

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 JOE MILLER,)
4)
5 *Plaintiff,*)
6)
7 v.)
8)
9 LIEUTENANT GOVERNOR CRAIG)
10 CAMPBELL, in his official capacity,)
11 and the STATE OF ALASKA,)
12 DIVISION OF ELECTIONS,)
13)
14 *Defendants.*)
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Case No. 4FA-10-3151 CI

Filed in the Trial Court
State of Alaska, Fourth District

NOV 22 2010

By _____ Deputy

11 **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

12 Comes now Plaintiff, JOE MILLER, by and through his attorneys, Thomas V. Van
13 Flein and John Tiemessen, of CLAPP, PETERSON, VAN FLEIN, TIEMESSEN &
14 THORSNESS LLC, and Michael T. Morley, and for his Complaint, alleges as follows:

15 **Introduction**

16 1. Defendants have adopted and implemented several policies, procedures, and
17 standards regarding the 2010 general election for U.S. Senate (hereafter, "Election") that
18 violate not only Alaska law, but the U.S. Constitution.

19 a. Defendants' policies threaten to disenfranchise Alaskan voters who voted in
20 full compliance with state law, by allowing those votes effectively to be nullified or
21 cancelled out by ballots cast and counted in clear violation of the law. Most notably,
22 Alaska law expressly provides that a write-in ballot "may not be counted" unless the name
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1 of the candidate is written on the ballot “as it appears on the [candidate’s] write-in
2 declaration of candidacy.” AS § 15.15.360(a)(11), (b). The statute emphasizes that this
3 requirement is “mandatory,” and there are “no exceptions” to it. *Id.* § 15.15.360(b).
4 Defendants nevertheless have decided to ignore the statute and create “exceptions” to count
5 ballots that do not satisfy these clear requirements. By so doing the defendants have
6 violated the mandatory legislative requirements and fundamentally altered the election.

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8 b. Defendants also, in effect have allowed a single person—the Director of the
9 Division of Elections (hereafter, “Director”)—to act as a “supervoter” who decides the
10 outcome of the election, by determining how tens of thousands of write-in ballots should be
11 counted, based on nothing more than a vague, amorphous, and unavoidable subjective
12 “intent of the voter” standard—with no specific rules, restrictions, or guidelines to help
13 confine her discretion. In *Bush v. Gore*, 531 U.S. 98 (2000), the Supreme Court
14 specifically held that employing such a standard to count ballots, without imposing
15 additional, more specific restrictions, was unconstitutional under the Equal Protection
16 Clause because it left too much discretion in the hands of government officials. Witnesses
17 to the exercise of her discretion describe the process as entirely subjective, inconsistent and
18 whimsical.

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20 c. Additionally, Defendants have established arbitrary, disparate, and
21 discriminatory procedures regarding the treatment of ballots that have been rejected as
22 invalid by automated tally machines, giving certain voters an extra opportunity to have their
23 ballots personally reviewed by Division personnel—and ultimately counted—if they
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1 attempted to vote for a write-in candidate, but not if they attempted to vote for a candidate
2 whose name was pre-printed on the ballot.

3 d. Finally, Defendants have ignored a variety of state law requirements enacted
4 to prevent voting fraud and ensure the integrity of the electoral process, thereby casting
5 serious doubt on the returns from certain precincts.

