

SB

31

<TARGET><BILL>SB 31</BILL><SUBJECT>SB
31</SUBJECT><COMM>SSTA27</COMM></TARGET>

CS FOR SENATE BILL NO. 31(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE SENATE 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 ballots."**

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

3 *** Section 1.** AS 15.15.360(a) is amended to read:

4 (a) The election board or director, as may be appropriate, shall count
5 ballots according to the following rules:

6 (1) A voter may mark a ballot only by filling in, making "X" marks,
7 diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or
8 plus signs that are clearly spaced in the oval opposite the name of the candidate,
9 proposition, or question that the voter desires to designate.

10 (2) A failure to properly mark a ballot as to one or more candidates
11 does not itself invalidate the entire ballot.

12 (3) If a voter marks fewer names than there are persons to be elected to
13 the office, a vote shall be counted for each candidate properly marked.

14 (4) If a voter marks more names than there are persons to be elected to
15 the office, the votes for candidates for that office may not be counted.

1 (5) The mark specified in (1) of this subsection shall be counted only if
2 it is substantially inside the oval provided, or touching the oval so as to indicate
3 clearly that the voter intended the particular oval to be designated.

4 (6) Improper marks on the ballot may not be counted and do not
5 invalidate marks for candidates properly made.

6 (7) An erasure or correction invalidates only that section of the ballot
7 in which it appears.

8 (8) A vote marked for the candidate for President or Vice-President of
9 the United States is considered and counted as a vote for the election of the
10 presidential electors.

11 (9) Write-in votes are not invalidated by writing in the name of a
12 candidate whose name is printed on the ballot unless the election board **or director**
13 determines, on the basis of other evidence, that the ballot was so marked for the
14 purpose of identifying the ballot.

15 (10) In order to vote for a write-in candidate, the voter must write in
16 the candidate's name in the space provided and fill in the oval opposite the candidate's
17 name in accordance with (1) of this subsection.

18 (11) A vote for a write-in candidate, other than a write-in vote for
19 governor and lieutenant governor, shall be counted if the oval is filled in for that
20 candidate and if the name, as it appears on the write-in declaration of candidacy, of the
21 candidate or the last name of the candidate is written in the space provided.

22 (12) If the write-in vote is for governor and lieutenant governor, the
23 vote shall be counted if the oval is filled in and the names, as they appear on the write-
24 in declaration of candidacy, of the candidates for governor and lieutenant governor or
25 the last names of the candidates for governor and lieutenant governor, or the name, as
26 it appears on the write-in declaration of candidacy, of the candidate for governor or the
27 last name of the candidate for governor is written in the space provided.

28 **(13) In counting votes for a write-in candidate, the election board**
29 **or director shall disregard any abbreviation, misspelling, or other minor**
30 **variation in the form of the name of a candidate if the intention of the voter can**
31 **be ascertained.**

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

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

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

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

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

14 (c) If the director determines that the requirements of (a) of this section have
15 been met,

16 (1) the director shall establish the place and date for counting those
17 write-in votes; and

18 (2) in an election for federal or statewide office, the director shall
19 count all write-in ballots under AS 15.15.360.

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

27-LS0350B
Bullard
1/24/11

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

BY

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24 in declaration of candidacy, of the candidates for governor and lieutenant governor or
25 the last names of the candidates for governor and lieutenant governor, or the name, as
26 it appears on the write-in declaration of candidacy, of the candidate for governor or the
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21 ballots submitted under 42 U.S.C. 1973ff.

ALASKA STATE LEGISLATURE

Senate State Affairs Committee

Senator Bill Wielechowski, Chair

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Committee Members:

Senator Joe Paskvan, Vice-chair
Senator Albert Kookesh
Senator Bettye Davis
Senator Kevin Meyer

AGENDA

Tuesday, January 25, 2011
9:00-10:30

1. SB 31: Counting of Write-in Votes
2. SB 33: Disposition of Service Members' Remains

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.

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



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State Capitol, Juneau, AK 99801

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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

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.

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.¹ 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.²

Alaska Voting Law

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.³ The law further specifies that the rules on counting ballots are, without exception, mandatory.

Miller v. Treadwell

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.

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

² *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).

³ 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*.⁴ 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.⁵ 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).

⁴ *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.

⁵ 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.

