

## AFFIDAVIT

### Improper handling of votes with two ovals filled in

I, William C Peck, being duly sworn upon oath deposes and states as follows:

1. I have personal cognizance of the matters set forth herein, and hereby verify that the same are true and correct to the best of my information and belief.
2. I am a write-in ballot observer / supervisor in Juneau. I have reviewed high hundreds of ballots as a table observer and also high hundreds as the final review for Joe Miller (alongside Gail Fenumiai and a lawyer for Murkowski) .
3. Yesterday while making the final review of ballots, at Table 15, Gail deemed the voters' intent to be Murkowski when there were two ovals filled in. In one particular case, the oval for a written candidate (it was either Joe Miller or Scott McAdams as I recall) had a X through it, which in normal circumstances means one is crossing something out.

When we questioned Gail on why she called "voters intent" for Murkowski, her line of reasoning was this (paraphrased): "Well, see how the voter properly filled out the oval for the other candidates, then look at Lisa's oval which is properly filled in, and then the other vote where they indicated they didn't want to vote for Scott / Joe". I tended to agree with this line of reasoning and conceded this ballot. The table worker, Chris Sternhagen, wasn't too happy with my decision, but my recollection is we conceded this ballot based on what Gail said.

4. The same situation occurred on Penny Mayo's table. I tried to reason with her about it being ok and such, but she was adamant that this should not be counted, with her line of reasoning being, "How do we know it was the voter who did this." Upon reflection, I realized that she was completely right, and that most likely if this came before some sort of legal review, the vote would not be counted.
5. I then read with great interest the guidelines that are posted online as to how write-in ballots are to be reviewed ([http://www.elections.alaska.gov/doc/info/Counting\\_Write-In\\_Instructions\\_2010\\_FINAL.pdf](http://www.elections.alaska.gov/doc/info/Counting_Write-In_Instructions_2010_FINAL.pdf)). On page 1 at the bottom, point 2, it says "place ballots where [...] more than one oval is marked" [into Box 2]. Box 2 is for invalid ballots.

However, these ballots end up (in effect) in Box 4, which is the box that Gail pulls from to do her

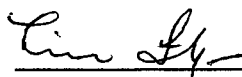
"voter intent" ruling. So that's how she ended up reviewing the ballot, pronouncing "Murkowski", and I initially approved some. Now I challenge all of these.

6. Even though I challenge the ballot, she puts it in the "Challenge counted" pile, because she has determined that it's a vote for Murkowski. Based on my personal observation across several tables, the number of cases with two ovals filled in is not miniscule, it is a substantial amount, given that this election is ending up to be very close. This means that the Division of Elections is counting votes for Murkowski that should not be counted, based on their own guidelines.
7. I interviewed Ivy Frye who indicated she had seen 5 or so over the course of maybe a day or so that she was at a table. The votes were challenged by the Murkowski team's lawyer, and in this case the votes went into the "challenged not counted" pile. This is inconsistent with the example in point 3, but this inconsistency might be an issue in and of itself.
8. The main point with this affidavit is that double votes, per the Division of Election Guidelines, should go in Box 2 as an invalid vote.

DATED this 14<sup>th</sup> day of November 2010, at Juneau, Alaska.

By:   
William C. Peck

SUBSCRIBED AND SWORN to or affirmed before me at Juneau, Alaska on this 14<sup>th</sup> day of November 2010.

  
Notary Public in and for Alaska  
My Commission Expires: 05-07-11