6 2. Plaintiff Joe Miller filed suit in the U.S. District Court for the District of Alaska,
7 seeking, among other things, to enjoin Defendants from violating the U.S. Constitution's
8 Elections Clause, *see* U.S. Const., art. I, § 4, cl. 1, by usurping the state legislature's sole
9 constitutional prerogative to prescribe the manner in which elections for the U.S. Senate
10 will be conducted, by establishing standards for counting write-in ballots that flatly
11 contradict those the legislature set forth in AS § 15.15.360. Plaintiff Miller's Amended
12 Complaint in federal court also sought to bar Defendants from violating the Equal
13 Protection Clause, *see id.* amend. XIV, by: (i) determining whether to count write-in
14 ballots based on a nebulous "intent of the voter" standard that the U.S. Supreme Court
15 already held was constitutionally insufficient, and (ii) discriminating among voters based
16 on the candidate for whom they attempted to vote, by establishing an extra opportunity for
17 personal review of ballots that were rejected by automated tally machines if the voter
18 apparently had attempted to vote for a write-in candidate, but not if the voter apparently
19 attempted to vote for a candidate whose name was pre-printed on the ballot.
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22 3. The U.S. District Court held that Plaintiff Miller had raised "serious constitutional
23 questions" as well as "serious state law issues" regarding the Defendants' policies and
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1 conduct. *Miller v. Campbell*, No. 3:10-CV-00252-RRB, at 2, 4 (Nov. 19, 2010) (hereafter,
2 “Federal Lawsuit”). It recognized, however, that some of Plaintiff Miller’s arguments
3 involved questions of state law that the state judiciary should have the first chance to
4 address. *Id.* at 3-4. The U.S. District Court therefore abstained from exercising jurisdiction
5 over the case pursuant to *Railroad Comm’n v. Pullman Co.*, 312 U.S. 496 (1941), so that
6 this Court would have the first opportunity to consider the state-law issues implicated by
7 Defendants’ troubling conduct, and entered a preliminary injunction barring Defendants
8 from certifying the results of the race for U.S. Senate “until the legal issues raised [by
9 Plaintiff Miller] have been fully and finally resolved.” Federal Lawsuit, *supra* at 3-4.

11 England Reservation

12 4. Pursuant to the U.S. District Court’s Order, Plaintiff Miller has filed the instant
13 lawsuit so that this Court can have the first opportunity to address Defendants’ various
14 violations of state law, as well as the state-law issues implicit in his federal constitutional
15 claims. Pursuant to Judge Beistline’s order, and *England v. State Board of Medical*
16 *Examiners*, 375 U.S. 411 (1964), and *United Parcel Service v. California Public Utilities*
17 *Comm’n*, 77 F.3d 1178 (9th Cir. 1996), Plaintiff Miller reserves his right to have the U.S.
18 District Court have the final decision on the federal claims related to this lawsuit, including
19 but not limited to Plaintiff Miller’s claims under the Elections Clause, U.S. Const., art. I, §
20 4, cl. 1., and the Equal Protection Clause, *id.* amend XIV.

23 Jurisdiction

24 5. This Court has jurisdiction over this case pursuant to AS § 22.10.020(a).

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Venue

6. Venue is appropriate in the Fourth Judicial District because the claim arose within the District. Alaska R. Civ. P. 3(c).

Parties

7. Plaintiff JOE MILLER is a resident of the State of Alaska. He is at least 30 years of age and is a natural-born U.S. citizen. On August 31, 2010, Mr. Miller won the primary election to become the Republican nominee in the Election for the office of U.S. Senator. He cast a vote in the Election.

8. Defendant Craig Campbell, Lieutenant Governor of Alaska, is a resident of Alaska. He statutorily is required to “control and supervise the division of elections,” AS § 15.10.105(a), and “administer state election laws,” *id.* § 44.19.020(1).

9. Defendant, the State of Alaska, Division of Elections (hereafter, the “Division”), is a department of the State of Alaska established under AS § 15.10.105(a). Its Director is the “chief elections officer of the state,” AS § 15.80.010(3); “act[s] for the lieutenant governor in the supervision of central and regional election offices . . . and the administration of all state elections,” *id.* § 15.10.105(a); *see also id.* § 15.15.010; and serves at the lieutenant governor’s pleasure, *id.* § 15.10.105(a). The Director may “adopt regulations under AS [§] 44.62 necessary for the administration of state elections.” *Id.* § 15.15.010. Defendant

1 Campbell, as Lieutenant Governor, “control[s] and supervise[s]” the Division, and the
2 Director acts on his behalf. *Id.*

3 **Defendants’ Numerous Violations of State Law Threaten to Taint**
4 **the Results of the 2010 General Election for U.S. Senate**

5 10. As the U.S. District Court for the District of Alaska recognized, Defendants’
6 conduct raises “serious state law issues” that this Court must address. Federal Lawsuit,
7 *supra* at 4.

8 11. Defendants’ policies, standards, and procedures violate state law, and will result in
9 legitimate, legally cast votes being either effectively nullified or cancelled out by votes cast
10 in violation of the law or, for certain votes rejected by automated tally machines, arbitrarily
11 discarded altogether without being afforded the same opportunity for individualized review
12 afforded to write-in ballots that similarly had been rejected by an automated tally machine.
13 These policies also resulted in protest votes, that were cast in order to mock the write-in
14 candidate, being counted as votes in favor of the candidate, directly contrary to the “voter
15 intent.”

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18 **COUNT ONE**
19 **Violation of AS § 15.15.360(a)(10), (a)(11), and (b)**

20 12. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
21 Paragraph 1 through 11, as if set forth fully herein.

22 13. Defendants have violated AS § 15.15.360(a)(10), (a)(11), and (b) by accepting as
23 valid and counting write-in votes in the race for U.S. Senate in which the candidate’s name
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1 was not spelled correctly, or was not written as it appears on the candidate's write-in
2 certificate of candidacy.

3 14. Alaska law provides that a write-in ballot may not be counted unless the voter
4 spelled the candidate's name correctly on the ballot, as it appears on the candidate's write-
5 in declaration of candidacy:

6 a. AS § 15.15.360(a)(10) provides, "In order to vote for a write-in candidate,
7 the voter must write in the candidate's name in the space provided."

8 b. AS § 15.15.360(a)(11) further provides, "A vote for a write-in candidate . . .
9 shall be counted if . . . the name, as it appears on the write-in declaration of candidacy, of
10 the candidate or the last name of the candidate is written in the space provided." The
11 defendants apparently don't like this law and have taken it upon themselves to amend it
12 without any legislative approval.

13 15. Unlike federal statutes such as the Uniformed and Overseas Citizens Absentee
14 Voting Act (UOCAVA), 42 U.S.C. § 1973ff-2; state regulations such as 6 AAC 25.670(b);
15 and the laws of some other states, these provisions do not expressly allow a voter to include
16 on a write-in ballot a misspelling, minor variation, or reasonable approximation of a
17 candidate's name.

18 16. Similarly, unlike other provisions of § 15.15.360(a) itself, such as subsection (5),
19 these provisions do not expressly allow a vote to be counted if the voter "substantially"
20 complies with these requirements or if, despite an error, it is "clear[] that the voter
21 intended" to cast his ballot for a particular person. *Cf.* AS § 15.15.360(a)(5).
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1 17. To the contrary, AS § 15.15.360(b) provides, “The rules set out in this section are
2 mandatory and there are no exceptions to them. A ballot may not be counted unless marked
3 in compliance with these rules.” This is the clear mandate by the legislature.

4 18. Thus, the legislature: clearly provided that a write-in vote may not be counted
5 unless the voter writes the candidate’s name on the ballot; specified that name must be
6 written on the ballot “as it appears” on the candidate’s write-in declaration of candidacy;
7 declined to authorize misspellings, minor variations, or reasonable approximations of
8 candidates’ names to appear on the ballot; omitted any suggestion that “substantial”
9 compliance with these requirements would be sufficient; and emphasized that these rules
10 are “mandatory” and are subject to “no exceptions.”

11 19. Defendants know this and have already acknowledged the correct application of the
12 law. Defendants themselves have argued to both the Alaska Superior Court and Alaska
13 Supreme Court that write-in ballots will be thrown about based on spelling errors or
14 mistakes about candidates’ names:

15 a. In *Alaska Democratic Party v. Fenumiai*, No. 3AN-10-11631CI (3d Jud.
16 Dist.), *Defendant’s* [sic] *Opposition to Plaintiff’s* [sic] *Motion for a Temporary Restraining*
17 *Order and Preliminary Injunction*, at 21 (filed Oct. 26, 2010), the Director and Division
18 argued that the Superior Court should make lists of write-in candidates available for voters
19 to review at precinct polling locations because “being shown the list of registered
20 candidates significantly increases the possibility that they will not have their vote thrown
21 out because of a spelling error or mistake about a candidate’s name.”

1 b. On appeal, in *Alaska Democratic Party v. Fenumiai*, No. S-14054 (Alaska),
2 *Petition for Review*, at 14 (filed Oct. 27, 2010), the Director and Division likewise
3 (successfully) argued that the Alaska Supreme Court should make lists of write-in
4 candidates available for voters to review at precinct polling locations because, “[f]or those
5 voters who seek assistance in voting for a write-in candidate, being shown the list of
6 registered candidates significantly increases the possibility that their vote will count (i.e.,
7 will not be thrown out because of a spelling error or mistake about a candidate’s name).”
8 These judicial admissions establish the defendants’ actual knowledge of the real meaning of
9 Alaska law. As a result of the Division’s arguments, the court allowed Defendants to post a
10 list of write-in candidates at each precinct for the first time in fifty years.

12 20. Despite this clear statutory mandate, Defendants announced—after Election Day—
13 that they nevertheless would accept as valid, and would count, write-in ballots in which the
14 candidate’s name was misspelled, or in which it otherwise was not written as it appears on
15 the candidate’s declaration of write-in candidacy, if the Director is able to ascertain the
16 “intent of the voter.” Defendants then issued a written regulation on segregating the
17 ballots. Defendants did not announce any more specific rules, guidelines, policies, or
18 procedures for how the Director would go about attempting to make determinations
19 regarding “voter intent.” In short, the Director had no objective guidelines.

21 21. Pursuant to this policy, Defendants accepted as valid and counted for Lisa
22 Murkowski several thousand ballots in which her name was misspelled, or otherwise was
23 not written as it appears on her write-in declaration of candidacy.

1 22. Because Defendants decided, also after Election Day, to start counting write-in
2 ballots over a week early, Plaintiff Miller did not have sufficient time to identify and train
3 volunteers to monitor the ballot-counting procedures and challenge questionable ballots for
4 the first few days of the counting process. Thus, it is likely that there are several hundred,
5 if not several thousand, additional write-in votes that were completed improperly and/or
6 contain other statutory defects such as misspellings, that have not yet been identified. The
7 Director arbitrarily changed the date and refused to accommodate the candidate's election
8 team.

9
10 23. Defendant's policy of counting write-in ballots in which the candidate's name was
11 misspelled, or in which the candidate's name otherwise is not written as it appears on the
12 candidate's write-in declaration of candidacy, is contrary to and violates AS
13 § 15.15.360(a)(10), (a)(11), and (b).

14 WHEREFORE Plaintiff Miller respectfully requests injunctive and declaratory relief
15 against this ongoing violation of AS § 15.15.360(a)(10), (a)(11), and (b).

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17 **COUNT TWO**
18 **Violation of AS § 15.15.030(5) and (12)**

19 24. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
20 Paragraph 1 through 23, as if set forth fully herein.

21 25. Defendants have exceeded their authority under, and violated, AS § 15.15.030(5)
22 and (12) by establishing disparate treatment for ballots that have been rejected by
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1 automated tally machines, depending on whether or not the voter apparently attempted to
2 vote for a write-in candidate.

3 26. Alaska law provides, “The director shall prepare all official ballots to *facilitate*
4 *fairness*, simplicity, and clarity in the voting procedure. . . . Provision shall be made for
5 write-in and no-party candidates within each section [of the ballot]. . . . The director may
6 provide for the optical scanning of ballots where the requisite equipment is available.” AS
7 § 15.15.030(5), (12) (emphasis added).

8 27. Automated tally (*i.e.*, optical scanning) machines may reject ballots for numerous
9 reasons, including but not limited to:

10 a. the voter completely filled in the oval next to the name of one candidate in a
11 particular race, but also made a stray mark in that area of the ballot;

12 b. the voter partially or completely filled in the oval next to the name of one
13 candidate in a particular race, attempted to erase that marking but did so incompletely, and
14 then filled in another oval next to a different candidate’s name in the same race; or

15 c. the voter filled in the oval next to a candidate’s name incompletely, or too
16 lightly to be read.

17 28. The Director violated §15.15.030’s requirement of “facilitat[ing] fairness” in the
18 election, and illegally exceeded the scope of her authority under AS § 15.15.030(12), by
19 establishing two different procedures for handling ballots that are rejected by automated
20 tally machines: an advantageous procedure for ballots in which the voter apparently
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1 attempted to vote for a write-in candidate, and a “fatal in fact” procedure for ballots in
2 which the voter apparently attempted to vote for a candidate whose name is pre-printed on
3 the ballot.

