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STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

October 20, 2010

Ms. Patti Higgins
Chair, Alaska Democratic Party
2602 Fairbanks Street
Anchorage AK 99503

SENT VIA FAX ONLY TO 907-258-1626

Dear Ms. Higgins:

The division of elections has taken measures to address the complaint from the Alaska Democratic Party regarding the write-in candidate list that was erroneously posted in two voting booths at the Homer absentee voting location.

First and foremost, the complained of action - posting a list of write-in candidates in the polling place - was an action not sanctioned by the Division of Elections, and contrary to specific instructions from the division. This election raises issues of first impression in Alaska and the division has worked with the Department of Law over the past weeks to analyze the requirements of state and federal law to address the unique circumstances posed by the election.

Your complaint letter came to the division late in the afternoon on October 19, 2010. The letter identifies five points of immediate action requested by your organization. The division's responses to each point are below:

1. Direct all polling locations to remove immediately all write-in information with candidate names. Also, the Division needs to ask each and every polling location if they posted any information with write-in candidate names and make a list of all violating polling locations available to the Alaska Democratic Party, the press and the public.

Response:

The write-in candidate list was removed from the voting booth immediately after it was brought to the attention of the Homer City Clerk that the list had been posted. There was a two and a half hour period of time, 8:00 a.m. to 10:30 a.m. on October 19, in which voting took place while the list was posted.

The division will contact each absentee voting location to reinforce the original instructions that the list is not to be posted. The division believes that the Homer posting was an isolated incident.

2. Make sure that all ballots which were cast Monday, October 18th and Tuesday, October 19th and which posted write-in candidate names, such as in Homer, be segregated and not commingled with other ballots.

Response:

As soon as it was brought to the division's attention, I requested that the 17 affected ballots be segregated.

3. Direct election workers and polling place workers going forward that they cannot post write-in candidate names or discuss them within 200 feet of any polling place and make this communication available to the Alaska Democratic Party, the press, and the public.

Response:

All voting locations are being sent an official write-in candidate list and instructed the list is for poll workers' use when providing assistance, if requested, to voters. The list is to be shown to a voter, who asks about official write-in candidates. Per our instructions, the list was never intended to be posted at any voting location.

The division of elections is obligated by federal (42 USC §1973aa-6) and state law (AS 15.15.240) to provide assistance to voters in the polling place upon request. The list of write-in candidates is the best way for poll workers to provide consistent information and assistance to voters if requested, regarding write-in candidates.

The regulation cited by the ADP does not prohibit such assistance. The regulation cannot be read in isolation, and providing voter assistance on how to vote for a write-in candidate is not in violation of the regulation; indeed, it is explicitly required by statute. AS 15.15.240 mandates that when a voter requests assistance, "the election official shall assist the voter." 6 AAC 25.070(b) must also be read in conjunction with AS 15.15.170, which prohibits political persuasion in or near the polls. Thus, subsection (b) of the regulation is directed at campaigning rather than voter assistance.

"Information" in the regulation means "persuasive information," and therefore the regulation only prohibits providing or exhibiting persuasive information. It does not prohibit the division from providing assistance to voters. In fact, the regulation in

subsection (d) specifically acknowledges that voters can request assistance from poll workers for indicating a write-in choice. Thus, the list provides appropriate assistance to voters who request help, without violating 6 AAC 25.070(b)'s prohibition against persuasive information.

4. Insure that packets being assembled for the November 2nd election not include information regarding write-in candidate names.

Response:

The division will provide all voting locations with an official write-in candidate list and instruct election workers that the list is for their use when providing assistance, if requested to voters. The list is to be shown to voters, if requested, when providing assistance regarding write-in candidates. The election workers have been instructed that the list is not to be posted in the polling place or voting booth.

The division is required by federal and state law to provide assistance to any voter when requested. In order to facilitate that assistance and to ensure that there is consistency with instructions, it is best to have a standardized document from the division identifying the write-in candidates. This list is intended to be used as a tool by election workers to provide information, if requested, to voters regarding write-in candidates. The list ensures that all voters are receiving the same information. It was never the intention of the division that the list be posted in a voting booth.

5. Provide a full explanation of exactly what happened, why it happened, and how many votes have been tainted.

Response:

There were 17 ballots were voted at the Homer City Clerk's office during the time period in which the list was physically posted in the two voting booths.

On October 15, the division prepared a list of write-in candidates who had completed the statutory process for registration and instructions to be sent to all absentee voting officials and precinct chairpersons for use of the list.

On the evening of October 18, the Region I Election Supervisor forwarded an email from me to the city clerks that had absentee voting sites asking them to print out a few copies of the attached documents and get them to the absentee voting officials.

After receiving notification regarding a complaint from Kay Brown about a poster that was hung in a voting booth in Homer, the Region I Election Supervisor immediately contacted Homer City Clerk Jo Johnson. Ms. Johnson relayed that one of her clerks had posted the write-in candidate lists in the polling booths and when she heard of the

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complaint she went to investigate and pulled the signs from the booths. Ms. Johnson stated that it was their mistake.

After the Region I Election Supervisor spoke with Ms. Johnson, she sent another email to all clerks to once again re-iterate that the list is NOT to be posted and instructed the absentee voting officials to only show the list if a voter asks for assistance regarding write-in candidates.

I immediately requested that all ballots voted during this time period be segregated. The ballots have been bundled and sent to the Region I Elections Office.

I believe this letter addresses the issues you raised in your letter received by the division on October 19, 2010.

Sincerely,



Gail Fenumiai
Director

cc: The Honorable Craig Campbell, Lieutenant Governor
Attorney General Dan Sullivan, Department of Law
Sarah Felix, Assistant Attorney General, Department of Law