

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

JOE MILLER,

Plaintiff,

vs.

LIEUTENANT GOVERNOR CRAIG
CAMPBELL, in his official capacity,
and the STATE OF ALASKA,
DIVISION OF ELECTIONS,

Defendants.

Case No. 4FA-10-3151CI

AFFIDAVIT OF ELECTIONS DIRECTOR GAIL FENUMIAI

STATE OF ALASKA)

) ss

FIRST JUDICIAL DISTRICT)

Gail Fenumiai, on oath duly sworn, hereby deposes and says as follows:

1. I am employed by the State of Alaska, Division of Elections, as the Director of the Division of Elections. Although I was hired in this position as of January 2, 2008, I have a long history of employment with the division.
2. I was employed by the Division of Elections from August 1988 through December 1989, and from July 1995 through early January 2003. At the time I left employment with the division in 2003, my position title was Elections Administrative Supervisor.
3. I have personal knowledge of the matters set out in this affidavit.

EXHIBIT 2
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4. During the run-up to the November 2, 2010 general election, the incumbent U.S. Senator, Lisa Murkowski, announced that she would run a write-in campaign.
5. On October 13, 2010, Lisa Murkowski registered as a write-in candidate. A copy of her letter of intent is attached as Exhibit A.
6. There was considerable public interest in how the division would deal with write-in votes for Murkowski — in particular, whether voters who misspelled Murkowski would nevertheless have their votes counted. Because it is the longstanding policy of the Division to apply the standards set out in AS 15.15.360 with voter intent in mind, the Lieutenant Governor made statements before the election, reported widely in the media as early as mid-October, 2010, explaining that ballots with minor misspellings would be counted if the intent of the voter could be ascertained. *See, e.g.,* Exhibit B.
7. After voting was complete, the number of write-in votes for U.S. Senate exceeded the number of votes cast for any other candidate. Thus, to determine the winner, the division had to examine the write-in votes.
8. The division devised a process for counting write-in votes, which it has now completed. *See* Exhibit C. The counting process for write-in votes had three steps: sorting all ballots; reviewing misspelled write-in ballots and any challenged ballots; and counting the votes.
 - a. In the first stage of the process all of the ballots cast in the election were sorted by 30 election board workers who worked in 15 teams of two. They sorted the ballots into five categories:

- (1) ballots on which the oval was marked correctly next to a candidate's name that was printed on the ballot;
- (2) ballots on which no oval was marked for U.S. Senate, more than one oval was marked for that race, or a name was written in but the oval was unmarked;
- (3) ballots on which the write-in oval was marked and the written name was "Lisa Murkowski" or "Murkowski," spelled correctly, and the ballot was not challenged by any observer;
- (4) ballots on which the write-in oval was marked and the name written appeared to be a variation or misspelling of Lisa Murkowski or Murkowski; this category also included any ballot challenged by an observer in the sorting process;
- (5) ballots on which the write-in oval was marked and the name written in was not "Murkowski," "Lisa Murkowski," or a variation thereof.

- b. The teams of election workers sorted all of the ballots cast in the election. The automated tally machines that the state uses to count ballots do not sort them. Nor do they segregate "overvotes"—ballots on which a voter marked more than one oval for the same race—or "undervotes"—ballots on which a voter failed to mark an oval for a particular race. The machines keep track of the total number of votes fed into them, and of the total number of correctly cast votes for each candidate appearing on the ballot.
- c. In sorting the ballots, the election board workers exercised little discretion. The teams of election workers sorted ballots one precinct at a time. The candidates had observers present who could challenge the category into which a ballot was sorted.

- d. When a team finished sorting the ballots for a precinct, I went to that team's table. In this second stage of the process, I determined how to count the ballots in category #4. I was the only person to make the final decision for each ballot. I allowed write-in ballots containing minor misspellings and phonetic variations of "Murkowski" to be counted for Lisa Murkowski when I determined that the voter clearly intended to vote for that candidate.
- e. The candidates' observers were able to challenge these determinations. If an observer challenged my decision to count or not count a particular Category #4 write-in ballot for Lisa Murkowski, that ballot was placed into one of two envelopes: "Challenged Counted " or "Challenged Not Counted ." These ballots were segregated. If my decision was not challenged, the ballot was placed either in category #3 or category #5, depending on whether or not I decided to count it for Murkowski.
- f. Some observers for Joe Miller had hand-held tally counters and seemed to be keeping track of how many of the ballots counted for Lisa Murkowski they were challenging. Miller observers challenged ballots that that included the following categories:
1. ballots on which the voter had misspelled "Lisa Murkowski" even slightly;
 2. ballots that spelled "Lisa Murkowski" correctly— in both perfectly legible and in less than perfect handwriting;