4 29. Under the Director’s policy, if an automated tally machine rejects a ballot, and the
5 voter apparently attempted to cast that ballot for a write-in candidate (*i.e.*, he or she wrote a
6 candidate’s name on the ballot), that ballot is reviewed by either a Division employee or the
7 Director herself, to determine whether “the intent of the voter” can be divined. If the
8 Division or Director decides, based on this individualized, personal review or hand count,
9 that the voter “intended” to cast his or her vote for a write-in candidate, the vote will be
10 counted for that candidate, despite the fact that the automated tally machine rejected it.

12 30. Under this same policy, however, if an automated tally machine rejects a ballot, and
13 the voter did not attempt to vote for a write-in candidate (*i.e.*, he or she did not write in a
14 candidate’s name on the ballot), that ballot is not subject to any review or hand count by
15 Division personnel or the Director. Thus, if an automated tally machine rejects a person’s
16 ballot, and that person did not write in a candidate’s name on the ballot, he or she has no
17 further opportunity to have his vote counted, and effectively is disenfranchised.

19 31. Neither AS § 15.15.030(5), which requires Defendants to make provisions for write-
20 in votes, nor Alaska Stat § 15.15.030(12), which permits Defendants to use optical scanning
21 machines to help tally votes, authorize Defendants to establish different rules for
22 determining the validity of ballots, or the handling of ballots that have been rejected by
23 automated tally machines, depending on whether or not the voter attempted to vote for a
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1 write-in candidate. Defendants' policy therefore is *ultra vires* under state law, and violates
2 § 15.15.030's directive that the Division's Director "facilitate fairness" in the election.

3 WHEREFORE Plaintiff Miller respectfully requests injunctive and declaratory relief
4 against this ongoing violation of AS § 15.15.030.

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6 **COUNT THREE**
7 **Procedural Violations of Alaska Administrative Procedure Act**
8 **(AS §§ 44.62.020, 44.62.030, and 44.62.300)**

9 32. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
10 Paragraph 1 through 31, as if set forth fully herein.

11 33. Defendants violated the Alaska Administrative Procedures Act (APA) by enacting
12 the policies set forth in Counts One and Two without adhering to the Act's procedural
13 requirements.

14 34. The Alaska Election Code expressly provides that the Division's Director must
15 promulgate regulations pursuant to the APA. AS § 15.15.010.

16 35. The new policies set forth above in Count One (regarding the counting of
17 improperly completed write-in ballots) and Count Two (regarding disparate treatment of
18 write-in votes and other ballots that have been rejected by automated tally machines)
19 constitute "regulations" under the Alaska Administrative Procedures Act ("APA"), but
20 were not enacted pursuant to that statute's procedural requirements.

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22 36. The Administrative Procedure Act defines the term "regulation" as including:
23 every rule, regulation, order, or standard of general application or the
24 amendment, supplement, or revision of a rule, regulation, order, or standard
25 adopted by a state agency to implement, interpret, or make specific the law

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enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of a state agency.

AS § 44.62.640(a)(3). The definition specifies that the term includes “‘manuals,’ ‘policies,’ ‘instructions,’ ‘guides to enforcement,’ ‘interpretative bulletins,’ ‘interpretations,’ and the like, that have the effect of rules, orders, regulations, or standards of general application.”

Id. “[W]hether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public.” *Id.*

37. The policies set forth above in Count One (regarding the counting of improperly completed write-in ballots) and Count Two (regarding disparate treatment of write-in votes and other ballots that have been rejected by automated tally machines) constitute “regulations,” because they affect the voting public and are used by the Division in determining whether and how to count voters’ ballots.

38. The APA specifies that an agency wishing to promulgate or amend a regulation must publish a formal public notice in a newspaper of general circulation at least 30 days before it takes effect, AS § 44.62.190(a)(1), along with “the reason for the proposed action” and certain other pieces of information about the proposal, *id.* §§ 44.62.190(d), 44.62.200(a).

39. A regulation may not be adopted unless and until the public has had the opportunity “to present statements, arguments, or contentions in writing,” if not orally, regarding the proposal. AS § 44.62.210(a). The agency is required to “consider all factual, substantive, and other relevant matter presented to it before adopting, amending, or repealing a regulation.” *Id.*

1 40. If an agency purports to promulgate a regulation without satisfying these
2 requirements, it may be struck down in court. AS § 44.62.300(1)-(2).

