election contest timeline can be detrimental to ensuring that the state has representation at the state and federal level.

**Question: Why weren't all ballots counted by hand?**

There were public comments received regarding the request by Joe Miller to have a hand-count of ballots for the U.S. Senate race. The process that took place regarding the write-in votes was solely for the purpose of determining how many votes were received by each write-in candidate from the total number of write-in votes cast. If Mr. Miller had requested a recount of the U.S. Senate election, it would have been granted; however the division never received such a request and therefore never conducted a recount.

As a matter of course, when a recount is requested, it is conducted by using the optical scan ballot tabulation equipment. The equipment is programmed to reject any ballot that is overvoted (more than one oval filled in) or undervoted (either entirely blank for the race being recounted or a mark that is too light for the tabulator to read). When a ballot is rejected it is placed in a box to be reviewed by the director. The director makes a decision whether or not to count the ballot and either party involved may challenge the decision. The challenged ballot is then sealed in an envelope to be preserved if it needs to be reviewed by the courts.

Each ballot is reviewed by observers and all ballots are subject to challenge.

During a recount, one precinct from each house district is randomly drawn for a hand-count verification.

To avoid confusion in the future, the division will post on their website the date the state review board has completed their review, which will indicate to candidates and voters that a recount request must be made within five days of that date.

There were also public comments received regarding the hand count verification process. This is a process in which one randomly drawn precinct that accounts for at least five percent of the total votes cast for the district is hand counted. If there is a discrepancy of greater than one percent, the entire district is recounted by hand. In the four years this requirement has been in statute, there has never been a need to recount the ballots for an entire district. Following the hand count verification from the 2010 General Election, copies of the paperwork were provided to observers from the Miller campaign.

## **II. (H) Voter Assistance**

### **Question: What voter assistance is allowable?**

Both state and federal law require that a voter be provided assistance at any time throughout the registration process and voting process. There are no limitations as to what level of assistance may be provided if requested by the voter.

Language assistance is specifically required by federal law.

The division provided, at voters' request, a list of qualified write-in candidates. Initially, an absentee voting site erroneously posted the list. Once the division learned about it, the list was immediately removed. Seventeen voters voted during the period the list was posted. These ballots were kept segregated, counted, and returned to their envelope in case of any future challenge. There were no challenges made to these ballots

The Alaska Democratic Party and the Alaska Republican Party filed a lawsuit against the division to prohibit the use of the write-in list. The Alaska Supreme Court upheld the use of the list ruling that it was consistent with Alaska's voter assistance statutes and did not violate state election regulations.

Public comments were received which stated that numerous ballots appeared to have the name of a write-in candidate written by the same person. Nothing in state law prohibits an election worker from assisting a voter with the writing of a candidate's name. This is an allowable form of voter assistance.

A number of write-in ballots were challenged due to similar handwriting. No evidence was presented to indicate this was the result of anything other than voter assistance or common penmanship among voters. This issue is also part of the complaint in current, active litigation in Perry et al. v. LG, SOA, 4FA-11-973 CI. Due to the past and current litigation, this report makes no recommendation on this issue.

### **Question: Is voter assistance documented?**

The division does not instruct poll workers to document when a voter receives assistance, with the exception of language assistance. The division instructs poll workers, when requested, to provide any necessary voter assistance. The only type of assistance that is documented is the number of language assistance requests and the type of language. Poll workers are instructed to maintain a language assistance log. Voter names are not maintained on the log. The language assistance log is a method used by the division to determine where language assistance, especially Alaska Native language assistance, is needed to ensure there are bilingual poll workers in those areas.

## II. (I) Public Information to Update Voter Lists

### Question: What information on voters may be used to update voter lists?

Changes to a voter's residence address must be provided in writing by the voter.

Mailing address changes (not residence addresses) can be made based on information received from the USPS or based on information provided by the voter to the Permanent Fund Dividend program.

A voter's record may be inactivated when information is received from another state indicating that the voter is now registered in their state.

A voter's record may also be inactivated as a result of information received from the Division of Vital Statistics and the Department of Corrections.

The division has been following the "Upgrading Democracy Project," by PEW Center on the States. We have been invited, through this project, to compare voter registration lists with a wider array of data sources to broaden the base of information used to update and verify voter rolls. To participate, the State would need to share data Alaskans provide to the Division of Motor Vehicles. We have also been asked to share data from Permanent Fund Dividend records because voters have every reason to keep address records with the PFD division current. The division currently has access to PFD information but does not have complete access to DMV information that would further help verify our registration records, or further reach out to eligible citizens who are not registered to vote. The Division is considering the possibility of joining the "Upgrading Democracy Project," but it will not do so unless the privacy of Alaskans' personal data can be assured.