3. ballots that spelled "Lisa Murkowski" correctly that added a descriptive term, such as "Senator Lisa Murkowski," "Lisa Murkowski, republican," "Lisa Murkowski, R," "Lisa Murkowski, independent," and "Lisa Murkowski, write-in";
 4. ballots that spelled "Lisa Murkowski" correctly that added an embellishment, such as a heart, a smiley face, or an exclamation point;
 5. ballots that spelled "Lisa Murkowski" correctly in the space below the write-in line rather in the space above it;
 6. ballots on which voters wrote "Murkowski, Lisa," in the style of the names already printed on the ballots; and
 7. ballots that spelled "Lisa Murkowski" correctly on which the voter had written but crossed out other letters or words.
- g. I also examined the ballots in category #2—those on which no oval was marked for U.S. Senate, more than one oval was marked for that race, or a name was written in but the oval was unmarked.

- 1) I did not count ballots that had no oval filled in for the U.S. Senate race, even if a name was written in.
- 2) If a ballot had two ovals filled in for the U.S. Senate race, I examined the ballot to see where the ovals appeared. If the voter had filled in the oval by the name of a candidate printed on the ballot and also by the write-in choice, I counted the ballot if the voter wrote in the name of the same candidate. This is how Joe Miller

received many of his 20 write-in votes. I also counted ballots with two ovals marked when it was clear that the voter crossed out one of the ovals. I did this regardless of whether the voter expresses an intent to vote for a write-in candidate or for a candidate whose name was printed on the ballot. Otherwise, I did not add the ballot to the count.

3) The candidates' observers were able to challenge all of these determinations.

h. In the third stage of the process, the election workers counted the ballots and recorded the vote totals for the precinct. The workers counted the ballots in category #3 — those that were spelled correctly and unchallenged — for Lisa Murkowski. They also counted the ballots for Lisa Murkowski in the envelope marked "Challenged Counted" but did not commingle them with any other ballots. All challenged ballots were kept segregated in their special envelopes for further review, if necessary. The workers also counted the other write-in ballots in category #5, adding those votes to the totals for the other registered write-in candidates or to the "other write-in" category.

9. The unofficial total number of ballots as of November 17, 2010, cast in the general election was 258,713. Not all of these ballots contained an oval marked for the U.S. Senate race, however. The machine count tallied 255,831 votes cast in the U.S. Senate race. The difference, 2,882 ballots, was primarily the result of the failure of the voters to fill in ovals on those ballots. During the write-in count, it

was discovered that many of these 2,882 ballots were votes for Lisa Murkowski, but because the oval had not been filled in, the division did not count them. These ballots were segregated in the "Challenged Not Counted" envelopes.

10. The unofficial results of the election for U.S. Senator as of November 17, 2010 were as follows:

Tim Carter	922
Ted Gianoutsos	456
Frederick Haase	1,454
Scott T. McAdams	60,007
Joe Miller	90,740
Write-in Votes	102,252

11. The write-in votes were counted as follows:

Lisa Murkowski, unchallenged	92,929
Lisa Murkowski, challenged, counted	<u>8,159</u>
Total counted for Lisa Murkowski	101,088
Lisa Murkowski, challenged, not counted	2,016
Joe Miller	20
Scott McAdams	8
Other registered write-in candidates	53
Other miscellaneous names	<u>620</u>
Total write-in votes	103,805

12. The reason that the total counted write-in votes is larger than the number of write-in votes recorded on election night is because, as explained above, as election workers sorted and counted the ballots, it was determined that some ballots belong in a different category than that originally recorded by the tabulating machines. For example, on election night the tabulating machines would have rejected as an overvote a ballot with more than one oval marked for the U.S. Senate race, but

upon inspection during the write-in count, the election workers might have determined that the ballot clearly indicated an intent to vote for one particular candidate. This would be true, for example, if a voter marked both the ovals for Joe Miller and for "write-in," and then wrote "Joe Miller" on the write-in line. During the manual count, that vote would be shifted from a rejected, uncounted "overvote" to the total for Joe Miller. Additionally, during the manual counting process observers for the candidates could challenge any decision the division made about a ballot. Murkowski observers challenged the division's decision not to count a ballot with no oval marked for the U.S. Senate race when Lisa Murkowski's name was written in. Because the tabulating machines can register only marked ovals, not writing, on election night these no-oval ballots would not have been reported as write-in votes. After manual inspection, they were segregated and placed into a category of ballots considered challenged, but not counted. These ballots would be part of the 2,016 figure noted above.