3 41. Before adopting and implementing the policies set forth above in Counts One and
4 Two, Defendants did not:

- 5 a. give the public advance notice;
6 b. publish the required information about them;
7 c. solicit or consider public feedback; or
8 d. otherwise comply with AS §§ 44.62.190(a)(1), (d), 44.62.200, and
9 44.62.210(a).
10

11 42. Because the policies set forth above in Counts One and Two were not promulgated
12 pursuant to the APA's procedural requirements, they are invalid and unenforceable.

13 WHEREFORE Plaintiff respectfully requests injunctive and declaratory relief against these
14 violations of the procedural provisions of the Alaska Administrative Procedure Act.

15 **COUNT FOUR**
16 **Substantive Violations of the Alaska Administrative Procedures Act**
17 **(AS §§ 42.62.020 and 42.62.030)**

18 43. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
19 Paragraph 1 through 42, as if set forth fully herein.

20 44. Defendants have violated the APA's substantive requirements by enacting the
21 policies set forth in Counts One and Two.
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1 45. The Alaska Election Code expressly provides that the Division's Director must
2 promulgate regulations pursuant to the requirements of the Alaska Administrative
3 Procedures Act. AS § 15.15.010.

4 46. The new policies set forth above in Count One (regarding the counting of
5 improperly completed write-in ballots) and Count Two (regarding disparate treatment of
6 write-in votes and other ballots that have been rejected by automated tally machines)
7 constitute "regulations" under the APA, but squarely violate the Act's substantive
8 requirements.
9

10 47. The APA provides, "each regulation adopted must be within the scope of authority
11 conferred and in accordance with standards prescribed by other provisions of law." AS §
12 44.62.020.

13 48. The APA further provides, "If, by express or implied terms of a statute, a state
14 agency has authority to adopt regulations to implement, interpret, make specific or
15 otherwise carry out the provisions of the statute, a regulation adopted is not valid or
16 effective unless consistent with the statute and reasonably necessary to carry out the
17 purpose of the statute." AS § 44.62.030.
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19 49. As discussed above in Count One, Defendants' policy of accepting as valid and
20 counting write-in ballots in which the candidate's name is misspelled, or otherwise is not
21 written as it appears on the candidate's write-in declaration of candidacy, is not consistent
22 with AS §15.15.360(a)(10), (a)(11), and (b), and therefore is not "valid or effective" under
23 AS § 44.62.030, and in fact is an impermissible "exception."
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1 50. As discussed above in Count Two, Defendants' policy of providing an
2 individualized review and hand count of write-in votes in the U.S. Senate race that were
3 rejected by automated tally machines, but not ballots in which the voter did not attempt to
4 vote for a write-in candidate, was not within the scope of the Director's authority to adopt
5 under AS § 15.15.030(5) and (12), is not "reasonably necessary" to carry out those statutes,
6 and therefore is not "valid and effective" under AS §§44.62.020 and 44.62.030.

7 WHEREFORE Plaintiff respectfully requests injunctive and declaratory relief against these
8 violations of the substantive provisions of the Alaska Administrative Procedure Act.
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10 **COUNT FIVE**
11 **Violation of AS § 15.15.225**

12 51. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
13 Paragraph 1 through 50, as if set forth fully herein.

14 52. Defendants have violated AS § 15.15.225 by accepting as valid, and counting,
15 ballots despite the fact that, according to the official election registers from the precinct
16 polling places, voters neither showed proper identification nor were excused from showing
17 such identification.

18 53. AS §15.15.225(a) provides, "Before being allowed to vote, each voter shall exhibit
19 to an election official one form of identification." The statute further states, "An election
20 official may waive the identification requirement if the election official knows the identity
21 of the voter." *Id.* §15.15.225(b). If a voter cannot show identification, he or she may only
22 cast a questioned ballot. *Id.* §15.15.225(c).
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1 54. The election register at each polling place contains a space near the name of each
2 person who signs in to vote, in which the election official must mark whether the voter
3 showed identification, or instead was excused from showing identification because he or
4 she was personally known to the election official.