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

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.

Politics



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?

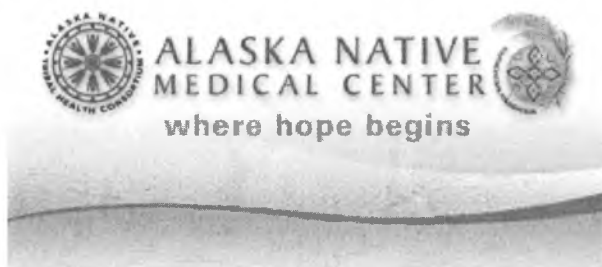
Her Democratic opponent has conceded defeat. But her Republican opponent, Joe Miller, whose own name was easier to spell and was, moreover, actually on the ballot, has had other ideas.

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."

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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

Dec 22, 2010 | 757 views | 0 comments | 5 likes | 0 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.

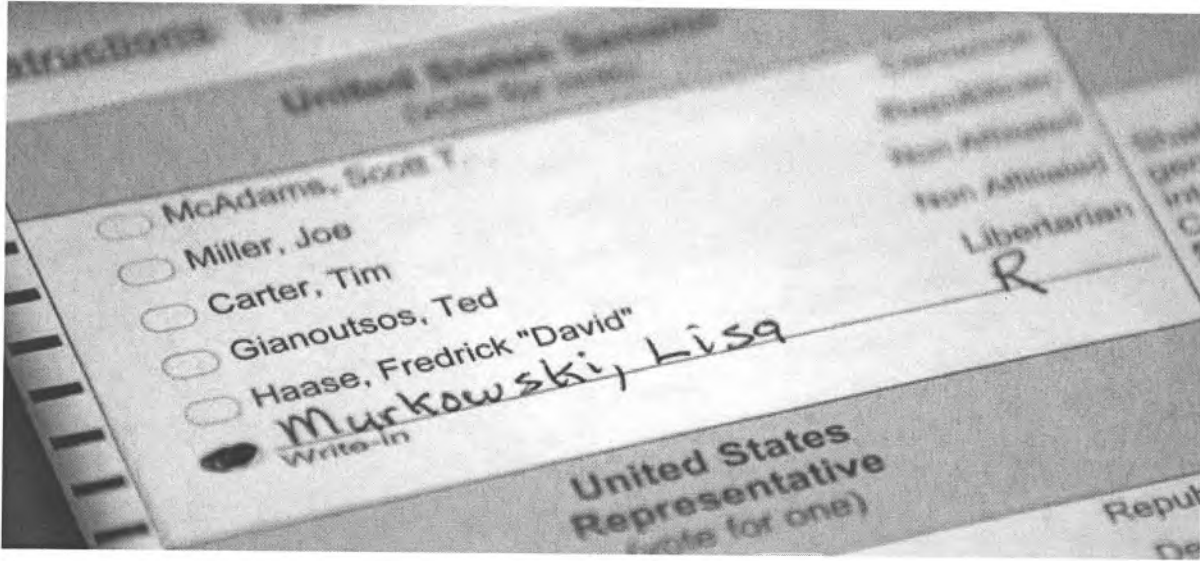
"The 'nickname' field allows a candidate to ensure that his or her pseudonym 'appears on the write-in declaration of candidacy' so that the write-in votes listing that pseudonym will count. Thus, the word 'appears' relates to a pseudonym's possible presence on the ballot, not the particular form of the 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)

<input type="radio"/> McAdams, Scott T.	Conservative	
<input type="radio"/> Miller, Joe	Republican	
<input type="radio"/> Carter, Tim	Non Affiliated	
<input type="radio"/> Gianoutsos, Ted	Non Affiliated	Should the general interest
<input type="radio"/> Haase, Fredrick "David"	Libertarian	Corporate
<input checked="" type="radio"/> MURKOWSKI, LISA MURKOWSKI Write-in		for