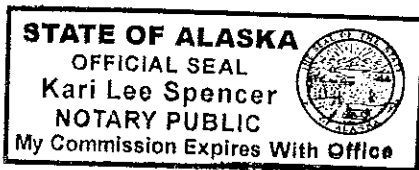
13. Alaska has 438 precincts.
14. There were approximately 2,500 people working at polling places across Alaska on November 2, 2010, the date of the general election.
15. These election officials are trained before Election Day as to the procedures used to assist voters and to process their ballots.
16. As part of these procedures, election officials must verify the identify of each person who enters a polling place to vote before handing him or her a ballot. They do this by checking certain types of written identification, examples of which are

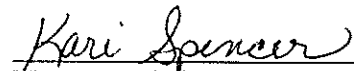
listed in AS 15.15.225. This is not necessary, however, if the official knows the identity of the voter, with one limited exception for first-time voters.

17. The precinct registers, which each voter must sign before receiving a ballot, contain a space after the signature box for each registered voter in that precinct. Election workers can check one of the three choices listed in this space to indicate the method they used to verify the identity of the voter. A page from a register book is attached as Exhibit D to illustrate this. The three choices are "VC," to indicate a voter registration card, "OI," to indicate "other identification," or "PK," to indicate that the voter was personally known to the official.


Gail Fenumiai

SWORN TO AND SUBSCRIBED before me this 29th day of November, 2010.




Notary public in and for Alaska
My commission expires *w/office*

RECEIVED

OCT 13 2010

Director's Office
Division of Elections

STATE OF ALASKA LETTER OF INTENT
WRITE-IN CANDIDATES FOR U.S. CONGRESS

10 OCT 13 2:52 PM

Please check: I acknowledge that I am responsible for contacting the Federal Election Commission for federal reporting requirements, 999 E St., NW, Washington, DC 20463

GENERAL INFORMATION (Please print or type)

I, Lisa Murkowski, am a qualified voter as required by law, a resident of Alaska, and a candidate for the office of (check one):

UNITED STATES SENATOR OR UNITED STATES REPRESENTATIVE

I am a write-in candidate for the November 2, 2010 General Election ballot.

I am registered under and am a candidate of the Republican political party OR (Party Name)

I am a candidate of the _____ political group OR (Please Check) I am not affiliated with a political group or party (Group Name)

RESIDENCY INFORMATION

My current Alaska residence address is: 249 Timberline Drive Girdwood AK 99587
(Please specify if this is a post or other physical location description) (City) (State) (Zip)

I have lived at this address since 2/1 2006 I have been a resident of Alaska since 05/22 1957
(MM/DD) (YY) (MM/DD) (YY)

My mailing address: PO Box 100847 Anchorage AK 99501
(Mailing Address) (City) (State) (Zip)

I am requesting voters to write my name as follows:

Murkowski Lisa [Redacted]
(Last Name) (First Name) (MI) (Write initials or other name)

CERTIFICATION

I, the undersigned, certify that the information in this Letter of Intent is true and complete, and that I meet the specific residency and citizenship requirements of this office. I further certify that I shall meet the age requirements upon taking the oath of office. If elected, I am not a candidate for any other office to be voted upon at the General Election, nor am I a candidate for this office under any other Declaration of Candidacy or Nominating Petition.

