

1 Thomas V. Van Flein
 2 Clapp, Peterson, Van Flein,
 3 Tiemessen & Thorsness LLC
 4 711 H St., Suite 620
 5 Anchorage, Alaska 99501-3454
 6 Phone: (907) 272-9228
 7 Facsimile: (907) 272-9586
 8 E-mail: tvf@akcplaw.com
 9 *Attorney for Plaintiff*

6 **UNITED STATES DISTRICT COURT**
 7 **DISTRICT OF ALASKA**

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

16 **OPPOSITION TO DEFENDANTS’ MOTION FOR**
 17 **SHORTENED TIME ON MOTION TO DISMISS**

18 Plaintiff Joe Miller respectfully requests that this Court deny Defendants’ Motion for
 19 Shortened Time on Motion to Dismiss (hereafter, “*Motion to Shorten Time*”). In this Court’s
 20 briefing schedule for Plaintiff Miller’s Motion for a Preliminary Injunction, it stated, “The
 21 parties shall address the significant jurisdictional issue raised by this matter in their briefing,”
 22

1 Order Regarding Motion for Preliminary Injunction, at 3 (Nov. 10, 2010) (hereafter, “*Order*”).¹

2 This directive clearly required the parties to address any jurisdictional concerns in their briefs
3 regarding the preliminary injunction Plaintiff Miller is seeking.

4 Yesterday, Defendants nevertheless filed an independent, sixteen-page Motion to
5 Dismiss for Lack of Federal Question Jurisdiction, or in the Alternative to Abstain (hereafter,
6 “*Motion to Dismiss*”). As this motion’s title implies, it not only challenges the validity of
7 Plaintiff Miller’s causes of action, but injects an entirely new issue into the case—whether this
8 Court should abstain, under *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941), from
9 exercising jurisdiction over this matter. Defendants now ask this Court to give Plaintiff Miller
10 slightly more than 48 hours to research these issues and file his opposition brief. They do not
11 contend that any emergency or exigent circumstances warrant such an unreasonably
12 compressed briefing schedule, but rather maintain only, “[I]t is appropriate that this motion be
13 decided before Mr. Miller’s motion for a preliminary injunction is considered.” *Motion to*
14 *Shorten Time* at 2.

15
16 Although Defendants are correct that this Court must **decide** that it has jurisdiction over
17 this case before reaching its merits, that does not imply that the jurisdictional issues must be
18 **briefed** on a separate, accelerated track. Furthermore, as noted above, this Court already set a
19 target of Thursday, November 18, at 3:00 P.M. for the completion of briefing regarding both
20 jurisdictional issues and the issuance of a preliminary injunction. *See Order* at 3. Defendants
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22
23 ¹ Defendants’ Opposition Memorandum is due at 3:00 P.M. on Monday, November 15, 2010, and
24 Plaintiff Miller’s Reply Memorandum is due at 3:00 P.M. on Thursday, November 18, 2010. *Order* at
25 2.

1 will not suffer any harm if this Court allows these issues to be briefed on parallel tracks, and
2 maintains the November 18 deadline for the completion of briefing on both the jurisdictional
3 and preliminary injunction issues. “[N]o exigent circumstances warrant” the extremely
4 compressed briefing schedule Defendants seek. *Id.* at 2.

5 It also should be noted that today, November 11, 2010, is Veterans’ Day, a federal
6 holiday. If the Court therefore does not issue an Order on this Motion until tomorrow, that
7 would give Plaintiff Miller only a few hours notice that the highly expedited deadline
8 Defendants seek to have imposed.

9 Plaintiff Miller therefore respectfully asks that this Court deny Plaintiff’s Motion. The
10 Court instead should order that Plaintiff Miller’s Opposition Memorandum is due on Monday,
11 November 15, at 3:00 P.M., and Defendants’ Reply Memorandum is due on Thursday,
12 November 18, at 3:00 P.M. Imposing these reasonable deadlines will ensure that all parties
13 have a reasonable opportunity to research and respond to all arguments, while continuing to
14 meet the Court’s original target date of November 18 for the completion of briefing.
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16 Dated this 11th day of November, 2010.

17 Respectfully submitted,

18
19 /s/ Thomas V. Van Flein
20 Thomas V. Van Flein
21 CLAPP, PETERSON, VAN FLEIN
22 TIEMESSEN & THORSNESS LL
23 711 H St., Suite 620
24 Anchorage, Alaska 99501-3454
25 Phone: (907) 272-9228
26 Facsimile: (907) 272-9586
E-mail: tvf@akcplaw.com
Attorney for Plaintiff