## II. (J) Information on Who Has Voted

### Question: Can we offer “real-time” updates on which voters have voted?

At this time the division does not offer a “real-time” or electronic update identifying which voters have voted. Nor does the division offer an hourly “carbon copy” of voters signing in to vote, as some other states do.

Poll watchers typically track this information on paper lists which match the list of voters for a specific precinct. They check off the names of voters as they vote and provide that information to campaigns and/or political parties. However, poll watchers are not allowed to see the registration rolls and can only glean voter information by listening.

The division will consult with a third party to research a “real-time” voter history system and a cost/benefit analysis of such a system.

## II. (K) Party Participation and Access

### **Question: How do we ensure that political parties have full participation in and access to the election process?**

The election process is open to all political parties, candidates, and the public. They have access to voter lists, absentee lists, and a presence at the review of absentee and questioned ballots, as well as the counting of these ballots.

The political parties are asked for names of individuals to serve as workers at polling places and as members of the state review board.

There are a large number of non-partisan and undeclared voters in the state. The division ensures that a board is not composed of only one party or another, but strives to ensure there is a combination. There are some precincts that may not have a worker that is registered as Republican or Democrat, but there are never boards that are entirely composed of only one party. There were occasions in 2010 when a board was composed of entirely non-affiliated workers.

Public comments were made stating that the division does not provide parties adequate notice regarding election worker and board appointments. The division will improve communication with the parties regarding election worker recruitment deadlines by providing multiple notices to them.

## 2010 Election Review

### III. Department of Justice Review

Alaska, and all political subunits (boroughs, cities, school districts), are subject to the provisions of Section 5 of the Voting Rights Act. This section requires the state to obtain preclearance from the U.S. Department of Justice (DOJ) for any change affecting the voting process before the change is implemented.

Routine preclearance submissions requested by the division include changes to polling locations, precinct boundaries, regulation changes, legislative changes and changes to forms used by the division such as the voter registration application, absentee ballot application, voting instructions and posters.

DOJ has 60 days after receiving a preclearance submission to make any objection to the voting change.

#### III. (A) Examples of Changes Needing Preclearance

Changes affecting voting include, but are not limited to, the following examples:

1. Any change in qualifications or eligibility for voting.
2. Any change concerning registration, balloting and the counting of votes, and any change concerning publicity for or assistance in registration or voting.
3. Any change with respect to the use of a language other than English in any aspect of the electoral process.
4. Any change in the boundaries of voting precincts or in the location of polling places.
5. Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).
6. Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).
7. Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.
8. Any change in the eligibility and qualification procedures for independent candidates.
9. Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

10. Any change effecting the necessity of or methods for offering issues and propositions for approval by referendum.
11. Any change affecting the right or ability of persons to participate in political campaigns which is affected by a jurisdiction subject to the requirement of Section 5.

### **III. (B) Pending Changes Needing DOJ Review**

1. As a result of the creation of a new political group, the Alaska Constitution Party, and the removal of the political group, the Moderate Republican Party, the division is in the process of updating the procedures relating to the voter registration application, absentee ballot application, primary ballot choice poster and the voter identification card to reflect the political group changes. Once these forms are updated, they will have to be submitted to DOJ for preclearance.
2. Any change to Alaska Statutes or regulations relating to counting write-in votes or the rules of counting write-in votes, including voter intent will, need to be precleared by DOJ after passage and prior to implementation.
3. Any change to Alaska Statutes, regulations or forms relating to candidacy declaration requirements, including write-in candidates, will have to be precleared by DOJ after passage and prior to implementation.
4. Any change to Alaska Statutes relating to the date of the primary election will have to be precleared by DOJ after passage and prior to implementation.
5. Any changes to Alaska Statute and/or regulation for compliance with the MOVE Act will have to be precleared by DOJ after passage and prior to implementation.
6. Any changes to Alaska Statute and/or regulation relating to requirements for voter identification or for proof of citizenship to register will have to be precleared by DOJ after passage and prior to implementation.
7. Redistricting changes, including changes to precinct boundaries, must be precleared by DOJ after adoption and prior to implementation.

### **III. (C) Meeting with DOJ Personnel**

Lieutenant Governor Treadwell and the Director of the Division of Elections met with staff from the Department of Justice in Washington, D.C. on February 10, 2011 to discuss various Voters' Rights Act issues applicable to Alaska.

