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7. IN THE UNITED STATES DISTRICT COURT  
 8. FOR THE DISTRICT OF ALASKA

9. JOE MILLER,

10. Plaintiff,

11. v.

12. LIEUTENANT GOVERNOR MEAD  
 TREADWELL, in his official capacity; and  
 13. the STATE OF ALASKA, DIVISION OF  
 ELECTIONS,

14. Defendants.

Case No. 3:10-cv-252 (RRB)

15. (PROPOSED)  
 16. ANSWER TO AMENDED COMPLAINT FOR INJUNCTIVE AND  
 17. DECLARATORY RELIEF AND CROSS-CLAIM OF  
 INTERVENOR SENATOR LISA MURKOWSKI

18. Proposed Intervenor Senator Lisa Murkowski ("Intervenor") hereby answers  
 19. plaintiff's Amended Complaint for Injunctive and Declaratory Relief and asserts a cross-  
 20. claim as follows:

21. I. ANSWER

22. 1. Denied.

23. 2. Intervenor admits that shortly before the hand count held in Juneau starting  
 24. on November 10 the Division of Elections issued a document describing how the ballots

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1. would be reviewed and sorted and denies the remaining allegations of this paragraph.
2.       3.     Denied.
3.       4.     Denied.
4.       5.     Denied.
5.       6.     Denied.
6.       7.     Denied.
7.       8.     Admitted.
8.       9.     Admitted.
9.       10.    The allegations set out in the first three sentences of this paragraph are
10. admitted. Intervenor is without sufficient information to respond to the allegations set out
11. in the last sentence of paragraph 9, and therefore denies them.
12.       11.    Admitted but undersigned denies he is the Lieutenant Governor of Alaska
13. at this time.
14.       12.    Paragraph 11 sets out legal conclusions to which no response is required.
15. To the extent the paragraph quotes statutes of Alaska, no response is required.
16.       13.    Denied
17.       14.    Paragraph 14 sets out legal conclusions to which no response is
18. required. To the extent the paragraph quotes statutes of Alaska, no response is required.
19.       15.    Paragraph 15 sets out legal conclusions to which no response is
20. required. To the extent the paragraph quotes statutes of Alaska, no response is required.
21.       16.    Denied.
22.       a.     Intervenor admits the existence of the news article cited in
23. Paragraph 16(a) and that the article contains certain allegations). However, the
24. paragraph's characterizations of the article, the allegations contained within the
- 25.

1. quotations, all other allegations contained in the news article, and the admissibility of  
2. these allegations are denied.

3.           b.       Intervenor admits the existence of the news article cited in  
4. Paragraph 16(b) and that the article contains certain allegations. However, the allegations  
5. contained within the quotation, all other allegations contained in the news article, and the  
6. admissibility of these allegations are denied.

7.           c.       Intervenor admits the existence of the news article cited in  
8. Paragraph 16(c) and that the article contains certain allegations. However, the allegations  
9. contained within the quotation, all other allegations contained in the news article, and the  
10. admissibility of these allegations are denied.

11.           d.       Intervenor admits the existence of the news article cited in  
12. Paragraph 16(d) and that the article contains certain allegations. However, the allegations  
13. contained within the quotation, all other allegations contained in the news article, and the  
14. admissibility of these allegations are denied. The final sentence of Paragraph 16(d) is  
15. denied.

16.           e.       Denied.

17.       17.    Denied

18.       18.    Denied

19.       19.    Denied

20.       20.    Denied

21.       21.    Intervenor admits that all ballots cast in the 2010 general election were  
22. reviewed during the hand count process which began on November 10, 2010 and they  
23. were reviewed by elections staff and observers from both Mr. Miller's campaign and hers  
24. and any ballots that were challenged were subject to a second review by the Director of  
25.

1. the Division of Elections and parties could challenge her determinations as to whether a  
2. ballot should be counted and if so for what candidate. Any remaining allegations of  
3. paragraph 21 are denied.

