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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOE MILLER,)	
)	Case No. 3:10-cv-00252-RRB
Plaintiff,)	
)	
v.)	
)	
LIEUTENANT GOVERNOR MEAD)	
TREADWELL, in his official capacity;)	
and the STATE OF ALASKA,)	
DIVISION OF ELECTIONS,)	
)	
Defendants.)	
_____)	

**REPLY TO PLAINTIFF’S OPPOSITION TO AMENDED MOTION TO
ESTABLISH EXPEDITED BRIEFING SCHEDULE ON REMAINING FEDERAL
ISSUES**

Plaintiff, Joe Miller, has opposed the state’s request that this court establish an expedited briefing schedule for any remaining federal issues on three grounds, complaining that briefing in the alternative will be burdensome; that establishing a schedule might be read as this Court presupposing the outcome of the state appeal, and that it “would suggest a lack of comity and respect for the state judiciary.” Because these arguments, even to the extent that they have merit, are insufficient to outweigh the

urgency created by the fact that the new Congress will convene in just over three weeks, the state respectfully asks this Court to grant its motion and establish a briefing schedule as requested in the state's amended motion. [Docket #67]

Plaintiff first argues that it is not known when the Alaska Supreme Court will issue a ruling on the appeal and that it will be unduly burdensome to have to brief the federal issues remaining before this Court before ruling has been issued. Although it is true that the Alaska Supreme Court has not indicated exactly when it will issue an order on this appeal, any burden created by a delay over the weekend will fall primarily on the state rather than on the plaintiff, because the state's brief will be due on Saturday, but the plaintiff will have until Tuesday before he has to file his opposition. And while briefing in the alternative is certainly not the preferred situation, the timeframe facing the parties simply does not allow for anything else.

Second, Mr. Miller argues that establishing a briefing schedule would prejudice him by suggesting to the Alaska Supreme Court and the public that this Court believes that he will lose his appeal. This argument makes no sense. Mr. Miller reserved consideration of the federal issues in his case to this Court. Whatever the outcome of his state court appeal, this Court retains jurisdiction to consider those federal issues and the case will return here for additional litigation. The state believes that Mr. Miller's claims will fail on the merits even if the Alaska Supreme Court reverses the superior court on some, or even all, Mr. Miller's claims. No presumption regarding the outcome is

suggested by establishing a schedule for briefing that must occur in this Court before this litigation can be resolved.

Finally, Mr. Miller suggests that establishing a briefing schedule for the federal questions “suggest[s] a lack of comity and respect for the state judiciary,” but no disrespect is involved in briefing in the alternative, should it turn out to be necessary.

Mr. Miller’s goal here appears simply to be to delay certification beyond the January 3, 2011 deadline, to the great detriment of the state and the citizens of Alaska. The state respectfully asks this Court to take every step possible to avoid this unnecessary harm to the people of Alaska.

DATED December 13, 2010.

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Certificate of Service

The undersigned hereby certifies that on the 13th day of December, 2010, a true and correct copy of the above document, Reply to Plaintiff's Opposition to Amended Motion to Establish Expedited Briefing Schedule on Remaining Federal Issues was served via electronic mail on the following:

- Thomas Van Flein, Esq.
- Michael T. Morley, Esq.
- Scott Kendall
- Timothy McKeever

By: /s/ Margaret Paton-Walsh