

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

1)	
2)	
3	JOE MILLER,)	Civil Action No:
4)	
5	<i>Plaintiff,</i>)	3:10-CV-00252 (RRB)
6)	
7	v.)	
8)	
9	LIEUTENANT GOVERNOR CRAIG)	
10	CAMPBELL, in his official capacity;)	
11	and DIVISION OF ELECTIONS,)	
12	STATE OF ALASKA,)	
13)	
14	<i>Defendants.</i>)	
15	_____)	

**AFFIDAVIT OF LOREN LEMAN IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

13	State of Alaska)
14) ss.
15	Municipality of Anchorage)

LOREN LEMAN, being first duly sworn upon oath, deposes and states as follows
under penalty of perjury:

1. I am over eighteen years of age, of sound mind, and competent to testify to the following facts based on personal knowledge.
2. I served as Lieutenant Governor of the State of Alaska from December 2, 2002 until December 4, 2006. In that capacity, I was responsible, among other things, for general oversight of the Division of Elections (hereafter, “Division”) and administering the State’s

Clapp, Peterson, Van Flein,
Tiemesen & Thorsness, LLC
711 H Street, Suite 620
Anchorage, Alaska 99501-3454
(907) 272-9272 fax (907) 272-9586

1 election laws. I am familiar with the electoral process and all major aspects of the
2 Division's procedures.

3 3. During my tenure as Lieutenant Governor, in my official capacity, I directed both
4 Laura Glaiser and Whitney Brewster, who served as Division directors, to strictly interpret
5 Alaska's election statutes, especially Alaska Stat. § 15.15.360, Rules for Counting Ballots.
6 I believed that neither the Division nor I had the authority to change election law through
7 our own interpretations, but also recognized that an aggrieved party could challenge any
8 decisions we made in Court. Several did, and in some cases the Court provided a different
9 decision. Any interpretations by the Division Director were made with advice from legal
10 counsel, often provided by the Department of Law.
11

12 4. To the best of my knowledge, the Division counted write-in votes for both the 2004
13 and 2006 election cycles as "gross numbers" for each particular race. I am unaware that
14 these write-in votes were ever scrutinized for correct spelling, qualifications of the write-in
15 "candidate" to serve if elected, or even segregated by name during counting for these two
16 election cycles. Because so few write-in votes were cast, this did not become an issue.

17
18 5. If an election had been held during my tenure as Lieutenant Governor in which
19 write-in votes had to be counted, I would have directed the Division Director to follow a
20 strict interpretation of election law, and let a Court direct otherwise if a candidate and the
21 Court disagreed with the Division's analysis. Under my direction the Division would not
22 have counted a write-in vote or accepted it as valid unless the candidate's name was written
23 correctly on the ballot, using the last name or the name as it appeared on the candidate's
24

1 write-in declaration of candidacy. The Division likewise would not have counted marred or
2 otherwise damaged ballots.

3 6. My understanding, based on my experience as a legislator and Lieutenant Governor
4 from 1989 through 2006, is that the Division of Elections historically has similarly
5 interpreted and applied election law in the counting of ballots. The 1998 General Election
6 provided the most recent experience in which a substantial number of write-in votes were
7 cast, in that case for Governor. The Division reported the number of votes cast for Robin
8 Taylor, a write-in candidate, and likely followed a standard that resulted in disallowing
9 votes otherwise intended to be cast for him.
10


11 7. The closest experience I can recall during my tenure as Lieutenant Governor in
12 which counting of ballots was challenged was the 2004 Primary Election race between Carl
13 Moses and Bryce Edgmon. Whitney Brewster, the Division Director, applied election law
14 strictly and the result was a tie vote. One or both of the parties challenged that application
15 of law and the Court changed her decision on a few of the ballots, favoring what it called
16 “voter intent.” The net result of the Court’s direction was that the vote remained tied and
17 the winner was subsequently determined by toss of a coin, which is prescribed by State law.
18

19 8. I am unaware of any Alaska election before the 2010 General Election, in which the
20 Lieutenant Governor or Division of Elections knowingly counted write-in ballots
21 containing misspellings, or in which a candidate’s name was written differently from how it
22 appeared on his or her write-in declaration of candidacy. I am, however, aware that U.S.
23 Supreme Court and Alaska Supreme Court rulings since 2000 have occasionally reversed
24

1 decisions by elections officials and allowed for counting of votes that were cast with what
2 they might term "minor irregularities."

3 This completes my statement.

4 Dated this 18th day of November, 2010, in Anchorage, Alaska.

5
6 
7 _____
Name

8 Subscribed and sworn to before me, a notary public, in and for the State of Alaska this 18th
9 day of November, 2010.





10
11
12 Certificate of Service:

13 The undersigned hereby certifies that a true
14 and exact copy of the foregoing was served
15 this ___ day of November 2010 via:

- 16 First Class Mail
- 17 Hand-Delivery
- 18 Facsimile
- 19 E-Mail

20 to the following listed individual(s):

21 By: _____
22 Chelsea Greene

23
24
25 **Clapp, Peterson, Van Flein,**
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