## **1. Preclearance**

The Alaska delegation expressed appreciation for DOJ's cooperation in quickly preclearing the write-in list process for the 2010 General Election.

## **2. The MOVE Act**

Alaska had initially thought it would not be able to meet the 45-day deadline for ballot distribution set out in the MOVE Act. The state had applied for a waiver from this requirement of the Act, and that waiver was denied. Division staff then worked with DOJ to find a way to comply with the MOVE Act, and DOJ's guidance was greatly appreciated in finding a solution to allow Alaska to meet the ballot distribution deadline.

## **3. Bail Out**

The term "bail out" refers to the process by which covered jurisdictions may seek exemption from Section 5 coverage. In order to bail out, a covered jurisdiction needs to obtain a declaratory judgment from the District Court for the District of Columbia.

The bail out standard requires that a covered jurisdiction demonstrate nondiscriminatory behavior during the ten years prior to filing, and while the action is pending that it has taken affirmative steps to improve minority voting opportunities.

Discussion took place regarding the bail out process. DOJ clarified that the state may not apply for a bail out from the Voting Rights Act for ten years after the date that federal election observers are no longer in the state. The state received confirmation that it is not entitled to receive copies of the federal observer reports, as these reports are not subject to the Freedom of Information Act. On October 1, 2009, the Bethel Census Area was certified for federal observers, and to date observers have been present for state elections only in Bethel.

## **4. Pending State Legislation**

DOJ was informed that there is legislation pending relating to elections and that the state, as always, would be submitting the legislation for preclearance prior to implementation. Clarification was received that if DOJ does not grant preclearance to a change in statute, the existing statute would remain in force.

## **5. Minority Language Assistance**

DOJ is interested in seeing the state expand language assistance into more areas of the state and work towards strengthening the Inupiaq language assistance program.

## 2010 Election Review

### IV. Issues for Third Party Review

#### Status of election security study recommendations

In 2007, then Lieutenant Governor Sean Parnell and the Division of Elections requested the UAA to conduct a study of Alaska's election security. Phase I of the study included a review of security studies conducted by other states and provided for a preliminary assessment of Alaska's election system. Phase II of the study provided for a detailed evaluation of Alaska's election system to provide recommendations that would strengthen both the technology and election procedures to mitigate any known security risks.

In evaluating Alaska's election system, the University reported that Alaska's election system is among the most secure in the country and is in good shape. In Phase II, the University provided several recommendations to further improve the security of Alaska's election system. The recommended changes were broken into two categories: changes recommended prior to the 2008 elections and changes recommended after the 2008 election.

Below is the status of each recommendation included in Phase II of the report:

#### IV. (A) Pre-election Recommendations

- 1. Verify the accuracy of voting technology before and after the election, by comparing code in voting machines with correct, registered code**

The division implemented the use of a hash code validation for all GEMS computers. This validation ensures that all GEMS computers are using the correct, registered code associated with the current software version. In addition, the GEMS computers are not connected to a network or internet and access to these computers is restricted to authorized personnel only.

- 2. Install new software that allows election officials to create a more secure password authentication system for touch-screen machines**

The division purchased and implemented the use of Key Card Tool which allowed the division to create their own authentication password and encryption keys for the touch screen units.

- 3. Change passwords on all voting technology throughout the system**

The division implemented procedures to change passwords on all hardware and software, including the BIOS, Windows and GEMS election database login passwords. The documented passwords for all systems are stored in a key safe in the director's office.

**4. Use tamper-evident seals on shipping cases and envelopes**

Prior to 2008, the memory cards used in the touch screen units were installed in the units prior to shipping. In 2008, the division implemented a policy that memory cards would be shipped separately from the unit in tamper evident envelopes. The division determined that since the units were not shipped with the memory cards installed, the division deemed that tamper-evident seals on shipping cases were not necessary.

In addition to tamper-evident seals on memory card envelopes, tamper-evident seals were placed on all voting equipment. One seal was placed on the optical scan unit that covered either the front or back seam and pre-drilled hole. One seal was placed on the touch screen unit that covered the seam and pre-drilled hole on the back of the machine. Division staff recorded the seal number used on each piece of voting equipment.

**5. Add election security material to poll workers' training manuals.**

Additional instructions were provided to election workers on equipment security that included a check list and procedures for seal inspection and what to do if the seal was broken. In addition, the division implemented the use of a security log for each piece of equipment. The log listed the tamper-evident seal number, instructions for inspection and a sign-off area for the election workers to sign and return to verify the seal number matched the number provided and that the seal was unbroken.

