



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 Michael T. Morley
9 616 E St. N.W. #254
10 Washington, D.C. 20004
11 Phone: (860) 778-3883
12 Facsimile: (907) 272-9586
13 E-mail: michaelmorleyesq@hotmail.com
14 Admitted *pro hac vice*

15 *Attorneys for Plaintiff*

16 IN THE SUPREME COURT OF THE STATE OF ALASKA

17 JOE MILLER,)

18 *Appellant,*)

19 v.)

20 LIEUTENANT GOVERNOR CRAIG)
21 CAMPBELL, in his official capacity,)
22 and the STATE OF ALASKA,)
23 DIVISION OF ELECTIONS,)

24 *Appellees.*)

Supreme Court Case No. S-14112

Superior Court Case No. 1JU-10-1007 CI

25 **NOTICE OF APPEAL**

26 NOTICE IS HEREBY given that Joe Miller, through counsel, will be and
is appealing the Superior Court's judgment entered on December 10, 2010 for

1 review by the Alaska Supreme Court. This appeal is brought pursuant to Alaska
2 Appellate Rule 202(a), and in conformance with the Clerk of the Appellate
3 Court's instructions on Friday December 10, 2010, the appeal and briefing
4 schedule are expedited in order to have oral argument before this Court on Friday
5 December 17, 2010. Appellant may be contacted directly at:
6

7
8 Joseph Miller
9 P.O. Box 83440
Fairbanks, Alaska 99708

10 Appellant's counsel may be contacted at the following address:

11
12 Thomas Van Flein, Esq.
13 John Tiemessen, Esq.
14 Clapp, Peterson, Van Flein, Tiemessen & Thorsness, LLC
15 711 H Street, Suite 620
16 Anchorage, Alaska 99501

17
18 Michael Morley, Esq.
19 616 E Street, N.W. No. 254
20 Washington, D.C., 20004

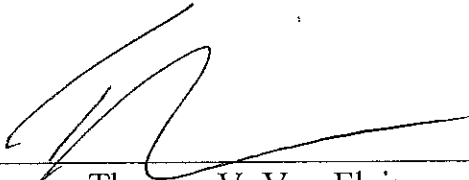
21 Appellee, the State of Alaska, can be contacted as follows:

22
23 Michael Barnhill, Assistant Attorney General
24 Attorney General's Office
25 P.O. Box 110300
26 Juneau, Alaska 99811

1 The decision of the Superior Court is a final decision for all practical
2 purposes and was distributed on December 10, 2010. Attached to this Notice of
3 Appeal are: (1) a copy of the Superior Court's Order being appealed from; (2)
4 Appellant's Statement of Points on Appeal; (3) Entry of Appearance; (4)
5 Certificate of Compliance (font); and (5) a Certificate of Service of these
6 documents.
7

8
9 Dated: December 13, 2010

Respectfully submitted,

10
11 

12 Thomas V. Van Flein
13 John Tiemessen
14 Michael T. Morley
15 Admitted *pro hac vice*
16 Attorneys for Plaintiff Joe Miller

17 Certificate of Service:

18 The undersigned hereby certifies that a true
19 and exact copy of the foregoing was served
20 this 13th day of December 2010 via: (X) E-Mail
21 to the following listed individual(s):

22 Michael Barnhill, Sarah Felix, Joanne Grace
23 Scott Kendall and Tim McKeever

24 By: Chelsea Greene
25 Chelsea Greene



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

4 Michael T. Morley
5 616 E St. N.W. #254
6 Washington, D.C. 20004
7 Phone: (860) 778-3883
8 Facsimile: (907) 272-9586
9 E-mail: michaelmorleyesq@hotmail.com
10 Admitted *pro hac vice*

11 *Attorneys for Plaintiff*

12 **IN THE SUPREME COURT OF THE STATE OF ALASKA**

13 JOE MILLER,)

14 *Appellant,*)

15 v.)