[Signature]
(Candidate's Signature)
[Redacted] (907) 271-3735
(Home Phone) (Work Phone)

10/13/10
(Date)

To assist staff in verifying candidate / voter identification, please provide one of the following:
SSN, ADL, Voter # or DOB: May 22, 1957

THE DIVISION OF ELECTIONS MUST RECEIVE THIS FORM NO LATER THAN THURSDAY, OCTOBER 28, 2010.
RETURN THIS FORM TO: DIVISION OF ELECTIONS, PO BOX 110017, JUNEAU, AK 99811-0017

ASS (Rev. 12/1/09)

EXHIBIT A

Campbell: Minor misspelling won't spoil ballot (Updated)

Posted by Alaska_Politics

Posted: October 14, 2010 - 11:17 am

Comments (66) | Recommend (3)

By BECKY BOHRER

Associated Press Writer

The overseer of Alaska elections said Thursday that he doesn't expect that minor misspellings will disqualify write-in ballots for U.S. Sen. Lisa Murkowski.

Lt. Gov. Craig Campbell told The Associated Press that officials don't want to disenfranchise any voters and that he suspects, if there's a minor misspelling of, say, Murkowski, that those ballots will be counted for her.

"I'm sure they're going to be lenient" in counting those, he said, adding that officials will to their best to count ballots that show "clear intent."

But Campbell said the farther a ballot gets from including either her last name or Lisa Murkowski, the more difficult it will be for ballot counters to determine voter intent — and the more likely it will be for those ballots to be challenged, particularly if the race is tight.

While "Murkowsky" probably would count, he said, it's questionable whether "Liza," Lisa misspelled, would.

Murkowski, who lost the GOP primary to Joe Miller, officially filed as a Republican write-in candidate Wednesday. She said she had not gotten a clear interpretation from the state as to what would count and was encouraging voters — in an attempt to avoid any challenges — to fill in the ballot oval and write in "Lisa Murkowski."

She also is urging supporters — if they need — to scrawl her correctly spelled name on a piece of paper they can take with them into the polling booth or to write her name on their hands. She's also handing out blue wristbands that read: "Lisa Murkowski Write it in," with a darkened oval. The director of the state Division of Elections says voters will

be allowed to wear them so long as they're not visible to others. If they are visible, that would be like wearing a campaign button on a coat, which isn't allowed, and the voter would be asked to remove it.

Campbell said that neither Murkowski nor her attorney has contacted him.

But he said she appears to be doing the right thing in educating her supporters about the write-in process.

His read of the law is that voters would need to blacken the oval and either write in Murkowski or Lisa Murkowski — her name as it appears on her declaration to run — for there to be no question about whether their vote would count.

Murkowski faces Miller and Democrat Scott McAdams. She also faces long odds: the last U.S. Senate candidate to win in a write-in bid was Strom Thurmond in 1954. And her opponents believe they have a distinct advantage by having their names already printed on the ballots.

Murkowski's campaign slogan is "Let's Make History."

Read more: <http://community.adn.com/node/153685#ixzz14pXxcZsc>

Counting Write-In Votes - US Senate Race

When separating ballots to count the individual write-in votes, the ballots will be initially sorted first. After the initial sort, if necessary, the director will make a determination on voter intent. Once ballots are sorted and challenges are handled, the ballots will be counted and individual write-in results will be recorded.

Ballots will be delivered by Goldbelt Security. There will be a chain of custody indicating the district and number of boxes being transported from the Division of Elections ballot room to the Alaska Litho Building and from the Alaska Litho Building to the Division of Elections ballot room. There will be a division employee following the ballot transport at all times.

Goldbelt Security will remain at the counting center to ensure ballot security.

One house district will be counted at each table. The voted ballots are in separate, sealed envelopes by precinct. There will be only one precinct opened at a time. When a precinct count is completed, the voted ballots are returned to the precinct envelope and sealed by the counting team. Challenged ballots will be sealed in separate envelopes, identified with the district and precinct number.

Results will be reported by district at the completion of each district count.

Below is an outline of the process:

Initial Ballot Sort

There will be 5 box lids used to sort ballots. Use the box lids to initially sort the ballots as follows:

1. Place ballots where the oval is marked (colored in, X, Star, Check, etc.) next to a candidate's name that is printed on the ballot (those other than the Write-In category).
2. Place ballots where the US Senate Race is left blank (no oval marked) or more than one oval is marked, or a name is written in, but no oval is marked
3. Place ballots where the oval is marked for Write-In category (colored in, X, Star, Check) and the name is written as **LISA MURKOWSKI OR MURKOWSKI** and spelled correctly that are **NOT** challenged.
4. Place ballots where the oval is marked for Write-In category (colored in, X, Star, Check) and **THE NAME WRITTEN APPEARS TO BE A VARIATION OR MISPELLING OF MURKOWSKI OR LISA MURKOWSKI**. Also place in this lid any ballot that an observer challenges so that the director can make a determination.