4. 22. Denied

5. 23. The responses to the allegations set out in paragraph 1 through 22 are  
6. incorporated herein by reference as if set forth fully herein.

7. 24. To the extent that paragraph 24 quotes the U.S. Constitution, it speaks for  
8. itself and no response is required. Intervenor denies the remainder of paragraph 24.

9. 25. To the extent that paragraph 25 quotes the U.S. Constitution, it speaks for  
10. itself and no response is required. Intervenor denies the remainder of paragraph 25.

11. 26. Plaintiff's prayer for relief does not require a response.

12. 27. The responses to the allegations set out in paragraph 1 through 26 are  
13. incorporated herein by reference as if set forth fully herein.

14. 28. Denied.

15. 29. Denied.

16. 30. Plaintiff's prayer for relief does not require a response.

17. 31. The responses to the allegations set out in paragraph 1 through 30 are  
18. incorporated herein by reference as if set forth fully herein.

19. 32. Denied.

20. 33. Denied

21. 34. Denied

22. 35. Denied

23. 36. Plaintiff's prayer for relief does not require a response.

24. 37. The responses to the allegations set out in paragraph 1 through 36 are  
25.

1. incorporated herein by reference as if set forth fully herein.

2. 38 Denied.

3. 39. Plaintiff's prayer for relief does not require a response.

4. 40. The responses to the allegations set out in paragraph 1 through 39 are  
5. incorporated herein by reference as if set forth fully herein.

6. 41. The allegations in paragraph 41 quote an Alaska statute, which speaks for  
7. itself, and no response is required.

8. 42. Denied.

9. 43. To the extent that the allegations in paragraph 43 quote an Alaska statute,  
10. which speaks for itself, no response is required. To the extent that a response is required,  
11. the allegations in paragraph 43 are denied.

12. 44. Denied.

13. 45. Denied.

14. 46. Denied.

15. 47. Plaintiff's prayer for relief does not require a response.

16. **AFFIRMATIVE DEFENSES**

17. 1. Plaintiff has failed to state a claim upon which relief may be granted.

18. 2. Plaintiff's claims are barred by the doctrine of ripeness.

19. 3. Plaintiff's claims are barred by the doctrine of mootness.

20. 4. Plaintiff's claims do not raise allegations sufficient to alter the outcome of  
21. the November 2, 2010 election.

22. 5. Plaintiff's claims are barred by waiver.

23. 6. Plaintiff has failed to join an indispensable party.

24.

25.

1. 7. The requested relief violates the equal protection clauses of the U.S. and  
2. Alaska Constitutions.

3. 8. The requested relief violates federal statutes.

4. 9. Intervenor reserves the right to assert additional affirmative defenses.

5. **II. CROSS-CLAIM**

6. **PARTIES**

7. 1. Lisa Murkowski is a resident of the state of Alaska, and was a write-in  
8. candidate for the United States Senate in the November 2, 2010 general election.  
9. According to the count conducted by the Alaska Division of Elections, she received more  
10. than ten thousand votes more than the candidate who received the second largest number  
11. of votes.

12. 2. Mead Treadwell is a resident of the state of Alaska and is the Lieutenant  
13. Governor of the State of Alaska and oversees the Alaska Division of Elections.

14. 3. The State of Alaska Division of Elections is an agency of the state of  
15. Alaska and administers elections including the 2010 General Election held on  
16. November 2, 2010.

17. **JURISDICTION**

18. 4. In the event the issue is not resolved in state court and it is necessary to  
19. determine the outcome of the election, this court has jurisdiction over Intervenor's  
20. cross-claim pursuant to 28 U.S.C. § 1331.

21. **VENUE**

22. 5. Venue is proper in the United States District Court for the District of  
23. Alaska because all defendants reside in Alaska, and a substantial portion of the events  
24. giving rise to the underlying claims occurred in Alaska. 28 U.S.C. §§ 1391(b)(1), (b)(2).

