

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) 272-9272
7 Facsimile: (907) 272-9586
8 E-mail: tvf@akcplaw.com

9 Michael T. Morley
10 616 E St. N.W. #254
11 Washington, D.C. 20004
12 Phone: (860) 778-3883
13 Facsimile: (907) 272-9586
14 E-mail: michaelmorleyesq@hotmail.com
15 Not admitted in the U.S. District Court
16 for the District of Alaska

17 *Attorneys for Plaintiff*

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ALASKA**

20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)

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

Civil Action No:
3:10-CV-00252 (RRB)

101 **PLAINTIFF MILLER'S CONSENT TO MODIFICATION OF PRELIMINARY**
102 **INJUNCTION TO ALLOW CERTIFICATION TO PROCEED**

103 Plaintiff Miller's Consent to Modification of Preliminary
104 Injunction to Allow Certification to Proceed
105 *Miller v. Treadwell*, No. 3:10-CV-00252 (RRB)
106 Page 1

1 Plaintiff Joe Miller hereby consents to modification of the Preliminary Injunction
2 that this Court entered in the above-captioned case on November 19, 2010, so that
3 Defendants may certify the results of the 2010 general election for U.S. Senate. With the
4 election results certified, and Alaska's full congressional delegation representing the
5 interests of Alaska's citizens in Congress, it will not be necessary to dispose of this case in
6 an extremely expedited manner, limited discovery should be allowed to commence and
7 proceed as necessary, and this Court can fully consider the substantial constitutional claims
8 Plaintiff Miller has raised.

9
10 In light of the impending certification of the election results, Plaintiff Miller
11 respectfully requests that this Court modify the Preliminary Injunction to toll his deadline
12 for seeking any post-certification remedies, including but not limited to a recount pursuant
13 to AS § 15.20.430, or an election contest pursuant to AS § 15.20.540, until after final
14 judgment has been entered in this case and all appeals have been exhausted. Plaintiff
15 Miller is willing to stipulate to reasonably expedited schedules for filing notices of appeal,
16 petitions for *certiorari*, or appellate briefs. Plaintiff Miller's ability to successfully assert
17 an election appeal, or to obtain any meaningful relief in a recount, hinge in large part on the
18 outcome of this lawsuit, but state law generally requires that such claims be brought within
19 a few days after the official close of the state ballot count review, which is when
20 certification occurs, AS § 15.15.450. See AS §§ 15.20.430(a) (deadline for recount),
21 15.20.550 (deadline for election contest). Thus, it is necessary to toll the deadlines for
22
23

1 pursuing these remedies until after this case has been definitively resolved. For these
2 reasons, Plaintiff Miller respectfully asks that this Court modify its injunction to do so.

3 DATED at Anchorage, Alaska, this 27th day of December 2010.

4 Respectfully submitted,

5
6 **CLAPP, PETERSON, VAN FLEIN,
TIEMESSEN & THORSNESS, LLC**
7 Attorneys for Plaintiff Joe Miller

8
9 By /s/ Thomas V. Van Flein

10 Thomas V. Van Flein, #9011119

11 John Tiemessen

12 Michael T. Morley (not admitted in the
13 U.S. District Court for the District
14 of Alaska)

15 *Attorneys for Plaintiff*

16 Certificate of Service:

17 The undersigned hereby certifies that a true
18 and exact copy of the foregoing was served
19 this 27th day of December 2010 via:

- 20 () First Class Mail
21 () Hand-Delivery
22 () Facsimile
23 () E-Mail
24 (X) ECF

25 to the following listed individual(s):

26 Michael Barnhill
Sarah Felix
Margaret Paton-Walsh
Timothy McKeever
Scott Kendall

By: /s/ Thomas V. Van Flein

Plaintiff Miller's Consent to Modification of Preliminary
Injunction to Allow Certification to Proceed
Miller v. Treadwell, No. 3:10-CV-00252 (RRB)
Page 3