

Margaret Paton-Walsh
 State of Alaska, Department of Law
 1031 W. 4th Avenue, Suite 200
 Anchorage, AK 99501
 Telephone (907)269-6612
 Facsimile (907)258-4978
Margaret.paton-walsh@alaska.gov
 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 RBB

Motion for an Expedited Order to lift the Preliminary Injunction

Defendants State of Alaska, Division of Elections and Mead Treadwell, in his capacity as Lieutenant Governor of Alaska (collectively “the state”), move for an expedited order to lift the preliminary injunction issued by this Court on November 19, 2010. The parties agree that certification is appropriate at this time,¹ and the logistics of the certification process require a quick decision.

¹ See Plaintiff Miller’s Consent to Modification of Preliminary Injunction to Allow Certification to Proceed, Docket #79 (“Plaintiff Joe Miller hereby consents to modification of the Preliminary Injunction that this Court entered in the above-captioned case on November 19, 2010, so that Defendants may certify the results of the 2010 general election for U.S. Senate.”)

Expedited treatment is necessary to assure that the winning candidate for Alaska's U.S. Senate seat is able to take the seat when the first session of the 112th Congress convenes, and therefore to prevent harm to the people of Alaska if they do not have full representation at that time.

In order for the winning candidate, Lisa Murkowski, to take her seat when the Senate convenes, the state's certification of the election results must be delivered to the Secretary of the Senate in Washington, D.C. before noon on January 3, 2011. *See* October 4, 2010 letter to Governor Sean Parnell from Nancy Erickson, Secretary of the Senate, attached as Exhibit A. Although the Senate does not convene until January 5, *see* S.J. Res. 40 attached as Exhibit B, the Secretary of the Senate will not represent to the state that the deadline to deliver the certification is any later than January 3. Affidavit of Gail Fenumiai, ¶ 4b. While state certification theoretically can be mailed to the Secretary of the Senate, this Court's injunction on certification has made that option unavailable at this late date. Therefore the state's certification must be hand-carried to Washington to assure that it reaches the office of the Secretary on the morning of January 3. The state is making travel arrangements for a state employee take the completed certification.

The delivered certificate must be an original document signed by both the Governor and Lieutenant Governor of Alaska. *Aff. of GF*, ¶ 4a. Because the Senate's certification requirements call for the Lieutenant Governor to attest to the signature of the Governor, the two must sign the certificate together. *Aff. of GF*, ¶ 4a. Alaska's Governor and Lieutenant Governor do not live in the same city, however, so in order to assure that the certificate is delivered to Washington, D.C. by noon on Monday, January 3—accounting for the holiday on Friday, December 31 and potential weather delays—they must arrange to meet by Thursday, December

30 at the latest. Because travel delays to and from Southeast Alaska are not uncommon, it would be preferable to have the certificate signed on Wednesday, December 29, 2010.

Therefore, the state requests an order lifting the preliminary injunction by the close of business on Tuesday, December 28, 2010.

DATED December 27, 2010.

JOHN J. BURNS
ATTORNEY GENERAL

By: /s/ Margaret Paton-Walsh
Alaska Bar No. 0411074
Assistant Attorney General
1031 W. 4th Ave., Suite 200
Anchorage, Alaska 99501
Phone: (907) 269-6612
Fax: (907) 258-4978

Certificate of Service

The undersigned certifies that on December 27, 2010, a true and correct copy of this document was served via electronic mail on the following:

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

By: /s/ Margaret Paton-Walsh