Written by **Kurt Hyde** on December 15, 2010

Alaska Senate Contest Goes to Alaska Supreme Court

The results of this year's election for U.S. Senator in Alaska are now being argued in the Alaska Supreme Court. The legal battle for this Senate seat began in federal court where U.S. District Judge Ralph Beistline ruled that it should be settled in a state court, but also granted a temporary injunction halting certification of the election based on the Miller campaign's raising of "serious" legal issues.

The Miller campaign promptly filed a lawsuit in Superior Court in Fairbanks. The defendants then won a motion to transfer the case to Superior Court in Juneau, the Alaska State Capitol. In Juneau, Superior Court Judge William Carey ruled against the Miller campaign's assertion that many of the write-in votes for Murkowski were counted in violation of Alaska State Statutes. The Miller campaign is currently appealing that ruling in the Alaska Supreme Court.

The issue over counting the write-in ballots is based on Alaska law. The section of Alaskan law governing the counting of ballots is Alaska Statutes, Chapter 15, Section 360.

The only leeway vote tabulators have in the way of determining voter intent is in Paragraph 5, which allows determination of voter intent where the voters have erred while marking the ovals in their ballots and lists legal guidelines for determining voter intent when counting ballots.

Paragraph 11 leaves no leeway in the manner of writing out a candidate's name, requiring that a write-in ballot have the last name "as it appears on the write-in declaration of candidacy." Section 360 goes on to say: "The rules set out in this section are mandatory and there are no exceptions to them. A ballot may not be counted unless marked in compliance with these rules."

After many years of studying and giving talks on America's voting process, I, personally, am an advocate of voter intent, but voter intent must be authorized by law along with legal guidelines to be followed. I also believe that every time voter intent is applied to a ballot, it must be done in public, with witnesses present, photography allowed, and the person or persons who determine the voter's intent must explain the decision.

Alaska is not the only state that has election laws that ride roughshod over write-in candidates. The Republican-Democrat duopolies have enacted similar laws in many other states. These laws should be changed by the legislatures of these states to allow voter intent and set proper guidelines.

However, the Miller campaign has alleged numerous other problems with the election, including a sworn affidavit from an Anchorage voter who witnessed stacks of ballots in an unsecured ballot box

even though he was one of the first voters at that precinct and a sworn affidavit from one of the Miller campaign's volunteers who witnessed pre-sorted ballots by U.S. Senate candidate as they arrived for the write-in count. Campaign staffers also believe they have spotted a number of write-in ballots in the same handwriting.

If the Miller campaign loses in the Alaska courts, an appeal can still be made to the U.S. Senate as specified in Article I, Section 5 of the U.S. Constitution, which says: "Each House shall be the judge of the elections, returns and qualifications of its members." While the U.S. Senate is decidedly liberal and would in all probability favor Murkowski over Miller, it would be an opportunity for the Miller campaign to make its grievances known.