1. 6. Anchorage is a proper location for this case. D. Ak. LR 3.3(a); 28 U.S.C.  
2. § 81A.

3. **COUNT ONE**

4. 7. Following Alaska's 2010 general election, it became necessary to hand  
5. count the write-in votes cast in that election pursuant to 6 AAC 25.085.

6. 8. During the hand count process, which began in Juneau on November 10,  
7. 2010, the Defendants determined that they would not count certain votes cast for Senator  
8. Murkowski.

9. 8. In particular, the Division did not count ballots on which the name "Lisa  
10. Murkowski" was spelled correctly but where the voter failed to fill in the oval next to the  
11. write-in line on the ballot.

12. 10. The Defendants also did not count certain ballots on which the oval was  
13. filled in but the name of the candidate that was written-in was a variation of the name  
14. "Lisa Murkowski" or "Murkowski".

15. 11. The Defendants also did not count certain other ballots on which the oval  
16. was filled in but the name of candidate was written-in as "Lisa M." or a variation of that  
17. nickname.

18. 12. The Defendants also did not count other certain ballots based on its  
19. determination that the intent of the voter was not clear.

20. 13. The total number of such ballots is approximately 2,016. This is  
21. approximately 1.99% of the total votes Intervenor received in the election and could make  
22. a significant difference in the outcome of the election.

1. 14. The failure to count these ballots where the intent of the voters was clearly  
2. to vote for Lisa Murkowski is contrary to federal law, and it improperly disenfranchised  
3. the voters who cast those ballots.

4. **COUNT TWO**

5. 15. The Defendants are obligated by law to administer elections in Alaska in a  
6. professional and neutral fashion and to ensure that election results are consistent with  
7. state law. They have an obligation to defend the result of the election without favoritism  
8. for any candidate.

9. 16. Intervenor is the apparent winner of the 2010 general election for United  
10. States Senator in that she has received more votes than any other candidate after all the  
11. ballots have been counted. She has an obligation to the voters who supported her to do  
12. all she can to ensure that the outcome of this race is not altered or modified as result of  
13. this litigation. As an elected official in this state, she also feels an obligation to make sure  
14. that the legitimate results of the election are not challenged by spurious and false  
15. allegation concerning the conduct of the election and the counting of the results. In  
16. addition Intervenor has a personal interest in insuring that she continues to serve the  
17. people of Alaska and can utilize her position in the U.S. Senate consistent with Senate  
18. Rules and the law for the maximum benefit to her constituents. She is uniquely able to  
19. represent these interests in this matter.

20. 17. There is no party in this lawsuit who represents all the particular interests  
21. held by Senator Murkowski.

22. 18. The interests of the Defendants and Intervenor, while in some respects  
23. similar, are sufficiently different and the Defendants are unable to represent Intervenor  
24. especially with respect to the cross claim which is adverse to the interests of Defendants.



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**III. REQUEST FOR RELIEF**

19. Intervenor seeks and prays for:

a. Judgment of dismissal of all of the allegations made by plaintiff

which challenge or contest any ballots on which the voter intent to vote for Intervenor can be determined and of all the allegation made by plaintiff has to the conduct of the 2010 general election or the counting of the ballots cast in that election.

b. A declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 that

1. Defendants should count those ballots which clearly indicate the voter's intent to vote for Lisa Murkowski even when the ballot may not have the oval filled in, or the spelling of the intervenor's name correct or where the voter wrote in the name "Lisa M."

2. Defendants not count any ballot on which a voter attempted

to vote for Mr. Miller by writing his name on the ballot.

3. That Intervenor be allowed to intervene in this case because

her interests cannot be adequately represented by the Defendants against whom she is asserting a cross-claim.

c. A award of full costs and attorney fees in this action.

d. Such other relief as the court deems just and equitable.

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DATED this 10<sup>th</sup> day of December, 2010.

HOLMES WEDDLE & BARCOTT, P.C.

s/Timothy A. McKeever  
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