**6. Increase security procedures in absentee polling locations**

The division does not use voting equipment in absentee polling locations. The touch screen voting units used in the regional offices early voting stations were handled with the same security measures as the equipment used in the polling places. Absentee voting officials were provided with instructions on maintaining the security of their ballots and voting materials.

**7. Purchase state-owned voting machines for use in North Slope Borough, rather than borrowing borough-owned machines**

The division purchased optical scan units for the precincts in the North Slope Borough and initiated use of the units in the 2008 elections.

#### **IV. (B) Post-election Recommendations**

**1. Upgrade voting machines and other technology to improved platform: Assure 1.2**

Assure 1.2 was federally certified by the United States Election Assistance Commission in August 2009. The division chose not to upgrade to Assure 1.2 for the 2010 General Election because the system provider, Premier Election Systems, was in the process of being acquired by Election Systems & Software (ES&S) which triggered an anti-trust violation investigation. This acquisition led to another vendor, Dominion Voting, obtaining the rights to the Assure 1.2 platform. Working with Dominion Voting, the division has begun the process to upgrade their ballot tabulation system to the Assure 1.2 platform. The upgrade will be completed in 2011.

**2. Establish long-term security goals and a method for measuring progress**

The long-term security goals established by the division relate to the recommendations provided in the study. It is the policy of the division that the recommendations and improvements made for the 2008 election cycle will be maintained for all future elections unless other security issues are identified and addressed.

**3. Improve testing processes to ensure that all voting technology is functioning properly and recording votes accurately**

The division adopted the University's increased scope of recommended logic and accuracy testing for the 2008 and 2010 election cycles. Memory cards used in the touch screen units were tested using a combination of an automatic and manual testing function. Memory cards used in the optical scan units were also tested following recommended test procedures. The State Ballot Review Board and the Regional Accu-Vote Boards and/or Accu-Vote Coordinators tested the memory cards. In addition to the memory card testing, a functionality test was conducted on all voting equipment used in the election to ensure the equipment was functioning properly prior to use during the election. The improved functionality, logic and accuracy testing performed by the division will be maintained for future elections.

**4. Develop and implement a standard plan for tracking and changing passwords**

The division has implemented a standard to change all applicable passwords prior to the start of a statewide election cycle. Documentation of the passwords is maintained in a safe in the director's office.

**5. Improve system for tracking the number and location of voting machines, through barcodes or other inventory control measures**

The division implemented a consistent inventory management system statewide. All offices are tracking voting equipment in a uniform manner.

**6. Strengthen storage facilities for voting machines and other system components with dead-bolt locks, alarms, ceiling grids, self-locking doors, and other features to prevent forced entry**

A separate locked key safe in the director's office is used to store keys and password codes. The other division offices where equipment and keys are stored maintain physical security features such as alarms and dead-bolts.

**7. Buy more secure shipping containers for optical-scanners**

The division increased the number of secure shipping containers for optical scan units during the 2008 election cycle, compared to previous elections. If additional containers are needed, the division will ensure an adequate supply is on hand for in the future.

**8. Recruit and train more poll workers**

The division consistently strives to train all poll workers prior to each election cycle. The division had tremendous success during the 2008 and 2010 elections by having an adequate number of poll workers at each precinct. New security procedures were added as a component to the division's training for the 2008 and 2010 elections.

**9. Consider partnerships with other institutions to conduct ongoing evaluation and implementation of improvements in election security technology**

The division believes that the implementation of the recommendations from Phase II of the UAA Study significantly increased the public's confidence in the integrity and accuracy of the election process and voting technology. The UAA Study is discussed fully in section IV of this report.

As part of the election certification process, the division performs a hand-count verification of 5% of the ballots cast at the polls in each of the state's 40 house districts. The hand-count of the 2008 and 2010 election results verified that the state's ballot tabulation system accurately counted and reported election results.

**10. Third Party Review**

In addition to the election security study, the division partnered with UAA Institute of Social and Economic Research to assist with outreach and improvements to the division's Yup'ik language assistance program. The division has benefited from these partnerships and will continue to pursue further partnerships.

One specific area needing further research and partnership is a review of the division's post-election processes, including a review of the division's audit procedures and hand-count verification of election results. Public comments were received relating to audit standards. In addition, comments continue to be received relating to the accuracy and security of the division's ballot tabulation system.