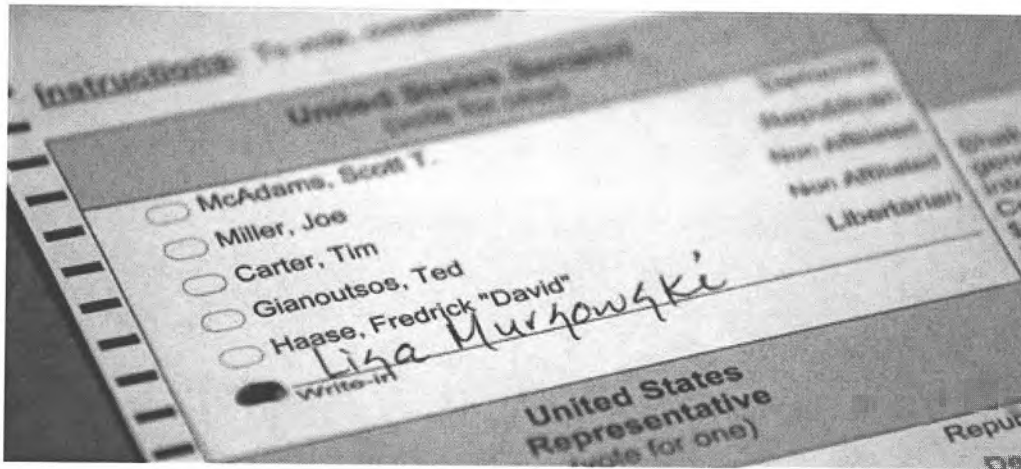
United States Representative
(vote for one)

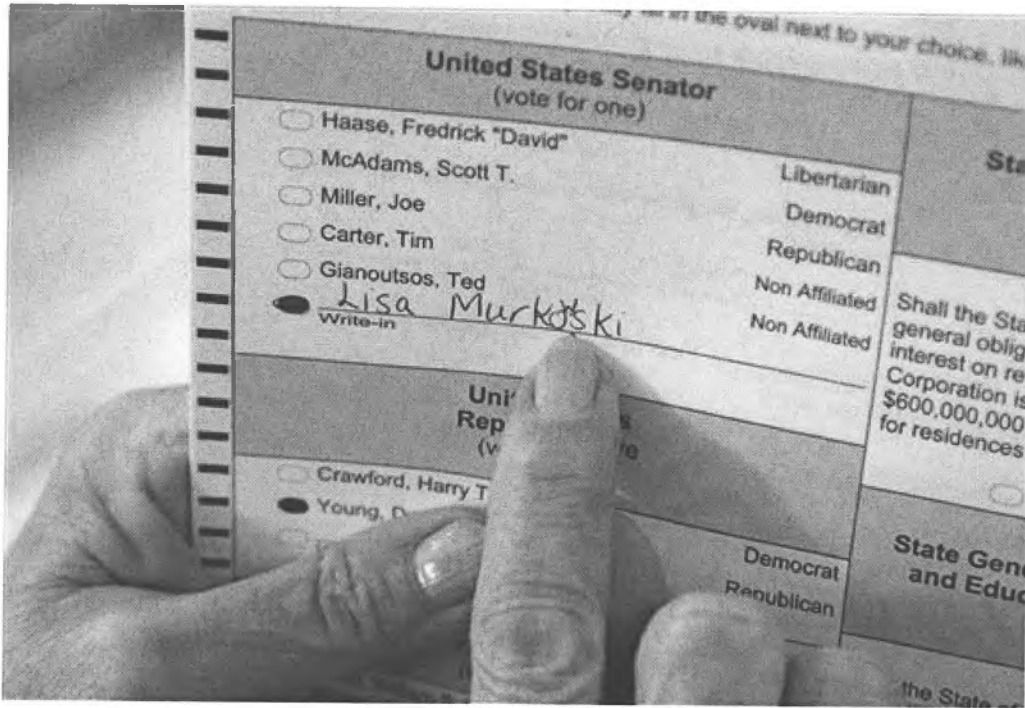
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D

