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Attorney for Lieutenant Governor
Craig Campbell and the State of Alaska,
Division of Elections

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

JOE MILLER,)
)
Plaintiff,)
)
v.)
)
LIEUTENANT GOVERNOR CRAIG)
CAMPBELL, in his official capacity;)
and the STATE OF ALASKA,)
DIVISION OF ELECTIONS,)
)
Defendants.)
_____)

Case No. 3:10-cv-00252 RBB

**DEFENDANTS’ PARTIAL OPPOSITION TO MOTION FOR SHORTENED
TIME ON MOTION FOR PRELIMINARY INJUNCTION**

In this case, the plaintiff, Joe Miller, a candidate for U.S. Senate in the November 2010 general election has filed a complaint against the State of Alaska, Division of Elections (the state or the division) and moved the court to enjoin the counting of ballots under procedures announced by the division earlier this week. [Docket at 1 and 3] He has requested an expedited briefing schedule on the motion for preliminary injunction, pursuant to which the division would have approximately 18

hours to respond to a 37-page motion. [Docket at 6] Because Mr. Miller suffers no conceivable harm by virtue of the division continuing to count write-in ballots in the way that it intends, such an expedited schedule is completely unwarranted and is profoundly prejudicial both to the defendants and to this Court's ability properly to assess the issues raised by this litigation.

Mr. Miller's claims all arise from his belief that the division wrongly interprets AS 15.15.360 to permit counting of write-in votes if the intent of the voter can be ascertained, even if the voter has not correctly spelled the write-in candidate's name. He alleges that permitting the count to go forward as planned somehow harms him. But review of the division's counting procedure, attached to Mr. Miller's motion as Exhibit A, reveals that the division will count and keep ballots with write-in votes for Lisa Murkowski which are spelled correctly and unchallenged by any observer separate from those counted as votes for Murkowski but where the voter has misspelled the name or some other challenge is made. [Docket at 3-1: Plaintiff's Exhibit A, p.2, Recording Results] Thus, at no time will there be any question about how many write-in votes have been cast for Murkowski under Mr. Miller's interpretation of AS 15.15.360 and under the division's interpretation.

No imaginable purpose, therefore, is served by delaying the division's sorting and counting. These ballots have to be counted at some point before a result can be determined. The division has rented space and hired temporary workers to sort and count ballots this week. And no harm to any party can result from that happening as

planned by the division. Indeed, the only imaginable harm here is to the division's ability to fulfill its obligation to determine and certify the result of the election in a timely fashion.

Finally, the division notes that Mr. Miller's complaint includes exhibits demonstrating that, contrary to his claims, it was abundantly clear weeks before the election that the division would count write-in votes for Murkowski, even if voters had slightly misspelled her name [Docket at 1-6]; and, as a result, the last minute character of this lawsuit, filed less than 24 hours before the counting was to begin, is entirely of his own making. This Court should not require the defendants to respond to a 37-page motion for preliminary injunction in less than 24 hours, when the plaintiff was fully aware of all the elements of any legal claims he currently has as soon as the initial ballot count was announced on election night more than a week ago.

However, because these issues must be resolved before the citizens of Alaska can know who their next senator will be, the division does not oppose some expediting of the standard briefing schedule. The final day for absentee ballots to arrive is November 17, 2010. No final result can be determined before then. Therefore, defendants propose that their opposition be due at the start of next week, on November 15; that plaintiff's reply be due a few days later; and oral argument held by the end of the week.

DATED: November 10, 2010.

DANIEL S. SULLIVAN

ATTORNEY GENERAL

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Certificate of Service

The undersigned hereby certifies that on the 10th day of November, 2010, a true and correct copy of the above document, Defendants' Partial Opposition to Motion for Shortened Time on Motion for Preliminary Injunction was served via electronic mail on the following:

-Thomas Van Flein, Esq.

By: /s/ Margaret Paton-Walsh