Although the UAA election security study concluded that Alaska's election system is among the most secure in the country and has a number of safeguards, the study did not include a thorough review of post-election processes used by the division and used in other jurisdictions across the country.

Alaska is known for close elections and recounts. A thorough review of the post-election processes, including any recommended changes, will enhance the public's trust in Alaska's election system.

Other areas to be included for third party review are:

- a) New review of ballot security issues
- b) Audit to ensure that non-U.S. citizens are not voting
- c) Audit to ensure that felons are not voting
- d) Explore systems or methods that can provide for real-time voter history

## 2010 Election Review

### V. Miscellaneous Public Comments

During the 2010 General Election review, Lieutenant Governor Treadwell solicited comments and input from the public, political parties and candidates. Information relating to the types of comments received were included throughout the election review in appropriate areas.

There were additional comments received that do not relate to a specific subject addressed in the report. A summary and response to those comments follows:

#### **V. (A) Create a better environment for the military to vote**

In 2000, the Department of Defense (DOD) issued a directive that polling places could not be established on military bases. At that time, the Division of Elections had established polling places on both Eielson Air Force Base and Fort Wainwright. Working through the late Senator Ted Steven's office, the division was able to maintain polling places on the military installations for the 2000 election cycle but was informed they would have to be moved for the 2001 municipal elections. The polling places for both installations were moved to off-base locations in 2001.

In 2003, the division was notified that DOD issued new election guidance indicating that if an installation facility had been designated as a polling place as of January 1, 1996 through December 31, 2000, the installation commanders could not deny the use of that facility as a polling place.

For the 2004 elections, the division investigated moving the polling places back onto both installations. Because the precinct boundaries for both installations include non-military voters, the division decided not to move the polling place back to the installations because non-military voters would have difficulty accessing the polling places.

The division suggests that under the new redistricting plan, the precinct boundaries be changed so that only installation boundaries are included in the precinct. When a precinct is wholly contained within the installations, the division can once again work with the military to establish polling places on the bases. This report recommends this change to the Redistricting Board.

#### **V. (B) Provide notice of any change in practice or procedure**

If the division decides to change a practice or process, ample notification of that change will be given.

The division follows the Administrative Procedures Act to adopt new regulations. Statutory changes can only be achieved through the legislative process. All changes that affect voting are sent to the U.S. Department of Justice for preclearance.

There are some internal policies that require emergency action and preclude prior public notice.

In order to improve public notification, the division will add a notice section to its website and post notices of public interest, such as filing deadline dates, withdrawal deadlines, and state review board dates. The election year events are captured on the public election calendar which is available on the division's website:  
<http://www.elections.alaska.gov/doc/forms/H11.pdf>.

## V. (C) Open primary

The division does not have the authority to change the primary election structure. Only the legislature has that authority. The current primary election structure is a result of many years of litigation. Title 15 Of Alaska State Statute affirms that political parties have the right of freedom of association and can determine which candidates will appear on their ballots and which registered voters will have access to their party's ballot. These determinations are documented and codified in the political party by-laws. Party members who meet candidate qualifications are allowed to appear on the party primary ballot.

The history of Alaska's primary election has been influenced by litigation over primary elections, some of which reached the United States Supreme Court. On June 26, 2000, in *California Democratic Party v. Jones*, the U.S. Supreme Court ruled that California's Blanket Primary violated political parties' First Amendment right of freedom of association. The court said political parties have the right to offer voting to self-identified members and not to the general electorate. At the time, Alaska's primary election was similar to California's primary election and thus the Jones case ruling also invalidated parts of Alaska's primary election law.

To comply with the Jones case ruling, the State of Alaska adopted emergency regulations that allowed the 2000 Primary Election to be conducted as a Party-Rule Ballot Primary.

During 2001 legislative session the Alaska State Legislature passed legislation that specified a primary election ballot was required for each political party in SCS CSHB 193(FIN).

Shortly after the 2002 General Election, the Green Party and Republican Moderate Party filed suit, challenging the requirement of separate party primary ballots. In 2005, the Alaska Supreme Court, in *Green Party et. al. v. State of Alaska et. al.* prevented the state from enforcing the provision in election law requiring separate party primary ballots. This ruling affirmed the earlier superior court ruling which allowed parties to decide if they wanted to appear on a Combined Party ballot. Parties were required to provide information to the state if they wanted to appear on the Combined Party ballot and indicate which voters would have access to their ballot.

In response to the Green Party case ruling, the Republican Party chose to include only Republican candidates on its primary ballot and provide ballot access to only those voters registered as republican, nonpartisan or undeclared.