16 LIEUTENANT GOVERNOR CRAIG)
17 CAMPBELL, in his official capacity,)
18 and the STATE OF ALASKA,)
19 DIVISION OF ELECTIONS,)

20 *Appellees.*)

Supreme Court Case No. S-14112

Superior Court Case No. IJU-10-1007 CI

21 **STATEMENT OF POINTS ON APPEAL**

22 Appellant Joe Miller, by and through undersigned counsel, respectfully
23 gives notice that he is appealing the Superior Court's final judgment entered on

24 Appellant Miller's Notice of Appeal and Statement of Points on Appeal
25 *Miller v. Campbell*, Supreme Court Case No. _____
26 Page 1 of 4

1 December 10, 2010. Pursuant to Alaska Appellate Rule 204(e), Appellant Miller
2 intends to rely on the following points in his appeal. In light of the extremely
3 expedited nature of these proceedings, Appellant Miller respectfully requests
4 leave to supplement this statement if necessary when he files his brief tomorrow.
5

6 STATEMENT OF POINTS

7 1. The Superior Court erred in ruling, as a matter of law, that AS §
8 15.15.360 grants State officials the power to impact the outcome of elections by
9 determining which write-in ballots are “close enough” to be counted, rather than
10 establishing an objective, bright-line standard established by the Legislature. The
11 State was not entitled to summary judgment on Counts I and IV.
12

13
14 2. Neither AS § 15.15.030(5), (12) nor 6 AAC 25.085(b) permitted the
15 Division of Elections to use optical scanning machines to conclusively determine
16 the validity of votes for “preprinted candidates,”¹ while accepting as valid, and
17 counting, votes for write-in candidates that the machines had rejected. The State
18 was not entitled to summary judgment on Count II.
19
20
21

22 ¹ The term “preprinted candidate” refers to a candidate, such as Appellant Miller, whose name
23 was preprinted on the ballots.

1 3. The Division's policies of accepting misspellings on write-in votes,
2 and employing more lenient standards for determining the validity of write-in
3 votes than votes for "preprinted candidates," are invalid and unenforceable,
4 because they are "regulations" the Division was required to promulgate pursuant
5 to the Alaska Administrative Procedures Act, AS § 44.62. The State was not
6 entitled to summary judgment on Count III.
7

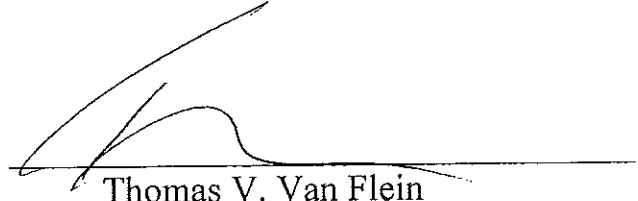
8 4. The Superior Court erred in denying Appellant Miller an opportunity
9 to take discovery regarding Counts V and VI; deciding there were no genuine
10 disputes of material fact; and awarding summary judgment to the State on those
11 Counts, when the evidence before the court established material questions of fact.
12

13 5. The Superior Court erred in constructively denying Appellant Miller
14 an opportunity to amend his Complaint to assert a new claim, that convicted
15 felons had been permitted to vote in the election in possible violation of the
16 Alaska Constitution and Alaska law.
17

18 6. The Superior Court erred in holding that some claims were moot.
19
20 The State was not entitled to summary judgment on Counts I through VI.
21

1 Dated this 13th day of December, 2010.

2 Respectfully submitted,

3
4 

5 Thomas V. Van Flein
6 John Tiemessen
7 Michael T. Morley
8 Admitted *pro hac vice*
9 Attorneys for Plaintiff Joe Miller

10 Certificate of Service:

11 The undersigned hereby certifies that a true
12 and exact copy of the foregoing was served
13 this 13th day of December 2010 via: (X) E-Mail
14 to the following listed individual(s):

15 Michael Barnhill, Sarah Felix, Joanne Grace (State of Alaska)
16 Scott Kendall and Tim McKeever (Intervenor)

17 By: Chelsea Greene
18 Chelsea Greene