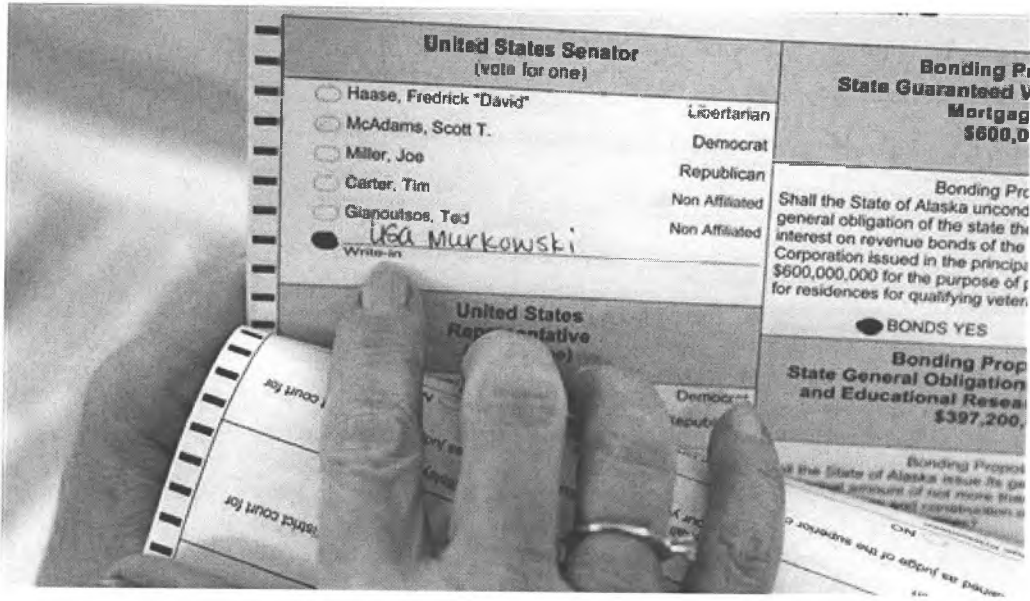
United States Senator
(vote for one)

- 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 _____
 Bill Version SB31
 () Publish Date _____

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

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 25, 2011

SUBJECT: Providing the Director of Elections the authority to ascertain the intention of a voter under AS 15.15.360(a) (CSSB 31(), Work Order No. 27-LS0350\B)

TO: Senator Joe Thomas
Attn: Grier Hopkins

FROM: Alpheus Bullard 
Legislative Counsel

You requested a blank committee substitute that would revise Senate Bill 31 (27-LS0350\M) and AS 15.15.360 to provide the Director of Elections (director) the authority, in counting votes for a write-in candidate, to 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.

AS 15.15.360 prescribes how an election board shall count ballots. The change you requested required modifications to the bill beyond the substitution of "director" for "election board" in the bill's ultimate paragraph.¹

While a regulation, 6 AAC 25.085(d),² provides the director authority to establish the place and date for counting certain write-in votes, the director is not currently authorized

¹ Note the change to the bill's title.

² **6 AAC 25.085. Counting of write-in votes in general election.**

(a) Except as provided in 6 AAC 25.670, the provisions of this section apply for the counting of write-in votes in a general election in this state.

(b) Counting write-in votes in a general election by candidate will only be done under this section if the aggregate of all votes cast for all write-in candidates for the particular office is

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

(2) the second highest number of votes received by any candidate and the difference between the total number of votes received by the candidate having the highest number of votes and the aggregate of

under statute to count ballots outside of certain statutorily identified situations.³ Nothing now in statute specifically authorizes the director to count ballots in a close election contest between a candidate on the ballot and a write-in candidate.

For this reason, your requested committee substitute includes an added section codifying the substance of 6 AAC 25.085 and further providing that the director shall count write-in ballots in certain elections for a federal or statewide office.

If I can be of further assistance please do not hesitate to contact me.

TLAB:med
11-006.med

Enclosure

all votes cast for all write-in candidates for the office is less than the percentage necessary for a recount at the state's cost under AS 15.20.450.

(c) Write-in votes that do not meet the requirements of this section will not be individually counted under this section.

(d) If the director determines that the requirements of this section have been met, the director will establish the place and date for counting those write-in votes.

³ While the director has general administrative supervision over the conduct of state elections and may adopt regulations necessary for the administration of state elections (AS 15.15.010) and regulations prescribing the manner in which the precinct ballot count is accomplished so as to ensure accuracy in the ballot count (AS 15.15.350), the director is authorized to review or count ballots only in certain statutorily enumerated areas. The director must (1) count or review certain absentee and vote by mail ballots under AS 15.15.430, AS 15.20.082(c), AS 15.20.201(d), AS 15.20.480, and AS 15.20.800(e); (2) review and count certain ballots under AS 15.15.430; and (3) review all ballots in a recount election (AS 15.20.480).