As an initial response to the Green Party case ruling, the Alaska Libertarian Party, Alaskan Independence Party, Republican Moderate Party, and the Green Party of Alaska agreed to be on a combined ballot that would be available to all registered voters. (Both the Green Party

and the Republican Moderate Party lost recognized political party status as a result of the 2005 ruling allowing the Combined Party Primary ballot.)

Currently, the Alaska Democratic Party appears on a ballot with the Alaskan Independence Party, and the Alaska Libertarian Party. Any registered voter may have access to this ballot.

#### **V. (D) Ballot counting machines can be hacked**

As previously mentioned in Section IV of the report, UAA conducted a study of Alaska's election system and found that the state's election system is among the most secure in the nation. Unlike other studies conducted, the UAA study examined not only voting technologies but also policies and procedures that add to the security of the system. UAA found that there are multiple steps, procedures and security features that make the system safe and provided recommendations to further improve the security of Alaska's election system.

To date, the division has implemented all but one of UAA's recommendations and will have the recommendations fully implemented in 2011. The final recommendation for implementation is for the division to upgrade the ballot tabulation system to the Assure 1.2 platform, which will address many of the security risks identified with the state's ballot tabulation system software (GEMS). The security recommendations provided by UAA and adopted by the division, along with the Assure 1.2 upgrade, will continue to ensure that Alaska's election system is secure. In addition, performing the hand-count verification of election results will continue to ensure the system is accurate.

#### **V. (E) Faxed ballots are transcribed – precautions to prevent fraud**

Under both state and federal law, the division must provide for electronic voting. Blank ballots are transmitted to voters via fax machine. Once voted, the ballot can be returned by mail or fax.

An electronically transmitted ballot, whether mailed or faxed, cannot be counted by the division's optical scan counting equipment because it is on plain paper, not on official ballot stock.

6AAC 25.065 allows the bi-partisan absentee ballot review board members to produce a facsimile ballot that exactly indicated the candidates chosen by the voter using ballot stock that can then be read by the optical scan tabulator.

When producing facsimile ballots, one person marks the ballot while another person, of a different political party, verifies the ballot was marked correctly. This ensures that the facsimile ballot is marked for the same candidates as the original ballot. Any observer present during the review is allowed to review the ballot.

If a facsimile was not produced for faxed ballots, the ballots would have to be hand-counted. The division believes this would impact the amount of time it takes to count and report election results. The division will monitor new methods to allow machine counting of ballots received by electronic means.

## **V. (F) Special Advance Ballots**

State law requires the division to send a special advance ballot to any registered voter who notifies the division they are living, working or traveling outside the United States at the time of the election, or in a remote area of the state where distance, terrain, or other natural conditions deny the voter reasonable access to a polling place at the time of the election.

This ballot must be sent starting 60 days prior to each state primary, general or special election.

Because the candidate withdrawal deadline has not yet occurred (48 days prior to an election), the ballot is printed with only race headings and a blank line for the voter to write the name of the candidate they wish to vote for. Each voter is sent a list of certified candidates and instructions on how to vote their ballot.

For a general election, the special advance ballots are sent prior to the election being certified. Therefore, a candidate list is sent containing the names of all candidates that appeared on the primary election ballot. The voter is given information regarding the candidate list, that the election has not yet been certified, therefore not all candidates appearing on the list will have advanced to the general election ballot. They are given the option of voting by political party as well as by candidate name.

As prescribed in state election law, Lisa Murkowski remained an official candidate and her name remained on the special advance candidate list until the election was certified.

All voters receiving a special advance ballot are also sent the official ballot once it is available. Voters are instructed to vote and return both ballots. The division will count the official ballot if received timely. If the official ballot is not received in time by the division, but the special advance ballot is, the division will count the special advance ballot.

To comply with the MOVE Act, the recommendation is for a change in state statute to allow the division to mail special advance ballots 45 days prior to each election to all UOCAVA voters and voters working or traveling outside the U.S. and those in remote Alaska.

## **V. (G) Use of stickers on ballots**

Since the division implemented the current ballot tabulation system, the use of stickers has been prohibited by state law.

The division has recently spoken with representatives from the division's ballot tabulation equipment provider. There is presently no voting equipment manufactured or certified that accommodates the use of stickers. Vendors do not recommend their use because of potential damage to equipment and the potential for miscalculations of votes for not only the write-in candidates but other candidates as well.

**2010 Election Review**  
**VI. Conclusion**

Once again, thank you to all Alaskans for their contributions to this report.