5 55. In numerous precincts, the election register records for the majority of voters clearly
6 show that they either presented proper identification or were personally known to an
7 election official. According to those election registers, however, numerous other voters in
8 those precincts neither presented identification nor were personally known to election
9 officials, yet apparently were permitted to vote anyway, without being given questioned
10 ballots.
11

12 56. AS § 15.15.225 does not permit Defendants to accept as valid or count as valid
13 ballots—other than questioned ballots—cast by voters who neither showed proper
14 identification or were excused from showing identification because they were personally
15 known to election officials. On information and belief, Defendants nevertheless have
16 accepted as valid and counted such ballots.
17

18 WHEREFORE Plaintiff respectfully requests injunctive and declaratory relief against these
19 violations of AS § 15.15.225.
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21 **COUNT SIX**
22 **Violation of AS § 15.15.360(a)(10)**

23 57. Plaintiff Miller hereby realleges and incorporates by reference the allegations in
24 Paragraph 1 through 57, as if set forth fully herein.

1 58. Defendants have violated AS § 15.15.360(a)(10) by accepting as valid and counting
2 write-in votes in which the candidate's name apparently was not written on the ballot by the
3 voter.

4 59. AS §15.15.360(a)(10) (emphasis added) provides, "In order to vote for a write-in
5 candidate, *the voter* must write in the candidate's name in the space provided."

6 60. In several precincts, the handwriting on many or all of the write-in ballots appears
7 to be from the same person, or the same small group of 2 to 4 people. The Division
8 nevertheless accepted as valid and counted the write-in votes from those precincts.
9

10 61. Thus, the Division is violating § 15.15.360(a)(10) by accepting as valid and
11 counting numerous write-in ballots in which the candidate's name was not written by the
12 voter himself.

13 WHEREFORE Plaintiff respectfully requests injunctive and declaratory relief against these
14 violations of AS § 15.15.360(a)(10).
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff JOE MILLER prays for:

- 18 1. An injunction prohibiting Defendants from:
- 19 a. Accepting as valid, or counting, write-in ballots in which the candidate's
20 name is misspelled, or is not written as it appears on the candidate's write-in declaration of
21 candidacy, in violation of AS § 15.15.360(a)(10), (a)(11), and (b);
- 22 b. Conclusively rejecting as invalid, and declining to count, ballots that were
23 rejected by an automatic tally (optical scanning) machine, in which the voter did not write
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1 in the name of a candidate, without first conducting an individualized review and hand
2 count of them according to the same standards Defendants applied to such ballots
3 containing write-in candidates, in violation of AS § 15.15.030(5) and (12);

4 c. Accepting as valid, or counting, votes in which the voter neither displayed
5 proper identification nor was excused from doing so because he or she was personally
6 known to an election official, in violation of AS § 15.15.225; or

7 d. Accepting as valid, or counting, write-in votes in which someone other than
8 the voter wrote in the name of the candidate (except for voters who required assistance due
9 to disability or illiteracy), in violation of AS § 15.15.360(a)(10).

10 2. A declaratory judgment pursuant to AS § 22.10.020(g) that:

11 a. Defendants violated AS §15.15.360(a)(10), (a)(11), and (b) by accepting as
12 valid, and counting, write-in ballots in which the candidate's name is misspelled, or is not
13 written as it appears on the candidate's write-in declaration candidacy;

14 b. Defendants violated AS §§ 15.15.030(5) and (12) by providing
15 individualized reviews and hand counts of ballots that were rejected by automatic tally
16 (optical scanning) machines if the voter wrote in the name of a candidate, but not if the
17 voter apparently attempted to vote for a candidate whose name was pre-printed on the
18 ballot;

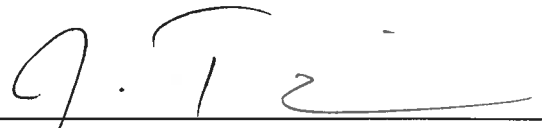
19 c. Defendants violated § 15.15.225 by accepting as valid, and counting, votes
20 from voters who apparently neither displayed proper identification nor were excused from
21 doing so because they were personally known to election officials; and
22
23
24

1 d. Defendants violated § 15.15.360(a)(10) by accepting as valid, or counting,
2 write-in votes in which someone other than the voter wrote in the name of the candidate
3 (except for voters who required assistance due to disability or illiteracy);


4 3. Attorneys fees if allowed by law; and

5 4. Such other relief as the Court deems just and equitable.

6 DATED at Fairbanks, Alaska, this 22nd day of November 2010.

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26 Application for *pro hac vice* admission
forthcoming

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