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Attorney for Lieutenant Governor  
Mead Treadwell and the State of Alaska,  
Division of Elections

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

JOE MILLER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LIEUTENANT GOVERNOR MEAD )  
 TREADWELL, in his official capacity; )  
 and the STATE OF ALASKA, )  
 DIVISION OF ELECTIONS, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. 3:10-cv-00252 RRB

**DEFENDANTS’ MOTION TO RE-CONDITION THE PRELIMINARY  
INJUNCTION**

Defendants Lieutenant Governor Mead Treadwell and the State of Alaska, Division of Elections (“the state”) ask this Court pursuant to D. Ak. LR 7.2(c) to add a new condition to the continuation of the preliminary injunction this Court issued on November 19, 2010. The continued existence of the preliminary injunction without the requested additional condition could have substantial and serious repercussions for the state and for Alaskans.

The state superior court is expected to rule today on the state law claims as to which this court abstained in its order of November 19, 2010. 1JU-10-1007 CI. Because this Court's November 19 order enjoined certification of the result of the U.S. Senate election "until the legal issues raised [in the state court action] have been fully and finally resolved," it is essential that the state court litigation continue to move at a highly expedited pace in order to give both the Alaska Supreme Court and this Court time to resolve the merits of the case before the new Senate is sworn in on January 5, 2011. If certification is enjoined beyond the convening of the new Congress in January, the state will suffer significant and immeasurable harm through the loss of full representation in the Senate.

If the superior court denies the state's motion for summary judgment, the state will immediately petition the Supreme Court for review. However, if the state prevails on summary judgment, pursuant to Alaska Rule of Appellate Procedure 204 Mr. Miller will have 30 days from entry of final judgment to appeal. The existence of this Court's preliminary injunction gives Mr. Miller no incentive to expedite the state litigation and, therefore, no reason to appeal before the 30-day deadline. Moreover, Mr. Miller's conduct of the state litigation suggests that he is strongly motivated to delay a final determination of the election result. He opposed expedited consideration of the state's Motion for Summary Judgment, and just yesterday, after full briefing and oral argument on the state's motion for summary judgment on all courts, moved to amend his

complaint to add a new claim and requested discovery to try to give substance to his entirely speculative allegations.

This Court's order of November 19, 2010 recognized the importance of moving this litigation expeditiously through the courts by conditioning the entry of the preliminary injunction on Mr. Miller's filing his state court action on the first business day following the Court's order. In order to assure that Mr. Miller seeks immediate review of an adverse superior court order, the state respectfully asks this Court to impose a similar condition on the continuance of the injunction, by ordering that, in the event that the superior court grants summary judgment to the state, the injunction against certification will be lifted unless Mr. Miller files an appeal with the Alaska Supreme Court by the end of the business day following the issuance of that order. If the superior court does issue its order today as expected, that would require Mr. Miller to appeal by the close of business on Monday, December 13, 2010.

DATED: December 10, 2010.

RICHARD A. SVOBODNY  
ACTING ATTORNEY GENERAL

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**Certificate of Service**

The undersigned hereby certifies that on the 10th day of December, 2010, a true and correct copy of the above document, Defendants' Motion to Re-Condition the Preliminary Injunction was served via electronic mail and fax on the following:

- Thomas Van Flein, Esq.
- Michael T. Morley, Esq.

By: /s/ Margaret Paton-Walsh