5. Place ballots where the oval is marked for Write-In category and the name written in is NOT Murkowski, Lisa Murkowski or a variation thereof.

After initial sort, raise hand for director, or director designee. The director's designees are division staff appointed by the director to validate that the ballots in box lid #2 are truly blank or over voted ballots. All other ballots will be reviewed by the director.

Director Determination

1. Each ballot in box lid #4 will be reviewed to determine voter intent. When reviewing these ballots, they will be sorted into 4 categories as follows:
 - a. Determination made as vote for Write-In candidate Lisa Murkowski and determination is NOT challenged. (These ballots will be placed in box lid #3 for counting.)
 - b. Determination made to count the vote for Write-In candidate Lisa Murkowski and determination is challenged. These ballots will be segregated and placed into envelope labeled - Challenged - Counted for Murkowski. The total number of votes from these ballots will be recorded on the results sheet as votes for Murkowski - Counted Challenged.
 - c. Determination made to NOT count the vote for Write-In candidate Lisa Murkowski and determination is challenged. These ballots will be segregated and placed into envelope labeled - Challenged - NOT Counted for Murkowski. The total number of votes from these ballots will be added to the results sheet as Murkowski - Not Counted Challenged.
 - d. Determination made to NOT count the vote for Write-In candidate Lisa Murkowski and determination is not challenged. These ballots are then placed in box lid #5.

Recording Results

1. Hand-count the number of ballots from box lid #3 (votes for Murkowski) and record the total number on the results sheet (certified write-in candidate list) for Lisa Murkowski.
2. Count the number of ballots in the "Challenged - Counted for Murkowski" envelope and record the total number on the results sheet line Lisa Murkowski - Counted Challenged. After counting, return these ballots to the envelope.
3. Count the number of ballots in the "Challenged - Not Counted for Murkowski" envelope and record the total number on the results sheet line for Murkowski - Not Counted Challenged. After counting, return these ballots to the envelope.

4. For the ballots in box lid #5 (write-in vote for candidate other than Murkowski) sort the ballots into the separate names. Count and record the individual results for those candidates appearing on the certified write-in candidate list or on the ballot (record the results next to the name on the results sheet). If the name written in does not appear on the results sheet record the votes on the line Other Write-In.

(MS)

VIS

VRMS - (GBVRMS)
GEPR69P-RI
KINCHELL

STATE OF ALASKA -- DIVISION OF ELECTIONS
EL-ID 106NR DISTRICT 27 PRECINCT REGISTER PRECINCT 710

DATE: 1
TIME: 1
PAGE:

VOTER NO	NAME & SIGNATURE (LAST-FIRST-MIDDLE-INITIAL)	PARTY IDENTIFIED BY (VC) (OD) (PK)	A RESIDENCE ADDRESS B MAILING ADDRESS
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2211	[REDACTED]	U () () () ()	[REDACTED] ANCHORAGE
2212	[REDACTED]	R (X) () () ()	[REDACTED] ANCHORAGE
2213	[REDACTED]	R () () () ()	[REDACTED] ANCHORAGE
2214	[REDACTED]	N () () () ()	[REDACTED] ANCHORAGE ANCHORAGE AK
2215	[REDACTED]	R () () () ()	[REDACTED] ANCHORAGE
2216	[REDACTED]	A (X) () () ()	[REDACTED] ANCHORAGE
2217	[REDACTED]	D (X) () () ()	[REDACTED] ANCHORAGE
2218	[REDACTED]	U () () (X) () ()	[REDACTED] ANCHORAGE
2219	[REDACTED]	R () () (X) () ()	[REDACTED] ANCHORAGE ANCHORAGE AK
2220	[REDACTED]	R () () (X) () ()	[REDACTED] ANCHORAGE
2221	[REDACTED]	R () () (Y) () ()	[REDACTED] ANCHORAGE ANCHORAGE AK
2222	[REDACTED]	N () () () () ()	[REDACTED] ANCHORAGE
2223	[REDACTED]	N () () () () ()	[REDACTED] ANCHORAGE

EXHIBIT D

OF CONTINUOUS

SERIAL:

