



AOR 2013-11 - reply to Alaska Dispatch counsel comments
William J. Olson to: rknop
Cc: johnsmiles

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1 attachment



AOR2013-11 - Reply Comments final.pdf

Mr. Knop --
Attached are the Miller Committee's reply comments to the comments
filed by counsel for the Alaska Dispatch.
Best regards,
Bill Olson

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September 25, 2013

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **Citizens for Joe Miller (FEC ID No. C00522730)**
Advisory Opinion Request 2013-11; Reply to ADLLC Comment

Dear Sirs:

Our firm represents "Citizens for Joe Miller," the FEC-registered principal campaign committee of U.S. Senate candidate Joseph W. Miller (the "Miller Committee").

On July 10, 2013, the Miller Committee requested an Advisory Opinion, pursuant to 2 U.S.C. § 437f, concerning the application of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* (the "Act") and Commission regulations under 11 CFR to an issue that has arisen regarding the use of its funds. Specifically, the Miller Committee sought confirmation that its deposit of its funds with an Alaska state court pending appeal of an Alaskan judgment assessing attorney's fees in certain litigation arising out of Mr. Miller's campaign as the Republican Party nominee for the U.S. Senate from Alaska in the 2010 election cycle does not constitute an impermissible personal use.

The FEC requested supplementary materials on the AOR, which were provided. The request was assigned the designation AOR 2013-11 and notice was placed on the FEC website to allow public comment before Commission consideration.

Just prior to the end of the 10-day period for submitting comments in AOR 2013-11, the Alaska Dispatch, LLC ("ADLLC" or "Dispatch") – an Internet-only Alaska-based political blog/magazine, which is a judgment creditor in the Alaska litigation – filed a 10-page comment. These Reply Comments respond to the ADLLC

comment. Also, additional documents were requested by the Commission, and were provided earlier today.

STATEMENT OF FACTS

Joseph Miller's 2010 and 2014 Senate Campaigns. Joseph W. Miller was a candidate for the Republican Party nomination to the U.S. Senate from Alaska in the 2010 election cycle, announcing his candidacy in April of 2010. His campaign committee was "Joe Miller for U.S. Senate." His principal campaign met with unprecedented success, and in August 2010 Mr. Miller won the primary election, defeating an incumbent U.S. Senator, to become Alaska's Republican nominee for the U.S. Senate. He then lost in the 2010 general election to that same incumbent U.S. Senator, who ran a write-in campaign. Mr. Miller's 2010 campaign filed its termination report with the FEC on June 6, 2012. Joseph Miller currently is a candidate for the U.S. Senate from Alaska in the 2014 election cycle. His campaign committee is "Citizens for Joe Miller," and was registered with the FEC on June 4, 2012. Thus, Mr. Miller has been engaged in seeking federal office in both the 2010 and 2014 federal election cycles.

AOR Background. AOR 2013-11 recited an overview of the facts relevant to the legal question presented for the FEC's consideration. AOR 2013-11 detailed the various parties to that litigation – known as Fairbanks Daily News-Miner and Alaska Dispatch LLC v. Fairbanks North Star Borough, et al., Case No. 4FA-10-2886 CI – in which candidate Miller intervened to prevent the unwarranted disclosure of his confidential personnel records in the middle of his U.S. Senate campaign. AOR 2013-11 also explained that ADLLC was awarded, as the prevailing party in that litigation, a judgment of \$85,435.89 in attorney's fees and costs against Mr. Miller.

Mr. Miller noticed an appeal from that decision, and as part of that appeal posted a cash deposit of \$94,083 with the court paid by Citizens for Joe Miller, in lieu of a cost or supersedeas bond pending appeal. ADLLC has questioned whether the Miller Committee may use campaign funds for that purpose. The Miller Committee filed AOR 2013-11 in an effort to confirm its belief that the use was proper, submitting a number of documents filed in the Alaska litigation (Case No. 4FA-10-2886 CI) for background in the case, and subsequently submitting a number of other documents at the FEC staff's request.

ADLLC Comment Generally. The ADLLC injects numerous characterizations and allegations into its comment which reveal that ADLLC has been more involved in opposing Mr. Miller's U.S. Senate campaigns than serving as an objective news

organization. Indeed, the ADLLC website, to this day, identifies as one of its ongoing "Projects" the "Joseph Miller Senate Run."¹ The ADLLC's effort in 2010 to obtain candidate Miller's personnel records was part of its efforts to oppose candidate Miller's senatorial candidacy.

The Dispatch, whose majority owner, Alice Rogoff, personally donated \$4,700² to candidate Joe Miller's opponent in the 2010 election cycle, has been in an adversarial posture with Mr. Miller since his candidacy for U.S. Senate was announced in April 2010. ADLLC has engaged in negative coverage of Mr. Miller well before commencement of the litigation that is subject to the FEC's review here.³ During that litigation, and well after ADLLC no longer had any proper role in it, the ADLLC continued to write one-sided stories about the case, often without disclosure of its own interests.⁴ This history helps to explain the importance to the Miller Committee of the litigation regarding candidate Miller's personnel records, including the post-2010 litigation proceedings.

ADLLC's comments to the FEC contain a number of errors. ADLLC suggests that "Miller had known of [the impending trial court's attorney's fees decision] for a year or two before he used the campaign funds for these purposes..."⁵ However, there was no reasonable way to anticipate that the Dispatch, a party with no remaining claims in the litigation, would – months after every other press outlet had been dismissed from the litigation⁶, and after all other parties' claims in the litigation were resolved – be successful in securing a judgment for significant attorney's fees against Mr. Miller. The court's grant of such extraordinary relief is currently under appeal to the Alaska Supreme Court.⁷

The Dispatch also mistakenly suggests that Mr. Miller spent "\$170,000, more or less ... on the second, post-records release phase of the Litigation..."⁸ In actual fact, such work was undertaken by counsel on a contingent basis, and thus neither Mr. Miller nor his campaign expended any funds, or incurred any debt, with respect to

¹ <http://www.alaskadispatch.com/>

² <http://images.nictusa.com/cgi-bin/fecimg/?29020301715>

³ Some of these stories have been removed from the Dispatch website.

⁴ Copies of such stories can be provided upon request.

⁵ ADLLC comments, at 2.

⁶ An Order dismissing the Anchorage Daily News and the Associated Press was entered December 15, 2011. See Order dated December 15, 2011. An Order dismissing the Fairbanks News Miner was entered April 18, 2012. See Order dated April 18, 2012.

⁷ Moreover, as noted in the affidavit accompanying Mr. Miller's bond application, the utilization of campaign funds was made under the advice of counsel. Affidavit of Campaign Treasurer (case No. 4FA-10-2886CI), dated July 12, 2013, at ¶5.

⁸ ADLLC Comment, at n. 5.

attorney's fees related to the Alaska litigation subsequent to January 2011.⁹

The ADLLC's assertion that "neither Miller nor the other parties to the litigation believed during the litigation that campaign funds could be used" in the case is unsupported and false.¹⁰ The Miller Committee paid attorney's fees related, in part, to this litigation in the amount of \$50,500, as reflected in the Committee's 2010 and 2011 FEC reports.¹¹ It is submitted that there is no serious question about whether those payments were proper. Even ADLLC does not so contend. *See, e.g.*, ADLLC Comment, p. 7 n.1. And, as affirmed by Mr. Miller's campaign treasurer, the \$5,000 recovered in the case by way of the Offer of Judgment (accepted by Mr. Miller), was paid directly to counsel.¹²

On page 4 of its Comment, ADLLC purports to raise questions about the potential far-reaching implications of a decision in this matter, essentially arguing (i) that a decision approving the use of campaign funds to pay for the appeal bond in the Alaska litigation would be tantamount to an approval for using campaign funds to launch tort suits that are personal in nature, and (ii) that the Miller Committee has been using campaign funds to pay for Alaska litigation expenses and then not reporting them to the FEC. Obviously, both arguments have been manufactured by ADLLC in an effort to persuade the Commission to disapprove of the use of campaign funds to pay for the supersedeas bond that is in question here. As to the first ADLLC argument, the Miller Committee submits that the ADLLC's so-called "Phase 2" matters in the Alaska litigation would not have existed but for Mr. Miller's senatorial candidacy. That is the standard thus far adopted by the Commission in determining that the payment of a candidate's litigation expenses do not constitute personal use. As to the second ADLLC point, it is the Miller Committee's understanding -- and Mr. Miller has so represented -- that no Committee funds were used to pay for the litigation expenses except as disclosed in the Committee's FEC filings.

Moreover, the Commission has previously approved the use of campaign funds used by a candidate to bring civil suits that arise from campaigning or holding of

⁹ As noted in the next paragraph, Mr. Miller's former counsel did receive the \$5,000 recovered from the FNSB and its former mayor's offer of judgment.

¹⁰ *See* ADLLC Comment, at 2. The Alaska Dispatch counsel's account of his conversations with Mr. Miller's former counsel, even if accurate, do not reflect the true facts. Moreover, any such discussions would have been held only in the context of settlement negotiations and should be protected from disclosure by Alaska's Evidence Rule 408 ("[e]vidence of conduct or statements made in compromise negotiations is ... not admissible").

¹¹ This was further affirmed by Mr. Miller's sworn discovery responses in the litigation. *See* Intervenor's Response to FNSB's First Set of Discovery, dated February 14, 2012, at 3 (averring, "part of the fees and costs were paid as part of a flat legal fee arrangement by campaign funds. However, since January 2011, no fees and costs have been paid by the campaign").

¹² Affidavit of Campaign Treasurer, dated July 12, 2013, at ¶7.

office. *See, e.g.*, AO 1997-27 (Friends of John Boehner) ("he may use funds of the Boehner Committee to pay the legal expenses incurred in evaluating and pursuing the lawsuit.")

Despite the ADLLC's efforts to suggest otherwise, the Miller Committee has regularly disclosed any and all attorney's fees paid by his campaign by way of his publicly-accessible quarterly FEC disclosures, including fees paid to campaign counsel. It is submitted that the Committee is in full legal compliance with these FEC requirements.¹³ ADLLC's implication of wrongdoing with respect to what ADLLC calls "Phase 2" is no more than another effort to muddy the waters.

Of course, the question here is not even about the use of Miller Committee funds for legal fees. The question presented is whether the Miller Committee may use funds as a cash deposit with a state court in lieu of bond pending appeal of a judgment against the candidate and/or for payment of a judgment should the appeal be unsuccessful, or whether this use of campaign funds would be an impermissible personal use under 2 U.S.C. section 439a and 11 C.F.R. section 113.2. In light of the ADLLC Comment, further insight into the Alaska litigation would be helpful.

Litigation History. Prior to the 2010 U.S. Senate campaign, in addition to his full-time private law practice, Mr. Miller worked as a part-time Fairbanks North Star Borough ("FNSB") employee for about seven years. His work was highly regarded by his supervisor, borough attorney, A. Rene Broker-King. After several years of Mr. Miller's employment, she noted that

If I had to rank all of the attorneys with whom I have worked . . . Joe would rank in the top three in all areas I consider important to the practice of law. He has an excellent grasp on legal issues.... He not only produces a high quality work product but he works efficiently and effectively. He practices law in a manner that reflects the highest standards in our profession and the Borough has benefited greatly by his work.¹⁵

During an interview in October 2010, Ms. Broker-King continued to reflect high regard for Mr. Miller's employment history, stating that his job was "at a very high

¹³ Disturbingly, the Dispatch also asserts that Mr. Miller settled the case to avoid "disclosure about his legal fees." ADLLC Comment, at note 8. First, the payments of Mr. Miller's fees were already fully disclosed. Second, ADLLC should fully understand that an offer of judgment, by operation of Alaska Civil Rule 68, expires within 10 days of the offeror's service. In other words, as the offeree, Mr. Miller was only in control of the decision to accept the FNSB's and its former mayor's offer of judgment, not the timing of it.

¹⁵ FNSB Public Records Release, July 2010, at 159.

level and he did very good work."¹⁶ This statement was made despite an incident involving several Borough computers that Mr. Miller used to vote in a political poll, which he initially denied to co-workers having done. Prior to investigation, however, Mr. Miller admitted to his supervisor what he had done and offered to resign. Ms. Broker-King rejected Mr. Miller's offer to resign, characterizing the matter as an "isolated incident" in which he fully accepted responsibility.¹⁷

During 2009, his last year of work with FNSB, disputes arose between Mr. Miller and the Borough attorney and FNSB's Mayor, resulting in a series of actions against Mr. Miller by the Borough attorney, culminating in that attorney's voluntary resignation from the Borough on September 1, 2009.¹⁸

Prior to the senatorial primary election in August 2010, a blogger and at least one member of the public reported information purportedly gleaned from Mr. Miller's confidential personnel file. Initially, these reports concerned the circumstances of Mr. Miller's departure from FNSB in 2009, and suggested he was fired in 2009. FNSB then made a number of public statements¹⁹ seemingly designed to pressure Mr. Miller into signing a unilateral release that would provide complete disclosure of his personnel file, but would not allow him the freedom to provide details concerning the reasons for his resignation.²⁰ Mr. Miller refused, stating that he would only release his personnel file if the FNSB would waive its attorney-client privilege so that Miller could speak frankly about the circumstances of his departure from FNSB.

After candidate Miller's primary victory and shortly before the 2010 general election in October, the Alaska Dispatch, the Associated Press (AP), the Anchorage Daily News (ADN), and the Fairbanks News Miner (collectively, the media plaintiffs) filed suit against FNSB, demanding that FNSB release confidential records concerning Mr. Miller's prior employment.²¹ In answering the media plaintiffs' complaints, FNSB denied that the records should be disclosed.²² FNSB also moved to require the media Plaintiffs to join Miller as a party or, alternatively, to dismiss the complaint for failure

¹⁶ See Alaska Dispatch, October 31, 2010

¹⁷ Memorandum from Broker to Miller, dated March 26, 2008, at FNSB Private Documents, at 33-34 (released October 2010).

¹⁸ These issues were detailed in Mr. Miller's resignation letter to FNSB, dated August 28, 2010. FNSB Public Records Release, July 2010, pages 235 to 236.

¹⁹ See, e.g., <http://www.alaskadispatch.com/article/fairbanks-miller-let-us-release-your-records>.

²⁰ FNSB Public Records Release, July 2010, pages 235 to 236.

²¹ See Complaint for Access to Public Records Concerning U.S. Candidate Joe Miller, dated October 11, 2010 ("ADLLC Complaint").

²² See FNSB's Answer to Alaska Dispatch's Complaint, dated October 15, 2010, paragraphs 18-20.

to join an indispensable party.²³

On October 14, 2010, Mr. Miller moved to intervene into this lawsuit.²⁴ On October 19, 2010, the Court granted Miller's motion to intervene. On October 20, 2010, Mr. Miller answered ADLLC's Complaint, cross-claimed against FNSB for violating his privacy rights and for indemnification, and asserted a third-party claim against former Borough Mayor Jim Whitaker for violating his privacy rights.²⁵ Mr. Miller filed no claim against any member of the media.

On October 22, 2010, FNSB moved to sever Mr. Miller's cross-claims against FNSB and third-party claim against Whitaker from the media's claims for records disclosure.²⁶

On October 23, 2010, the Alaska trial court refused to release all documents to the media, agreeing with Mr. Miller that he had a protected privacy interest in some of the documents. Ultimately, the trial court ordered that some records would remain confidential, others would be released with redactions, and others would be released in whole.²⁷ The Court expected that both the Dispatch as well as Mr. Miller would appeal over their disagreement with his ruling.²⁸

On November 4, 2010, the Court denied the FNSB's motion to sever, ordering that: "Currently it appears to the Court that the documents issue is resolved."²⁹

After the documents were released on October 26, 2010, the litigation continued with Mr. Miller's cross-claims and third-party claim against FNSB and Mr. Whitaker. The Dispatch was never a party to these claims.

Alaska Dispatch filed no substantive pleading from October 26, 2010 until March 23, 2012, when it filed an Opposition to Miller's Motion to Compel Journalists' Testimony in Connection with Cross-Claims Against FNSB.³⁰ Alaska Dispatch filed its

²³ See FNSB's Motion to Require Alaska Dispatch to Join Joseph Miller as a Party or, Alternatively, to Dismiss for Failure to Join an Indispensable Party, dated October 12, 2010.

²⁴ See Motion to Intervene by Joseph Miller, dated October 14, 2010.

²⁵ See Intervenor Joseph Miller's Answer to ADLLC's Complaint, Cross Claim Against FNSB and Third-Party Claim Against Jim Whitaker, dated October 20, 2010.

²⁶ See FNSB's Opposition to Intervenor Joseph Miller's Motion for Expedited Discovery and Civil Rule 56(f) Motion and FNSB's Motion to Sever, dated October 22, 2010.

²⁷ See Court Transcript, dated October 23, 2010, at 116, 122-124.

²⁸ *Id.* at 123-124. Neither party filed an interlocutory appeal.

²⁹ See Order Denying FNSB's Motion to Sever, dated November 4, 2010.

³⁰ See Memorandum of Alaska Dispatch in Opposition to Joe Miller's Motion to Compel Journalists' Testimony in Connection with Cross-Claims Against Fairbanks North Star Borough, dated March 23, 2012.

opposition to assert a journalist's privilege to protect Alaska Dispatch and other news organizations and journalists from disclosing their sources of information which were sought in the litigation on Mr. Miller's cross-claims against FNSB. It was not filed for the purpose of seeking relief on any claim filed by Alaska Dispatch or to defend against any claim filed by Mr. Miller against Alaska Dispatch. Alaska Dispatch did not need to be a party in order to assert a journalist's privilege. Blogger Andrew Halcro filed a similar opposition asserting his claim as a non-party participant to a journalist's privilege on March 12, 2012.³¹ Alaska Dispatch admitted in its opposition of March 23, 2012, that it had no reason for remaining a party and the remaining disputes between the other parties did not involve Alaska Dispatch.³² Although Alaska Dispatch blamed Mr. Miller for its continued presence as a party, Alaska Dispatch did not need Mr. Miller's agreement or stipulation to move for entry of final judgment under Alaska Civil Procedure Rule 54(b). Such a motion was available from November, 2010 onward.

After filing its opposition asserting a journalist's privilege, Alaska Dispatch filed no other pleading until it finally moved for entry of a Rule 54(b) final judgment on May 24, 2012, 19 months after Alaska Dispatch prevailed on its records disclosure claim and before any ruling on its asserted journalists' privilege. Despite such virtual non-involvement, ADLLC somehow incurred attorney's fees that later formed the basis for a substantial portion of the attorney's fee award against Mr. Miller.

After months of discovery regarding Mr. Miller's claims – none of which involved ADLLC, although ADLLC nevertheless stayed involved in the litigation – on June 8, 2012, FNSB and Whitaker made a Civil Rule 68 Offer of Judgment for entry of joint and several liability in favor of Miller, with all parties to bear their own attorney's fees and costs. Mr. Miller accepted this Offer of Judgment on June 18, 2012.

In response to the court's status inquiry after the accepted offer of judgment, all parties agreed that all pending motions were moot, including Mr. Miller's motions to compel disclosure of sources and the claim of any journalists' privileges, and the case was finally concluded, except for a motion by Alaska Dispatch for attorney's fees and costs.³³

³¹ See Andrew Halcro's Opposition to Motion to Compel Testimony Regarding Confidential Sources of Information Gathered in the Course of Reporting on U.S. Senate Candidate Joseph Miller's Previous Employment, dated March 9, 2012.

³² See Memorandum of Alaska Dispatch in Opposition to Joe Miller's Motion to Compel Journalists' Testimony in Connection with Cross-Claims Against Fairbanks North Star Borough, p. 17, fn. 16.

³³ See Status Reports dated June 20, 2012, of Miller, FNSB, Alaska Dispatch, and Whitaker.

On August 29, 2012, Final Judgment was entered in favor of Joseph Miller against FNSB and Whitaker, jointly and severally, in the total amount of \$5,000, with post-judgment interest and the parties bearing their own costs and attorney's fees.³⁴ Final judgment was also entered in favor of Alaska Dispatch against FNSB and Mr. Miller "for the reasons set forth in the court's October 23, [2010] order"³⁵, in which FNSB was ordered to release records to Alaska Dispatch. The court's decision, awarding attorney's fees, was entered on June 13, 2013.

The Dispatch's counsel billed 123.1 hours of attorney's fees from September 9, 2010³⁶ through October 19, 2010, when Mr. Miller intervened in the litigation; 34.6 hours from October 20, 2010 through October 26, 2010, when Alaska Dispatch obtained much of its requested relief; and 291 hours after October 27, 2010, while the cross-claims and third-party claim between Mr. Miller and FNSB/Whitaker were being litigated.³⁷ Even after the court ruled that Alaska Dispatch was entitled to a Rule 54(b) final judgment on June 6, 2012, Alaska Dispatch continued involving itself in the merits of the cross-claims and third-party claim between Miller and FNSB/Whitaker, billing 52.7 hours after June 6, 2012.³⁸

Mr. Miller filed a timely appeal on July 15, 2013, contesting only the attorney's fees decision of the trial court.³⁹ The Dispatch then attempted to dismiss that appeal by arguing that Mr. Miller had not posted a sufficient \$750 appeal bond because the proposed bond had been paid with campaign funds even though the Dispatch had already told the trial court that it had no objection to Mr. Miller "using campaign funds to pay for the 35 percent of the judgment attributable to the campaign-related, pre-2011 portion of the case..."⁴⁰ The Dispatch reiterated that it would not "quibble with Miller's characterization that Alaska Dispatch has essentially conceded that 35 percent of the total fees may be paid from campaign funds,"⁴¹ but continued to argue that Mr. Miller's nominal bond previously posted with such funds was entirely insufficient as it was derived from campaign funds.⁴²

³⁴ See Final Judgment entered on August 29, 2012.

³⁵ The Final Judgment misidentified the year of this order as October 23, 2012, rather than October 23, 2010.

³⁶ Fees were billed beginning more than a month before Alaska Dispatch even filed its lawsuit against FNSB on October 11, 2010.

³⁷ See Invoice for Professional Services attached to the Declaration of Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney Fees, dated October 8, 2012.

³⁸ *Id.*, pp. 19-22.

³⁹ See Appellant's Points of Appeal, July 15, 2013.

⁴⁰ See Alaska Dispatch's Response to Miller Motion to Approve Cash Bond, at note 12.

⁴¹ *Id.*

⁴² See Alaska Dispatch Motion to Dismiss Appeal, at 4 ("Miller has tried to put this Court in the position of approving what may be an illegal use of federally-regulated campaign funds to pay his cost bond...").

As the Dispatch had agreed to stay execution, notwithstanding the validity of the bonds on deposit with the Court⁴³, there was indisputably sufficient, uncontested funds (35 percent of the original judgment amount of \$85,435.89 plus interest) available for this bond. Nevertheless, given the Dispatch's decision to expend significant legal resources (dozens of pages⁴⁴) on what was a \$750 issue (as confirmed by the Supreme Court's subsequent order), Mr. Miller personally paid⁴⁵ a separate \$750 cost bond to the Court to promptly resolve the issue. The Alaska Supreme Court then accepted the new bond and denied the Dispatch's Motion to Dismiss as moot.⁴⁶

ARGUMENT

I. Campaign Funds May be Used for Any Lawful Purpose Except When Converted to Personal Use.

Title 2, Section 439a of the United States Code sets forth permitted and prohibited uses for political contributions. It allows expenditures for any "lawful purpose," but disallows conversion of any political donation "to personal use."⁴⁷ The statute goes on to explain that:

a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist **irrespective of the candidate's election campaign** or individual's duties as a holder of Federal office . . .⁴⁸

The implementing regulation is virtually identical, permitting any "lawful purpose" except where "such use is personal use under 11 CFR 113.1(g)."⁴⁹ "Personal use" is

⁴³ See Order, dated September 6, 2013, at 3.

⁴⁴ The Dispatch filed a three-page motion, 18-page memorandum, three-page order, and three-page affidavit in support of its unsuccessful effort to dismiss the appeal. Even after Mr. Miller posted the additional \$750, the Dispatch continued its protestations, filing yet another seven-page pleading. See Dispatch Reply to Miller Opposition to Motion to Dismiss, dated September 9, 2013.

⁴⁵ In response to the bond that Mr. Miller personally paid (by deposit to his attorney's client trust account), the Dispatch asserts incorrectly that the additional \$750 bond deposit was drawn on campaign funds. Dispatch Reply to Miller Opposition to Motion to Dismiss, dated September 9, 2013, at 1. Mr. Miller's \$750 payment will be reflected in the Committee's third quarter FEC filing, due October 15, 2013.

⁴⁶ See Order, dated September 11, 2013.

⁴⁷ 2 USC § 439a(a)(6), (b)(1).

⁴⁸ *Id.* at (b)(2) (*emphasis added*).

⁴⁹ 11 CFR 113.2.

then defined as "a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign..."⁵⁰

As already pointed out in AOR 2013-11, there are a number of FEC Advisory Opinions approving the use of campaign funds for expenses related not only to legal proceedings involving campaign committees, but also to related concerns and undertakings. In AO 2005-11 (Friends of Duke Cunningham), for example, the Commission determined that campaign funds could be used not only to pay for legal fees related to a grand jury investigation, but also for legal fees incurred in responding to the press. The key consideration is whether the fees and expenses would exist irrespective of the campaign. *Id.* at 3. Indeed, the Commission concluded that campaign funds also could be used to pay, in whole or in part, for legal expenses even if the grand jury investigation did not involve campaign activities. *Id.* at 4. *See also* AO 1996-24 (Congressman Cooley) (concluding that if allegations of wrongful conduct are made about a candidate in a campaign context, campaign funds may be used to respond, even if the underlying activities were not campaign-related). Clearly, it is submitted, where Mr. Miller's involvement in litigation related to release of his personnel records during a political campaign, payment from campaign funds of the bond involving related legal expenses should be permissible.

II. The Litigation Arose Exclusively from and Continued Due to Mr. Miller's Senate Campaign.

The Alaska Dispatch concedes that at least 35 percent of its attorney's fees award may be satisfied by campaign funds.⁵¹ In other words, the Dispatch apparently agrees that its complaint in the Alaska litigation arose out of the 2010 U.S. Senate campaign and Mr. Miller's candidacy. However, the Dispatch maintains that at some point after the 2010 litigation, the litigation converted into an action exclusively concerning Mr. Miller's personal claims and that, therefore, the part of any judgment for fees arising from such post-2010 litigation should be borne by Mr. Miller personally, and not by the campaign.

However, the proper focus on the post-2010 litigation does not even involve the character or timing of the litigation but, rather, whether the Alaska Dispatch's continued involvement in that phase of the litigation was due to Mr. Miller's Senate candidacy or otherwise would have existed. If the Dispatch's involvement in that

⁵⁰ 11 CFR 113.1(g).

⁵¹ Although the Dispatch's reasoning behind this determination seems to be whether fees were incurred before or after the trial court's decision regarding Mr. Miller's employment records, no supporting calculations are supplied. It is submitted that the percentage of time relating to the document release and related fees substantially exceeds 35 percent.

litigation was motivated by Mr. Miller's federal candidacy, or an expectation of his future candidacy, then any judgment for the Dispatch's fees may be paid by campaign funds as such obligation would not have "exist[ed] irrespective of the candidate's election campaign. . .".⁵²

In examining the Dispatch's involvement in the post-2010 litigation, it is necessary first to examine the claims that were pending after 2010. As noted above, four media outlets initiated the litigation against FNSB (the ADN, the AP, the News Miner, and the Dispatch), and their claims all resolved upon the trial court's decision to release some of Mr. Miller's confidential employment records to the public. The remaining claims pertained to Mr. Miller and FNSB and its former mayor.

Mr. Miller neither filed any claims against the Dispatch, nor did he serve the Dispatch with any discovery requests. Nor did the Dispatch engage Mr. Miller with any discovery.⁵³ Eventually, ADN, AP, and News Miner all recognized the need to be removed as parties in the case as they had no claims demanding resolution. They contacted Mr. Miller's former counsel who entered into stipulations with them regarding their dismissal and orders for dismissal (entered December 15, 2011, for ADN and AP and April 18, 2012, for News Miner).⁵⁴ Under these stipulations, the parties agreed to bear their own attorney's fees.

The Dispatch also contacted Mr. Miller's former counsel for a stipulation for dismissal but, unlike all other media plaintiffs, the Dispatch demanded attorney's fees in exchange for such dismissal. The Dispatch eventually filed a motion for dismissal on May 24, 2012.⁵⁵ But the Dispatch had absolutely no legal interests that inhibited it from filing this pleading as early as October 23, 2010.⁵⁶

⁵² 2 USC § 439a (b)(2).

⁵³ The Dispatch's counsel attended numerous depositions in the case that had nothing to do with the Dispatch's legal interests, but generated additional stories about candidate Miller.

⁵⁴ Even the Dispatch cannot argue that the News Miner's participation in the case at this late date was related to anything other than the U.S. Senate Campaign. Even if the Commission were to find some personal component to the litigation, it should not extend to any of the media participants and it should certainly not start on October 27, 2010.

⁵⁵ At this stage, given the Dispatch's demands for attorney's fees, "Mr. Miller opposed entering a Rule 54(b) final judgment only because it would trigger the time limits for filing an appeal and moving for costs and attorney's fees, at a time when the remaining parties were still litigating and preparing for trial on the cross-claims and third-party claim." See Mr. Miller's Opposition to Dispatch's Motion for Attorney's Fees, at 6-7.

⁵⁶ There was no pending claim or any other matter that prevented the Dispatch from filing such a motion immediately after the hearing on October 23, 2010.

In fact, the Dispatch claimed in a June 6, 2012, filing that after the October 2010 records release it had "no stake" in the litigation and no "dog in this fight."⁵⁷ During oral arguments on that same date, the Dispatch reiterated this position stating, "It's not our case.... There is nothing further involving the Dispatch.... [T]here's no reason we should continue to be in this case."⁵⁸ Even in the Dispatch's letter to this Commission, its counsel contends that he asked Mr. Miller's counsel not to "mak[e] them [sic] continue as parties through the entire second phase *which all knew did not involve them*."⁵⁹ But even though there were no pending claims against the Dispatch, the Dispatch did not file a motion to remove itself from the proceedings until months later. Thus, by the Dispatch's own admissions, its continued participation in the case was a result of nothing more than candidate Miller's U.S. Senate race.⁶⁰

Besides the Dispatch's admissions, its conduct in the case after 2010 also reflected the political nature of its involvement. As reflected by its counsel's invoice, the Dispatch paid legal fees for numerous matters unrelated to its legal interests. For example, its counsel sat in on multiple depositions involving FNSB employees, even though such depositions had absolutely nothing to do with the Dispatch.⁶¹ Based on this involvement, the Dispatch wrote a number of disparaging articles about Mr. Miller and his candidacy for federal office on its blog (many of which appear to have been since removed).

Absent Mr. Miller's 2010 federal candidacy, and anticipated future candidacy, the Dispatch would never have paid the thousands of dollars necessary to have a representative observe proceedings wholly unrelated to the Dispatch's legal interests. Nor would have the Dispatch paid the thousands of dollars in fees to have its counsel

⁵⁷ See Alaska Dispatch's Reply to Defendant Joe Miller's Opposition to the Dispatch's Motion for Entry of Judgment Pursuant to Civil Rule 54(b), at page 13.

⁵⁸ Intervenor Miller's Opposition to Dispatch's Motion for Attorney's Fees, at 6. From the time of the trial court's decision regarding the employment records in October 2010 through the June 6, 2012, hearing, the Dispatch filed only one substantive motion, and it related to journalistic privilege. *Id.* at 4-5. As another non-party also filed a motion relating to this, the Dispatch's involvement as a party was not a predicate to this filing. Moreover, this motion was still pending when the Dispatch admitted "[t]here is nothing further involving the Dispatch."

⁵⁹ ADLLC comment, at n.5 (emphasis added). The Dispatch's own admissions throughout the litigation and before this Commission contradict the trial court's statement that the Dispatch had to stay in the litigation due to "Miller's Motion to Compel" a nonparty to disclose sources of information in the litigation. Order, dated May 13, 2013, at 12-13. The trial court made no attempt to explain how this motion, not filed until February 28, 2012, *see* Docket for 4FA-10-2886 CI, at 14, could compel a party to stay in the litigation for months after it prevailed in the case. Obviously, if non-party Halcro was able to assert journalistic privilege by way of motion, the Dispatch could have done so as a nonparty as well. *See* Halcro Opposition, dated March 12, 2012, reflected at Docket for 4FA-10-2886 CI, at 15.

⁶⁰ *See* n. 55, *supra*.

⁶¹ *See* Invoice for Professional Services attached to the Declaration of Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney Fees, dated October 8, 2012, at 12-13.

review numerous pleadings and other legal matters unrelated to its legal interests.⁶² Indeed, ADLLC's co-owner and editor, Tony Hopfinger, referenced such a *future* candidacy by Mr. Miller as part of its political and legal calculus in the case. Though the ADLLC did not need to be remain a party to exercise its journalistic privilege, Hopfinger revealed during an interview on Anchorage talk radio in August 2013 that his organization was indeed politically motivated by the prospect of another Miller candidacy. "Our feelings were those depositions, being videotaped and everything, we felt it might be used when he would run for office in the future, sort of snippets from them in his commercials and things...."⁶³

The Dispatch's involvement throughout the litigation arose from, and continued due to, Mr. Miller's Senate candidacies and nothing else.

III. The Obligation for the Fee Award Would Not Have Existed Irrespective of Mr. Miller's Senate Campaign.

Although Mr. Miller strongly disagrees with the trial court's decision regarding attorney's fees, the court's rationale for the award of fees against him forecloses any reasonable objection to the use of campaign funds to satisfy that judgment. Alaska Civil Rule 82(a) provides that, generally, a party must be found to be "the prevailing party" in order for attorney's fees to be awarded to that party.⁶⁴ The trial court found that the Dispatch was the prevailing party in the litigation, explaining

'A prevailing party is the one who has successfully prosecuted or defended against the action or the one who is successful on the "main issue" of the action.' Given that Alaska Dispatch was the only party to prevail on the 'principal dispositive issue' of the case – the release of the documents – the court finds Alaska Dispatch to be the prevailing party.⁶⁵

The trial court's conclusion that Alaska Dispatch's "prevailing party" status arose exclusively from the court's decision in October 2010 to release some of Mr. Miller's confidential records to the public leaves little question that that the derivative attorney's fees judgment is an obligation arising from the existence of Mr. Miller's Senate campaign. Had the Senate campaign not occurred, the Alaska Dispatch would not have

⁶² See generally *id.*

⁶³ The Dave Stieren Show on KPQD Anchorage, August 12, 2013. Minute 35:10-35:27. Download podcast at <http://www.mediafire.com/kfqd#9bf686iff5u479>.

⁶⁴ Alaska Civil Rule 82(a) (stating, "Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule").

⁶⁵ Order, dated May 16, 2013, at 12 (citations omitted).

been designated the prevailing party, and Mr. Miller would not have been found liable to the Dispatch for its attorney's fees, no matter the subsequent conduct of the case.⁶⁶

IV. All Phases of the Litigation Arose out of the 2010 Senate Campaign.

The Dispatch attempts to characterize the litigation as two distinct phases: the first involving a suit for Mr. Miller's employment records, the second involving Mr. Miller's pursuit of monetary damages. It claims that only the first phase would not have existed "irrespective" of Mr. Miller's Senate campaign. The Dispatch is mistaken.

First, as discussed *supra*, all parties agree that the litigation arose directly out of Mr. Miller's U.S. Senate campaign. When claims were filed and Mr. Miller essentially was compelled to enter the lawsuit⁶⁷, he was also compelled to file any counter-claims relating to the suits for disclosure of his confidential employment records. *See* Rule 13(a), Alaska Rules of Civil Procedure. Mr. Miller's failure to do so would have risked forever waiving such claims. Moreover, it was proper to file related claims, for all of Mr. Miller's claims, including those proposed with his Amended Third Party Complaint, as they arose out of the wrongful disclosure of his confidential personnel records. And all claims were filed in October 2010 prior to the trial court's release of some of Mr. Miller's confidential records.

These claims relating to the wrongful disclosure of his personnel records and related acts by FNSB's former mayor all asserted wrongful actions arising from – and exclusively because of – candidate Miller's 2010 Senate Campaign. Mr. Miller asserted that his rehire status as well as the adverse employment action from his confidential file had been leaked to the media due to his 2010 U.S. Senate race. The leak occurred less than two months after declaring his candidacy and 10 months after he left FNSB's employment. And the proposed amended claim that added an allegation of FNSB's breach of the implied covenant of good faith and fair dealing related to FNSB's failure to remove information from Mr. Miller's personnel file because of Mr. Miller's political involvement. Thus, the affirmative claims litigated necessarily by Mr. Miller arose directly from his 2010 U.S. Senate candidacy.

⁶⁶ Of course, but for the Senate campaign, there would have been no personnel records dispute, no litigation and no attorney's fees.

⁶⁷ *See* FNSB Motion to Require Dispatch to Join Miller as an Indispensable Party, dated October 12, 2010; FNSB Motion to Require News Miner to Join Miller as an Indispensable Party, dated October 12, 2010; and Letter from FNSB Attorney to Mr. Miller's Former Attorney, dated October 11, 2010, asserting that Mr. Miller "is an indispensable party to this litigation."

Mr. Miller was powerless to unilaterally end the litigation subsequent to the records release in late October 2010. The termination of litigation either required settlement by the parties – as subsequently accomplished by and between Mr. Miller, the AP, the News Miner and the ADN over a year later – or resolution by court order. This reality alone demonstrates the fallacy of the ADLLC's position that only attorney's fees prior to October 27, 2010, should be reimbursed by campaign funds. Mr. Miller simply did not have the unilateral power to end the litigation at that point, even with parties that had no remaining claims amongst them.⁶⁸ Although the Dispatch's attempt to characterize the litigation as occurring in distinct "personal" and "campaign-related" phases may appear logical at first glance, it clearly does not describe the reality of the litigation.⁶⁹

As already noted herein, there is ample precedent approving the use of campaign funds to pay for litigation costs incurred with respect to campaign concerns, investigations, and possible repercussions for a candidate. Again, the central issue is whether legal costs would exist irrespective of the campaign. For example, the Commission determined in Advisory Opinion 2009-12, that U.S. senatorial candidate Norm Coleman could use committee funds to pay for monitoring of and representation in certain litigation, as well as representation in defending against an alleged FBI investigation of violations of federal law or rules governing the office of a senator or conduct of campaigns. Indeed, there are numerous advisory opinions concluding that a candidate committee may pay litigation expenses involving not only the candidate, but also staff members and former staff members. *See also* AO 2011-07 (Congressman Fleischmann); AO 2009-20 (Congressman Visclosky).

CONCLUSION

There can be no reasonable dispute that the litigation and all claims filed in that litigation involving Mr. Miller, FNSB, its former mayor, the Dispatch, ADN, AP, and the News Miner arose as the direct result of candidate Miller's 2010 U.S. Senate Campaign and anticipated future campaign. Although Mr. Miller did not initiate the litigation, his participation in it was compelled by his indispensability as recognized by the parties to the litigation. The wrongful acts alleged by Mr. Miller's claims – necessarily filed in this action – would not have existed but for his Senate candidacy.

⁶⁸ Although there was no reason for any party to seek the ADN, AP, and News Miner's continual participation in the litigation, it took well over a year for the ADN and AP to be dismissed from the case and 18 months for the News Miner's dismissal.

⁶⁹ As noted above, the News Miner's exit from the case did not occur until April 18, 2012. No one can reasonably argue that the News Miner's participation in the case at this late date had any connection to anything other than the Miller Senate Campaign. Setting an artificial cut off for "campaign-related" litigation at October 27, 2010, does not reflect the realities of litigation or of this case.

The Dispatch concedes that its involvement in the case arose exclusively from Mr. Miller's U.S. Senate race. It also concedes that it "had no dog in the fight" past the October 2010 proceeding. But unlike the other media parties, it remained in the litigation. Although nothing prevented the Dispatch from moving in late October, 2010, for dismissal from the case, it did not. Rather, it chose to remain in the case, well past all other media plaintiffs, and continued to publish critical stories about Mr. Miller with facts derived from its participation in the litigation. During this time, the Dispatch expended an enormous amount of legal fees on matters that, by its own admission, did not pertain to any claims involving it. Its involvement, like the claims still pending after the October 2010 employment records disclosure, arose exclusively from Mr. Miller's 2010 U.S. Senate campaign, and Mr. Miller's anticipated future Senate candidacy.

Finally, the Dispatch was awarded attorney's fees by the trial court because it was deemed the prevailing party due to the October 2010 records release of many of Mr. Miller's employment records. This is yet another reason Mr. Miller's obligation to the Dispatch for its attorney's fees would not have existed irrespective of Mr. Miller's Senate campaign. Payment for such fees is not an unlawful conversion under 2 USC § 439a (b)(2) or 11 CFR 113.1(g), and the deposit of committee funds with the court while the case is on appeal should be approved by the Commission.

Sincerely yours,

/s/

William J. Olson

WJO:gw

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OFFICE OF GENERAL
COUNSEL



AOR 2013-11 - response to documents requested by FEC

William J. Olson

to:

rknop

09/25/2013 04:49 PM

Cc:

johnsmiles

Hide Details

From: "William J. Olson" <wjo@mindspring.com>

To: rknop@fec.gov,

Cc: johnsmiles@hotmail.com

History: This message has been forwarded.

7 Attachments



Doc. 1 - 102010 - JM's Answer to.pdf Doc. 2 - 102310 - Transcript -.pdf



Doc. 3 - 110410 - Order Denying Borough Motion to Sever - P3.pdf Doc. 5 - 092011 - JM's Opposition.pdf



Doc. 6 - 041812 - JM's Opposition.pdf Doc. 7 - 100312 - JM's Reply to.pdf Doc. 8 - 102212 - JM's Opposition.pdf

Mr. Knop --

On September 11, 2013, you requested the following documents (from Alaska Superior Court Case No. 4FA-10-02886CI):

- (1) Oct. 20, 2010, Mr. Miller's Cross-Claim
- (2) Oct. 23, 2010, Order granting in part Case Motion #5
- (3) Nov. 4, 2010, Order denying Borough Motion to Sever, Case Motion #10
- (4) Oct. 14, 2011, Mr. Miller's Amended Cross-Claim
- (5) Sept. 19, 2011, Mr. Miller's Opposition to Borough Summary Judgment Motion Cross Claim for Indemnification
- (6) Apr. 18, 2012, Mr. Miller's Opposition to Whitaker's Motion to Dismiss Third Party Claim
- (7) May 3, 2012, Mr. Miller's Reply to Borough's Objection to Proposed Amended Answer, Cross Claim and Third Party Claim
- (8) Oct. 22, 2012, Mr. Miller's Opposition to Alaska Dispatch's Motion for Attorney Fees.

Copies of those documents--- with the exception of #4, which apparently never was filed --- are attached.

We expect to send you the Miller Committee's reply comments (to the comments filed by the Alaska Dispatch) later today. If, after reviewing those comments, you would need other documents not yet in your possession, we would be please to attempt to obtain them for you.

Best regards,
Bill Olson

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370 Maple Avenue West, Suite 4, Vienna, Virginia 22180-5615
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< <http://www.lawandfreedom.com> >

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS
3 ~~FAIRBANKS~~ Trial Courts
4 State of Alaska Fourth District

5 FAIRBANKS DAILY NEWS MINER)
6 And Alaska Dispatch, LLC,)

OCT 20 2010

7 Plaintiffs,)

8 vs.)

By _____ Deputy

9 FAIRBANKS NORTH STAR)
10 BOROUGH,)

CASE NO. 4FA-10-2886 CI
(consolidated with 4FA-10-2990)

11 Defendant.)

12 vs.)

13 JOSEPH MILLER,)

14 Intervenor,)

15 vs.)

16 JIM WHITAKER,)

17 Third-Party Defendant)

18 **INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S**
19 **COMPLAINT, CROSS-CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH,**
20 **AND THIRD-PARTY CLAIM AGAINST JIM WHITAKER**

21 Intervenor, Joseph Miller, through counsel of record, hereby appears and answers
22 Plaintiff Alaska Dispatch, LLC's Complaint as follows:

- 23 1. Dary that an entity named "Alaska Dispatch, LLC" is an Alaska LLC. Admit
24 that Alaska Dispatch Publishing, LLC is an Alaska LLC with principal offices in Anchorage.
25 Admit that Alaska Dispatch Publishing, LLC, publishes an online blog available at

26 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
WHITAKER

Fairbanka Daily News Miner et. al. vs. Fairbanks North Star Borough, et. al.

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1 AlaskaDispatch.com. All allegations regarding the quality or character of Alaska Dispatch's
2 personnel or content is denied.

3 2. Admit that the Fairbanks North Star Borough is a municipal corporation
4 organized and operating pursuant to the laws of the State of Alaska and pursuant to the
5 Fairbanks North Star Borough Municipal Code.

6 3. Admit.

7 4. Admit that Intervenor resigned his employment with the Borough effective
8 September 1, 2009.

9 5. Admit that Intervenor maintained a private law practice while employed with
10 the Borough, consistent with Borough policy and regulations. The remainder of this
11 allegation is denied.

12 6. This paragraph does not refer to Intervenor and on that basis is denied.

13 7. This paragraph does not refer to Intervenor and on that basis is denied.

14 8. This paragraph does not refer to Intervenor and on that basis is denied.

15 9. Intervenor admits he voluntarily resigned from his employment with the
16 Fairbanks North Star Borough. This paragraph states facts outside of the personal knowledge
17 of Intervenor, and on that basis is denied.

18 10. Intervenor is unable to admit or deny the allegations in this paragraph pursuant
19 to confidentiality provisions of Fairbanks North Star Borough Code Section 2.24.081(A).

20 11. Intervenor is unable to admit or deny the allegations in this paragraph pursuant
21 to confidentiality provisions of Fairbanks North Star Borough Code Section 2.24.081(A).

22 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
23 CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
24 WHITAKER

25 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough, et. al.

26 Case No.: 4FA-10-2886 CI

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1 12. This paragraph does not refer to Intervenor and on that basis is denied.

2 13. Intervenor is unable to admit or deny the allegations in this paragraph pursuant
3 to confidentiality provisions of Fairbanks North Star Borough Code Section 2.24.081(A).

4 14. Intervenor acknowledges that he has requested a release from the Borough in
5 order to fully discuss the circumstances of his resignation from the Borough. The remainder
6 of this paragraph is denied.

7 15. The first allegation in this paragraph does not refer to Intervenor and is
8 therefore denied. The second allegation in this paragraph sets forth a legal conclusion to
9 which no response is required.

10 16. This paragraph does not refer to Intervenor and on that basis is denied.

11 17. Without identification of a particular advertisement or statement, Intervenor is
12 unable to admit or deny this allegation.
13

14 18. Denied.

15 19. Denied. All personnel records, as defined in Borough Code Section
16 2.24.081(A)(1), are confidential and not open to public inspection pursuant to Borough Code
17 Section 2.24.081(A)(2).

18 20. This paragraph states a legal conclusion and is therefore denied. The
19 remainder of this paragraph is denied.
20

21 **AFFIRMATIVE DEFENSES**

22 1. The privacy and confidentiality of Intervenor's personnel records are protected
23 by Fairbanks North Star Borough Code Section 2,24.081.

24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
25 CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
26 WHITAKER

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1 2. The privacy and confidentiality of Intervenor's personnel records are protected
2 by Alaska's Constitutional Right to Privacy. Ak. Const. Art I, Sec. 22.

3 3. Failure to state a claim upon which relief may be granted.

4 4. Lack of standing.

5 5. Laches; Unclean hands.

6 6. Such other and further affirmative defenses that are revealed through future
7 discovery.

8 **CROSS-CLAIMS AGAINST FAIRBANKS NORTH STAR BOROUGH**

9 Intervenor, Joseph Miller, cross-claims against the Fairbanks North Star Borough as
10 follows:

11 1. Fairbanks North Star Borough ("FNSB") is a municipal corporation, organized
12 and operating pursuant to the Fairbanks North Star Borough Municipal Code and the law of
13 the State of Alaska.

14 2. Intervenor was an employee of FNSB until his voluntary resignation on or
15 about September 1, 2009.

16 3. During his employment, FNSB maintained a personnel file consisting of
17 private, confidential records protected by FNSB Code Section 2.24.081(A)(2).
18

19 **COUNT I – VIOLATION OF RIGHT TO PRIVACY**

20 4. Intervenor alleges and incorporates by reference Paragraphs 1-3 above.

21 5. An unknown individual or individuals employed by FNSB have improperly
22 disclosed and made public confidential information from Intervenor's personnel file in
23

24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
25 CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
26 WHITAKER

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1 violation of Fairbanks North Star Borough Code Section 2.25.140, Section 2.24.081, and in
2 violation of Borough Policy as codified in FNSBC Section 2.60.010. Violation of these
3 Fairbanks North Star Borough Code provisions is a misdemeanor punishable by a fine or
4 imprisonment. FNSBC 1.04.010(A) & (B).

5 6. An unknown individual or individuals employed by FNSB have improperly
6 disclosed and made public confidential information from Intervenor's personnel file in
7 violation of Intervenor's Constitutional right to privacy as articulated in Ak. Const. Art I,
8 Sec. 22.

9 7. The illegal and unconstitutional disclosure of these private, confidential
10 records has caused damages to Intervenor, the nature and amount of which will be
11 established at trial.

12 **COUNT II - INDEMNIFICATION**

13 8. Intervenor realleges and incorporates by reference Paragraphs 1-7 above.

14 9. Fairbanks North Star Borough Code Section 2.24.341 provides that the
15 Borough "shall indemnify any employee of the borough against any claim, demand, suit, or
16 judgment arising out of his employment with the borough."
17

18 10. The present claims by Plaintiffs against Intervenor arise out of his employment
19 with the Fairbanks North Star Borough and therefore the Borough is required to fully
20 indemnify Intervenor for all fees and costs incurred in defending against Plaintiffs' demands.
21

22 11. A demand for indemnification was submitted to the Fairbanks North Star
23 Borough, and the Borough rejected any duty to indemnify.

24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
25 CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
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THIRD-PARTY COMPLAINT AGAINST JIM WHITAKER

1
2 1 Intervenor realleges and incorporates by reference Paragraphs 1-6 set forth in
3 Intervenor's cross-claim against the Fairbanks North Star Borough.

4 2. Jim Whitaker was Mayor of the Fairbanks North Star Borough from 2003
5 through 2009.

6 3. As a former Mayor of the Fairbanks North Star Borough, Mr. Whitaker is
7 prohibited from disclosing or using information acquired in the course of official duties that
8 are confidential by law. FNSB Code Section 2.25.140(B).

9 4. On or about October 14, 2010, Mr. Whitaker, without authorization or other
10 legal right to do so, made public statements relating to Intervenor's confidential personnel
11 files in violation of Fairbanks North Star Borough Code Section 2.25.140, Section 2.24.081,
12 and in violation of Borough Policy as codified in FNSBC Section 2.60.010. Violation of
13 these Fairbanks North Star Borough Code provisions is a misdemeanor punishable by a fine
14 or imprisonment. FNSBC 1.04.010(A) & (B).

15 5. On or about October 14, 2010, Mr. Whitaker, without authorization or other
16 legal right to do so, made public statements relating to Intervenor's confidential personnel
17 files in violation of Intervenor's Constitutional right to privacy as articulated in Ak. Const.
18 Art I, Sec. 22.

19 6. The illegal and ~~un~~constitutional disclosures made by Mr. Whitaker purporting
20 to represent information contained in Intervenor's private, confidential records has caused
21 damages to Intervenor, the nature and amount of which will be established at trial.
22
23

24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
25 CLAIM AGAINST FAIRBANKS NORTH STAR BOROUGH, AND THIRD-PARTY CLAIM AGAINST JIM
26 WHITAKER

Fairbanks Daily News Minor et. al. vs. Fairbanks North Star Borough, et. al.

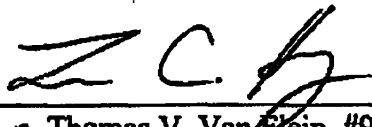
Case No.: 4FA-10-2886 CI

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1
2 WHEREFORE, Intervenor prays for a judgment of dismissal with prejudice, and that
3 judgment be entered in his favor against the Fairbanks North Star Borough for
4 indemnification pursuant to Fairbanks North Star Borough Code Section 2.24.341,
5 compensatory damages to be proven at trial; costs, interest, and attorney fees; and further
6 relief as deemed appropriate by this Court. Intervenor prays for judgment to be entered in
7 his favor against Jim Whitaker for compensatory damages to be proven at trial; costs, interest,
8 and attorney fees; and further relief as deemed appropriate by this Court.

9 DATED this 20th day of October, 2010 at Fairbanks, Alaska.

10
11 CLAPP, PETERSON, VAN FLEIN,
TIEMESSEN & THORSNESS, LLC
12 Attorneys for Joseph Miller

13
14 By  0111063
15 For: Thomas V. Van Flein, #9011119
John J. Tiemessen, #9111105

16
17 **Certificate of Service**

18 The undersigned hereby certifies that a true and correct copy of the foregoing was served via
19 fax, email and U.S. Mail to counsel of record listed below on this 20th day of October, 2010
on the following:

20 John McKay, Esq.
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24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
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WHITAKER

Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough, et. al.

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24 INTERVENOR JOSEPH MILLER'S ANSWER TO ALASKA DISPATCH, LLC'S COMPLAINT, CROSS-
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

FAIRBANKS DAILY NEWS MINER &)
ALASKA DISPATCH, LLC.,)
)
Plaintiffs,)
)
vs.)
)
FAIRBANKS NORTH STAR BOROUGH,)
)
)
Defendant,)
)
and)
)
JOSEPH MILLER,)
)
Intervenor.)

Nos. 4FA-10-02886 CI
4FA-10-02990 CI

VOLUME II

TRANSCRIPT OF STATUS HEARING

BEFORE THE HONORABLE WINSTON BURBANK
Superior Court Judges

Fairbanks, Alaska
October 23, 2010
2:01 p.m.

DISCLAIMER

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APPEARANCES:

FOR PLAINTIFF
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P R O C E E D I N G S

1
2 Courtroom 503

3 2:01:20

4 THE CLERK: Court is on record.

5 THE COURT: All right. We're on record in the matter of
6 the Fairbanks Daily News Miner, Alaska Dispatch, LLC, and
7 Anchorage Daily News versus the Fairbanks North Star Borough,
8 Defendant, and Joseph Miller as Intervenor. And I guess, also,
9 former and third-party defendant Mr. Jim Whitaker who is also
10 here.

11 I want to thank counsel for being here today and
12 accommodating this. I think there's a few preliminary matters
13 we need to take care of. Just by way of notifying everybody,
14 some people have asked to participate and I'll define the word
15 participate as meaning listening as opposed to speaking by
16 phone on a teleconference thing. Is there anyone listening on
17 the teleconference phone? All right. Their participation is
18 going to be very limited, indeed then.

19 As a preliminary matter, there is the matter of Associated
20 Press's intervention motion. I think everybody has more or
21 less filed nonopposition.

22 Mr. Van Flein, nice seeing you.

23 MR. VAN FLEIN: Good seeing you.

24 THE COURT: It's been a long time. In any event, I think
25 at the last hearing, Mr. Tiemessen verbally indicated he didn't

1 have any objection but since I haven't seen anything, do you
2 have an objection to AP -- it'd be no additional attorneys.
3 They're all with Mr. Zimmerman.

4 MR. VAN FLEIN: Yeah, we have no objection. Of course,
5 they would be treated as an aligned party with the same
6 interests as Alaska Dispatch and the News Miner.

7 THE COURT: Exactly.

8 MR. VAN FLEIN: And ADN.

9 THE COURT: Is that agreeable, Mr. Zimmerman?

10 MR. ZIMMERMAN: That's correct, Your Honor.

11 THE COURT: All right. Your motion to intervene on behalf
12 of your client, Associated Press, is granted.

13 In regards to Mr. Miller's motion for expedited discovery
14 and Civil Rule 56(f), quite frankly, I'll just make these
15 preliminary remarks.

16 I wasn't sure where to go with it for one. It didn't
17 appear to be a motion for expedited consideration of a motion.
18 It didn't comply with Civil Rule 77(g) for what is required
19 pursuant to that rule.

20 The other thing I wasn't sure of but I'll let you argue
21 this down the road but I'm just giving you a heads up, I didn't
22 see where the decision today which we're here to address the
23 principal motion of Alaska Dispatch's motion to require
24 immediate disclosure of public records today would in any way
25 affect Mr. Miller's ongoing rights in regards to his claims

1 against the Borough as you have set forth in your answer and
2 complaint. And also, any claims that Mr. Miller may have
3 against Mr. Whitaker. But I'll allow you to address that at
4 sometime, Mr. Flein, but as I said, it's a heads up.

5 And as far as discovery goes for today, it's my
6 understanding that the bulk of all the documents, some 366
7 documents have been previously delivered to Mr. Miller's former
8 attorney, Mr. Merdes, and that -- with the exception of about
9 20, I believe, is what Ms. Broker indicated to the Court at the
10 last hearing. And I think Mr. Tiemessen advised the Court that
11 he hadn't re -- yet received those documents from Mr. Merdes'
12 office, if I recall correctly. And I made arrangements to have
13 Ms. Broker to get the documents not only to Mr. Tiemessen,
14 albeit your Fairbanks office, but also to the Court as well for
15 an in camera inspection visa vie a protective order as well.
16 And as far as I know, that was effectively done. So in regards
17 to the discovery to address the principal motion that we're
18 here to argue today, those materials have been delivered and
19 have been, for the most part, previously delivered to
20 Mr. Miller, albeit his former attorney, Mr. Merdes.

21 And lastly, I had concern about your motion because it --
22 this was brought up in all the opposition. It appeared to be a
23 motion for reconsideration but it was, in my opinion,
24 procedurally defective in that it didn't comply with Civil
25 Rule 77(k).

1 I guess what I need to say is on Tuesday when we had a
2 hearing, this matter was expedited in light of the election
3 schedule, which is scheduled to go forth on November 2nd and
4 that it's, in this Court's opinion, important to a functional
5 democracy of having an informed electorate and the potential of
6 the documents in this case to inform the electorate, and that's
7 why we're here today.

8 In one of your pleadings, you indicated that I scheduled
9 this hearing on a court holiday and I think I need to advise
10 you, Mr. Van Flein, that that isn't exactly how it came about.
11 I originally indicated that we'd have a hearing on Friday but
12 if parties needed additional time, I would offer to come in on
13 a Saturday.

14 I think Mr. McKay was the first to stand up and indicated
15 that you were traveling and that he thought, in his opinion,
16 that you might like to have the extra day so that Saturday
17 would probably be more appropriate for you. The rest of the
18 parties, and I believe even Mr. Tiemessen acquiesced more or
19 less and agreed that probably the extra day that would be
20 afforded to you by having the hearing on Saturday would, in
21 fact, be welcome by you. That's why we set the hearing today
22 for that reason and not for any weird reasoning of utilizing a
23 court holiday. In fact, I probably owe an apology for
24 everybody in this room for being in the courtroom on such a
25 beautiful and gorgeous day that we have outside today, but

1 albeit, here we are.

2 With that, I propose that in regards to the argument on
3 the principal motion, that I was entertaining the thought of
4 assigning everybody a certain time limit. I know you all. I
5 know you all very well and you're all professional, good
6 attorneys. And I have -- I respect you all as well; therefore,
7 I think it'd be a slap in your face if I did assign you a time
8 limit. I expect you all to address your comments strictly to
9 the motion and the issues at hand that has to do, once again,
10 with the Alaska Dispatch's motion to require immediate
11 disclosure of the public records from -- that are held by the
12 Borough concerning their former employee who is now a candidate
13 for the United States Senate and that's Mr. Miller.

14 And I should assure you that I've read every pleading that
15 has come across my desk very late yesterday afternoon and
16 Mr. McKay, I also got yours. Because of your computer glitch,
17 I got yours -- one of your pleadings this morning. They've all
18 been read. So if you would spare me going through re -- in
19 your arguments today of reciting what you put forth in your
20 briefs, I would appreciate that very much.

21 The way we'll proceed is the way you probably anticipated.
22 I'll have Mr. McKay address his motion. I'll allow Mr. Burns,
23 Mr. Zimmerman, Ms. Broker an opportunity to speak as well.
24 Mr. Whitaker, I've been -- it's my understanding that you wish
25 to speak to the motion as well.

1 MR. WHITAKER: I do, Your Honor, yes.

2 THE COURT: Okay. Before you speak, I'm going to give you
3 a special instruction. This isn't going to be a time to
4 speak.....

5 MR. WHITAKER: I understand.

6 THE COURT:to the complaint that's been filed
7 against you, only to the disclosure of the Borough's documents
8 is what we're here for today. All right?

9 MR. WHITAKER: Understood.

10 THE COURT: And.....

11 MR. WHITAKER: And in that case, Your Honor, I really have
12 very little to add and it may not be necessary for me to make a
13 statement.

14 THE COURT: Very well. And the other thing I as going to
15 advise you of a little later but I'll do it now.....

16 MR. WHITAKER: I understand.

17 THE COURT:there's an old saying and I think most of
18 the attorneys in this room have heard me say it one time or
19 another; that he who represents himself usually has a fool for
20 an attorney or a client, one of the ones. But in any event,
21 you're probably well-advised to carefully choose what you say
22 when you represent yourself. It's not usually a good idea.

23 MR. WHITAKER: I understand.

24 THE COURT: Yeah, it's my understanding that you do wish
25 to represent yourself here today, correct?

1 MR. WHITAKER: I -- at this point, yes.

2 THE COURT: At this point in time.

3 MR. WHITAKER: Yes.

4 THE COURT: Okay.

5 MR. VAN FLEIN: Your Honor, it -- or I didn't know if you
6 were done with your preliminaries.

7 THE COURT: Well, and then I'll give you an opportunity,
8 obviously, to present your argument as well. Go ahead.

9 MR. VAN FLEIN: If I may comment on one thing that you've
10 raised. I think procedurally we have to address the 56(f)
11 motion first because it is dispositive of the underlying issue.
12 And under the well-established case law under Rule 56(f), we
13 need a ruling on that first before you can address the merits
14 and so.....

15 THE COURT: I'll let you speak to that briefly.

16 MR. VAN FLEIN: Okay. If I could then. Procedurally, we
17 have to evaluate where we are today. There's two ways that
18 this motion has come before you. There's two possible rules.
19 It's either Rule 12(b) (6) or it's Rule 56(c) because we have
20 not had a hearing, there's been no evidentiary hearing for you
21 to make findings of fact and conclusions of law which are
22 required if you're going to issue an injunction. You have to
23 have facts in front of you.

24 We, Mr. Miller, is entitled to due process. He's entitled
25 to find out what those facts are. All you have in front of you

1 are bare allegations in a complaint. You also have some
2 affidavits from some of the moving parties and some
3 attachments.

4 What that does is it would -- it eliminates Rule 12(b)(6)
5 as a possible method to resolve this and it brings us within
6 Rule 56(c) because information outside the pleadings has been
7 provided for you to consider.

8 Now that we're under Rule 56, the law is also clear. You
9 can have an injunction. You can have a hearing on this but we
10 are entitled, before the evidentiary hearing on this to some
11 discovery and we laid out in my affidavit who we need to depose
12 and why. It goes to the very heart of what's being asked here.
13 For example, one of -- there -- this Court is being asked to
14 invoke its equitable jurisdiction. That's what an injunction
15 is. There's no money damages here.

16 There are two defenses we pled that apply to equity here.
17 One is that the moving parties have unclean hands and two, that
18 they've been dilatory. Let's address the second one first.

19 Here's what we know that's in the record that's
20 undisputed. The moving parties admit that they've been trying
21 to get Borough records since June of this year. So we have
22 June, July, August, September, and the first two weeks of
23 October went by before they filed an action in court here on
24 the eve of this election. That is dilatory conduct. How do I
25 know? Look at the decision in the City of Kenai. In that

1 case, the newspaper asked for the public records on June 1st.
2 They didn't get it in the month of June. They filed suit at
3 the end of the first week of July, July 8th. It was five weeks
4 and the Court said that was okay and approved the process.

5 Here we have a five-month delay. The urgency that has
6 compelled us to meet on a Saturday -- and I only pointed that
7 out not to say this was wrong to meet today, to show the
8 urgency that they created by waiting until the eve of this
9 election to ask you to intervene. They've been dilatory. And
10 that is an affirmative defense in equity and we're entitled to
11 flesh out through discovery why they didn't act sooner. Maybe
12 something prevented them from acting sooner. We don't know.
13 You don't know. But it's a key part of our affirmative
14 defense.

15 The same is true for the doctrine of unclean hands. That
16 is a complete bar to equity. In this case, there's a Borough
17 ordinance which we've cited that says this information and this
18 personnel file, not just the file itself but the information
19 from the file, is confidential by law. And there's two ways
20 for that information to become public. One, Mr. Miller could
21 release it. Or two, a court could order it. It doesn't say
22 under what circumstances, but it says a court could order it.

23 Well, there is evidence in the record in their own moving
24 papers that they have already obtained confidential information
25 through interviews and Mr. Whitaker which violate the very

1 statute they're now asking you to rule upon. And if you look
2 at the two-part test in Nabil (ph) versus Schneider, that is
3 all that is required to prove unclean hands. They're coming to
4 this Court asking for you to exercise your beneficence and your
5 equity to help them at the last moment. Yet, they've already
6 violated the law because the law prohibits soliciting
7 confidential information, yet they did so. They admitted they
8 did so in their own moving papers. They've published excerpts
9 and they've published interviews with Mr. Whitaker. There is a
10 statute right on point that says a former mayor cannot release
11 confidential information that he or she learned in the course
12 of being a mayor.

13 So when you have a direct violation of the law and now
14 they're coming in here saying well, under that law, that same
15 law, we're asking you to give us a court order so we can
16 complete the process. What we took unlawfully, we're now
17 asking you to bless with your court equity and make it legal
18 and enable us to get more.

19 We are entitled to find out how long this has been going
20 on, to what extent, who's been leaking information, where
21 Mr. Whitaker got his information, and who the other sources
22 have been for both the Alaska Dispatch and the News Miner.
23 That is a key part of our affirmative defense that we pled and
24 it is a key part to equity.

25 They have come in here pleading equity. They are asking

1 you, do the right thing. Help us out here. But they have not
2 done the right thing. They have already violated the law.
3 They needed to come to you first, Your Honor, and get a court
4 order and do it lawfully. On what basis can they come in here
5 after violating the law, soliciting confidential information,
6 publishing confidential information, and then ask you to bless
7 it? That's not the way the system works, and we are entitled
8 to present a full defense on that. We are entitled to an
9 evidentiary hearing to demonstrate to you why they are not
10 entitled to the relief they are seeking in equity because they
11 have acted contrary to the law already and have unclean hands.

12 So that is why I think our motion for Rule 56(f) -- it is
13 not a reconsideration either. We have not addressed the
14 procedural process of this yet. This was -- the complaint was
15 just filed. Our answer was just filed earlier this week. This
16 has all been done rapidly. No one has analyzed are we under
17 Rule 12(b)(6), are we under Rule 56. You can't just issue a
18 ruling in a vacuum without reference to the civil rules and the
19 civil rules apply to Joe Miller and to the Alaska Dispatch just
20 as it does to any other litigant. They are not free to come in
21 here and say, as they almost have in their pleadings, the rules
22 be damned. Just give us the records now. There's an election.
23 Well, they waited five months. Why didn't they file this
24 action when there was plenty of time for you to conduct an
25 orderly met -- hearing in a manner that is acceptable under the

1 law? I think they are urging reversible error by saying you
2 don't have to do any discovery. You don't have to allow
3 Mr. Miller any due process rights. Just order the records. To
4 heck with the civil rules. To heck with due process. But Rule
5 56(f) is pretty clear. That request should be freely granted.

6 I acknowledge there's an election coming up but you know
7 what? The date of this election has been known for almost 200
8 hundred years. It's in the Constitution. Every six years on
9 the first Tuesday of the month, there's going to be a senate
10 election. They sat on this. They knew when this was coming.
11 It is not my fault, it is not your fault that they waited this
12 long to make this motion. It should be done in an orderly and
13 fair manner and if -- it's their problem that they waited until
14 the last minute. Not your problem. Not my problem. And
15 that's why I think this motion has to be granted. We'll do it
16 expedited. I'll take depositions Monday, Wednesday, whenever
17 we can. But we need evidence and then we need an evidentiary
18 hearing. That's the process.

19 THE COURT: Thank you, Mr. Van Flein. Mr. McKay.

20 MR. MCKAY: Thank you, Your Honor. First of all, I --
21 what I heard was essentially a motion for reconsideration.
22 This is the same arguments that we heard on Tuesday for the
23 most part about why we shouldn't expedite this and I think
24 you've already addressed that so I won't.

25 We're here because the public has an interest in having

1 access to these public documents. The motives -- now the City
2 of Kenai case is an interesting one that Mr. Van Flein brings
3 up because in that case, I -- what I've told reporters I've
4 represented for over 30 years is if you should have to use
5 lawyers, unfortunately for -- in a situation, my job is to come
6 into court for you. Your job is to keep reporting. Right?
7 The public's interest isn't served by reporters sitting back,
8 as Mr. Van Flein says, leaving it to the lawyers and the judge
9 to decide what's happening here and not do their job as
10 reporters.

11 So in the City of Kenai case, for example, there -- that
12 was two consolidated cases actually. A city manager and a
13 police chief. In both of those cases, the reportings showed
14 while it went to court, the reporters kept working on it and
15 turned up that both of those people had fraudulently applied
16 for the jobs that they were working with misstated resumes.
17 Well, before the Supreme Court decided that, the public had the
18 opportunity to know the important information without saying
19 well, now this is in the hands of the court.

20 We've been accused over -- the accusations of criminality
21 seem to be tossed around pretty lightly here and I -- I'd just
22 like to say for the record, I know of no criminal behavior
23 involved in this case at all. And I know that Mr. Van Flein
24 has sued the former mayor about this, but I don't know of any
25 and the day after we talked to Mr. Van Flein and he inquired

1 about whether we -- that our reporter had Mr. Miller's
2 personnel file improperly -- whether it's improper or not, we
3 advised him that that's simply not true. That wasn't the case
4 and the very next day, his camp -- his canidies [sic] that he's
5 here -- it's -- pleadings that he's here for the campaign made
6 a public statement accusing my client of criminally possessing
7 the personnel file that we'd already said we didn't have. So,
8 I think we need to keep this in perspective.

9 This is a suit -- whst should be a pretty simple public
10 records suit. The law applies and allows us to have access to
11 his record or it doesn't. We think it does. We'll show you
12 why in a few minutes when we start arguing this. I think we
13 have in the briefing.

14 But all this stuff about the motives, that's one of the
15 dangers, one of the reasons why we didn't file any earlier.
16 And to say this is five months simply isn't true. I think the
17 first single public records request went in at the very end of
18 June. Then there was the primary and so on. But the reason, I
19 think, is that the law has changed significantly in the last
20 few years making it harder and more expensive, more dangerous
21 for citizens to bring suits because of the change in the public
22 interest attorney fee rule. And we negotiated in good faith
23 and part of what's happened is that for the last couple of
24 months, Mr. Miller has said these things that he's now saying
25 he wants private, I want full disclosure. We want to fully

1 discuss this. As recently as last night at the University of
2 Alaska-Fairbanks debate saying now all of this should be
3 public.

4 All right. But in the meantime, the Borough and
5 Mr. Miller go back and forth sending letters, saying well, if
6 you release this, I can do it. If you give us that, we'll do
7 it. And that's -- it'd be premature and -- for the press to
8 come in and spend money when it seems to be that they're --
9 that they should be able to work that out.

10 In any event, we are where we are. We've already argued
11 about whether this is going to be moved ahead or not. But I
12 think the important thing here is that it's important to have a
13 process in these public records suites so that citizens aren't
14 intimidated from filing public records suits, citizens
15 including the press, turning a simple a request for a public
16 record into a full-blown litigation where the minute somebody
17 doesn't get a record, they're denied a record that they
18 arguably have a right to have and that automatically turns them
19 into a subject of litigation or the -- or as Mr. Van Flein
20 wants to take the records requester's depositions, the public
21 employees' depositions, the former mayor's depositions, making
22 -- he wants to take at least a dozen depositions in the next
23 few days. It's unfair for citizens asking for public records
24 to be put through that mill. And in the Municipality of
25 Anchorage case that I pointed out, we had the same -- I

1 apologize, Your Honor. I have a cold and the plane didn't do
2 me any good this morning, so I.....

3 THE COURT: Keep it to yourself.

4 MR. MCKAY: Thank you. I will. It's actually not so much
5 a cold as it's in my ears.

6 In the Municipality case that I mentioned, in that case,
7 you had a similar situation where the other side tried to delay
8 things. They tried to say, well, the librarian here is an
9 indispensable party. You can't move without him. We need to
10 take depositions. And the judge denied that he was an
11 indispensable party and the Supreme Court upheld us on that.
12 And also, the judge did say that he would grant some right to
13 take depositions and the Supreme Court, as you know from the
14 opinion, said that was reversible error, that he abused his
15 discretion. There was no need in that public records suit
16 which went on at about the same pace as this. There was no
17 need for citizens seeking records to go through having their
18 depositions taken in order to get those and that's clear from
19 the Supreme Court that that's not necessary.

20 So, if you have any questions, I'd be glad to address
21 them. I think it's -- I think we can save the rest for our
22 substantive motion.

23 THE COURT: And did other counsel have anything to add to
24 that?

25 MR. BURNS: Very briefly.....

1 THE COURT: Very briefly.

2 MR. BURNS: Very briefly, Your Honor. The -- as Mr. McKay
3 points out, this evidentiary hearing is absolutely unnecessary.
4 The simple issue is whether or not the documents that are
5 contained in the file are disclosable or could this Court's
6 review -- in camera review of those documents protects
7 Mr. Miller's due process rights.

8 With regards to the unclean hands issue, certainly with
9 respect to the AP, the Anchorage Daily News, and the News
10 Miner, there's no solicitation. The cat is out of the bag.
11 The information has been disclosed. You can't put the cat back
12 in. Mr. Miller himself has discussed it on CNN. Mr. Miller's
13 father has discussed it in the context of an email that's been
14 widely distributed. You can't simply put the cat back in the
15 bag and to the extent that Mr. Miller's right have been
16 abridged, he has a recourse in this case involving
17 Mr. Whitaker.

18 The focus of this case is whether or not those documents
19 are disclosable. How it came to be, it really is irrelevant in
20 the context of this. Thank you, Your Honor.

21 THE COURT: Mr. Zimmerman.

22 MR. ZIMMERMAN: I have nothing to add, Your Honor.

23 THE COURT: One minute. Ms. Broker, do you have anything
24 to.....

25 MS. BROKER: Your Honor, I would just add that as the

1 party that probably all the attorneys in the room sooner or
2 later will be trying to get the Borough to pay their attorney
3 fees, and some requests have already been made, our interest is
4 in a quick, expeditious result that applies the law. There's a
5 three-part test. Your Honor, I'm sure since you've read their
6 documents, you're well aware of it. The three-part test has
7 nothing to do with skullduggery, criminal activities, any of
8 that. We can deal with that later. We'd like to get this done
9 and over with as quickly as possible and without engaging in
10 side shows and rabbit trails.

11 THE COURT: Mr. Whitaker, I'm skipping over you because
12 this is a technical legal issue on 56 -- Civil Rule 56. I
13 doubt you even know what it is, but thank you.

14 MR. WHITAKER: Thank you.

15 THE COURT: By your body language, I guess I was correct
16 in skipping over you. Mr. Van Flein.

17 MR. VAN FLEIN: Thank you, Your Honor. Just briefly.
18 There's a bit of a tautological conclusion that's being argued
19 by the Alaska Dispatch and that is they're assuming this entire
20 file is a public record and they're saying, therefore, release
21 it now. And that is not correct. The entire file is not a
22 public record.

23 We know there are prominent -- and they're complaining
24 that there's litigation over this, quote, public record. It is
25 not a public record. How do we know that? The law says it's

1 not, number one. Number two, let's look at comparable examples
2 where there have been litigation, prominent litigation over
3 issues just like this. There are people who believe that birth
4 certificates should -- are public records and should be
5 disclosed if you're the President of the U.S., for example.
6 That -- there's been litigation that says no, a birth
7 certificate is not a public record. Well, that applied to a
8 sitting president of our country. So it's not correct to argue
9 that merely by running for U.S. Senate that somehow everything
10 in your past, your school transcripts, your medical record,
11 your birth certificate, or your personnel file, suddenly magic
12 convert to public records.

13 At the time these records were created, Mr. Miller was
14 simply a public employee. He was not applying for high office.
15 If you look at the City of Kenai decision, you look at the
16 Firefighters decision, what was released? Name and pay in the
17 Firefighters case. Those were -- the public had a right to
18 know what they were getting paid.

19 The City of Kenai, what was released? The application for
20 the high office itself. Well, that's the equivalent to the FEC
21 filing here for Mr. Miller. That is his application for high
22 office. Not his birth certificate. Not his medical records.
23 Not his personnel file from this job. Do we make judges
24 disclose their bar record just because they sit in high office?
25 We don't. It's confidential. It's not a public record, unless

1 there's a public hearing. But if -- a judge could have 20
2 complaints against a judge and it's all confidential unless
3 there's a hearing.

4 So, the law respects privacy. Just because the government
5 handles paperwork and makes a record, it is not correct as is
6 presented here that it's automatically a public record because
7 you run for office or you hold office. But remember, these
8 records were created two to three years ago, long before there
9 was a candidate. And that is what has to be kept in mind here
10 and that is why the harm here with a erroneous release of
11 records is very high.

12 There are reasons why personnel records are confidential,
13 very good reasons, both for employer and employee. If everyone
14 knew that their records would be public records, you might
15 respond to every little incident at work much differently. You
16 might even lawyer up. You might contest every infraction that
17 your supervisor says you committed. But people know that's not
18 the way it works. If your boss says you're 10 minutes late,
19 you don't file a complaint against your boss and get a lawyer
20 and dispute it was 10 minutes or four minutes thinking well,
21 later on, this might be a public record.

22 The point of the matter is here under Rule 56(f), we have
23 raised valid defenses. This -- we have to keep in mind the
24 process that is being followed here. It's either Rule 12 or
25 it's Rule 56. We aren't -- as much as they do not like it, and

1 that is what they're telling you. We don't like them
2 requesting evidence. We -- just give us the records now. I am
3 sorry. The law is different. The law says we are entitled to
4 evidence. We are -- they submitted an affidavit from the News
5 Miner. We are entitled to test the voracity and find out what
6 else may be used in support of that motion. They're the ones
7 who submitted the evidence. If you look at page -- footnote 3
8 of their -- Alaska Dispatch's opposition, they admit discovery
9 is needed. They want Mr. Miller here in an evidentiary hearing
10 to ask him questions. Footnote 3 of Alaska Dispatch's
11 opposition to our own 56(f) says get Mr. Miller here. We have
12 questions. Well, you know what? That's what an evidentiary
13 hearing is for.

14 THE COURT: It was an invitation that I think was more
15 tongue in cheek than sincere.

16 MR. MCKAY: It was an invitation and we'd be perfectly
17 happy to.....

18 THE COURT: Oh, maybe I'm wrong.

19 MR. VAN FLEIN: It sounds tongue in cheek.

20 MR. MCKAY: Well, it was to go to the issues presented
21 here today if he wanted the opportunity because, Your Honor,
22 the Supreme Court has spoken to due process and said it doesn't
23 really require him here but it said if the Court.....

24 THE COURT: Let Mr. Flein.....

25 MR. MCKAY: Yes, Your Honor.

1 THE COURT:Van Flein finish his.....

2 MR. VAN FLEIN: My point is they seem to agree that some
3 evidence is necessary also, and I agree. We should have an
4 evidentiary hearing on this. You should know the facts because
5 you know why? Under Rule 52, you have to issue written
6 findings of fact and conclusions of law. Where are you going
7 to get your facts, Your Honor? On mere allegations in a
8 pleading? It doesn't work that way. You need evidence. You
9 need testimony. You need people. We need a hearing. That's
10 the way the process works. And you know what? I don't see
11 anything in our civil rules and I don't see anything from the
12 Alaska Supreme Court and nothing from the U.S. Supreme Court
13 that says yeah, yeah, the rules don't apply if there's a senate
14 election in five days or two weeks. It just doesn't work that
15 way. And like I said, they're the ones who waited, not Joe
16 Miller.

17 THE COURT: All right. Thank you. In regards to your
18 motion in regards for delaying this matter for discovery
19 purposes under 56(f), the Court's going to deny it.

20 In regards to discovery, we're here for the limited
21 purpose of determining whether or not documents need to be
22 disclosed. I understand your arguments, Mr. Van Flein, in
23 regards to the equitable defenses of unclean hands and dilatory
24 actions. But I'm still rejecting your arguments on those basis
25 because, foremost, I think equity needs to favor the public's

1 interest in becoming full informed in situations like this.

2 Additionally, I think the allegations that the media has
3 built a public interest by taking improper actions is
4 undermined by the provision that prohibits agencies from
5 considering the basis for record requests of public entities.
6 With that, your motion is denied and will be preserved for
7 appeal purposes, which I will deal with later.

8 With that, I think I've already set forth how we're going
9 to deal with the principal motion. Mr. McKay, may I have your
10 argument on your principal motion for disclosure of public
11 records.

12 MR. MCKAY: Thank you, Your Honor. And thank you for
13 hearing us today.

14 Perhaps a bit of just -- I understand that you're well
15 aware of the law and have read the pleadings but I think just
16 in light of the most recent comments, it might be helpful to
17 clarify -- may I sit while I talk, Your Honor?

18 THE COURT: Yeah.

19 MR. MCKAY: Would you mind? Thank you. That when I refer
20 to a public record, I think these are all public records. The
21 law provides some record -- public records may be withheld if
22 they're subject to exemptions so they aren't disclosable. Most
23 -- the presumption is that public records are disclosable. So
24 when I say that these are public records, I say it in the sense
25 that these are, by definition under the law, public records.

1 Mr. Van Flein can argue why these particular public records
2 shouldn't be disclosed.

3 Title 40, the Public Records Act, Title 40, section
4 25.125, specifically provides for what we're asking here, an
5 injunction that says that the -- it provides for an injunction
6 against denying or obstructing the inspection of these public
7 records and specifically provides for seeking injunctive relief
8 under that section of the Public Records Act. And it also
9 specifically says that there's no requirement of exhaustion.
10 There's a public policy here that citizens should come in and
11 be able to ask for these things and get them.

12 And I have to say that I don't know if it's a hypothetical
13 case about somebody going in for a birth record, a birth
14 certificate but assuming taking a hypothetical case, say a
15 birth record for the President of the United States, if
16 somebody went in and asked for that, I think it would be pretty
17 clear that if the President of the United States, whose privacy
18 interests is arguably at stake, said due process requires that
19 I be entitled to come in here, take depositions of the person
20 requesting, ask why they're being put up to this, all the rest
21 of it, we wouldn't go for it.

22 Citizens have a right to access to these public records.
23 Under the state law -- we briefed why the state law controls
24 here. I'm happy to answer any questions about that. But I
25 also think it's important to note that the Borough ordinance

1 does not -- you don't need to invalidate the Borough ordinance
2 in order to grant the relief that we're seeking here. As we
3 pointed out, the Borough ordinance provides for three different
4 avenues for granting access to otherwise confidential records.
5 And I think one -- probably the key thing in Mr. Van Flein's --
6 Mr. Miller's response here that was filed yesterday is that he
7 says that the -- on page 13 -- the analysis of Mr. Miller's
8 privacy interests should begin and end with the Fairbanks North
9 Star Borough code sections that specifically articulate that an
10 employer [sic] or former employee has a right of privacy in
11 their confidential personnel files.

12 I think that's the main area where we differ. I don't
13 think it begins and ends there. I don't think you can ignore
14 state law. I don't think you can ignore the rest of the
15 Borough code that says that there are parts of that that don't
16 suit him but that say that if the Court orders it, otherwise
17 confidential material can be released and that happens on any
18 number of occasions.

19 It also says that the Borough code is not violated if the
20 employee or former employee has given consent to releasing
21 this. And as we pointed out, Mr. Miller has, on a number of
22 occasions, essentially consented, including, as the ordinance
23 says in writing, to disclosure through Mr. Merdes and his
24 campaign materials. He said we want full disclosure of these
25 materials. Now he's, at times, conditioned that on an over-

1 reaching demand of his former client that they waive their
2 attorney/client privilege as to the Tapp litigation in its
3 entirety and a number of other things which is really
4 questionable conduct for an attorney to insist on that when
5 it's not necessary, clearly. And at first, I thought, well,
6 maybe it's just a misunderstanding. But that has been
7 repeated. The Borough has since said in writing we understand
8 if you're claiming -- you know, you've said in writing we want
9 to fully disclose this, so I think that's a waiver and I think
10 it gives you a handle under the Borough ordinance for saying
11 that that alone is a reason for disclosure. But the Borough
12 has said if you believe it's necessary to disclose client
13 confidences or secrets, we understand that you're entitled to
14 do that to the extent reasonably necessary. I think the
15 Borough doesn't believe it's reasonably necessary. We don't
16 either, but to the extent reasonably necessary, he is entitled
17 by law to do that. So it's disingenuous to continue to assert
18 we want full disclosure but only if you will do something which
19 I have no right as an attorney to insist that you do and in any
20 event, the Borough has said we release you. He said last night
21 if they release me, I'll take about it. They've said we
22 release you because we believe the law gives you the right to
23 talk about this to the extent reasonably necessary.

24 So on that ground alone, we're entitled to the documents.
25 The public is entitled to the documents. The Court is entitled

1 to balance the interests under the second portion of the
2 Borough ordinance saying that the Court can order this. And
3 then also, it's otherwise provided by law. The Borough
4 ordinance specifically allows disclosures otherwise provided by
5 law.

6 And as we've pointed out in our brief, state law
7 specifically talks about the need to balance the interests and
8 -- and that's really what it boils down to, Your Honor. You --
9 it's -- this is really up to you. Whether -- I appreciate the
10 Borough attorney's candor, the Borough's candor in their brief
11 in saying that they really were conservative in not providing
12 documents when they know that the state law, the state Supreme
13 Court's opinions say that the public records custodian should
14 favor disclosure.

15 In the first instance, the -- it's the obligation of the
16 records custodian to provide documents. They candidly admit
17 they essentially punted here and left this -- and under the
18 circumstances, it's a pragmatic decision. We've encountered it
19 before. But that's why you're here. That's why the public has
20 to rely on you to do that balancing that the Supreme Court says
21 in the first instance should be done by the records custodian
22 but if it gets to you, you have to do that. You have to weigh
23 the public's interests in disclosure of materials that bear on
24 the qualifications and background and fitness of a candidate
25 for the highest office -- the office that has the longest

1 tenure of any in our state for a man who has never been -- have
2 never held public held office, has never really been vetted by
3 the public until now, and he's trying to withhold information
4 which may or may not -- voters may or may not decide it's
5 negative. I mean, he's indicated on CNN that whatever he did
6 in March of 2008 was just something he did on his own lunchtime
7 on his lunch hour for -- to do some politicking on his lunch
8 hour. I -- we would like to more about that. The voters may
9 say that's all there was to it. Of course, he didn't have a
10 lunch hour. But aside from that, the voters can decide what
11 bearing this should have on his fitness or qualifications, but
12 they have a right to decide. There couldn't be anything more
13 important about the public's interest to know in this case.

14 And when we balance that on the other hand against
15 Mr. Miller's interests, the privacy interests in this case are
16 about as minimal as you can get when you're talking about
17 essentially two sets of records that Mr. Miller has
18 independently said I want full disclosure of these, or I've
19 already explained this and gone onto public television and said
20 that we get it.

21 Now Mr. Van Flein has raised a new issue last night, new
22 in the sense that we haven't talked about it in either brief
23 before, that HIPAA somehow applies here. What we've said is
24 that the -- that Your Honor should also provide a balancing in
25 considering the same sort of balancing except that, as I

1 pointed out, there is a specific exception. There is no
2 exemption in the state public records law for personnel
3 records. Mr. Van Flein is wrong when he cites Title 39 as
4 being controlling law here. That law specifically has to do
5 with the making certain state employees records confidential.

6 It also makes other -- other records are not confidential
7 under Title 39. In any event, they're only state records. It
8 doesn't apply to municipal employees. It doesn't even apply to
9 all state employees. And in a number of cases, we have gotten
10 records under state employees under the general public records
11 law balancing rather than under Title 39. So it simply doesn't
12 apply here.

13 But in any event, there's a specific exemption for medical
14 records and so I pointed that out in our briefing, Your Honor.
15 And all we're asking is that you bear in mind -- and there may
16 be nothing there. Again, we're relying on you. If there's
17 something there the public should know about, fine.

18 And you, of course, have to follow the law which says if
19 it's a medical record or a public health record, it shouldn't
20 be disclosed. But like the rest of the exemptions, it should
21 be narrowly construed in favor of disclosure. If it's a
22 medical record, yes. If it's something that refers to so-and-
23 so -- my office mate was acting weird today or so and so came
24 in late with a cold, that's not a medical record. And so you
25 need to decide in the circumstances which -- you've seen the

1 records, we haven't. But the important thing I want to point
2 out here is I think Mr. Miller, the intervenor -- you know, he
3 might be happy with the argument that HIPAA applies here, but I
4 think Mr. Miller, the candidate, would say this is a gross
5 over-reaching of -- when the United States Congress decides
6 that they want to address the question of how insurance
7 companies can transmit their billing information so that
8 insurance claims can get paid electronically in an efficient
9 way and they passed HIPAA -- that's what that was for -- to
10 somehow intrude into this courtroom and say HIPAA has something
11 to do, the federal law, my suspicion is that Candidate Miller
12 would say that doesn't make a lot of sense and the federal
13 government should stay out of this and leave it to local
14 officials like you and the Borough.

15 The good news is that common sense prevails here and that
16 the argument that -- in the brief, it goes into great detail
17 about all the definitions of HIPAA and why it applies and why
18 the Borough's a covered entity, and why this is protected
19 health information. It includes all the information you need,
20 I think, to decide this except for the part that says that it
21 doesn't apply to the Borough.

22 All right. So if you look at 45 CFR 160.103 which Mr. Van
23 Flein cited to you, the only part he didn't cite was the part
24 that says protected health information -- that's the definition
25 that he quoted to you in the brief -- excludes individually

1 identifiable health information in employment records held by a
2 covered entity in its role as an employer. So I would suggest
3 that you take that into consideration as well as the other
4 parts that have been cited.

5 Your Honor, I think -- I appreciate that you've covered --
6 if you have questions, I'd be -- I appreciate that you've spent
7 the time reading this. I think I'd prefer to save anything
8 else for rebuttal and if you have any questions, be happy to
9 answer that.

10 THE COURT: All right.

11 MR. MCKAY: Thank you.

12 THE COURT: Thank you. Mr. Burns.

13 MR. BURNS: Yes, thank you, Your Honor. The -- both the
14 Alaska Public Records Act and the Borough ordinance which
15 parallels in large measure the Public Records Act is.....

16 THE COURT: Hold on, one minute. Are you picking him up
17 all right?

18 THE CLERK: Uh-huh (affirmative).

19 THE COURT: Okay. Sorry.

20 MR. BURNS: No problem -- have a presumption in favor of
21 disclosure. There's a fundamental right to disclosure.

22 The first issue in the analysis of public records, the
23 first issue is whether or not the documents that are sought to
24 be withheld from discovery on the basis of confidentiality
25 under the personnel records section are truly records that fall

1 within that category. Just because you sweep something into a
2 personnel record, does not make it confidential. As the Alaska
3 Supreme Court has said, there has to be an expectation of
4 privacy. It has to relate to something of a personal, private
5 nature. There cannot be any expectation of privacy to the
6 extent that there have been ethical violations or criminal
7 violations that impact directly on the public. There cannot be
8 any expectation of privacy. So any documents in the -- whether
9 they are in personnel files or otherwise that relate to that
10 cannot fall within this number of privacy. Those have to be
11 immediately disclosable.

12 That leaves the second set of documents. Those documents
13 that arguably have a legitimacy of privacy to them, an
14 expectation of privacy. That's when this Court, according to
15 the Alaska Supreme Court, then has to do this balancing factor.
16 That has -- the Court -- this Court, looking at documents on a
17 base -- on a document-by-document basis weighs the legitimate
18 expectation of privacy of the individual in the context of the
19 individual, in this case, Mr. Miller, the U.S. candidate -- I
20 mean, the candidate for U.S. Senate, versus the public's
21 interest to know that information. And as the Alaska Supreme
22 Court has said on a number of occasions, an individual who
23 seeks high public office can absolutely expect that their
24 privacy rights will be scrutinized. And so this Court, looking
25 at those documents, cannot, as Mr. Van Flein seems to indicate,

1 look at them in a vacuum, step back two or three years and
2 ignore the fact that Mr. Miller is now seeing to be the
3 candidate for Senate and ignore the implications.

4 Anybody who seeks candidacy of the U.S. Senate, a seat
5 which by its very nature is a fiduciary seat, one that's
6 premised on trust, can expect that this public, the public has
7 a right and a need to know the facts surrounding that
8 candidate, regardless of who it is and regardless of the party
9 affiliation. Elements that relate to integrity, voracity,
10 credibility, competence, all of those records, right, have to
11 balance as to the public's right to know. And we assert in
12 this instance, with the documents that you have, that that's
13 the litmus test. The Alaska Supreme Court has clearly laid it
14 out. First you cull through them to see if there really is any
15 expectation of privacy and then you cull through them based on
16 the expectation of privacy. Those that do qualify within that
17 context. And I think that's a fairly easy process and the 16
18 pages in the matrix that the Borough has provided, there are a
19 number of documents that would seem to be on their face at
20 least, give the indication that they relate to internal
21 investigations relating to either criminal misconduct or
22 ethical violations, and the public absolutely has the right to
23 know and there cannot be any privacy as to those. The other
24 documents, we do. We defer to this Court and the exercise of
25 its analysis, weighing the factors to make that determination.

1 Thank you.

2 THE COURT: Thank you. Mr. Zimmerman.

3 MR. ZIMMERMAN: We join with the arguments of other
4 counsel, Your Honor.

5 THE COURT: Thank you, Mr. Zimmerman. Ms. Broker,
6 anything you wish to add?

7 MS. BROKER: Really only one thing, Your Honor. I just
8 wanted to correct one fact or argument that was made in
9 Mr. Miller's briefing with respect to Borough ordinances and
10 the classification of Borough employees.

11 The ordinance that he cites is a definition of employee
12 for purposes of the ethics ordinance and the reason it
13 distinguishes between employees on one hand and the mayor, the
14 assembly, the clerk, and the deputy clerk on the other hand is
15 because there is an entirely separate provision in Borough law
16 that concerns those officials. So it was just a way to say
17 this applies to the mayor and employees. There are separate
18 sections for mayor and employee. And then there's an entirely
19 separate ethica section for those categories of employees.

20 There was -- that citation that was given to you is not
21 the Borough's mechanism of deciding who's a private -- who's a
22 public official or who even is a public figure for the purposes
23 of defamation for the right of privacy. The Borough does not
24 do that. It classifies its employees in its personnel
25 ordinance and it does it only with respect to whether you're an

1 appointed employee or a professional employee or a regular
2 employee and then that's done for purposes of pay and those
3 sort of things.

4 THE COURT: Thank you. Mr. Whitaker? Nothing. Okay.
5 Thank you. Mr. Van Flein.

6 MR. VAN FLEIN: Thank you, Your Honor. We've heard it
7 stated here that there is no expectation of privacy in a
8 personnel record. And I couldn't disagree with that more. But
9 it's not my argument. It's not my belief that I'm stating
10 here. It's the law. It's in the Borough ordinance. Quote:
11 Personnel records are confidential and not open to public
12 inspection except as provided. Which means if he signs a
13 release or in those six categories. Your name, rank, serial
14 number, date of employment, pay.

15 I think that pretty clearly establishes an expectation of
16 privacy when the law says these are confidential. The state
17 law is no different. Under AS 39.35.080, state personnel
18 records, including employment applications and other assessment
19 materials are confidential and are not open to public
20 inspection.

21 So to hear it said today, nobody, nobody could have a
22 reasonable expectation of privacy in their personnel record
23 really is directly contradicted by our state legislature and
24 the Borough assembly that says no, we disagree. Here's the
25 law. Here's the law of the land. And these personnel records

1 are, in fact, confidential and if they're protected by law as
2 confidential, how could anyone reasonably argue that you
3 wouldn't have an expectation to privacy in this. This would
4 turn human resources on its head if the ruling from this Court,
5 which by the way, would be the first ruling in this state that
6 we're aware of, to hold that personnel records are public
7 records. You're being asked to make.....

8 THE COURT: Thank you for that information. That's
9 calming.

10 MR. VAN FLEIN: You would be making new ground. The other
11 cases are very limited. Applications for employment in the
12 City of Kenai, right? Wages and benefits in the Firefighter
13 case.

14 Let's look at one case that's not really been discussed
15 here but did address a personnel file. It's a case called
16 Jones versus Jennings. Justice Burke issued it in 1990.
17 Brilliantly reasoned decision. In it, though, the people
18 involved were state troopers. They were actual litigants.
19 They were parties to the litigation and the other side says we
20 need your personnel records. Very important to our claims we
21 are pursuing. And even in that case, in that case where these
22 police officers were parties to the litigation, not just
23 running for some office, not part of any lawsuit involving
24 money and damages, the Court says not so fast. The trial
25 court's going to have to take a look at this and be very picky

1 about what it will release to the other side only for good
2 cause that supports a claim or a defense. That's the holding
3 in Jones v. Jennings. That you, in camera, if -- can -- and
4 that one involved a party. There's no parties here. There's
5 no lawsuit by Mr. Miller for wrongful termination for example.
6 But his personnel records would be very relevant to a law -- to
7 a claim for wrongful termination or loss of future earning
8 capacity, for example. Those are the situations where we see
9 personnel records becoming available by court order. That's
10 the circumstances when both state law and borough law says you
11 can get a court order for these records. Yeah, when you're
12 suing about it, when you're saying you were wrongfully
13 terminated or when you're saying you can't work in the future
14 because of an injury. It becomes relevant to see your work
15 history, what you were capable of doing. That's standard civil
16 litigation. You can get a court order for that if the other
17 party doesn't release it. That's why that language is in both
18 statutes. But nowhere -- I haven't seen a case cited,
19 certainly isn't New York Times v. Sullivan, which was
20 really -- that just says -- that's on defamation. I haven't
21 seen the case yet that says if you run for office, you waive
22 all privacy rights, your medical records, your birth
23 certificates, your school transcripts, your personnel files
24 from jobs 10 years ago, five years ago, it all becomes a public
25 record magically even if when this occurred, you were just a

1 private citizen. Not even a mayor. It wasn't like Joe Miller
2 was mayor of the Borough doing a -- holding high public office.

3 I don't think there's any authority here to release these
4 records under the law. There is an expectation of privacy, a
5 very valid expectation of privacy. And Mr. Miller hasn't put
6 his employment records in litigation making a claim about his
7 employment. This is just kind of a curiosity saying -- guised
8 under the public's right to know.

9 I respect the private -- the public's right to know. But
10 they are not entitled to know everything. The right to privacy
11 under our state constitution, which was expressly added in the
12 1970s by a vote of the people, is pretty clear that in Alaska
13 at least -- and these laws on -- with personnel records
14 confidentiality mirror the right that we believe strongly in
15 this state in a person's right to privacy. And you don't just
16 waive that right by running for office one day. It's just not
17 how it works. And there's no precedent for you to rely on that
18 says if you file for office, you waive all your prior
19 confidentiality in your whole life.

20 How about adoption records? What if you were a juvenile
21 delinquent when you were 12 and those records are sealed?
22 Where would it stop? Who would run for -- if we want to talk
23 about public policy, if you're going to do a weighing analysis,
24 Your Honor, which you've been asked to do, where -- what are
25 you going to weigh on the other side? We have a prurient

1 interest by the public or a legitimate the public. However you
2 want to look at it to say we're curious. What is this guy up
3 to? What is that woman up to? What is Lisa Murkowski's bar
4 exam record rate? We want those bar failures and we want to
5 see why she failed the bar. Where is this Court going to draw
6 the line between the right to privacy and the right of the
7 public to know?

8 There isn't much guidance for you. Certainly, City of
9 Kenai isn't that much helpful. And the Firefighter's case,
10 that information is already out there in this case. The
11 Borough ordinance says you can release the stuff but the city -
12 - but the Firefighter case said you should release. So, I
13 think you're being asked to go into uncharted territory. I
14 think it's very dicey for you, and I think there's irreparable
15 harm to -- not just to Mr. Miller, but to the process because
16 what good person would ever want to run for office if they go,
17 hmm, you know, when I was 16, I stole a car. Those records are
18 sealed. I had bad -- I was a bad kid but I'm a good man now 30
19 years later. But now people like the Alaska Dispatch will want
20 to see why I stole a car when I was 16. And they may not even
21 run for office, even if they've been a good citizen for 30
22 years after that.

23 There's a reason why records get sealed. There's a reason
24 why there's confidentiality. And the public's right to know
25 has to be tempered and it has to be balanced. We're not a

1 National Enquirer society. You don't have a right to know
2 everything, at least from the government's perspective. You
3 don't have a right to every intimate detail of a person's life,
4 their marriage, their work history. There is no such right
5 just because you're a public official.

6 It is correct, there is dicta in City of Kenai and the
7 Anchorage Daily News decision versus the Municipality of
8 Anchorage that says if you are in public office, you have a
9 lesser expectation of privacy. And that is true. But the
10 events here didn't occur while he was in public office. They
11 occurred when he was a private citizen in his personnel
12 records. So that dicta really doesn't apply here. Just
13 because he's running for public office doesn't mean he now
14 throws and waives all privacy out the door. It's just not how
15 it's been ruled on in the past. This is an unprecedented
16 request by the media put upon you, I think a little bit
17 unfairly, to say give us everything. Everything and they did
18 ask for medical records. They did in their briefing. We want
19 his medical records, too.

20 Well, you know, that's considered pretty private, too.
21 And I don't think by running for office, you're entitled to
22 medical records. And I think the law supports our position on
23 that.

24 I want to address, finally, one issue. There's sort of
25 been tap dancing on this waiver issue. Oh, well, he spoke on

1 CNN once. You know, he did. He briefly was asked a question,
2 tried to not answer it the first time. But it was after
3 Mr. Whitaker, through the Alaska Dispatch by the way,
4 publically made accusations and brought out confidential
5 information prohibited by Borough ordinance attacking
6 Mr. Miller. And so the media then says well, Mr. Whitaker has
7 been saying this, this, and this. How do you respond to that?
8 You can't violata the law and bring out this confidential
9 information and then say oh, you've waived it and now that
10 you've responded to a reporter briefly who you feel obligated
11 to respond to. That's not a waiver. That is a -- not a
12 relinquishment of rights. That is not a carte blanche waiver,
13 now I want all my personnel records out there.

14 I find it notable also, that they say well, there's no
15 attorney/client privilege issue here. Well, there really is.
16 They attached as a document in their motion, Alaska Dispatch
17 did, a letter from Steve Van Goor, bar counsel. I don't know.
18 There's a lot of stuff. Did you get a chance to see that?

19 THE COURT: I did.

20 MR. VAN FLEIN: Okay. In that letter.....

21 THE COURT: But thank you for reminding me of it.

22 MR. VAN FLEIN: Okay.

23 THE COURT: I know.....

24 MR. VAN FLEIN: And I know.....

25

1 THE COURT:exactly what document you're referring
2 to.

3 MR. VAN FLEIN: Great. And I know you've had this much
4 and two days to look at it. So and I appreciate your effort
5 here, too.

6 Mr. Van Goor's letter -- and we can confer with him as
7 well independently -- is pretty clear. Mr. Whitaker is the
8 equivalent of a former CEO to an organization. The client is
9 the organization. And under Mr. Van Goor's analysis with us,
10 he said the privilege applies after your employment with the
11 client terminates. It remains indefinitely. And so Mr. Miller
12 cannot stand up and rebut anything Mr. Whitaker says about
13 well, this happened at the Borough and this -- Mr. Miller says
14 I want to give the context. I want tell why everybody why
15 Mr. Whitaker is unhappy with me. I have reasons where I
16 advised him as Borough attorney and he didn't follow my advice
17 and it caused harm. Mr. Miller would like to go down that road
18 and discuss it publically. He's been saying that. We've asked
19 for a written waiver from the Borough so he could and we're
20 getting this tap dance. We're not going to sign a written
21 waiver. Well, the rule, and Mr. Van Goor is pretty clear, is
22 you go down this road as a lawyer at your own peril. If you
23 talk about the details learned in your prior representation and
24 it is more detailed than, quote, is absolutely necessary,
25 you've committed an unethical practice. Violated your duty of

1 confidentiality. So Mr. Miller has his arms behind his back on
2 this. He's being attacked by Mr. Whitaker making accusations
3 and then he's unable to respond unless we get a release from
4 the Borough of the attorney/client privilege so we can put
5 everything into context. And it is not a sham, nor is it
6 unethical, as Mr. McKay implies, for Mr. Miller to actually
7 comply with the very letter the Alaska Dispatch attached by
8 Mr. Van Goor. Mr. Miller is actually complying with the rules
9 of ethics. Not acting unethically but ethically here. I can't
10 talk about this unless the Borough says I can. Can we ask you
11 for an order today, since we're on an expedited proceeding to
12 order the Borough to waive the attorney/client privilege? I
13 imagine they might object. They may have their reasons why
14 they don't want to sign a waiver and I'll respect that.
15 They're -- you know, there's reasons for privacy here, too.
16 The public has no right to know what an attorney tells a
17 client. It's another balancing act. If you want to look,
18 maybe there are thousands of readers or dozens depending on
19 which website you're looking at, but there are readers out
20 there who may want to know the advice that Joe Miller provided
21 to the Borough that makes Mr. Whitaker so made at him today
22 that he can't discuss it until they waive it.

23 Are you hear today to balance those interests as well?
24 The public's right to know what the advice was, what Mr. Miller
25 advised the mayor, what happened and what didn't happen? Can

1 you do that? Are you authorized to do that? I don't think so.
2 I think it's the privilege that is owned by the Borough and if
3 they don't want to waive it, that's their right, and they don't
4 want to waive it. And we respect that. But in the meantime,
5 don't use that as an argument against us saying we've waived it
6 or there's no -- they're not really -- you can go ahead and
7 talk about it but you talk about it at your own peril. No, he
8 can't talk about it because then you're in a bar hearing trying
9 to explain under the rules that Mr. Van Goor what was
10 absolutely necessary to discuss and what wasn't.

11 I think you're in a very difficult position because of the
12 breadth of the request here. Everything that applies,
13 everything in his file they want and they want it now. There's
14 no effort to limit the request to you. There's no effort to
15 distinguish what is truly in the public interest, what is not,
16 what Mr. Miller had a chance to respond to in his personnel
17 file, what he didn't. I'm an employer. And you were an
18 employer before you went on the bench. I get to put things in
19 people's files that they don't know about. And when they find
20 out later, they may not like it but I'm the boss. I get to do
21 that. It's my firm. You're my employee. I can say, hmm, I
22 thought I smelled alcohol on that person's breath. In the file
23 it goes. Well, maybe they had cough syrup, but they don't even
24 know it's in the file. So how are you going to waive -- or
25 weigh rather that various interests of the employee and

1 employer. The employer gets to create the file. The employee
2 has no ability to even know generally what's in the file until
3 after the fact. And yet, this is to be used for opposition
4 research to be used for public consumption for them to weigh?
5 It's highly prejudicial, highly prejudicial to anybody and not
6 just Mr. Miller, but anybody who's going to run for office.

7
8 I think those are also the -- it's more than the public
9 interest here you're weighing. There is much larger issues.
10 If you were to order the carte blanche disclosure of a
11 personnel record, you'd be the first in the state to do so.
12 Well, then I guess it's fair game for every public employee.
13 Why even have a statute? Why have a statute that says these
14 records are confidential if you can just come into court and
15 say, Your Honor, make them give it to us. We want it. We're
16 curious.

17 That's not a legal basis to say we're curious and we want
18 to see it. And the public is curious. The Borough and the
19 state has said it's none of your business. These are for
20 personnel purposes. The federal government has said medical
21 records are private. The IRS says tax records are private.
22 There are things the government, even though those are public
23 records, they're not for public consumption. Birth
24 certificates, too. School transcripts. All of that.
25 Confidential, confidential, confidential. And you don't waive

1 that confidentiality and I don't see anything that authorizes a
2 court to say, well, I'm going to waive it. May I be so bold as
3 to say where you get the authority if the statute -- and I mean
4 no offense, but where would you get the authority.....

5 THE COURT: That's -- go ahead.

6 MR. VAN FLEIN:to say I want this out there? What
7 statute really allows that. It's not real clear. It's not --
8 at least in the briefing so far, I don't see where the Court,
9 other than this kind of vague balancing and Jones v. Jennings
10 which really wasn't cited by the moving parties, is the closest
11 I see where a personnel record was actually waived by the court
12 and they told the judge take it in camera, look at it, and be
13 very judicious as to what can go out to the other litigants,
14 from one party to the other, but not everything went out. The
15 Court had to weigh it. The Court had to meet in camera -- or
16 in chambers and talk about it and see what's going on. That
17 hasn't happened in this case either. Maybe I'm requesting that
18 now. If you're going to go down that road and think some of
19 this should be released, then you should have an in camera
20 review and allow Mr. Miller and his attorneys to discuss it
21 with you. It's his records. And weigh the pros and cons.
22 That would be at least -- especially since we haven't had any
23 evidentiary hearing -- sometime of due process to Mr. Miller.
24 And I want to be real clear. Not to you. I know you're
25 clear. To the Supreme Court. I'm not waiving our 56(f)

1 argument here by arguing the merits of this motion.

2 THE COURT: Very good and so noted for the record.

3 MR. VAN FLEIN: Okay. I'm arguing the merits of this
4 motion because we have to.

5 THE COURT: You're required to based upon my ruling.

6 MR. VAN FLEIN: I am, yes. So -- but I -- we've -- we're
7 all familiar with those decisions by the Supreme Court where
8 they say, you went on and talked about the other motion so you
9 waived it. I'm not waiving that.

10 That's where we're at. And I don't envy your position
11 here. I see the public interest. I see the concern here. But
12 I also see Mr. Miller's privacy rights and they're substantial,
13 and they're significant. Our state respects the right to
14 privacy almost above all else in terms of other states. Our
15 laws are clear on that. And we have a very strong libertarian
16 bent here that a man's and a woman's right to privacy is
17 important. And it flows where these statutes are consistent
18 with that. But not everything is for public consumption. It's
19 just not. Thank you.

20 THE COURT: Thank you. Mr. McKay, your rebuttal argument.

21 MR. MCKAY: Thank you, Your Honor. I would ask that Your
22 Honor -- to consider the case that we brought and the arguments
23 that we're making rather than the ones that are attributed to
24 us.

25 We have never said that Mr. Miller or anybody else does

1 had -- had no expectation of privacy in any personnel records.
2 It's not the argument we made here. We never made the
3 argument. We do expect you to balance the interests as we've
4 laid out in our briefing as the Supreme Court has said is
5 appropriate.

6 I understand that you retired. In fact, you're doing this
7 pro tem. My assumption is your pension is safe. And that.....

8 THE COURT: Well, I have my bottle of oxygen down here,
9 too, so that's all right.

10 MR. MCKAY: The constant concern about you being put on
11 the spot and difficult job -- I assume that you can -- you'll
12 take the risk necessary to make the appropriate decision here,
13 Your Honor. And I'm not trying to make light of this, but it's
14 -- this is a pretty straightforward case given the -- it
15 requires your balancing because it isn't clear. Because there
16 is a privacy interest that somebody has in, at least, certain
17 aspects of their personnel file. And we recognize that and
18 that's why we're asking -- why we asked the Borough in the
19 first place, as the Court said, to make those determinations.
20 And when they booted it to you, we're asking you to do that.

21 We have not said -- and this argument that Mr. Miller
22 somehow doesn't know -- he has had these documents for months.
23 He has had an opportunity to know what's in that file. If
24 there's something that he -- he can address that and he has.
25 He has addressed it. He said they should freely speak about

1 this. Want full disclosure about this. So, when -- this
2 argument that somehow you have to decide about attorney/client
3 privilege or that the Borough, again, has to waive -- this is a
4 disingenuous argument, with all respect, Your Honor, because
5 the argument -- what Mr. Miller has said is not simply that
6 they should allow him to speak. They've said they have to
7 waive completely their attorney/client privilege with respect
8 to the Tapps [sic] litigation that the Borough has engaged in
9 concerning your revenues from the tariffs, completely waive
10 their privilege concerning that case if -- in order that
11 Mr. Miller can talk about his version of why he left the
12 Borough employment. It's absurd on its face and to -- and it
13 also misstates, I think -- and you have the document. You
14 indicated you've read it -- from Mr. Van Goor, which
15 specifically addresses that and says no, the Borough does not
16 need to waive. I think the Borough's concern is yeah, we'd
17 probably waive the privilege to talk about this if it was
18 necessary but there's problems about a partial waiver, it might
19 jeopardize the Borough's larger interest in the Tapps [sic]
20 litigation, the other cases. Why would we do that when it's
21 not necessary because Mr. Van Goor's opinion specifically says
22 it is not necessary for the Borough to waive this privilege
23 because Mr. Miller has the right to talk about it. And not
24 like Mr. Van Flein has just argued that it has to be absolutely
25 necessary. The rule -- the bar -- the rule and the

1 professional conduct rules and as Mr. Van Goor stated in his
2 letter is that it has to be reasonably necessary. So
3 Mr. Miller can decide what's reasonably necessary and he has
4 latitude and the Borough has said we don't see it but if you
5 think there's something reasonably necessary to disclose -- to
6 do that, we understand that you're entitled to do that. So
7 it's simply not fair to the public to have Mr. Miller out there
8 himself or through counsel repeatedly saying, God, I'd love to
9 talk about this. I want full disclosure. If I could do it,
10 you know, it'd all be out there.

11 With the attorney/client privilege on the termination
12 issue and on the other question going on, you know, television
13 and talking about this and saying well, I just have to respond
14 to the Borough mayor. You know, I want to live in a society
15 where in my small town or in my slightly larger town if I've
16 got somebody who rises to prominence and runs for public office
17 and wants to affect the future of Alaskans, the future of our
18 country, say I think there's big changes necessary in the
19 future of our country that are going to affect all Americans, I
20 want the guy who knew him to be able to say hey, I remember
21 that guy. Here's what I know about him. Take it for what it's
22 worth. You know, I want to live in a place where reporters
23 don't get arrested for asking questions. I want to live in a
24 society where the public's interest isn't called prurient
25 because we want to know about the fitness and qualifications of

1 a candidate.

2 Now I think -- I think we've -- if Your Honor has any
3 questions, I think we've addressed the points and I'd
4 respectfully ask Your Honor to provide the injunctive relief
5 allowed by the public records law itself. It's embodied in the
6 statute and enjoin the Borough from further delaying -- denying
7 access to these records. Thank you. Thank you for hearing us,
8 Your Honor:

9 THE COURT: All right. Thank you. I'm going to take a
10 15-minute recess and I'll come back and give my ruling, so.....

11 MR. TIEMESSEN: Your Honor, could we briefly be heard
12 again on the one points -- on the waiver issue? The 1.6 issue?
13 It.....

14 THE COURT: Briefly, you may.

15 MR. TIEMESSEN: Thank you, Your Honor. And the reason I
16 wanted to address this was because I was the one that had the
17 conversation with bar counsel's office and it actually was not
18 with Mr. Van Goor. It was with Ms. Driscoll and Mr. Woelber,
19 the other two members of the office, but.....

20 THE COURT: I know them well, too.

21 MR. TIEMESSEN: Okay.

22 THE COURT: And I respect them, too.

23 MR. TIEMESSEN: I'm just making sure the record's clear
24 because Mr. Van Flein is telling him -- telling you what I told
25 him, so rather than work our way through the telephone game.

1 The 1.6 issue, what Mr. McKay's arguing is that the
2 Borough doesn't need to waive, that the waiver to the extent is
3 reasonably necessary, it has already occurred. Well, the
4 problem is the words reasonably necessary and the fact that the
5 client is saying we don't see, you know, the need for it means
6 that he does that at his peril. And the lawyer that's facing
7 that situation has that problem and that was the conversation
8 that we had with bar counsel is that the problem here is that
9 you do this at your peril.

10 And so again, on that particular issue, that's basically
11 the path that they want to lead Mr. Miller down as an attorney
12 is you can do this but only to the extent reasonable and
13 necessary and we're going to figure out what was or wasn't
14 reasonably necessary after you've done it. And if you're
15 wrong, well, then God help you.

16 So then -- and that's the situation we're looking at and
17 that was the conversation that occurred with bar counsel.
18 Thank you.

19 THE COURT: All right. Thank you. I don't think there's
20 any rebuttal necessary for that, so we'll take our 15-minute
21 recess and I'll come back then.

22 (Off record)

23 THE CLERK: On record.

24 THE COURT: Are we back on record, or do you need a few
25 more minutes.....

1 THE CLERK: We're on record. I'm ready.

2 THE COURT: Okay. Very good. During the break, I was
3 told there is somebody on the teleconference line. I don't
4 know if that's been disseminated yet to you or not? It has
5 been? Okay. I won't be redundant then.

6 Let me just start off again by thanking all counsel,
7 Mr. Whitaker, yourself as well, for being here, but
8 particularly counsel for the work that they have done on this
9 case and the briefing. It was a very short time schedule and
10 you've all done an admirable job, particular Mr. Van Flein,
11 I'll pick on you because I know you were traveling and we tried
12 to accommodate your schedule and though I'm sure it was still
13 short for you and you have the right to be a little critical
14 about how short it was, but I appreciate your position, and I
15 appreciate all that you've done to enlighten the Court here
16 today.

17 And as far as the Borough goes, I think I mentioned it
18 before in regards to helping the Court and all the parties with
19 that matrix of the documents. That was a fabulous job and I
20 commend the Borough for doing that.

21 Today we're here to decide a motion filed by Alaska
22 Dispatch. In short, Alaska Dispatch, as we all know here
23 today, is requesting the Court to rule on a motion to require
24 the Borough to make immediate disclosure of the public records
25 concerning Mr. Miller who is now a U.S. Senate candidate.

1 Now Alaska Dispatch believes, as well as other news
2 agencies, that they are entitled to these documents. The Court
3 has reviewed each and every document that the Borough has
4 submitted to it in camera and some documents I had reviewed at
5 least a dozen times in weighing whether or not they should be
6 disclosed or not disclosed, and I will address those documents
7 shortly.

8 I can further state that when those documents came to my
9 office, I took extra care to ensure the safeguarding of those
10 documents, that there'd be no leaks of any documents from my
11 office. They were with me the entire time during the day and
12 at night, I ensured that they were locked in the court safe by
13 our court administrator, Mr. Woods.

14 With that, Mr. Miller has objected to the disclosure of
15 the documents on grounds of privacy. And more specifically,
16 the Fairbanks North Star Borough Code, section 2.24.081(a); the
17 Alaska Constitution, Article 1, section 22; and Alaska Statute
18 39.25.080. He's also claimed that the equitable relief herein
19 should not be granted because of the equitable defenses which
20 we've previously discussed and which I have ruled on.

21 Now, Alaska Dispatch has argued that Mr. Miller is a
22 public figure by virtue of the fact that he's running for one
23 of the highest offices in the land today; namely, being one of
24 Alaska's U.S. senators in Washington, D.C., and that Alaska
25 Statute 40.25.120 requires disclosure of the documents in

1 question.

2 Now when I became a judge, I had to take an oath. Part of
3 that oath requires me to follow the law. It requires me to
4 follow the decisions of the Alaska Supreme Court. Now I'm not
5 going to try and fool anybody that I think each every and law
6 that has been enacted by our legislature is a good one or a
7 correct one, and Mr. Paskvan, one of our representatives --
8 senator, state senator -- please excuse me for this but
9 nevertheless, I do take exception to some of those laws.

10 Likewise, I don't think the Alaska Supreme Court, in all
11 its rulings and cases that I've read as an attorney, as a
12 judge, or -- some of those cases I fully would adopt. But
13 nevertheless, based upon my oath of office, I'm required to
14 follow the law and the cases, the decisions as issued by the
15 Alaska Supreme Court.

16 In regards to the perceived conflict between the Fairbanks
17 North Star Borough Code, section 2.24.081(a), and the Alaska
18 Statute of 40.25.120, I think the Alaska Supreme Court has
19 tried to resolve that issue in the case of the City of Kenai
20 versus Kenai Peninsula Newspapers, and that's found at 642 P.2d
21 page 1360. It was decided by our Alaska Supreme Court in 1982.

22 In that case, the Kenai Peninsula Newspapers requested the
23 City of Kenai to release certain names and a summary of
24 credentials of applicants who were applying to become the next
25 city manager and the city denied the newspaper's request.

1 Tied to that case was a companion case emanating out of
2 the Municipality of Anchorage wherein the municipality denied a
3 request to divulge the names and qualifications of people who
4 were applying to become the next police chief of that city.

5 Now the Supreme Court specifically held that to the extent
6 that an ordinance prohibits such disclosure, it is directly
7 inconsistent with the state law, the state statute, and cannot
8 be accorded the substantive effect and thereby, invalidated the
9 municipality's ordinance. Therefore, the Fairbanks North Star
10 Borough Code, section 2.24.081(a), which is the -- been the
11 subject matter of the arguments presented to the Court herein
12 today must yield to Alaska Statute 40.25.120, the state law.

13 Now it's interesting to note that the Supreme Court went
14 on to hold that there's a strong public interest in the
15 disclosure of the affairs of government generally. In fact,
16 that tracks with common law and in the open selection process
17 for high public officials in particular. And that in doubtful
18 cases, in situations that are doubtful, it should be resolved
19 by permitting public inspection.

20 Now Mr. Miller also contends that the documents are
21 protected by Alaska Statute 39.25.080. However, it is this
22 Court's opinion that this provision is not intended to protect
23 municipal personnel records as the Supreme Court has suggested
24 in Jones versus Jennings. And that cite is found at 788 P.2d
25 page 732, and it was decided by the Alaska Supreme Court in

1 1990 and also the City of Kenai case which I've previously
2 cited.

3 Now additionally, Mr. Miller argues that the documents are
4 protected under Alaska Statute 40.25.120(a)(3), a provision
5 that protects medical records. And also in his pleadings,
6 Mr. Miller has directed the Court to HIPAA, as we have heard
7 here today. However, this provision does not protect the
8 passing references to medical issues mentioned in some of these
9 so called documents and that of a -- in, I guess, an abundance
10 of caution, I'll order that the references to medical issues be
11 redacted in each document that Fairbanks North Star Borough may
12 be required to disclose as noted on the matrix to be medical.
13 In their column, they checked certain documents of a medical
14 nature.

15 To resolve a conflict between the Alaska Public Records
16 Act and the individual's right to privacy, the Supreme Court
17 has announced a three-part test.

18 One, does the party asserting a right to privacy have a
19 legitimate expectation of privacy. The Court went on to note
20 that a right to privacy protects intimate or sensitive personal
21 information which if disclosed, even disclosed to a friend,
22 could possibly cause embarrassment or anxiety. And this is
23 part of the Firefighters -- the International Association of
24 Firefighters case. I think it's a local 12 something. I don't
25 have it but anyway, versus Municipality of Anchorage. It's

1 found at 973 P.2d 1132 and once again, it's a 1999 case.

2 But the Court, went, also, on in its explanation that
3 applicants for high government positions based upon the fact
4 that they are seeking these high offices expose their private
5 life to public scrutiny.

6 Two, is disclosure nonetheless required to serve a
7 compelling interest? Now the Court's required to balance
8 between the nature and extent of privacy invasion and the
9 strength of the public interest. Once again, that's Jones
10 versus Jennings.

11 And the last point is, number three, whether necessary
12 disclosure occur in the manner least intrusive of the
13 individual privacy. Now the Court has gone through, as I've
14 told you, each and every document, weighing each document in
15 regards to Mr. Miller's privacy, in regards to the public's
16 right to know.

17 In the present case, the Court makes the following
18 findings of fact, and I disagree with Mr. Van Flein. I think
19 there is several admissions in the pleadings and in the answers
20 to date where the Court can make certain findings.

21 One, Mr. Miller is a public figure by virtue of the fact
22 that he is a candidate for the U.S. Senate. And I'll take
23 judicial notice that being a U.S. Senator is certainly one of
24 the highest elected offices that anyone can hold in our nation
25 today.

1 Two, that Mr. Miller worked as a part-time employee for
2 the Fairbanks North Star Borough from the years 2002 to 2009 as
3 an attorney in the Borough's legal department.

4 Three, that the Fairbanks North Star Borough maintained a
5 personnel file on Mr. Miller.

6 Four, that Alaska Dispatch and other news agencies have
7 filed a request with the Fairbanks North Star Borough
8 requesting documents concerning Mr. Miller and that request for
9 document included, among other things, his personnel file.

10 That the Fairbanks North Star Borough prepared a matrix,
11 which I've previously referenced in my opening remarks here,
12 identifying 344 public records on approximately 286 pages that
13 were responsive to this request.

14 It was also made known to me and I'll just make this a
15 sixth finding that some of these documents that were listed on
16 the -- on this matrix have already been disclosed.

17 Seven, that there are approximately 120 documents that
18 have not been released and of the 120 nonreleased documents,
19 these were delivered to Mr. Miller's attorneys for review and
20 to the Court for an in camera protective order prior to this
21 hearing so that the Court could weigh and review each and every
22 document, which the Court has done.

23 The Court concludes that in light of the City of Kenai
24 case and Alaska Statute 40.25.120, that the public's need to
25 know is more compelling than Mr. Miller's right to privacy

1 since he is now a candidate for the U.S. Senate; therefore, the
2 documents should be disclosed. However, before the Court can
3 order a disclosure of any particular document, the Court must
4 balance the public's right to know and Mr. Miller's right to
5 privacy.

6 I hold that although Mr. Miller has a legitimate
7 expectation of privacy in those documents, Mr. Miller's right
8 to privacy is, indeed, outweighed by the public's significant
9 interest in the background of a public figure that is running
10 for the U.S. Senate.

11 Further, my order is narrowly tailored as I carefully
12 reviewed each document and decided whether it must be
13 disclosed.

14 Mr. Miller contends that the extent of his right to
15 privacy, i.e., whether diminished due to his public figure
16 status, was established at a time at the -- when each document
17 was generated. I must admit, this is an attractive argument
18 because it arguably would encourage candor at the time the
19 documents were created and would avoid discouraging
20 individuals, like Mr. Miller and others, from running for
21 public office.

22 Mr. Miller cites the City of Kenai case but I find that it
23 does not support his position, and Mr. Miller cites no other
24 cases to support the proposition. Ultimately, this argument
25 must be rejected because individuals who run for office expect

1 that their past will be researched and revealed and thereby
2 lose their previously established expectation of privacy in
3 those documents.

4 In the case of the Borough, the Court must consider the
5 interference that such disclosure might cause it. And it's
6 interesting to know that the Supreme Court has placed the
7 burden of proof upon the Borough and Mr. Miller to establish
8 whether or not the documents are protected.

9 In regards to the specific documents, I make the following
10 findings:

11 The Borough's objection to disclosing documents numbered
12 332 through 341, the Court finds that such documents are
13 subject to the attorney/client or the attorney work product
14 privilege and, therefore, they will not be disclosed. I
15 particularly find that each document was prepared by an
16 attorney in anticipation of litigation or involved in a
17 confidential communication between the attorney and the client
18 for the purpose of securing legal advice. Once again, those
19 documents will not be disclosed.

20 The Borough's objection to disclosing documents 298
21 through 302, these documents are subject to the deliberative
22 process privilege and is valid and is therefore granted. I'll
23 humbly admit to you all that before I saw that, I didn't know
24 what the deliberative process privilege was. However, I did a
25 little research and pursuant to the Gwich'in Steering Committee

1 versus State found at 10 P.3d 572 (Alaska 2000), the Supreme
2 Court has, indeed, recognized it and has set forth a test and I
3 find that those documents satisfy the test as expressed by the
4 Supreme Court; therefore, they are protected and will not be
5 disclosed.

6 The Borough's objection to disclosing documents 89, 90,
7 92, 93, 98 through 103, and document numbered 107, 107 that is,
8 that the public's need to know is not more compelling than the
9 privacy issues of the author of the document or other people
10 involved in that document and, therefore, the Borough's
11 objection to disclosure is granted. I also find that the
12 information contained in those documents was somewhat redundant
13 and that the information can be gleaned from other documents
14 within the file.

15 The Borough's objection to disclosing document 91 is going
16 to be denied in part and granted in part. The Court will
17 require that the entries on that document, document 91 for
18 March 10th and March 11th, be redacted and removed and are not
19 disclosable. The entry for March 12th will be disclosed but
20 the names of the other Borough employees that were -- are
21 within that entry for March 12th need to be redacted and
22 blocked out for privacy issues. And the reason why the Court
23 is denying the Borough's objection to disclosure of this
24 document is that the Court finds that the public need to know
25 is greater than the privacy issues that were articulated by the

1 Borough. And primarily, that this particular document is
2 referred to and incorporated by reference in other documents
3 which are going to be disclosed and, therefore, are needed for
4 -- this document, in particular, is needed for clarification
5 purposes.

6 In regards to the medical record privilege, the Court is
7 somewhat concerned and somewhat confused about these documents.
8 These documents are not medical records from doctors. They're
9 not diagnostic reports for tests or anything like that
10 concerning any medical issue. Instead, these documents are
11 emails between -- most of them -- between Mr. Miller and
12 Ms. Broker addressing several issues and in passing in small
13 part addressing a medical matter. Notwithstanding the mention
14 of the medical matter is the Court's finding that these
15 documents should be disclosed but out of an abundance of
16 caution, I find that I am going to order that any
17 medical-related word in those documents be redacted and blocked
18 out. Therefore, in doc -- the documents that I'm specifically
19 dealing with are documents numbered 3 through 7, documents
20 number 28 through 34, 36, documents 46 through 49, document
21 numbered 86, documents numbered 202 through 208, documents 237
22 through 269, and document 295.

23 In regards to documents 23 -- number 23 and 24, the Court
24 finds that these documents should not be disclosed for privacy
25 reasons.

1 For purpose of organization, these documents that I have
2 ordered that are not to be produced, what I am going to do is I
3 will mark as exhibit 1A and they will be inserted into a sealed
4 envelope. As I said, that envelope will be marked 1A.

5 The documents that I have ordered to be redacted in any
6 way will be placed into a sealed envelope which will be marked
7 as exhibit 1B.

8 The documents that I have ordered to be produced without
9 any modification whatsoever, and those are all the remaining
10 ones that I haven't specifically mentioned, will be placed into
11 a sealed envelope which will be marked as exhibit 1C.

12 Hopefully, when this goes to the Supreme Court then and
13 they have questions about certain documents, it's somewhat
14 organized for them to address. Admittedly, I've done this
15 unilaterally. If anybody wants to weigh in that that's not an
16 appropriate way but I think it's a way to maybe speed the
17 matter along with some other things I have done which I will
18 divulge to you very shortly. So without objection, I will have
19 the documents marked and ordered in that way.

20 In regards to the disclosure of the documents, I'm going
21 to order that they be disclosed to the parties no sooner than
22 Tuesday, October 26th, 2010, at 4:00 p.m. The reason why I'm
23 ordering this is I want to give all the parties involved --
24 because I suspect Mr. Van Flein will definitely be taking an
25 appeal and I suspect Mr. McKay will be taking an appeal as to

1 the documents I have ordered not disclosed -- to have an
2 opportunity to go to the Supreme Court.

3 I have taken steps to helping the parties do just that if
4 they are so inclined. You should know that arrangements have
5 been made that the recording of this hearing is going to be
6 sent to Anchorage tonight. It will be taken directly to the
7 transcription department and will be transcribed Monday
8 morning, so the transcript will be ready for you. I hope
9 there's no objection to me taking this liberty.

10 I have also contacted Marilyn May, clerk of the Alaska
11 Supreme Court. She is standing by to assist you and if you
12 need to contact her, she has said you may contact her even over
13 the weekend in order to enable you to take your respective
14 appeals to the Supreme Court.

15 I will adopt some of what Mr. Flein has said that the
16 Court is in somewhat of a particular hard situation. The
17 cases, the way I've read it, have authorized me to do what I've
18 done, but it's not exactly clear if I look at it in a different
19 way as well, so I think this is a -- an issue that should
20 probably go to them.

21 I suspect all of you will understand why I am reticent to
22 putting Ms. May's phone number -- private phone numbers on the
23 record, so I've prepared a sheet for each of you. Though she
24 said feel free to call over the weekend, I suspect that was
25 conditional. She would probably not be very receptive or

1 appreciative of a phone call at 2:00 a.m. in the morning, so be
2 mindful of that. Mr. Van Flein, maybe I can just ask you to
3 come forward and hand these out and bring whatever extra copies
4 are back to me, if you would, please. And you may want two for
5 your office. I think there's enough there.

6 MR. VAN FLEIN: Mr. Whitaker as well?

7 THE COURT: He doesn't wish one. At least that's what his
8 body language has told me.

9 MR. WHITAKER: No, thank you.

10 THE COURT: And again, if you take exception to what I've
11 done to facilitate this, I apologize but I figured I would be
12 of help to everyone concerned in light of the time lines that I
13 have put forth. With that, anything further, Mr. McKay?

14 MR. MCKAY: No, Your Honor. Thank you.

15 THE COURT: Mr. Burns?

16 MR. BURNS: Nothing, Your Honor. Thank you.

17 MR. ZIMMERMAN: No, Your Honor. Thank you.

18 THE COURT: All right. Mr. Whitaker, anything further?

19 MR. WHITAKER: No, thank you, sir.

20 THE COURT: Ms. Broker?

21 MS. BROKER: Will the transcript be available for the
22 parties on Monday? I just want to make sure in the Borough in
23 preparing this that we have access to your transcript so we
24 don't get anything wrong in preparing a release.

25 THE COURT: My understanding, that's -- is what has been

1 promised to me.....

2 MS. BROKER: Okay.

3 THE COURT:but you must understand, I've been
4 promised many things in the past that have never come to pass,
5 too, so.....

6 MS. BROKER: Okay. I was writing frantically but I would
7 rather be able to see.....

8 THE COURT: Yeah.

9 MS. BROKER:it in the transcript and make sure I
10 have it right.

11 THE COURT: And I'm happy -- let me make this offer, too.
12 I'm happy to meet with a representative of Mr. Miller's,
13 whether it be you, Mr. Van Flein, or a representative from your
14 Fairbanks office here and Ms. Broker on Monday at a time of
15 your choosing to ensure that that the documents are redacted
16 and set aside in accordance with the Court's order here today.

17 MR. VAN FLEIN: Would that be in chambers, Your Honor?

18 THE COURT: It'd be in chambers. And needless to say, it
19 would only be for that purpose. No reargument, no new
20 evidence, no new documents of any sort like this, just to
21 ensure that when -- if these documents are disclosed, they
22 comply with the Court's order.

23 MS. BROKER: I would appreciate that, Your Honor.

24 MR. MCKAY: And Your Honor, we have -- speaking for the
25 plaintiffs, we have no objection to that. I would ask, if it's

1 possible, that -- however informally we might agree, before we
2 leave today after we're done on the record, if we might just
3 verify the numbers so that as we're making a decision
4 about.....

5 THE COURT: I went over them pretty fast and I'm happy to
6 do that.

7 MR. MCKAY: Thank you, Your Honor.

8 THE COURT: And I suppose from what Ms. Broker said, she
9 was writing fast but maybe not fast enough. She might
10 appreciate that, too. And likewise, I'll just assume by
11 implication you're all within that, too, Mr. Van Flein, so I'm
12 happy to do that as well.

13 MR. VAN FLEIN: We did our best to keep up. I have one
14 question for you, though. It sounds like the deadline on
15 Tuesday the 26th at 4:00 p.m. is, in essence, a stay until that
16 moment to try.....

17 THE COURT: Absolutely. Nothing will be disclosed until
18 4:00 p.m., Tuesday. That's to give you an opportunity by then
19 to go to the Supreme Court.

20 MR. VAN FLEIN: Got it. Okay.

21 MR. TIEMESSEN: And Your Honor, the stay applies, not just
22 to documents but to disclosing the contents of the documents
23 through any means?

24 THE COURT: Yes. That.....

25 MR. TIEMESSEN: Okay.

1 THE COURT:I thought that would be implicit,
2 but.....

3 MR. TIEMESSEN: We've got a non-lawyer present.....

4 THE COURT:I'm happy that you made it explicit.....

5 MR. TIEMESSEN:I want to make it clear.....

6 THE COURT:but that's correct. Nothing will be
7 disclosed in those documents.

8 MR. MCKAY: Your Honor, just for clarification because I
9 don't know what those documents are. I don't know who knows
10 but I assume that that's not intended to be an argument that's
11 been made that information in those documents being disclosed
12 from people who already -- who are not getting those -- that
13 information from those documents is somehow violating your
14 order.

15 THE COURT: No.

16 MR. MCKAY: Thank you, Your Honor.

17 THE COURT: More importantly, I don't want the documents
18 disclosed prior to 4:00 p.m., Tuesday. I think that's
19 October 26th. And if I need to, 2010.

20 MR. TIEMESSEN: We're not quite that.....

21 THE COURT: All right. Mr. Van Flein, anything further?
22 I don't think I specifically asked you that or not.

23 MR. VAN FLEIN: No, I -- we've covered it, you've got the
24 stay. I assume that was -- you've read City of Kenai and
25 that's what the trial court did there as well, so I appreciate

1 that and your diligence on handling this very quickly also and
2 meeting us here today.....

3 THE COURT: All right.

4 MR. VAN FLEIN:and your thorough review. It sounds
5 like you did take a lot of time with the records, and we
6 appreciate that.

7 THE COURT: Well, you all took it -- have taken a lot of
8 time to educate me and I appreciate that. So thank you one and
9 all, and we'll go over those numbers. Why don't we just take a
10 10-minute -- another 10-minute break and we'll meet and go over
11 the numbers again.

12 MR. MCKAY: Thank you.

13 (Off record)

14 THE CLERK: On record.

15 THE COURT: All right. We're back on record and -- we go
16 over those numbers again?

17 MR. MCKAY: Please.

18 THE COURT: All right. 332 through 341 will not -- no
19 disclosure. 298 through 302, no disclosure.

20 MR. MCKAY: Your Honor, and if I could ask you to give the
21 basis of that disclosure, again.

22 THE COURT: I already did.

23 MR. MCKAY: Okay.

24 THE COURT: I'm not going to.....

25 MR. VAN FLEIN: Yeah.

1 THE COURT:redo it again. I've said it once.....
2 MR. VAN FLEIN: That's probably what messed it up the
3 first time.
4 MR. MCKAY: All right. Yeah.
5 THE COURT: And you can grab it off the web and it'll put
6 you to sleep tonight, I'm sure.
7 MR. BURNS: So the last one, Your Honor, was 332.....
8 MR. MCKAY: 298.....
9 THE COURT: 298.....
10 MR. MCKAY:to 302.
11 THE COURT:to 302.
12 MR. MCKAY: Thank you.
13 THE COURT: The next was document 89, document 90, 92, 93,
14 and documents 98 through 103, and document 107, no disclosure.
15 Document 91, there's two entries. One for March 10th and
16 one for March 11th. They're to be redacted. No disclosure of
17 those entities. Are you with me, Ms. Broker, or.....
18 MS. BROKER: When you say redacted, do you mean the
19 employee names?
20 THE COURT: No, I mean.....
21 MS. BROKER: Or the whole part.....
22 THE COURT:the en -- the whole entry for March 10th
23 is to be removed.....
24 MS. BROKER: Okay.
25 THE COURT:the whole entry for March 11th is to be

1 removed, but the entry for March 12th is to remain.

2 MS. BROKER: Okay. But that's the part that's redacted
3 from -- the employee's name, the entry for March 12th?

4 THE COURT: You.....

5 MS. BROKER: Okay.

6 THE COURT:anticipated my very next remark.

7 MS. BROKER: All right.

8 THE COURT: That portion of document 91, the entry for
9 March 12th, is to be redacted to block out or remove the names
10 of employees.

11 All right. The following doc -- next set of documents
12 have to deal with the medical thing, and that is documents 3
13 through 7, 28 through 34, 36, 46 through 49, 86, 202 through
14 208, 237 through 269, and 295. Those documents are disclosable
15 but need to be redacted.

16 All right. Doc -- I also said documents 23 and document
17 24, no disclosure.

18 All other documents as numbered on the matrix supplied by
19 the Borough of the 120 we're talking here today are to be
20 disclosed.

21 How are we all doing with the numbers?

22 MR. VAN FLEIN: I think we got them again.

23 MR. TIEMESSEN: That works.

24 THE COURT: Okay.

25 MR. MCKAY: Thank you for taking the time to do that.

1 THE COURT: And again, I'm happy to meet with the Borough.
2 I was thinking of going on the record, but in a way that would
3 be violating my own protective order, so I think it will have
4 to be in chambers but we'll find a room to do it in. It'd be
5 nice to have a record but then it becomes public notice and if
6 I'm wrong on this, then I've let the cat out of the bag, so we
7 can't do it that way. I'm sorry. I thought -- I was thinking
8 that maybe down the road, it'd be further -- it might be nice
9 for the news agencies to have but in hindsight, I don't think I
10 can do that. But -- and will someone be attending, Mr. Van
11 Flein?

12 MR. VAN FLEIN: Yes.

13 THE COURT: What's a good time?

14 (Whispered conversation)

15 THE COURT: Do you want to do it in the afternoon,
16 Ms. Broker.....

17 MS. BROKER: I would prefer the afternoon.

18 THE COURT:to give your staff time to work in the
19 morning?

20 MS. BROKER: Yes. What I'd like to do is basically have
21 the documents prepared, bring them, show you what we're going
22 to do, and then make sure everybody's.....

23 THE COURT: Great idea.

24 MS. BROKER:on the same page.

25 THE COURT: How's 3:00 o'clock work for you?

1 MR. TIEMESSEN: If we do 3:15, I pick up my daughter at
2 2:45, so I can certainly be here by 3:15.

3 THE COURT: Mr. Tiemessen, 3:15. You've convinced me. If
4 a.....

5 MR. TIEMESSEN: This is -- this -- you can -- I can give
6 you my wife's phone number if you want to go for 3:00, but.....

7 THE COURT: Well, don't put it on the record.

8 MR. TIEMESSEN: All right. Yeah.

9 THE COURT: 3:15.

10 MS. BROKER: 3:15 works for me, Your Honor.

11 MR. TIEMESSEN: Thanks.

12 THE COURT: All right. And if you'll check in the
13 calendaring department coming up, we'll try and get a phone
14 call to your respective offices to tell you where to come
15 Monday morning because I don't know where I'll be in the
16 building.

17 MR. TIEMESSEN: Judge McConahy might want his chair
18 back.....

19 THE COURT: Mr. McConahy's coming back so I'm sure I'll be
20 dispossessed of his office and also, that he'll probably want
21 his courtroom back as well.

22 I was probably remiss in also saying that I'm obviously
23 granting the injunctive relief and I find by -- that to me,
24 there's a clear likelihood that the news agencies would've
25 prevailed on their injunctive relief. That was probably

1 implicit in my findings. I would think anybody would've
2 probably picked that up but stated clearly, I have done so now.

3 MR. MCKAY: Thank you, Your Honor.

4 THE COURT: All right. Very good. And I thank you once
5 again.

6 MR. VAN FLEIN: Thank you.

7 MR. TIEMESSEN: Your Honor.....

8 THE COURT: Off record.

9 MR. TIEMESSEN:also thanks to the in-courts and
10 court staff.....

11 MR. MCKAY: Yes.

12 MR. TIEMESSEN:for coming in on a weekend. I
13 recognize that that's above and beyond.

14 THE COURT: I appreciate that.

15 THE CLERK: Off record.

16 (Court recessed)

17 4:15:20

18 **END OF REQUESTED PORTION**

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TRANSCRIBER'S CERTIFICATE

I, CHRISTINE F. CLAYTON, PP, PLS, CERT, hereby certify that the foregoing pages numbered 60 through 134 are a true, accurate, and complete transcript of proceedings in Case Nos. 4FA-10-02886 CI and 4FA-10-02990 CI, Fairbanks Daily News Miner, et al., Plaintiffs vs. Fairbanks North Star Borough, Defendant, and Joseph Miller, Intervenor, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

October 24, 2010
Date

Christine F. Clayton
Transcriber

10
Messin

B

C

THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

FAIRBANKS DAILY NEWS-MINER,
ALASKA DISPATCH, LLC and
ANCHORAGE DAILY NEWS,

Plaintiffs,

vs.

FAIRBANKS NORTH STAR BOROUGH,

Defendant,

vs.

JOSEPH MILLER,

Intervenor.

Case No. 4FA-10-2886 CI
(consolidated with 4FA-10-2990 CI)

Department of Law
P.O. Box 71267
Fairbanks, Alaska 99707
Phone: (907) 459-1318

Denying
ORDER GRANTING FNSB'S MOTION TO SEVER

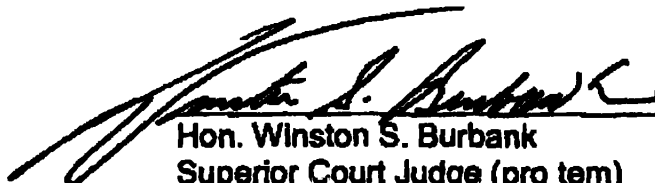
Upon consideration of FNSB's Motion to Sever and any opposition thereto,
IT IS HEREBY ORDERED that the motion is ~~GRANTED~~ *DEPIED*. Intervenor Miller's
Cross-Claim(s) against Defendant Fairbanks North Star Borough, and Intervenor
Miller's Complaint against third-party Defendant Jim Whitaker, are hereby severed
from Case No. 4FA-10-2886CI.

IT IS FURTHER ORDERED that the ~~Clerk of Court shall assign separate case~~ *ARTICLES MAY REFUSE THIS*
~~numbers to each of the matters set forth above, and that judicial assignments for~~ *motion in THE FUTURE. CURRENTLY IT APPEARS TO THE COURT*
~~each shall proceed in the usual course of court business.~~ *THAT THE DOCUMENTS ISSUE IS RESOLVED.*

OCT 23 2010

Received at:
CLAPP, PETERSON, VAN FLEIN,
TIEMESSEN AND THORSNESS, LLC
Date Recd/Initials: 11-15-10
Date Served: 11-15-10
Response Due: ANCH

DATED at Fairbanks, Alaska this 14 day of ~~October~~ ^{NOVEMBER}, 2010.


Hon. Winston S. Burbank
Superior Court Judge (pro tem)

CERTIFICATE OF SERVICE

This is to certify that on this date,
a copy of the foregoing is being:
 mailed via first class mail, faxed,
 sent electronically or hand delivered
to the following attorney or parties of record:

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U.S. District Court for the District of Alaska
MAIL
 U.S. Postal Service
() Other: McKay, Vanflein
HAND DELIVERY
By: John J. Burns
Date: 11/22/10

Andrea Steeds 10/22/10
FNSB Department of Law Date

Department of Law
P.O. Box 71267
Fairbanks, Alaska 99707
Phone: (907) 459-1318

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

2011 SEP 20 PH 3:40

BY _____ DEPUTY

FAIRBANKS DAILY NEWS MINER)
And Alaska Dispatch, LLC,)

Plaintiffs,)

vs.)

FAIRBANKS NORTH STAR)
BOROUGH,)

Defendant.) (consolidated with 4FA-10-2990)

vs.)

JOSEPH MILLER,)

Intervenor,)

vs.)

JIM WHITAKER,)

Third-Party Defendant.)

INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH
MILLER'S CROSS CLAIM FOR INDEMNIFICATION

Intervenor, Joseph Miller, through counsel, opposes
Defendant Fairbanks North Star Borough's Motion for Summary
Judgment on Intervenor Joseph Miller's Cross-Claim for
Indemnification.

INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH MILLER'S
CROSS CLAIM FOR INDEMNIFICATION

*Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
et. al.; Case No.: 4FA-10-2886 CI*
Page 1 of 17

1 **I. FACTUAL AND PROCEDURAL HISTORY**

2 Intervenor, Joseph Miller, is a former Fairbanks North
3 Star Borough part-time employee who ran for office as a U.S.
4 Senator in 2010. Mr. Miller announced his candidacy for
5 office in April of 2010. His campaign leading up to the State
6 primaries met with success, and in August 2010 Mr. Miller was
7 elected as Alaska's Republican nominee for the U.S. Senate.

8 Prior to the 2010 U.S. Senate campaign, Mr. Miller worked,
9 in addition to his full-time private law practice, as a part-
10 time Fairbanks North Star Borough ("FNSB" or "Borough")
11 employee for about seven years. His work was highly regarded
12 by his supervisor, borough attorney, A. Rene Broker-King.¹

13 After several years of employment, she noted that
14

15 If I had to rank all of the attorneys with
16 whom I have worked with . . . Joe would
17 rank in the top three in all areas I
18 consider important to the practice of law.
19 He has an excellent grasp on legal issues .
20 . . . He not only produces a high quality
21 work product but he works efficiently and
22 effectively. He practices law in a manner
23 that reflects the highest standards in our

24
25 ¹ The borough attorney is referred to as Rene Broker in most of the FNSB
26 documents previously disclosed in this case. In her recent emails to the
undersigned, her name appears as A. King. To avoid confusion, she is
hereinafter referred to as A. Rene Broker-King or Ms. Broker-King.

1 profession and the Borough has benefited
greatly by his work.¹

2 During an interview in October 2010, Ms. Broker-King continued
3 to reflect high regard for Mr. Miller's employment history
4 stating that his job was "at a very high level and he did very
5 good work."²

6 This statement was made despite an unfortunate incident
7 involving several borough computers that Mr. Miller used to
8 vote in a political poll and was initially dishonest with co-
9 employees about. At the time, Ms. Broker-King rejected Mr.
10 Miller's offer to resign, characterizing the matter as an
11 "isolated incident."³ In this same memorandum, FNSB also agreed
12 to remove the disciplinary action from Mr. Miller's file
13 within two years (by March 26, 2010).⁴

14 In June, several months before the primary election took
15 place, Alaska Dispatch, as well as other media outlets,
16 requested that Mr. Miller's former employer, the Fairbanks
17 North Star Borough, release Mr. Miller's complete confidential
18
19

20 ¹ See Exhibit A, pg. 159 (FNSB Public Records Release, July 2010).

21 ² See Exhibit B (Alaska Dispatch, October 31, 2010, at
[http://www.alaskadispatch.com/article/joe-millers-paranoid-attempt-
22 overthrow-alaska-republican-party?page=full](http://www.alaskadispatch.com/article/joe-millers-paranoid-attempt-overthrow-alaska-republican-party?page=full)).

23 ³ See Exhibit C, (Memorandum from Broker to Miller, dated March 26, 2008, at
FNSB Private Documents, at 33-34 (released October 2010)).

⁴ *Id.*

24 INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH MILLER'S
25 CROSS CLAIM FOR INDEMNIFICATION

Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
26 *et. al.*; Case No.: 4FA-10-2886 CI

Page 3 of 17

1 personnel file.¹ The Borough refused to disclose the complete
2 file and prepared a spreadsheet of documents that it was
3 withholding from production pursuant to Fairbanks North Star
4 Borough Code Section 2.24.081, as well as the deliberative
5 process privilege, and privilege related to documents
6 containing medical information.

7 At the same time, the Borough determined that a number of
8 documents from the file should be released to the public.
9 Included in these documents at page 184 was Mr. Miller's final
10 Personnel Action Form, dated September 2009.² This document,
11 never previously provided to Mr. Miller³, included several
12 redacted sections including the portion of the form that
13 indicated whether Mr. Miller was eligible for rehire or not.
14 Id. The Borough's privilege log at page 7 reflects that this
15

16
17 ¹ FNSB parrots Halcro's false allegation that "Miller chose not to list his
18 Borough employment in his published biography" to help provide an excuse for
19 why the press would suddenly seek Mr. Miller's personnel file. See FNSB
20 Motion for SJM, at 7. From the beginning of the campaign, Mr. Miller's
21 official resume was linked to his campaign website. It fully disclosed Mr.
22 Miller's part-time employment with FNSB. The short narrative originally
23 included on the website (and subsequently changed during the primary) did
24 not mention his part-time work with FNSB, his adjunct professor duties at
25 UAF, his internship with the Department of Law, and other part-time work.

26 ² See Exhibit D (FNSB Public Records Release, July 2010, at 184).

27 ³ Mr. Miller requested his personnel file shortly after his resignation. Mr.
28 Miller was required to first sign an acknowledgement of receipt prior to
FNSB providing the copy of the file. The file provided to Mr. Miller did
not include this Personnel Action Form. See Exhibit E (Affidavit of Joseph
Miller) at ¶ 8.

29 INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
30 BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH MILLER'S
31 CROSS CLAIM FOR INDEMNIFICATION

32 *Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,*
33 *et. al.; Case No.: 4FA-10-2886 CI*

34 Page 4 of 17

1 information was "Nondisclosable" as it was "Confidential
2 Personnel Info" and was otherwise protected by "Privacy."¹

3 No other reference to Mr. Miller's eligibility for rehire
4 was included in any of these public documents. The date this
5 public file was provided to Mr. Miller was on or about July
6 13, 2010. The documents were released to the public on or
7 about that same date. However, at a time well before even Mr.
8 Miller knew that his personnel file reflected that he was
9 "ineligible for rehire" for two years,² his eligibility status
10 had already been leaked to members of the public who
11 subsequently publicized the information.

12 When the Fairbanks Daily News Miner and Alaska Dispatch
13 brought suit against the Borough, the Borough notified Mr.
14 Miller's Counsel and indicated that it intended to assert that
15 Mr. Miller was an indispensable party in the litigation. See
16

17
18 ¹ At Page 16 of FNSB's privilege log (entitled "JM Public Records Request-
19 Document Analysis"), FNSB states that "'Confidential Personnel Information'
includes information required to be kept confidential under Borough Code or
other legal authority" and "'Privacy' includes information required to be
kept confidential as required by law."

20 ² In an email to Mr. Miller after his resignation, Borough Attorney Rene
21 Broker-King states it "is my understanding that your eligibility for rehire
22 will be affected." Mr. Miller wrote back stating that he "strongly
23 disagree[d] with that conclusion." Ms. King asked for Mr. Miller's
explanation, saying that she would then "reconsider my decision re: rehire."
He provided his explanation, and Ms. King never responded as to her
decision. In short, Ms. Broker-King never provided her final decision to
Mr. Miller on rehire eligibility. *Id.* at ¶ 9.

1 Exhibit F (Letter from Jill Dolan to Thomas Van Flein dated
2 October 11, 2010). Mr. Miller requested that the Borough
3 indemnify him pursuant to FNSBC 2.24.341, but the Borough
4 refused.

5 **II. SUMMARY JUDGMENT STANDARD**

6 Under Civil Rule 56, the burden is on the party requesting
7 summary judgment to show, by evidence which would be admissible
8 at trial, that there exists no genuine issue of material fact
9 and that such party is entitled to judgment as a matter of law.
10 *Wickwire v. McFadden*, 576 P.2d 986 (Alaska 1978). Civil Rule
11 56 provides that summary judgment should only be granted when
12 "the pleadings, depositions, answers to interrogatories, and
13 admissions on file, together with the affidavits, show that
14 there is no genuine issue as to any material fact and that any
15 party is entitled to a judgment as a matter of law."
16

17 In considering a matter on summary judgment, the Court
18 should not engage in a weighing of the evidence on summary
19 judgment. *Alakayak v. British Columbia Packers, Ltd.*, 48 P.2d
20 432, 449 (Alaska 2002). There is a "genuine issue" of material
21 fact as long as the non-movant has presented some evidence in
22 support of its legal theory. *Id.* The court must draw all
23

reasonable inferences in favor of the non-movant. *Green v. Northern Pub. Co., Inc.*, 655 P.2d 736, 742 (Alaska 1982).

3 **III. Applicable Law**

4 Fairbanks North Star Borough Code section 2.24.081
5 requires the Borough to "indemnify any employee of the borough
6 against any claim, demand, suit, or judgment arising out of his
7 employment with the borough if the borough employee, at the
8 time of the occurrence, was acting in good faith and within the
9 scope of his duties."

10 The first part of section 2.24.081 requires that the claim
11 seeking to be indemnified must arise out of employment with the
12 borough. The second section requires that, at the time of the
13 occurrence of the event which creates the claim, the employee
14 had to be acting in good faith.

15 Because the two sections of the code set out two separate
16 requirements, each will be addressed separately in the analysis
17 section below. It is important to note here, however that these
18 requirements, do not by their language depend on when suit is
19 brought or when a claim is made, but rather require only that
20 the claim "arise out of" the employment, and that at the time
21 of the occurrence of the event which is the basis of the claim,
22

1 that the employee was acting in good faith within the scope of
2 his duties.

3 **IV. DISCUSSION**

4 **A. The claim arises out of Miller's employment with the Borough**

5 The claim must necessarily arise out of Miller's
6 employment with the Borough. Miller could have run for Senate
7 without ever having worked for the Borough, and that occurrence
8 alone would not have generated the issues presently before this
9 court. The mere existence of his political campaign is in no
10 way dispositive of the issue. By contrast, there are other
11 potential reasons why the newspaper might have asked for a
12 Borough employee's records, completely unrelated to any
13 political campaign. There is no way for this claim to exist
14 outside the fact of Miller's employment with the Borough and
15 the records created as a part of that experience as the
16 foundation.
17

18 In advancing its interpretation of the terms "arising out
19 of his employment" the Borough quotes AS 23.30.395 (regarding
20 workers compensation). However, while this statute specifically
21 excludes "activities of personal nature away from employer-
22 provided facilities," and specifically includes "employer-
23

1 sanctioned activities at employer-provided facilities," it is
2 silent and therefore ambiguous as to activities which may be
3 construed as being of a personal nature that occur at employer-
4 provided facilities. Therefore, relying on AS 23.30.395 to
5 define the terms as they exist in FNSBC 2.24.341 is neither
6 appropriate, nor particularly instructive.

7 The term "arising out of" generally refers to the origin
8 of the cause of action. In a more general sense when applied in
9 a general employment context (as opposed to a more specific use
10 in a workers compensation context) an injury is said to "arise
11 out of" employment if it arises out of the nature, conditions,
12 obligations and the incidents of the employment. See Black's
13 Law Dictionary 99 (5th edition). Because this case would not
14 exist absent Miller's employment with the Borough, the injury
15 suffered is by definition incidental to his employment.
16

17 The Alaska Supreme Court has spoken a number of times to
18 the question of whether an activity was within the course and
19 scope of employment and does not rely on AS 23.30.395 to
20 interpret those phrases outside of the workers compensation
21 context. In fact, the Supreme Court has repeatedly found that
22 the issue of whether an act was within the course and scope of
23

1 employment "is a fact specific inquiry for the jury unless the
2 facts are undisputed or lend themselves to one conclusion."
3 *Ondrusek v. Murphy*, 120 P.2d 1053, 1057 (Alaska 2005). For
4 example, in *Luth v. Rogers & Babler Construction Co.*, 507 P.2d
5 761 (Alaska 1973) the act in question occurred during the
6 employee's twenty-five mile commute between his home and his
7 job. *Id.* at 762. Yet the Alaska Supreme Court held that while
8 the facts were undisputed, the jury could draw conflicting
9 inferences about whether the conduct was within the course and
10 scope of the employment. *Id.* at 765.

11 Similarly, in *Ondrusek v. Murphy*, the question of whether
12 an employee who took his parents for a free trail-ride on a day
13 that the business was closed was acting within the course and
14 scope of his employment was not appropriate for summary
15 judgment. 120 P.2d at 1058-59. The Supreme Court in *Ondrusek*
16 cited a number of other cases which stand for the proposition
17 that the scope of employment is a fact specific issue which is
18 generally left to the jury. *Id.* citing *Taranto v. North Slope*
19 *Borough*, 909 P.2d 354, 358 (Alaska 1996) ("scope of employment
20 is a fact-specific issue requiring case-by-case
21 determination."); *Luth*, 507 P.2d at 764 ("scope of employment
22
23

24 INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
25 BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH MILLER'S
26 CROSS CLAIM FOR INDEMNIFICATION
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1 questions are jury issues where conflicting inference can be
2 drawn from undisputed facts."); *Fruit v. Schreiner*, 502 P.2d
3 133, 140-141 (Alaska 1972) (noting "applicability of respondeat
4 superior will depend primarily on the findings of fact in each
5 case" and that "the factual determination generally is left to
6 the jury.")

7
8 The Borough alleges in its Motion for Summary Judgment
9 that the public records request triggering this litigation
10 arose out of Mr. Miller's U.S. Senate Campaign, not Mr.
11 Miller's good faith performance of his employment duties as a
12 Borough employee. See Memorandum in Support of Motion for
13 Summary Judgment at 6. The Borough is attempting to re-define
14 the language of FNSBC 2.24.341 so that the duty to indemnify is
15 based on the time of the claim rather than "the time of the
16 occurrence." See FNSBC 2.24.341. By misconstruing the statute
17 in this manner, the Borough argues that the Fairbanks Daily
18 News Miner's demand and suit did not arise out of Mr. Miller's
19 employment. See Memorandum in Support of Motion for Summary
20 Judgment at 6.
21
22
23

1 What the Borough fails to appreciate is the Daily News
2 Miner's claims exclusively "arise" out of Mr. Miller's
3 employment with the Borough because those claims are for the
4 release of employment records created and maintained by the
5 Borough during that time period. The time of the occurrence at
6 issue is the time of creation of Mr. Miller's employment
7 record, and therefore the Fairbanks Daily News Miner's claim
8 arises directly out of Mr. Miller's employment with the
9 Borough.

10 B. At the time of the occurrence, Miller was acting in
11 good faith and within the scope of his duties.

12 The Borough argues that "to the extent that the public
13 records requests relate to Miller's admitted use of other
14 employee's computers ..." the actions were not performed in good
15 faith or in performance of his duties as a Borough employee.
16 See Memorandum in Support of Motion for Summary Judgment at 7.
17 Of course, this incident was not the only reason that Mr.
18 Miller was forced to expend fees in this case. The personnel
19 file and other employment records contained significant
20
21
22
23

1 personal information¹ far beyond the computer disciplinary
2 action that never should have been in the file to start with
3 (FNSB was contractually obligated to destroy the disciplinary
4 action in March 2010). Nevertheless, as discussed above, scope
5 of employment questions are jury issues where conflicting
6 inference can be drawn from undisputed facts. See *Luth v.*
7 *Rogers & Babler Costruction Co.*, 507 P.2d 761, 765 (Alaska
8 1973). The Borough's self-serving retrospective interpretation
9 of Mr. Miller's scope of employment is not dispositive of this
10 issue. That question is a question of fact which should be
11 decided by a jury. It is also important to note, however, that
12 the timing of the Fairbanks Daily News Miner's lawsuit is not
13 the deciding factor as to whether indemnification under FNSBC
14 2.24.341 is required. Rather, the event upon which the
15 litigation is based, in this case the creation of employment
16 records, "occurred" throughout the entire time Mr. Miller was
17 employed with the Borough. The "occurrence" being dealt with
18 here, to which any "good faith" requirement could be applied,
19 is his overall tenure of employment with the borough. Placing
20
21

22 ¹ The file included health and medical documentation, social security
23 numbers, and other sensitive information.

1 the emphasis of the occurrence on any single event found within
2 Miller's employment records unfairly misrepresents the full
3 scope the media inquiry into his employment, and the quality of
4 the work he performed, and thereby misconstrues the true nature
5 of the larger issue.

6 The Borough's interpretation of 2.24.081 is far too narrow
7 and does not interpret the code in a manner that adequately
8 protects former employees. For example, if an employee who is
9 a truck driver hits a pedestrian while driving his regular
10 route, then quits his job, and the pedestrian does not sue the
11 employer for two years after, that incident still "occurred"
12 within the scope of truck driver's employment. Under the
13 Borough's interpretation, the "occurrence" would be the
14 initiation of the legal action; clearly this is not the code's
15 intent. The Borough ordinance is designed to protect both
16 current and former employees so long as the "occurrence" took
17 place during that employee's employment.

18 The issue presented in this case is about the overall
19 "occurrence" of Miller's employment during the entire period of
20 his employment with the Borough and the extent to which that
21 overall employment was performed in good faith. The media
22

1 parties who originally brought suit seeking the release of
2 Miller's records sought the release of numerous documents
3 pertaining to all aspects of his entire employment with the
4 Borough.¹ The fact that the filing of the lawsuit seeking those
5 records took place after his employment with the Borough ended
6 does not change the validity of the claim.


7 **V. Conclusion**

8 Because genuine issues of fact remain to be litigated in
9 this case regarding the obligation of the Borough to indemnify
10 Mr. Miller, and because the moving parties are not entitled to
11 a judgment as a matter of law, the Boroughs motion for summary
12 judgment in this matter must be denied.

13
14 DATED at Fairbanks, Alaska, this 20th day of September,
15 2011.
16
17
18
19

20 ¹ The records requests from the Fairbanks News Miner, Anchorage Daily News,
21 and Alaska Dispatch all sought not just documents relating to Mr. Miller's
22 resignation from FNSB or the computer incident, but also the entire
23 "personnel file," (Alaska Dispatch, June 30, 2010), "all documents
pertaining to Joe Miller's employment," (Fairbanks News Miner, July 13,
2010), and all documents concerning any failure to meet FNSB standards
(Anchorage Daily News, July 1, 2010),

1 CLAPP, PETERSON, TIEMESSEN,
2 THORSNESS & JOHNSON, LLC
3 Attorneys for Intervenor Joseph
4 Miller

5 By: 
6 John Tiemessen
7 Alaska Bar No.: 9111105

0706037

8 CERTIFICATE OF SERVICE

9 I certify that a copy of this document
10 was served upon the following individual(s):

- 11 () via hand-delivery
12 (X) via first class mail
13 () via fax

14 John McKay, Esq.
15 117 E. Cook Ave.
16 Anchorage, Alaska 99501

17 Christopher E. Zimmerman, Esq.
18 Zimmerman & Wallace
19 711 Gaffney Road, Suite 202
20 Fairbanks, Alaska 99701

21 Corey Borgeson, Esq.
22 Borgeson & Kramer, PC
23 100 Cushman Street, Suite 311
24 Fairbanks, AK 99701

25 Jill Dolan, Esq.
26 Rene Broker, Esq.
Assistant Borough Attorney
Fairbanks North Star Borough
809 Pioneer Road
Fairbanks, Alaska 99707

Jim Whitaker, Pro se
512 Panorama Drive
Fairbanks, Alaska 99709

INTERVENOR JOSEPH MILLER'S OPPOSITION TO FAIRBANKS NORTH STAR
BOROUGH'S MOTION FOR SUMMARY JUDGMENT ON INTERVENOR JOSEPH MILLER'S
CROSS CLAIM FOR INDEMNIFICATION
Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
et. al.; Case No.: 4FA-10-2886 CI
Page 16 of 17

1 William Walker, Esq. (courtesy copy)
Walker & Levesque, LLC
731 N Street
2 Anchorage, Alaska 99501

3
4 Date: 9/20/11 By: [Signature]



December 9, 2004

Larry Cohn, Executive Director
Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1969

Dear Mr. Cohn:

You requested my opinion concerning Joe Miller's appointment with the Fairbanks North Star Borough. As the Borough Attorney I am Joe's direct supervisor. Joe began work as a part-time Assistant Borough Attorney at the Borough in September 2003.

Joe has consistently performed his duties in a manner that exceeds my expectations in all areas of his employment. A copy of his job description is attached.

I have worked with a variety of attorneys in my career, as I supervise not only our borough attorneys, but also outside counsel employed by the borough. If I had to rank all of the attorneys with whom I have worked with in those years, Joe would rank in the top three in all of the areas I consider important to the practice of law. He has an excellent grasp on legal issues and analyzes them in a thoughtful, conscientious manner. He not only produces a high quality work product but he works efficiently and effectively. He practices law in a manner that reflects the highest standards of our profession and the Borough has benefited greatly by his work.

Sincerely,

FAIRBANKS NORTH STAR BOROUGH

A. René Broker
Borough Attorney

Miller's paranoid attempt to overthrow the Alaska Republican Party

ka | Oct 31, 2018



When U.S. Senate candidate Joe Miller set out in 2008 to overthrow the head of the Alaska Republican Party, the mission, to him, became far more dangerous than anyone might have imagined, according to his former co-workers at the Fairbanks North Star Borough.

Politically speaking, working to overthrow the guy at the top was indeed a gutsy move. But Miller perceived risks greater than to just his reputation. He feared for his own life, his former co-workers said in interviews with Alaska Dispatch.

ails and other documents released Tuesday under court order relating to Miller's time as a part-borough attorney allude to some of the Gulf War veteran's fears, including his belief that someone might hack into the borough's computer system.

is around this same time -- March 2008 -- that Miller was caught using three of his co-workers' computers to pad a political poll on his personal website. After the incident, Miller, who at first lied about the computer usage, was placed on leave for about two weeks, followed by a three-day suspension without pay and six months probation.

co-workers who had just days earlier heard Miller going on about personal threats and computer crimes, the timing of Miller's misuse of their computers was unsettling, spawning one more twist in a situation that seemed to grow stranger by the day.

er that same week in 2008, hundreds of miles south in Anchorage, other people would make similar remarks about Miller's presence at the statewide Republican convention -- the very place where the political aspirant hoped Randy Ruedrich, the party's chairman, would be ousted. According to numerous sources, Miller arrived at the convention with bodyguards similar to those he had on hand at a town hall meeting at Central Middle School on Oct 17, where they handcuffed the editor of Alaska Dispatch.

Miller's employee files from the borough and the first-hand accounts by convention-goers tell only a partial story of Miller's quest to unseat Ruedrich.

in the shadow of the public power struggle -- the old guard versus the new Palin-led faction in the Alaska Republican Party -- the effort was taking a noticeable toll on Miller, who seemed unusually stressed and genuinely worried about his personal safety.

One of Miller's supervisors, borough attorney Rene Broker, wrote in a memo to Miller following the computer incident, "It has been apparent in the last several months that you are under significant stress and it has affected your judgment as evidenced by your actions on Mar. 12, 2008."

In interviews Friday with Alaska Dispatch, Miller's former co-workers in the Fairbanks borough's legal department said the Senate candidate was paranoid, acting strangely in the days leading up to the computer polling incident and the state GOP convention in spring 2008, including telling them about threats against his life, computer hijacking, a bug in his office, and requesting that the mayor hire a security detail to protect Miller.

Miller's campaign did not respond to a request, which included a brief summary of this story, for comment.

EXHIBIT B

ings Miller was saying and doing in spring 2008 -- actions they summed up as "bizarre."

on their accounts, this political episode in Miller's life appears to derive more from an
age thriller than a political playbook. What follows is Miller's co-workers' recollection of his
e and embroiled political mission and how it crossed over into their government workplace.

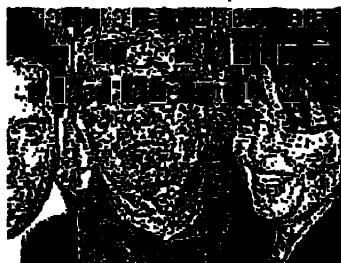
before he was caught using the borough computers for the poll, Miller had spoken openly with
ers of the borough office about a potential threat coming his way. The Alaska Republican Party
ut to get him, Miller told them, and he warned them to be careful about what they did on their
sters. Miller claimed a public records request was in the works aimed at scrutinizing employees'
ster use, adding that, if granted, he feared it might reveal child pornography on his computer. If
appropriate material was found on his computer, Miller told them, they needed to know it would
result of a sophisticated setup -- someone hacking the Fairbanks North Star Borough's
ster system and planting inappropriate material on his computer.

just a few days later that his colleagues discovered something was amiss with their computers,
upset and unnerved them given the timing to Miller's earlier warnings. Miller had been on their
uters during lunch hour to vote in a political poll hosted on his own personal website. When
onfronted Miller about it, he told one of his supervisor's, Jill Dolan, "not to worry about it (and)
e was not on a bad site," according to a written statement Dolan provided during the borough's
sequent internal investigation.

here is no evidence that the prospect of illicit materials existed anywhere but in Miller's fears.

hundreds of pages of public records produced by the borough regarding Miller's employment,
is nothing to suggest that the borough ever had concerns about child pornography or other
ropriate material being found on his computer.

when he got caught falsely inflating his own political poll did he face sanctions related to
uter use. In the ensuing disciplinary letter from his supervisor, Rene Broker, she made it a point
te that the borough believed it was an isolated incident.



ar, Randy Ruedrich and Sarah Palin

GOP out to get Miller?

But Joe Miller's warnings went far beyond the alleged computer plot.
He was also convinced his office was bugged, the borough employees
told Alaska Dispatch.

And he believed there was a murder plot under way to kill him and
then-Gov. Sarah Palin, who at the time also was trying to persuade her
fellow Republicans to dump Randy Ruedrich as the party chairman.

Miller feared someone might tamper with his tires, causing him to have
accident as he drove to Anchorage, the borough employees recalled.

his worries mounting, Miller wanted Jim Whitaker, then the mayor of the Fairbanks North Star
ugh, to provide a security staff for him, his former co-workers said. Miller wanted doors locked
security cameras mounted in the borough's legal offices (The New York Times has reported
Miller has security cameras at his home). And he wanted an escape route -- a second exit in case
main one was somehow blocked or unsafe.

was just very paranoid about the whole thing," one employee said.

r believed the people out to get him included Ruedrich and former Gov. Frank Murkowski, the
r of Sen. Lisa Murkowski -- one of Miller's opponents in the Senate race -- and the man who
inted her to the job in 2002.

r told one of his co-workers that Frank Murkowski and Ruedrich were men who "had the power
money to pull something off," the borough employee said Friday.

ast three of Miller's colleagues believed his fears were genuine, but they had no way to know if
were credible. One borough employee wasn't sure how to react. Should they call the FBI? It was

EXHIBIT

B

led coup

tuesday, March 15, 2008, Miller's plot to oust Ruedrich was about to collapse. Although Miller tried to hijack the party's convention agenda and successfully get the body to take a no-confidence vote in Ruedrich, the seasoned GOP chairman outmaneuvered Miller and Palin and prevented the coup from coming up.

Commentary in the Anchorage Daily News, Juneau Republican Paulette Simpson described the overthrow as an "unsuccessful, banana republic-like coup."

Miller's desire to wrest control from Ruedrich and redefine the Alaska Republican Party as unfaithfully loyal to Palin was no secret. In media interviews at the time, Miller spoke openly of his desire to "bring up government" and ensure "the public understands that the Republican Party is a party of limited government."

Interview with the Anchorage Daily News one week before the failed takeover, Miller was quoted as saying, "The public needs to be assured that this is not the party of corruption and influence. It is the party of limited government, of Lincoln, of state's rights."

Conventioners, including Simpson, couldn't help but note the unusual companions Miller had brought with him to the Hotel Captain Cook in Anchorage, where the meeting was held in 2008. She wrote in the Daily News:

oward the end of the convention when it was apparent his firework had fizzled, in what can only be described as paranoid and bizarre, a security detail -- yes, pretend Secret Service suits with aviator glasses and earpieces -- showed up to flank and apparently protect the silly, self-important Miller from a bunch of mostly middle-age Republican delegates who had voted against him and were now genuinely embarrassed for him.

Republican Andree McLeod -- a Palin critic -- also noticed Miller's not-so subtle security detail: three men and a woman, each equipped with walkie talkies and ear pieces. They were friendly enough, she said, and although it was obvious they were shadowing Miller, they would only say they were "on a city job."

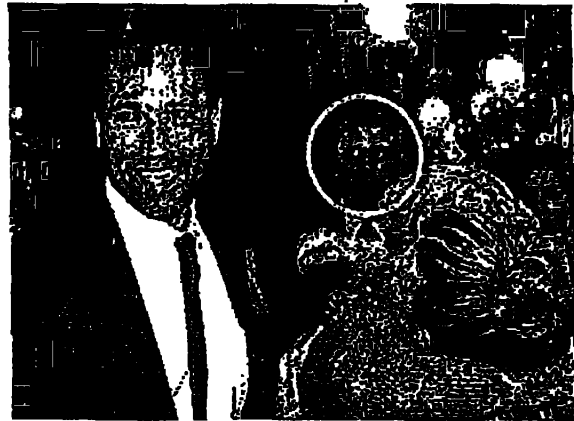
McLeod doesn't recall the name of the security guard she spoke with at the time, but recalls being proud of his business, which he identified as Drop Zone -- the same company that had arrested and detained Alaska Dispatch editor Tony Hopfinger after the Oct. 17 campaign rally meeting at an Anchorage public school.

When Miller left the convention hall and headed to the hotel's downstairs for a news interview, the guards lined up and stood by at the door, McLeod recalled. When Miller went upstairs to another floor in the hotel, they stuck close and buzzed around him.

Short time later, McLeod noticed them guarding an elevator door, with one guard posted in front of the door and others on either side. When the door opened, out came Miller and the four security guards moved into a diamond formation around him -- one in front, one behind and one on each side -- and they hustled Miller in a military-style march to a waiting SUV outside the Hotel Captain Cook. Once Miller and his entourage -- which included Palin aide Ivy Fry, according to McLeod, were safely on their way -- the guards cleared out.

"It was the most surreal thing I have ever seen," McLeod said.

Miller quit the Alaska GOP and his regional chairmanship the following Monday -- the same week he was placed on administrative leave pending the outcome of an investigation into his misuse of state e-mail through computers.



Kim McEachen photo

At the primary election bash Aug. 24, William Fulton (circled in yellow), owner of Drop Zone, followed Joe Miller around closely. Fulton is the same security guard who handcuffed and detained an Alaska Dispatch journalist Oct. 17 at a Miller town hall meeting at a public school.

EXHIBIT

Page

3 of 4

forward more than two years later and now one of Miller's would be accessible to the state
order -- Randy Ruedrich, who remains the Alaska GOP's chairman.

Friday, Ruedrich denounced talk of any alleged threats to Miller in 2008 as so ridiculous that the
wasn't worthy of discussion.

don't threaten people," he said. "We just make sure they have the opportunity to participate."

conversation really doesn't need to exist," added Ruedrich, hanging up the phone.

weeks and months following the failed political ploy and his ethics lapse at the borough, Miller
to himself more than usual, his co-workers said. With the intensity of the fight behind him, there
no more talk of death threats or people out to get him.

seven years that Miller worked at the Fairbanks North Star Borough, there had been other times
he expressed a heightened level of anxiousness about his personal safety, but the scenarios
red reasonable, his co-workers said. For example, in one instance the potential threat was a man
ought over a family situation that Miller had become involved in through his private law practice.

r's co-workers were also aware that Miller had security cameras at his house, but it was their
rstanding they were standard-issue for U.S. District Court magistrate judges, and that Miller had
red the equipment after resigning that post to rue for local office in 2004.

ite the odd events leading up to the March 2008 GOP convention, the quality of Miller's legal
for the borough was largely unaffected.

job he did here was at a very high level and he did very good work," said Rene Broker, one of
r's former bosses, in an interview earlier this week.

also came to his defense regarding speculation that the medical issue for which Miller was
ing treatment in August and September 2009 -- revealed in records released under court order
week -- just as he was resigning from his borough job, had something to do with his mental
th. She called the claims -- which she has seen in the comments sections of recent news reports
Miller's time at the borough -- "totally unfair."

it's wrong. That is not the case," she said. "This concept is unfair that he has some kind of service
ted mental issue. People are just making that up."

tact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).

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EXHIBIT B
Page 4 of 4

MEMORANDUM

To: Joe Miller, Assistant Borough Attorney
From: Rene Broker, Borough Attorney
Date: March 26, 2008
Subject: Disciplinary Suspension and Mandatory Referral to the Employee Assistance Program for Inappropriate Conduct and Inappropriate Use of Computer/Network Resources

You were issued a Notice of Intent to Investigate and if necessary, impose disciplinary action on March 14, 2008 for alleged infractions that occurred during the lunch hour on March 12, 2008.

This memo imposes discipline for your 1st offense under the FNSB Disciplinary Policy for Inappropriate Conduct and Inappropriate Use of Computer/Network Resources. You accessed three Legal Department employee computers for a non-borough related purpose and then you were dishonest both about your conduct and the reasons for the conduct. Shortly after this incident, however, you completely admitted the wrong doing, acknowledged the inappropriateness of your actions and have fully accepted responsibility.

It has been apparent in the last several months that you are under significant stress and it has affected your judgment, as evidenced by your actions on March 12, 2008.

I believe that this was an isolated event, and given your full acceptance of responsibility for your actions, I am imposing the following mitigated discipline: 3 day suspension, mandatory referral to the Employee Assistance Program for evaluation, and a six month probationary period. Please be advised that any further behaviors such as these will not be tolerated and will be grounds for further disciplinary action, up to and including termination of employment.

You will be suspended without pay for three (3) days, scheduled for Thursday March 27, 2008 to Monday March 31, 2008. You will be expected to return to work on Tuesday, April 1, 2008.

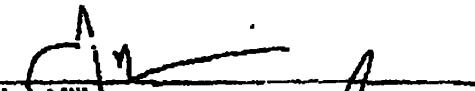
You are also required to participate in an assessment through the Employee Assistance Program (EAP) Mandatory Referral Process. Please call 1-800-759-8302 to schedule an appointment. Failure to fully cooperate with Magellan will be considered gross insubordination and will lead to immediate termination of your employment.

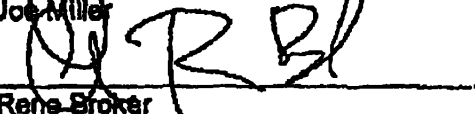
Page two, Miller Discipline

You will be required to serve a six (6) month probationary period, effective April 1, 2008 to October 1, 2008. During this period, if there are further issues or dissatisfaction with your performance, I have the discretion to non-retain you.

Finally, I expect that you will work hard to rebuild the co-worker relationships that were harmed due to your actions on March 12, 2008. It will take effort on your part to regain their trust.

This letter of Disciplinary action shall be removed for your personnel file no later than two (2) years from the date of this letter, provided there are no further incidents.



Joe Miller


Rene Broker

4/1/08
Date
3/26/08
Date

cc: Sallie Sluvek, Human Resources Director
Joe Miller, Personnel File

SS or ID # 00001046

DEPARTMENT DIVISION

Legal/042119

EMPLOYEE NAME

KILLER

JOSEPH

M.

Last

First

Middle Initial

BEGIN DATE

END DATE (if applicable)

9/1/09

BARGAINING UNIT:

- MANAGEMENT (01)
- ___ APEA FLSA EXEMPT (05)
- ___ APEA (01)
- ___ LABORERS (02, 04, 06, 07)
- ___ CONFIDENTIAL (03)
- ___ TEMPORARY (09)

EMPLOYEE TYPE:

- ___ Regular FT
- ___ Regular PT (___ hrs/wk)
- ___ Casual

FTE:

- ___ 1.0 (8 hrs/day)
- ___ .75 (6 hrs/day)
- ___ .50 (4 hrs/day)
- ___ Other ___/day

Reason:

- New Hire
- Re-Hire
- Resignation / Termination (attach exit processing form)
- Acting Status
- Promotion
- Lead Pay (add / remove)
- ORG Key Change
- Change (Explain):

TO BE COMPLETED BY PERSONNEL:

Pay Class 100 PCN# LS-40205
 Prior PCN# _____

GRADE / LEVEL

L4 / L12
 Salary: \$ 45,9033 Hourly Annual

CLASSIFICATION TITLE:

ASSISTANT BOROUGH ATTORNEY

ORG KEY:

ORG

ORG CALCULATION

New

COMMENTS:

COMPLETE THIS SECTION FOR TERMINATION ONLY:

Termination Date: 9/1/09

Reason:

- 01 Resignation
- 02 Involuntary Separation
- 03 Term Funded
- 04 Casual
- 05 Intern
- 06 Special Grant
- 07 Lay Off
- 08 Deceased
- 09 Retired

Eligible for rehire: NO YES (Y3Y) Y7Y YWC
 (Circle One) See Policy FNSB 6.5.12 for definition

If YWC, note conditions: insufficient notice given

AUTHORIZED SIGNATURES:

Immediate Supervisor: [Signature] Date: 9/3/09
 Department Director: [Signature] Date: 9/3/09
 Human Resources Director: [Signature] Date: 9/3/09
 EEO Officer (regular and term and probation only): _____ Date: _____
 Entered By: [Signature] Date: 9/9/09

Time & Date Position Accepted By: H/R Initials

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FAIRBANKS DAILY NEWS MINER)
And Alaska Dispatch, LLC,)

Plaintiffs,)

vs.)

FAIRBANKS NORTH STAR)
BOROUGH,)

Defendant.)

CASE NO. 4FA-10-2886 CI

(consolidated with 4FA-10-2990)

vs.)

JOSEPH MILLER,)

Intervenor,)

vs.)

JIM WHITAKER,)

Third-Party Defendant.)

AFFIDAVIT OF JOSEPH MILLER

STATE OF ALASKA)

) ss.

FOURTH JUDICIAL DISTRICT)

JOSEPH MILLER, being first duly sworn upon oath,
deposes and states as follows:

1. I am the Intervenor in the above-captioned case and
aver that the following is true and correct based upon my

AFFIDAVIT OF JOSEPH MILLER

Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
et. al.; Case No.: 4FA-10-2886 CI

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EXHIBIT

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2011/12/17 11:10 AM (2011/20/14/17)1200

1 belief and understanding.

2 2. During my final year of work with the Fairbanks
3 North Star Borough, disputes arose between myself, Mayor Jim
4 Whitaker, and Borough Attorney A. Rene Broker-King. It was
5 my perspective that borough resources were being
6 unnecessarily squandered.

7 3. I believe that these disputes led to a series of
8 retaliatory actions by the borough attorney and mayor
9 against me. As to the borough attorney, I believe these
10 actions included her improper attempt to create a conflict
11 between my part-time borough work and my full-time private
12 law office work, her cancellation of my pre-approved leave,
13 and her breach of her written agreement to remove the FNSB
14 disciplinary letter from my file by the end of March in
15 2010.
16

17 4. I believe the borough attorney's retaliation
18 continued into the 2010 U.S. Senate election leading to
19 partisan press releases and statements, and the leaking of
20 confidential documents from my personnel file to the public.
21 I also believe that this retaliation continued after the
22 election with the borough's allegations that I may have
23

24 AFFIDAVIT OF JOSEPH MILLER

25 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
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1 committed illegal acts by deleting emails even though the
2 borough attorney was well aware that FNSB regularly backed
3 up such emails.

4 5. Sally Stuvek's statement, as reported by the
5 Fairbanks News Miner article entitled "Fairbanks borough,
6 Joe Miller differ on personnel claims," dated July 22,
7 2010, that the borough provided me with an unredacted copy
8 of my September 2009 Personnel Action Form in September
9 2009, is false. The first time I saw this document was upon
10 my review of the redacted documents provided by the borough
11 to me in July 2010. Sally Stuvek's reported statement that
12 I did not request this file until September 25, 2009, is
13 also false. The request was made much earlier. Although
14 not directly attributed to Sally Stuvek, the article also
15 suggests that I acknowledged in writing that I received a
16 "complete" copy of the file. However, the borough required
17 that the acknowledgement of receipt of the file be signed
18 and provided to it prior to releasing the file to my
19 courier. The courier (my son, Joseph A. Miller), signed
20 that he "Received file" and affirmed to me that he did not
21 take anything out of it before delivering it to me.
22
23

24 AFFIDAVIT OF JOSEPH MILLER
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1 6. After my resignation, the borough attorney wrote me
2 an email stating that it "is my understanding that your
3 eligibility for rehire will be affected." I wrote her back
4 stating that I "strongly disagree with that conclusion."
5 Ms. Broker-King then asked me for an explanation and then
6 indicated that she would "reconsider [her] decision re:
7 rehire." I provided my perspective but, Ms. Broker-King
8 never responded to it.

9 7. My official campaign website, as early as May 2010,
10 included a link to my resumé which included information
11 about my Fairbanks North Star Borough employment. The brief
12 biographical sketch originally on my website did not
13 initially include an express reference to my part-time
14 borough employment or to other work that I also was engaged
15 in during my time in Alaska, including my work as an adjunct
16 professor and as an intern for the Department of Law.

17 8. A true and correct copy of a Facebook message sent
18 to my account from an account with the name Branch Haymans
19 on or about June 27, 2010, is attached hereto as Exhibit 1.
20 Branch Hayman's profile reflected that he lived in Alaska.
21

22 12. True and correct copies of: Andrew Halcro's blog, dated
23

24 AFFIDAVIT OF JOSEPH MILLER
25 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
26 et. al.; Case No.: 4FA-10-2886 CI
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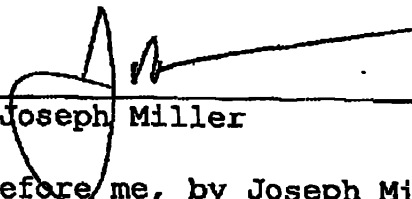
Page

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1 July 6, 2010, is attached hereto as Exhibit 2; Fairbank News
2 Miner article, dated July 15, 2010, is attached hereto as
3 Exhibit 3; and Andrew Halcro's Facebook posting, dated June
4 29, 2010, is attached hereto as Exhibit 4.

5 FURTHER AFFIANT SAYETH NAUGHT.

6 DATED at Fairbanks, Alaska, this 19th day of September,
7 2011.

8 
9 _____
10 Joseph Miller

11 SUBSCRIBED AND SWORN to before me, by Joseph Miller on the
12 19th day of September, 2011, at Fairbanks, Alaska.

13 
14 _____
15 Notary Public in Alaska
16 My Commission Expires: 02.26.14



24 AFFIDAVIT OF JOSEPH MILLER
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26 et. al.; Case No.: 4FA-10-2886 CI
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20110919 1110 AM (2011) 3017-17-1700

CERTIFICATE OF SERVICE

I certify that a copy of this document
was served upon the following individual(s):

- () via hand-delivery
- (X) via first class mail
- () via fax

John McKay, Esq.
117 E. Cook Ave.
Anchorage, Alaska 99501

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Fairbanks, Alaska 99701

Corey Borgeson, Esq.
Borgeson & Kramer, PC
100 Cushman Street, Suite 311
Fairbanks, AK 99701

Jill Dolan, Esq.
Rene Broker, Esq.
Assistant Borough Attorney
Fairbanks North Star Borough
809 Pioneer Road
Fairbanks, Alaska 99707

Date: 9-11 By: [Signature]

AFFIDAVIT OF JOSEPH MILLER
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et. al.; Case No.: 4FA-10-2886 CI
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Branch Haymans June 27 at 11:50am

There is rumor that Joe is not elligible for rehire at the borough. Is this true?



→ **Home Page**
main page of the web site

→ **Biography**
who is Andrew?

→ **Issues**
Andrew's Views

→ **Alaska Links**
links around Alaska

→ **Contact**
get in touch with Andrew

The Seven Year Itch

NEW! [Subscribe to RSS Feed](#)



Search

Search

I'm a fan...

July 6, 2010: It was early Saturday morning when I realized I was having a political argument over facebook with someone who had just called me a "liar." I desperately need to get a life.

But before I do, I'd like some key answers from the Joe Miller for U.S. Senate campaign.

EXHIBIT

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Page

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of

3

For those who haven't been following this soap opera, here's the deal; seven years of work history are missing from Miller's resume and I'd like to find out why?

I've got a seven year itch to know.

If you choose to run on your resume than you choose to be questioned on the same. Joe Miller has portrayed his resume as his foundation and a key reason why supporters should trust his leadership. So...it's time to stand and deliver.

For years, Joe Miller was an attorney with the Fairbanks North Star Borough. However, there are rumours that he was fired from his job for his performance. Miller's people have said he re-signed and produced a letter written to the Borough from Miller that had portions redacted.

The Borough has been silent, but public documents show that Miller would not be eligible for rehire.

This makes no political sense. The public loves a Law & Order candidate. If Joe Miller spent seven years protecting taxpayers and winning the good fights, why not advertised the hell out of it?

But no.

Miller left seven years out of his bio.

Maybe that's why at least one blogger has called Miller out on puffing up his credentials as a Magistrate. Over playing the Magistrate card might allow him to avoid talking about his work at the Borough.

"Joe Miller has never been a judge; he has been a magistrate. A state judge is appointed by the Governor from candidates proposed by the Alaska Judicial Council. Joe Miller has been a ~~candidate~~ for a judgeship: the superior court in 2005, the seat Judge Robert Downes now holds. He withdrew his name just before the bar poll results came out; that's usually an indication he was panned by his peers. A magistrate is appointed by the court to do ministerial tasks. A federal magistrate is much the same." *Wickersham's Conscience blog*

Miller's supporters were quick to come to his defense. One poster at Alaska Dispatch stated that "Joe Miller's seven year career at the Borough is second to none."

However, Miller's supporter just made it even more curious why Miller would say nothing about his supposed brilliant seven year career at the Borough.

So needless to say; there are questions about Joe Miller's resume and his work performance over the last seven years.

Many a candidate has suffered a mortal wound by puffing up their resume, it's a sign that the candidate will even mislead to get the job. These are legitimate questions that beg answers.

If Miller's resume screams integrity and honor, then you can bet we expect to hear the following:

Does a magistrate have the same power as a judge?

EXHIBIT 2

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What were the circumstances around your departure from the North Star Borough?

And since you want to eliminate the Department of Education, just how much taxpayer money went to fund your education?

|

I have that seven year itch to know.

Andrew Halcro's blog

NEW! Subscribe to RSS Feed

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EXHIBIT 2
Page 3 of 3



ads

[sign in](#)

HEY, YOU LIKE TO SAVE MONEY, RIGHT? We thought so. Sign up now and get Hot Deals sent directly to your inbox. Enter your email address and click to sign up. It's that easy.

GET MONEY SAVING HOT DEALS RIGHT IN YOUR INBOX

Joe Miller should release his personnel files to show why he left borough job

by demotools Democrat Cole

Jul 15, 2010 | 2728 views | 27 [up](#) | 16 [down](#) | [email](#) | [permalink](#)

I don't understand how the Joe Miller campaign can argue that "attorney-client privilege" has anything to do with Miller's personnel file as a borough employee.

This is not about legal strategy, but about job performance.

If Miller wants to clear up the questions regarding the circumstances under which he joined the ranks of borough alumni, he should release his files and drop this flimsy excuse.

This is entirely up to Miller. The borough can not stop him from releasing his own files. This information is normally private, but Miller is asking Alaskans to send him to the United States Senate and the information should be made public.

His resignation letter alone is not enough.

Miller was a borough employee, by the way. As to why he would not mention this on his website, his campaign says he did not want to name individual clients on his biography.

That doesn't ring true. I believe the real reason is that being a half-time government lawyer would not be seen as a plus by his anti-government supporters.

This started a couple of weeks ago when former state Rep. Andrew Halcro wrote on his blog, "U.S. Senate candidate Joe Miller was fired from his job as an attorney for the Fairbanks North Star Borough. Why?"

The Miller campaign responded that Miller was not fired. He quit.

Halcro wrote later that since Miller is running on his resume, he should not leave out a significant part of it, which is his time as a borough employee. Halcro also said that "public documents show that Miller would not be eligible for rehires."

Halcro followed that up this week by saying, "all I want to know is why Joe Miller still won't tell us why he failed to list a seven year gig with the Fairbanks North Star Borough on his resume. Was he double billing, not performing up to expectations or was it some leftist mayor as supporters have mentioned?"

In a posting by the Alaska Dispatch website July 1, the Miller campaign was quoted as saying, "Joe Miller and the Campaign will not allow the borough to hide behind the attorney-client privilege when he needs to describe the reasons why he voluntarily left" and "Joe Miller's seven-year record with the Fairbanks North Star Borough was second to none."

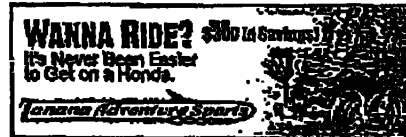
It's Miller who is hiding behind the words "attorney-client privilege."

He should release the files.

[Share This Blog entry](#) |

[post a comment](#)

comments (27)



EXHIBIT

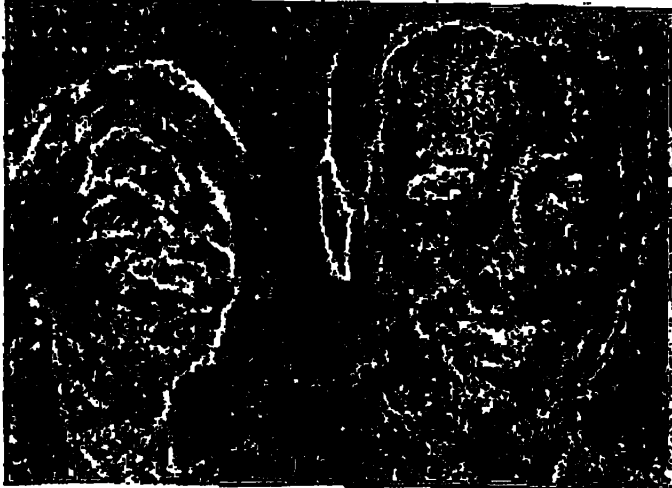
Page

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of

Andrew Halcro's Photos
Click to Album

We Know Palin Quit... But why was Miller Fired?



Say it ain't so Joe.

U.S. Senate candidate Joe Miller was fired from his job as an attorney for the Fairbanks North Star Borough. Why?



People You May Know

See All



Jacqueline McDrew
62 mutual friends
Add Friend



Robert Owens
258 mutual friends
Add Friend

Sponsored

Click to Ad

Travel the Way You Live



My Little Swans is the ultimate resource for luxurious world travel. Get free access to valued itineraries and top travel specialists.

YES on Propositions 1 & 3



Vote YES to support planned major maintenance of 5 public schools in the Fairbanks area.

Like: Stephen Kenneth Star this.

2011 Convention & Exposition



Expand your industry! Spend four days learning how to reach and engage a global audience through media. This February in Nashville.

Like: Tom Steigman likes this.

Earn points faster
americanexpress.com



Earn 3X points on airfare, 2X points on advertising, gas, shipping, 1X points on everything else. Apply now.

Tag Photo

Andrew Halcro
Share

3 people like this.



Juliet Hildreth Please share.
June 26, 2010 at 8:33pm



Diane Witt Give me a little heads up when you do Val --)
June 26, 2010 at 8:43pm



Diane Witt This is snarky and totally inappropriate so I have to type it; did he get caught photocopying on the job?
June 26, 2010 at 9:01pm 1 person



Ann Laurence uh oh! Fascinating..... get Mr. Davel
June 26, 2010 at 10:33pm



Juliet Hildreth Am I on the sat of "Glee"? Why was he fired? Like there is some satirical innuendo. Crap I have the list of reasons why every Alaska Governor's appointees who were fired, also, dismissed. Like one psycho who would log on to desktop computer... See More
June 28, 2010 at 10:35pm



Diane Witt Right, right, right, right... you were the guy who was overwhelmingly concerned about the legal problem we have in Alaska. You know, because all the MedCardians are stealing our jobs?
June 28, 2010 at 11:44pm

Album: Andrew Halcro's Photos

Shared with: Public

Posted: June 26, 2010

Tag This Photo

Download

Report This Photo

EXHIBIT

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Page

1 of 2



Mike Longman How was success and represented by district in a very professional and conservative manner, I wish he was still there.
June 28, 2010 at 11:31pm



Juliet Hildreth Am I in a time machine? So Democrat Scott McAdams should be elected? All the battles is coming out. This space is not about Republican or Democrat. It is about roles. There are so many issues I think I am standing in Barnes and Noble Magazine rack's section. What????? Again so Democrat Scott McAdams should be elected?
June 28, 2010 at 12:04am



Juliet Hildreth I will go with Add or EQX. What is the drug of choice for beating the Pain? Act 13? Prozac?
June 28, 2010 at 1:21am



Juliet Hildreth Pete and Re-Pete were sitting on a fence. Pete fell off and who was left. Pete and Re-Pete were sitting on a fence. Pete fell off and who was left. Anyone following me like a binger?
June 28, 2010 at 1:31am



Jim Lottfeldt Run with them on this one. We need to stop the character attacks and focus on facts. Maybe there is a story there, maybe not.
June 28, 2010 at 4:34pm



Victoria Jenkins Integrity is my favorite word and a most revered action. Why can't we see some here?!! Would SOMEONE with some integrity please STAND UP?
June 28, 2010 at 4:56pm



Andrew Walters Paul, Injust peeing started so you better hold out now.
June 29, 2010 at 7:46pm



Juliet Hildreth I am sitting on the sidelines eating popcorn. Double me!
June 29, 2010 at 9:29pm



Jim Lottfeldt You misunderstand me. No one is a bigger supporter of Lisa Mouton than me. Fagan has savaged me for being her supporter on his show. I just think we don't need to tear down people to build up others. I'm gladly supporting Lisa--with no equivocations. Joe Miller is a complete stranger to me, but I don't hold any animosity towards him for choosing to run against my friend.
June 30, 2010 at 12:12am

chat (offline)

EXHIBIT 4
Page 2 of 2



Fairbanks North Star Borough

Department of Law

809 Pioneer Road • PO Box 71267 • Fairbanks, AK 99707 - (907) 459-1318 FAX 459-1155

Clapp Peterson Van Flein Tiemessen & Thorness I

CPVT File # 2548-1 Date Rec'd 10-13

Date Served _____ Response Due _____

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October 11, 2010

VIA FACSIMILE (907) 272-9586

Thomas Van Flein
Clapp, Peterson, Van Flein, Tiemessen & Thorness, LLC
711 H. Street, Suite 620
Anchorage, AK 99501

Re: Joseph W. Miller

Dear Mr. Van Flien:

Your legal assistant informed me that you represent Mr. Miller regarding the public records requests that the FNSB has received. Please see the attached complaint. If you do not represent Mr. Miller in this matter, please let my office know immediately.

For your information, the FNSB intends to assert that Mr. Miller is an indispensable party to this litigation.

Sincerely,

FAIRBANKS NORTH STAR BOROUGH

Jill S. Dolan
Assistant Borough Attorney

cc: Luke Hopkins, Mayor

Attachment: *Alaska Dispatch, LLC v. FNSB, 4FA-10-2886CI*

EXHIBIT F
Page 1 of 1

COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

1
2 FAIRBANKS DAILY NEWS MINER)
3 And ALASKA DISPATCH, LLC,)
4 Plaintiffs,)
5 vs.)
6 FAIRBANKS NORTH STAR)
7 BOROUGH,)
8 Defendant.)
9 vs.)
10 JOSEPH MILLER,)
11 Intervenor,)
12 vs.)
13 JIM WHITAKER,)
14 Third-Party Defendant))

FILED in the Trial Courts
State of Alaska, Fourth District

APR 18 2017

By _____ Deputy

CASE NO. 4FA-10-2886 CI
(consolidated w/4FA-10-2890 CI)

INTERVENOR JOSEPH MILLER'S OPPOSITION TO THIRD-PARTY
DEFENDANT JIM WHITAKER'S MOTION TO
DISMISS INTERVENOR MILLER'S THIRD-PARTY COMPLAINT

Intervenor, Joseph Miller, hereby opposes Mr. Whitaker's
Motion to Dismiss. Because Mr. Whitaker is a real party in
interest and was properly joined in this matter and because Mr.
Miller was not required to exhaust administrative remedies
before bringing this claim, Mr. Whitaker's motion to dismiss
should be denied.

Intervenor Joseph Miller's Opposition to Third-Party Defendant Jim
Whitaker's Motion to Dismiss Intervenor Miller's Third-Party
Complaint
Fairbanks Daily News-Miner, et al., v. Fairbanks North Star Borough,
et al., 4FA-10-2886 CI
Page 1 of 32

411 Fourth Avenue, Suite 300
Fairbanks, AK 99701-4711
(907) 479-7776 fax (907) 907-479-7966

Client/Clerk
1/9/12

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I. FACTS

The court has become very familiar with this litigation, and therefore the facts will be presented in this opposition only as specifically needed to support this opposition to the original motion.

Intervenor, Joseph Miller, is an attorney in private practice and former part-time Fairbanks North Star Borough employee. Mr. Miller ran for the office of U.S. Senator in 2010. During that campaign a number of events took place which are now at issue in this case, including the illegal disclosure of information from Mr. Miller's confidential the Fairbanks North Star Borough ("FNSB") file to the news media without Court order or other authorization.

Mr. Whitaker served as mayor of the Fairbanks North Star Borough from 2003 until 2009. In October of 2010 (after leaving office), Mr. Whitaker gave a number of interviews to various media outlets regarding Mr. Miller. On October 13, 2010, Mr. Whitaker was quoted in the Fairbanks Daily News Miner as stating that, "Miller's actions [while an employee of the borough] violated the Fairbanks North Star Borough's ethics policy but did not result in a termination because the borough

Intervenor Joseph Miller's Opposition to Third-Party Defendant Jim Whitaker's Motion to Dismiss Intervenor Miller's Third-Party Complaint
Fairbanks Daily News-Miner, et al., v. Fairbanks North Star Borough, et al., 4FA-10-2886 CI
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LAW OFFICES OF STEPHEN B. LEE
411 Fourth Avenue, Suite 300
Fairbanks, AK 99701-4711
(907) 479-7776 fax (907) 907-479-7966

1 needed Miller to continue working on its lawsuit about how much
2 to tax the trans-Alaska pipeline system," and that "I'm
3 speaking now because this occurred on my watch as mayor,
4 because I know the truth, and because I have an obligation to
5 tell the truth."¹ On October 14, 2010, Mr. Whitaker was quoted
6 in the Alaska Dispatch as stating that, "While Miller resigned
7 from the borough in 2009 . . . had Miller not left on his own
8 he would have been fired."² Both statements made by Mr. Whitaker
9 demonstrate that he was personally and intimately familiar with
10 Mr. Miller's confidential Borough personnel file and
11 confidential personnel actions taken by the Borough. In
12 addition both statements also show a compelling desire on the
13 part of Mr. Whitaker to share that information with the public.
14 In fact Mr. Whitaker was so motivated to disclose the content
15 of Mr. Miller's confidential file to the public that he
16 violated Chapter 2.25.140(B) of the Borough Code of Ethics
17 while doing so.³ Furthermore, there is still some question this

18
19
20 ¹ See Exhibit A, copy of Fairbanks Daily News Miner article dated October 13, 2010.

21 ² See Exhibit B, copy of Alaska Dispatch article dated October 14, 2010.

22 ³ FNSB Code. 2.25.140(B): A current or former mayor or employee may not
23 disclose or use, without appropriate authorization, information acquired in
the course of official duties that is confidential by law. The contents of
Mr. Miller's personnel file, at that time, were still protected by

1 case as to whether Mr. Whitaker also was the source of other
2 confidential information given to the news media or blogger
3 Andrew Halcro on earlier occasions.

4 Mr. Whitaker's actions were one part of a series of inter-
5 related events, all of which constitute a violation of Mr.
6 Miller's constitutionally guaranteed right to privacy which was
7 also affirmatively protected by Borough Code.⁴ At the
8 invitation of the Borough, Mr. Miller intervened in this action
9 to protect his privacy rights against intrusion by the
10 Fairbanks Daily News-Miner and others; he also seeks to
11 establish when, how, and by whom those privacy rights were
12 violated. This includes violations by Mr. Whitaker. Because
13 the events leading to the Daily News-Miner's lawsuit are
14 factually and causally interrelated with Mr. Miller's claims
15 related to the violation of his privacy interests, and because
16 judicial economy will be best served by addressing all of these
17 interrelated legal issues in one case, Mr. Whitaker's request
18 for dismissal of Mr. Miller's Third Party Complaint against him
19 should be denied.
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II. LAW

a. **Intervenor Miller's Right to Privacy**

Both the Alaska Constitution and the Fairbanks North Star Borough Code protect Mr. Miller's right to privacy. Article I, Section 22 of the Alaska State Constitution provides that:

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. [Approved August 22, 1972]

Similarly, Fairbanks North Star Code Sec. 2.60.010(E) states that, "[t]he people's right to privacy as provided by the constitution is recognized and shall not be infringed."

Consisted with the Borough's recognition of privacy rights, Fairbanks North Star Borough Code section 2.24.081(A)(2) provides that, "personnel records are confidential and are not open to public inspection except as provided in this section." (emphasis added).

Until the Superior Court ordered the release of some of Mr. Miller's employment records, his right to privacy in those records was still guaranteed by law. Even after the Court's ordered partial disclosure, Mr. Miller retained his right to

¹ See FNSB Code Sec. 2.60.010(E), 2.24.081(A)(2), and 2.25.140.

1 privacy in the undisclosed portions of those records. The leak
2 of information to the public from Mr. Miller's confidential
3 personnel file was a clear and intentional violation of the
4 Borough code.

5 Furthermore, the Borough Code specifically prohibits the use
6 or disclosure of information acquired by a current or former
7 mayor or employee that is confidential by law. FNSB Code.

8 2.25.140(B). The law therefore prohibited Whitaker, under the
9 Borough's code of ethics, from disclosing confidential
10 information regarding Mr. Miller's employment with the Borough.

11 Notably, Mr. Whitaker's prohibited disclosures took place
12 before the Court's ruling releasing certain portions of Mr.
13 Miller's employment file. Furthermore, Mr. Whitaker's
14 statements exceeded the scope of this Court's limited release
15 including his unsupported assertion that "had Miller not left
16 on his own he would have been fired."⁵

17
18 **b. Disclosure of Confidential Information by a Former Borough**
19 **Mayor is Prohibited by Law**

20 Fairbanks North Star Borough Code section

21 2.25.140(A) and (B) states that:

22
23 ⁵ See Exhibit B.

1 A. A current or former borough mayor or employee
2 may not disclose or use information gained in
3 the course of, or by reason of, his official
4 duties that could in any way result in the
5 receipt of any benefit for the mayor or employee
6 or an immediate family member, if the
7 information has not also been disseminated to
8 the public.

9 B. A current or former mayor or employee may not
10 disclose or use, without appropriate
11 authorization, information acquired in the
12 course of official duties that is confidential
13 by law

14 (emphasis added).

15 Mr. Whitaker brazenly violated these statutory
16 restrictions, acted unethically in so doing, and committed a
17 crime under Borough law.⁶

18 c. Alaska Civil Rule 12(b)(6)

19 A Rule 12(b)(6) dismissal "is only appropriate where the
20 complaint, given the benefit of all reasonable inference,
21 'presents no set of facts justifying recovery.'" *Valdez*
22 *Fisheries Development Ass'n, Inc. v. Alyeska Pipeline Services*
23 *Co.*, 45 P.3d 657, 665 (Alaska 2002) (citations omitted). In
24 considering a Civil Rule 12(b)(6) motion to dismiss, the

25 ⁶ "A person who violates a provision of this code is guilty of a misdemeanor
26 or a violation and shall be punished by a fine not to exceed \$1000 or
imprisonment for not more than 90 days or both." See FNSB Code Sec.
1.04.010(A)&(B).

1 appropriate standard has been stated by the federal courts in
2 applying Federal Rule of Civil Procedure 12(b)(6), a rule
3 identical to Alaska Civil Rule 12(b)(6). *Shooshanian v. Wagner*,
4 672 P.2d 455, 461 (Alaska 1983). "A complaint should not be
5 dismissed 'unless it appears beyond doubt that the plaintiff
6 can prove no set of facts in support of his claim which would
7 entitle him to relief.'" *Id.* quoting *Conley v. Gibson*, 355 U.S.
8 41, 45-6, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80, 84 (1957).
9 Granting a Rule 12(b)(6) motion is improper if the complaint
10 states a claim upon which some relief may be granted, even if
11 the relief demanded may not be the precise kind to which the
12 party is in fact entitled to obtain. *Miller v. Johnson*, 370
13 P.2d 171, 172 (Alaska 1962).

14
15 When evaluating a Rule 12(b)(6) motion, the court must
16 assume that the factual allegations pled in the complaint are
17 true and ascertain whether or not they state a claim upon which
18 relief may be granted. *Shooshanian*, 672 P.2d 455 at 461. "If,
19 within the framework of the complaint, evidence may be
20 introduced which will sustain a grant of relief to the
21 plaintiff, the complaint is sufficient." *Kollodge v. State*,
22 757 P.2d 1024, 1026 (Alaska, 1988). The court "must presume all

1 factual allegations of the complaint to be true and [make] all
2 reasonable inferences ... in favor of the non-moving party."

3 *Id.* Finally, Alaska Rule of Civil Procedure 8(f) states that
4 "[a]ll pleadings shall be so construed as to do substantial
5 justice."

6 d. Proper Parties to an Action

7 Alaska Civil Rule 13(h) provides that Alaska Rule of Civil
8 provides that "persons other than those made parties to
9 the original action may be made parties to a counterclaim or
10 cross-claim in accordance with the provisions of Rules 19 and
11 20."

12 Alaska Civil Rule 19(a) (joinder of persons needed for
13 adjudication) states that:

14 A person who is subject to service of process
15 and whose joinder will not deprive the court
16 of jurisdiction over the subject matter of
17 the action shall be joined as a party in the
18 action if (1) in the person's absence
19 complete relief cannot be accorded among
20 those already parties, or (2) the person
21 claims an interest relating to the subject of
22 the action and is so situated that the
23 disposition of the action in the person's
24 absence may (i) as a practical matter impair
25 or impede the person's ability to protect
26 that interest or (ii) leave any of the
persons already parties subject to a
substantial risk of incurring double,

1 multiple, or otherwise inconsistent
2 obligations by reason of the claimed
3 interest. If the person has not been joined,
4 the court shall order that the person be made
5 a party. If the person should join as a
6 plaintiff but refuses to do so, the person
7 may be made a defendant, or, in a proper
8 case, an involuntary plaintiff. If the joined
9 party objects to venue and joinder of that
10 party would render the venue of the action
11 improper, that party shall be dismissed from
12 the action.

13 Alaska Civil Rule 20 (permissive joinder) states that:

14 All persons may be joined in one action as
15 defendants if there is asserted against them
16 jointly, severally, or in the alternative,
17 any right to relief in respect of or arising
18 out of the same transaction, occurrence, or
19 series of transactions or occurrences and if
20 any question of law or fact common to all of
21 them will arise in the action.

22 Whether Mr. Whitaker is subject to mandatory joinder under
23 Civil Rule 19 or permissive joinder under Civil Rule 20, his
24 joinder in this action is appropriate under Civil Rule 13(h)
25 because Mr. Whitaker can properly be made a party to Mr.
26 Miller's claim against the Borough and because Mr. Miller's
claims against Mr. Whitaker arise out of the same series of
transactions and occurrences that led to the initiation of this
suit.

1 Furthermore, even if Mr. Whitaker does not technically fit
2 within any of the party designations under Civil Rules 13, 14,
3 19 or 20, Alaska Rule of Civil Procedure 21 states in pertinent
4 part states that:

5 Misjoinder of parties is not ground for dismissal
6 of an action. Parties may be dropped or added by
7 order of the court on motion of any party or of
8 its own initiative at any stage of the action and
9 on such terms as are just. Any claim against a
10 party may be severed and proceeded with
11 separately. (emphasis added)

12 If Mr. Whitaker's claims were severed from this action,
13 Mr. Miller would move this Court pursuant to Alaska Civil 42(a)
14 for consolidation of cases which involve common questions of
15 law or fact. Civil Rule 42(a) states that:

16 When actions involving a common question of law or
17 fact are pending before the court, it may order a
18 joint hearing or trial of any or all the matters
19 in issue in the actions; it may order all the
20 actions consolidated; and it may make such orders
21 concerning proceedings therein as may tend to
22 avoid unnecessary costs or delay.

23 Finally, Alaska Rule of Civil Procedure 94 states that:

24 These rules are designed to facilitate business
25 and advance justice. They may be relaxed or
26 dispensed with by the court in any case where it
shall be manifest to the court that a strict
adherence to them will work injustice.

1 Therefore, even if Mr. Miller was not properly joined to this
2 suit under Civil Rule 13 or 14, severing the claims against Mr.
3 Whitaker and forcing the parties to proceed separately in
4 another lawsuit would be contrary to the goals articulated in
5 Civil Rule 42(a) and Civil Rule 94.

6
7 **III. DISCUSSION**

8 When examined at the most fundamental level, this case is
9 about the employment record privacy rights granted to each
10 citizen of this state under the Alaska Constitution, the
11 circumstances by which any part of that right can be lost or
12 waived, and when that loss occurs through illegal means, what
13 remedies are available for a violation of those rights. The
14 Fairbanks Daily News Miner sought a court ruling regarding the
15 scope of Mr. Miller's privacy interests in his personnel file,
16 Mr. Miller intervened in this action in order to both protect
17 his privacy interests and pursue the concomitant issues related
18 to the previous wrongful violation of his privacy rights which
19 led to the Fairbanks Daily News Miner's inquiries and
20 eventually to this action. Therefore, while the Fairbanks
21 Daily News Miner's original lawsuit may have been limited in
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1 scope, the matters at issue have since broadened such that they
2 now clearly involve questions about Mr. Miller's right to
3 privacy in the broadest sense, and the circumstances under
4 which such rights were illegally violated. The means by which
5 Mr. Miller's privacy rights were first illegally violated, and
6 then later legally modified by this Court, are all part of the
7 same cauee of action, because both find their genesis in the
8 same underlying, inter-related events.

9 Mr. Miller ran for public office, beginning a very public
10 discussion of his qualifications to serve in that office;
11 various parties decided that his employment record at the
12 borough should be part of that public discussion; some of those
13 parties facilitated making it part of the discussion by illegal
14 disclosure, while others chose the court as the appropriate
15 forum to facilitate their desired outcomes. Regardless of who
16 did what and on which occasion in this case, there is a clear
17 nexus that ties all these events together.

18
19 When the court examines the factual underpinnings of the
20 claims against Mr. Whitaker, the connection between the
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1 Borough, Mr. Whitaker, and violation of Mr. Miller's privacy
2 rights is readily apparent:⁷

3 1. On or about June 27, 2010, an individual posted a
4 Facebook comment reporting that Mr. Miller was ineligible for
5 rehire at the Borough—an obvious reference to Mr. Miller's
6 *confidential personnel file.*⁸

7 2. On June 28, 2010 blogger Andrew Halcro posted a photo
8 of Mr. Miller on his web page with the caption "We Know Palin
9 Quit, But why was Miller Fired?" A comment on and second
10 reference to Mr. Miller's *confidential personnel file;*⁹

11 3. In July of 2010, before the Republican primary ended,
12 the Fairbanks Daily News-Miner ("the News-Miner") and other
13 media outlets began requesting that Mr. Miller's former
14

17 ⁷ Intervenor Miller offers these facts from outside of the pleadings with the
18 understanding that consideration of these facts will convert Mr. Whitaker's
19 Civil Rule 12(b)(6) Motion to Dismiss into a Civil Rule 56 Motion for
20 Summary Judgment. If this Court finds that Mr. Miller's complaint is
21 sufficient to withstand dismissal under Civil Rule 12(b)(6) then
22 consideration of these facts is unnecessary. However, if the Court feels
23 that consideration of these outside facts is necessary for a proper
24 determination of this matter, these facts are offered for the Court's
25 consideration. See *Homeward Bound, Inc. v. Anchorage School Dist.* 791 P.2d
26 610, 611 (Alaska 1990) ("If the court considers matters outside the
pleadings, it must treat the motion to dismiss as a motion for summary
judgment pursuant to Civil Rule 56.")

⁸ See Exhibit C, copy of Facebook posting made by Branch Haymans.

⁹ See Exhibit D, copy of blog posting made by Andrew Halcro.

1 employer, the Fairbanks North Star Borough ("the Borough"),
2 release Mr. Miller's confidential personnel records.¹⁰

3 4. As early as July 16, 2010, Mr. Whitaker was speaking
4 publicly about Mr. Miller's employment at the Borough and Mr.
5 Miller's online official biography stating that "when an
6 individual runs for a public office, there needs to be full
7 disclosure," . . . "You can't just put the things you choose
8 to; you must put all things on it."¹¹

9 5. Sometime prior to his statements made on October of
10 2010, Mr. Whitaker met with the Borough Attorney for the
11 Fairbanks North Star Borough, Rene Broker-King, wherein Mr.
12 Whitaker apparently asked Ms. Broker-King about what
13 information about Mr. Miller was considered confidential.¹²

14 6. On September 20, 2010, an "anonymous" letter was
15 dropped off at the office of the Fairbanks Daily News-Miner
16 newspaper. The letter was in the form of a very specific public
17 records request related to Mr. Miller's Borough employment
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22 ¹⁰ See Alaska Dispatch's Complaint for access to public records concerning
23 U.S. Senate Candidate Joe Miller at ¶ 7-8 (already on file with this Court).
¹¹ See Exhibit E, (Alaska Dispatch Report dated July 16, 2010).
¹² See Exhibit F, (Deposition of Jill Dolan) at 119:20-121:15.

1 records, seeking information from Mr. Miller's *confidential*
2 *personnel file*.¹³

3 7. On October 11, 2010, after Mr. Miller became the
4 Republican nominee for the U.S. Senate, and also after the
5 Borough officially refused to disclose any more of the
6 documents in Mr. Miller's employment records (citing the law
7 and his right to privacy), the News-Miner and other media
8 outlets filed a lawsuit against the Borough seeking the release
9 of items in Mr. Miller's *confidential personnel file*.¹⁴

10 8. On October 13th and 14th of 2010, Mr. Whitaker gave
11 interviews to the two media outlets most involved with seeking
12 the release of items in Mr. Miller's employment records, during
13 which he extensively discussed the contents of Mr. Miller's
14 confidential personnel file.¹⁵

15 9. The Borough attorney confirmed Mr. Whitaker did not
16 have authorization from the Borough to discuss the content of
17 Mr. Miller's file.
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21 ¹³ See Exhibit G, copy of the anonymous letter dropped off at the Newsminer
22 office.

23 ¹⁴ Eventually the Court determined that some of these records should be
24 released, which occurred late in October of 2010.

25 ¹⁵ See Exhibits A and B.

1 10. The Borough's Answer noted that Mr. Miller was the
2 real party in interest.

3 It was at this point that Mr. Miller intervened in the
4 ongoing litigation to protect his right to privacy as
5 delineated in the Alaska state constitution. Because Mr.
6 Miller was litigating the media plaintiffs' requests to release
7 his confidential personnel records was a violation of his
8 privacy right found under Article I, Section 22 of the Alaska
9 State Constitution, all matters related to the basis for the
10 Daily News Miner's request, including the fact that it was
11 initially predicated on the illegal leak of confidential
12 personnel information, were placed in dispute. In an attempt
13 to conserve both judicial and financial resources and in order
14 to address related violations of his right to privacy which
15 eventually lead to the Daily News Miner's request and which
16 originated from the same causal event (the leak of confidential
17 personnel information) Mr. Miller plead claims against Mr.
18 Whitaker for his illegal disclosure of confidential personnel
19 information.
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23

1 **a. Intervenor Miller States a Claim Upon Which Relief Can Be**
2 **Granted Under Rule 12(b)(6)**

3 Mr. Whitaker begins his Rule 12(b)(6) motion by arguing
4 that Miller has failed to state a claim on which he can be
5 granted relief. The crux of this argument relates to Mr.
6 Miller's status as an Intervenor in the original litigation and
7 filing of the subsequent cross claim against Mr. Whitaker. Mr.
8 Whitaker inaccurately argues that his actions are separate from
9 the issues presented by the original parties to the litigation,
10 and therefore Mr. Miller can argue no set of facts upon which
11 relief can be granted. See Motion to Dismiss at 3.

12 The present complaint against Mr. Whitaker states
13 sufficient grounds that would entitle Mr. Miller to relief
14 against Mr. Whitaker, and therefore dismissal under Civil Rule
15 12(b)(6) is inappropriate. If taken as true, Mr. Miller's
16 complaint against Mr. Whitaker states a cause of action
17 sufficient to warrant recovery of damages for violation of Mr.
18 Miller's privacy rights. Furthermore, every issue presented in
19 this litigation, and every party to it, is factually and
20 legally interrelated. The factual basis for Mr. Miller's
21 cross-claim against the Borough and Mr. Miller's third-party
22

1 claim are predicated on the same course of illegal conduct and
2 the relationship of the same inter-related events: Mr. Miller's
3 candidacy for office, the interest in his confidential
4 personnel records, and how his right to privacy was violated,
5 leading to the Fairbanks Daily News Miner's request for
6 specific information from the Fairbanks North Star Borough.
7 Various actions were taken at various times, by various people,
8 but at the heart of them all was the one goal pursued by
9 various parties (the release of Mr. Miller's confidential
10 personnel records) and how those actions implicated Mr.
11 Miller's right to privacy. Still at issue in this litigation is
12 the extent to which all of these parties may have acted in
13 concert to violate Mr. Miller's privacy rights.

14
15 Because the media interest in Mr. Miller's personnel file
16 did not lead to litigation until after the illegal act of
17 leaking some of the contents of these records occurred, and
18 because there is still a very real possibility that the same
19 actors played some role in all of the events and different
20 points in time, these events are quite obviously inter-related.

21 At the very least Mr. Miller is entitled to assert they are
22 related in his cross claim and then seek the evidence to
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1 present at trial which substantiates this reasonably pled
2 claim. See *Shooshanian*, 672 P.2d 455 at 461. Under *Shooshanian*
3 the role of the court in the 12(b)(6) evaluation is to assume
4 that the facts pled by the plaintiff (here Third party
5 Plaintiff Miller) are true, and based on that assumption
6 determine if by the cause of action as pled he may be entitled
7 to relief.

8 Media inquiries for Miller's borough records were at best
9 insubstantial prior to the illegal leaking of his records by a
10 still unknown source. The court need only look at the time line
11 set out above to conclude that this assertion is easily well
12 pled, and if taken as true, could lead to a discovery process
13 related to this issue through which Mr. Miller may prove that
14 the illegal leaking of information from his file led directly
15 to the media inquiries as to the contents of his confidential
16 personnel records, leading to his defense of his right to
17 privacy under the Alaska Constitution. In addition he may also
18 prove that many of the persons involved in this process at
19 different times in fact acted together to obtain the same
20 outcome: the release of Mr. Miller's confidential personnel
21 file. A complaint should not be dismissed "unless it appears
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1 beyond doubt that the plaintiff can prove no set of facts in
2 support of his claim which would entitle him to relief."

3 *Shooshanian*, 672 P.2d 455.

4 In order to distract from his involvement in the violation
5 of Mr. Miller's privacy rights and to further support his
6 12(b)(6) argument Mr. Whitaker references Rule 14(a), which
7 allows a Third Party Plaintiff (Miller through his Intervention
8 and cross claim) to issue a summons/complaint to be served on
9 another party (Whitaker as Third Party Defendant), only if that
10 party may be liable to the Third Party Plaintiff (Miller) for
11 all or part of the original Plaintiff's (Media) claim. See
12 Motion to Dismiss at 5. In support of this position, Mr.
13 Whitaker cites *Jackson v. Nangle*, 677 P.2d 242 (Alaska 1984)
14 for the proposition that third-party practice against Mr.
15 Whitaker is improper under Civil Rule 14. See Motion to
16 Dismiss at 5.

17
18 However, the Court in *Jackson* simply held that failure to
19 allow this third-party practice against the Credit Union was
20 harmless error but that the Credit Union could properly have
21 been joined under Civil Rule 13(h) and that joinder would have
22 been permissive under Civil Rule 20. *Jackson*, 677 p.2d at 251-

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1 252. Civil Rule 13(h) provides that "persons other than those
2 made parties to the original action may be made parties to a
3 counterclaim or cross-claim in accordance with the provisions
4 of Rules 19 and 20." Because Mr. Whitaker would be properly
5 subject to permissive joinder under Civil Rule 20, his addition
6 to this lawsuit is also proper under Civil Rule 13(h).

7 Civil Rule 20 states that:

8 All persons may be joined in one action as
9 defendants if there is asserted against them
10 jointly, severally, or in the alternative,
11 any right to relief in respect of or arising
12 out of the same transaction, occurrence, or
13 series of transactions or occurrences and if
14 any question of law or fact common to all of
15 them will arise in the action.

16 According to the Alaska Supreme Court in *Jackson*, a decision
17 out of the West District of Pennsylvania, *Horton Co. v.*
18 *International Telephone & Telegraph Corp.*, 85 F.R.D. 369 (W.D.
19 Pa. 1980) is instructive. The *Horton* court noted that joinder
20 of a party under Rule 20 is discretionary, and that its
21 discretion was limited in only two respects: "[F]irst, a right
22 to relief must be asserted which arose from the same
23 transaction or occurrence and, second, a question of law or
24 fact common to all the parties must arise in the action." See

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1 Jackson v. Nangle, 677 P.2d 242, 252 (Alaska 1984). Even if,
2 as Mr. Whitaker claims, the third-party complaint against Mr.
3 Whitaker is improper under Civil Rule 14, Mr. Whitaker is still
4 a proper party to this action under Civil Rule 13(h) because
5 the right to relief plead by Mr. Miller arises from the same
6 violation of Mr. Miller's privacy rights based on conduct
7 common to all of the parties in this action, and the nature and
8 extent of those privacy rights (and whether they were illegally
9 violated) is a question of law and fact common to all parties
10 in this suit.

11 Whether Mr. Whitaker acted in concert with the Fairbanks
12 North Star Borough in undermining Mr. Miller's right to privacy
13 and violating the Fairbanks North Star Borough Code is also a
14 question of law and fact common to both Mr. Whitaker and the
15 Borough. The known meeting between Mr. Whitaker and the
16 Borough attorney confirms there was at least some concerted
17 effort. The violation of Mr. Miller's privacy rights and the
18 parties involved therewith all arise "out of the same
19 transaction, occurrence, or series of transactions or
20 occurrences" required under Civil Rule 20(a).

1 Mr. Whitaker argues that Mr. Miller's claim against Mr.
2 Whitaker is not sustainable as either a compulsory or
3 permissive joinder of a party under Civil Rule 13(h) (through
4 its inter-relation to Rules 19 and 20). This argument also
5 relies on the premise that the events which form the foundation
6 of this litigation are entirely separate matters and that Mr.
7 Whitaker's violation of Mr. Miller's privacy rights related to
8 this FNSB personnel file are in no way interconnected with the
9 Borough's violation of Mr. Miller's privacy rights and the
10 resulting request from the Fairbanks Daily News Miner for
11 release of these records because of this underlying violation
12 of Mr. Miller's privacy rights.

13
14 Even if this argument was well made, it should still give
15 way to considerations of judicial efficiency and the goal of
16 avoiding un-needed costs and delays and to advance justice. See
17 Ak. R. Civ. P. 94. At best, the claims against Mr. Whitaker
18 could be severed under Civil Rule 21, which places Mr. Whitaker
19 into a separate but parallel lawsuit, and would simply lead Mr.
20 Miller to move this court to join these obviously interrelated
21 actions together for one trial under Civil Rule 42. "Nothing
22 in Rule 42 suggests that the legal theories of consolidated

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1 cases must be identical in order for a judge to consolidate
2 them." *Baseden v. State*, 174 P.3d 233, 242 (Alaska 2008).
3 "Alaska case law places the decision to consolidate cases
4 firmly within the discretion of the superior court judge." *Id.*

5 Civil Procedure 42 allows a court to conduct a joint
6 hearing or trial of any or all the matters in issue, and order
7 all actions consolidated; and it may make such orders
8 concerning proceedings therein as may tend to avoid unnecessary
9 costs or delay. Even if Mr. Whitaker could convince a court
10 that he is an improper party under Civil Rules 13 and 14, the
11 appropriate response would be to order the pleading to be
12 amended into the proper form while keeping the inter-related
13 issues and parties joined in the same proceeding to avoid an
14 unreasonable waste of judicial resources in the form of
15 unnecessary added costs and delays. There can be no question
16 that all parties and all issues are inter-related, and find
17 their genesis through the same underlying set of facts.

18 Separating these actions would only lead to multiple
19 depositions and to each witness being brought back to court for
20 multiple trials to testify to the same exact events. Even if
21 Mr. Whitaker's arguments were sustainable under the standards
22

1 set out in *Shooshanian*, Civil Rules 42 and 94 would allow the
2 court order an amendment to the pleadings and rejoining of all
3 the parties and issues into a single litigation in order to
4 conserve judicial resources and deal with these obviously
5 inter-related matters through a single litigation process.

6 Alaska Rule of Civil Procedure 94 states that the civil
7 rules are designed to advance justice. To that end they may be
8 relaxed or dispensed with by the court in any case where it
9 shall be manifest to the court that a strict adherence to them
10 will work an injustice. As such, any and all parties who played
11 a part in either challenging Mr. Miller's right to privacy or
12 violating it illegally in their quest to make his borough
13 personnel records a part of the public discussion during his
14 candidacy should be a party to this litigation. To do otherwise
15 would thwart the basic intent of Rules 42 and 94: to avoid un-
16 needed costs and delays and to advance justice the court may
17 (and should) interpret the rules to allow for a single trial of
18 all of the matters at issue in this case.
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1 **b. Intervenor Miller Did Not Fail To Exhaust Administrative**
2 **Remedies**

3 In the final argument of his motion, Mr. Whitaker argues
4 that he is also not a proper party to this litigation because
5 The Borough Code, Chapter 2.25 (Code of Ethics for Mayor and
6 Borough Employees) would have first required that Mr. Miller
7 exhaust any administrative remedies available through the code
8 before filing the cross-claim. See Motion to Dismiss at 14-15.
9 This argument is without merit.

10 The doctrine of exhaustion of administrative remedies
11 states that a claimant must generally exhaust administrative
12 remedies before making a claim in court challenging an agency's
13 decision-making procedures. See *Doubleday v. State, Commercial*
14 *Fisheries Entry, Com'n*, 238 P.3d 100, 107 (Alaska 2010). In
15 the present case, no administrative agency is responsible for
16 adjudicating the question related Mr. Miller's privacy rights
17 under the Borough Code.

18 Mr. Miller's claim against Mr. Whitaker, who is no longer
19 Borough Mayor, is not "a procedural challenge to agency
20 decisionmaking" and therefore does not require the exhaustion
21 of administrative remedies. See *Doubleday*, 238 P.3d at 107. In

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1 the present action, the Court is not being called upon to
2 decide a procedural challenge to any agency decision making.
3 Mr. Whitaker was no longer the Borough Mayor when he violated
4 Mr. Miller's right to privacy by disclosing confidential
5 personnel information related to Mr. Miller's employment with
6 the Borough. Therefore exhaustion of administrative remedies
7 is not a defense in this action, because Mr. Miller is making a
8 claim in tort against an individual who violated both Mr.
9 Miller's constitutional rights as well as borough code, not
10 against an agency based on that agency's decision making
11 process.

12 The Fairbanks North Star Borough Code, section 2.25.194,
13 provides that any person may file a complaint under this
14 chapter concerning the mayor by filing a written, signed
15 complaint with the borough clerk. This language is clearly
16 permissive, rather than mandatory. See generally *Garrison v.*
17 *Dixon*, 19 B.3d 1229, 1236 (Alaska 2001) ("The term 'may'
18 generally denotes permissive or discretionary authority."); see
19 also *Gerber v. Juneau Bartlett Memorial Hospital*, 2 P.3d 74, 76
20 (Alaska 2000) ("the term 'may' generally denotes permissive or
21 discretionary authority and not a mandatory duty.")
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1 Furthermore, even if Mr. Miller filed an ethics complaint
2 against Mr. Whitaker, the Borough does not have authority to
3 award Mr. Miller damages to remedy the tortious harm caused by
4 the former Mayor's violation of Mr. Miller's privacy interests.
5 Rather, the hearing officer may subject the mayor to a public
6 censure or a civil fine of \$500.00 (FNSB Ord. 2.25.196(j)) and
7 may determine if the Borough wishes to pursue legal or
8 equitable remedies or criminal actions. FNSB Ord. 2.25.197(C)
9 & (D). There is no basis under the Borough Ordinances to
10 compensate the complainant for the wrongs committed by a former
11 mayor.

12 In addition, there is some question as to whether an
13 ethics complaint may even be brought against former Mayor
14 Whitaker.¹⁶ FNSB Code 2.25.140(B) states that a current or
15 former mayor or employee may not disclose or use, without
16 appropriate authorization, information acquired in the course
17 of official duties that is confidential by law.¹⁷ FNSB Code

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20 ¹⁶ Though Mr. Miller does not concede that an ethics complaint may not be
21 brought against Mr. Whitaker, he understands that there is an obvious
22 inconsistency in the Borough Code leading to at least the question of
23 whether Code Section 2.25.194 applies to former mayors. Mr. Miller reserves
24 his right to argue that this Code section does apply to Mr. Whitaker, but
25 acknowledges that this inconsistency makes this conclusion less than
26 absolute.

¹⁷ Ord. 2002-08 § 2, 2002.

1 section 2.25.194 states that any person may file a complaint
2 under this chapter concerning the mayor by filing a written,
3 signed complaint with the borough clerk.

4 The Alaska Supreme Court has repeatedly indicated that
5 they will follow the plain text of the statute as a starting
6 point for interpreting its meaning.¹⁸ A plain reading of these
7 two provisions demonstrates that there is some question as to
8 whether the Borough will entertain an ethics complaint against
9 a former mayor under the terms of FNSB Code 2.25.194. Because
10 of this inconsistency in the code between Section 2.25.140
11 (speaking of both "mayor" and "former mayor") and Section
12 2.25.194 (speaking only of "mayor"), it cannot be said that
13 there is "undisputedly" an administrative remedy that Mr.
14 Miller has failed to exhaust. See Motion to Dismiss at 15.
15 Therefore, Mr. Miller's remedy is to assert a claim against him
16 in a court of law, and that claim against Mr. Whitaker as a
17 former mayor is appropriately asserted in this litigation.

18 ¹⁸ See generally: *Benavides v. State*, 151 P.3d 332 (Alaska 2006); *West v. State, Bd. of Game*, 248 P.3d 689 (Alaska 2010); *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533 (Alaska 2006) for three examples.

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IV. CONCLUSION

Mr. Whitaker's actions in this matter are part of a series of inter-related events, all of which are connected to Intervenor Miller's constitutionally protected right to privacy. Mr. Whitaker is a real party in interest in this dispute and properly joined under Civil Rule 13(h). Furthermore, Mr. Miller was not required to exhaust administrative remedies before bringing the present action against Mr. Whitaker. For the reasons stated above in this Opposition, Third-Party Defendant Jim Whitaker's Motion to Dismiss Intervenor Miller's Third-Party Complaint should be denied.

DATED this 18th day of April, 2012, at Fairbanks, Alaska.

CLAPP, PETERSON, IEMESSEN,
THOSNESS & JOHNSON, LLC
Attorneys for Joseph Miller

By: 
John J. Tiemessen, #9111105

Certificate of Service

1 The undersigned hereby certifies that a true and correct copy of the
2 foregoing was served via U.S. Mail to counsel of record listed below
3 on this 18 day of April, 2012 on the following:

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5 117 E. Cook Ave.
6 Anchorage, Alaska 99501

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11 BY: Codie Chace

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24 Intervenor Joseph Miller's Opposition to Third-Party Defendant Jim
25 Whitaker's Motion to Dismiss Intervenor Miller's Third-Party
26 Complaint
Fairbanks Daily News-Miner, et al., v. Fairbanks North Star Borough,
et al., 4FA-10-2886 CI
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Former mayor: Alaska Senate candidate Miller 'not truthful' about borough employment

by Chris Freiberg / chrisf@newsminer.com

Oct 13, 2010 | 12:08 views | 414 40 | 118 40 | ca | 40

Updated with comment from Ruedrich, additional details, 9:14 p.m. 10/13/10.

FAIRBANKS, Alaska - Republican U.S. Senate candidate Joe Miller was nearly fired from his job as a borough attorney in 2008 after using borough computers in an attempt to e-mail the chairman of the Republican Party of Alaska, former borough Mayor Jim Whitaker said Wednesday.

Whitaker said Miller's actions violated the Fairbanks North Star Borough's ethics policy but did not result in a termination because the borough needed Miller to continue working on its lawsuit about how much to tax the trans-Alaska pipeline system. Miller eventually resigned from borough employment on Sept. 1, 2009.

"I'm speaking now because it's occurred on my watch as mayor, because I know the truth, and because I have an obligation to tell the truth," Whitaker said in an interview with the Daily News-Miner.

He said that, as a former mayor, he would prefer not to be involved in "the political melee."

"I also felt it was appropriate to give Mr. Miller enough time to come forward himself," Whitaker said. "It's clear with his statements of the other day, he's not going to do that. Referring to the truth as innuendo and lies is not truthful."

Miller campaign spokesman Randy DeSoto refused to comment on Whitaker's allegations.

"We're not going to comment further on this, but the campaign released records this past July conclusively demonstrating that Joe was not fired, but resigned, on his own accord, in September of 2009," DeSoto said in an e-mail.

Computer access

Whitaker, who served as borough mayor from 2003-2008, said he did not know exactly when Miller gained access to the computers in the borough's legal department but said it was some time in the days immediately preceding the March 2008 convention of the Republican Party of Alaska. The convention was held March 13-15, 2008, in Anchorage.

Borough attorneys are only allowed access to each other's computers for very specific cases, Whitaker said.

Whitaker said the computer security breach was discovered when another attorney in the legal department noticed something unusual about her computer, but Whitaker did not elaborate on what exactly that was.

The borough's ethics policy states that "public office, facilities or equipment are not to be used for personal gain" and names "political activities while in work status" as a violation of the policy.

Miller was to be suspended for a period without pay for the incident, Whitaker said, but he added he was unsure if that punishment was carried out.

"It is my understanding that Mr. Miller admitted in writing to the breach," Whitaker said. "It is my understanding that document is in his file."

Whitaker said he has not seen Miller's personal e-mail and that all of the information about the computer security breaches came to him from his chief of staff, the borough attorney and the human resources director.

The former mayor said it is his understanding that Miller used multiple borough computers to engage in "proxy voting" in an attempt to unseat Alaska Republican Party Chairman Randy

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EXHIBIT A
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Ruedrich, who has held the position since 2000.

Miller was a regional chairman in the party overseeing seven districts at the time of the incident. His opposition to Ruedrich was well-documented in 2008, and he sent fliers to delegates attending the state convention to support a vote change that would replace Ruedrich with the party's vice chairman, according to a March 8, 2008 Associated Press report.

However, Ruedrich said Wednesday that Whittaker's accusations about proxy voting do not make sense.

"There is no proxy process at the state convention, therefore the allegations that anyone voted with state computers to influence the party's chairman process is wrong," Ruedrich said.

Ruedrich also questioned Whittaker's motives for coming forward given his endorsement for Barack Obama in 2008 while he led the then-mayor speaking at the Democratic National Convention.

The party chairman also noted that Whittaker has been closely associated with Sen. Lisa Murkowski since they were both in the state Legislature around 2000. Miller defeated Murkowski in this year's Republican primary, and she is now pursuing a write-in campaign.

The former mayor said he was at the time "puzzled" by Miller's use of borough computers for partisan purposes. While proxy voting may not have been used to elect the party chairman, Whittaker said he remembers the term coming up in a meeting with his chief of staff, the lead borough attorney and the head of the human resources department.

However, Whittaker said they did not go into great detail about Miller's computer use because he expected the legal department to deal with the problem.

"I've been very careful not to speculate and not to overstate," he said.

Ultimately, Whittaker said the issue could be resolved if Miller releases his borough personnel file.

Whittaker said he has not contributed to any candidates in the tightly contested Senate race between Miller, Democrat Scott McAdams and write-in candidate Sen. Lisa Murkowski. Nor has any campaign asked him to coordinate with the treasurer, he said.

What is public?

The Fairbanks Daily News-Miner and the online publication Alaska Dispatch on Monday filed separate lawsuits against the borough seeking more information about Miller's borough employment, which ran from 2002-2009.

In July, the borough released 146 pages of documents and a 16-page log that listed documents that could not be released. The borough acted in response to public records requests from the Daily News-Miner and other media outlets.

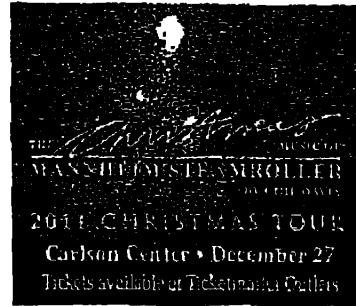
On the list of non-releasable documents are several entries that coincide with dates just before and during the 2008 convention of the Republican Party of Alaska.

Among the several items on the borough's July manifest of documents about Miller are statements from four unnamed employees on March 12 and March 13. The list also includes internal activity reports for four employees for the time period of 11:30 a.m. to 1:30 p.m. March 12, 2008, the day before the start of the GOP convention. The list does not indicate the contents of these employee statements or of the internal activity reports.

Miller has declined to release additional information from his personnel file or to allow the release of other information by the borough, saying such a release would violate attorney-client privilege and the borough would need to provide a release. The borough disputes Miller's contention that such a privilege exists and says Miller has not granted it permission to release the documents.

After the Alaska Dispatch published allegations of misconduct by Miller on Sunday, quoting anonymous sources, Miller said he would address the controversy Monday at an Anchorage news conference. He later canceled the news conference but made a brief statement to reporters in which he said he would address questions about his past.

"We've drawn a line in the sand. You can ask me about his progress, you can ask me about personal issues. I'm not going to answer, I'm not," he said. "This is about the issues. This is not about continuing the personal attacks, it's not about continuing the diversions based on illegal acts, this is about moving the state forward."



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Miller said information in his personnel file is confidential but has been illegally leaked to the news media.

Resignation issues

Whitaker, the former borough mayor and Republican state legislator, also shed some light on what ultimately led to Miller's resignation from his borough job last year.

An Aug. 28 resignation letter, which Miller and the borough released earlier this year, indicates Miller and his supervisor, borough attorney Rene Broker, had "significant differences of opinion" when it came to North Haven Communities, a semi-private housing manager on Fort Wainwright that has wrestled with the borough on the issue of property taxes. Miller also expressed his displeasure that Broker canceled his leave to go out hunting with his sons. She said in an e-mail the same day that he was needed in the office.

Miller resigned October 1, 2009, without funding, according to a partially redacted e-mail released by the borough. The same day, Broker told Miller via e-mail that he failed to give enough notice and this would affect his eligibility to be rehired.

Miller, in responding to media inquiries, has said that his vacation time still fulfilled the borough's requirement that he give advance notice of his resignation. Broker said in an Aug. 28, 2009, e-mail to Miller that the public employee retirement system does not allow "terminal leave."

Miller said he has never received an immediate copy of his personnel record that would tell him whether or not he is eligible to be rehired. In an Oct. 7 letter to Miller's attorney, Michael Morales, the borough said Miller received an unredacted statement on July 18 that "specifically advised him of his eligibility for rehire status."

Miller should have access to his file and know he is not eligible for rehire, Whitaker said. Further, the former mayor said Miller was denied leave because two other attorneys were off at the same time — one attorney was pregnant, and the other was recovering from a heart attack, he said.

"Given the workload, the borough attorney felt it inappropriate for him to take time off," Whitaker said. "They disagreed, the borough attorney informed me she was probably going to terminate Mr. Miller the following day. The next morning the borough attorney called me to inform me Mr. Miller had resigned."

Whitaker said Miller was a "competent attorney" and that he was not aware of any other problems with Miller while mayor.

He would not comment on what the computer incident said about Miller's character or ability to work as a senator.

"I'm not going to editorialize," he said. "I came here today to tell the truth."

Contact staff writer Chris Freiberg at 459-7546.

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Comments (414) Post a Comment

Farmnews | October 27, 2010

It isn't that Joe lied back then, it's that he lied now. He called others liars, threatened and pursued law suits. He allowed others to lie for him and all for what? The what is because he is, like all chronic liars, too stupid to take the heat up front and then lie his followers into believing it was long ago and far away in another universe. If the man had half a brain, he would not have had his troubles. As for West Point, they don't come around to support graduates the liars of him.

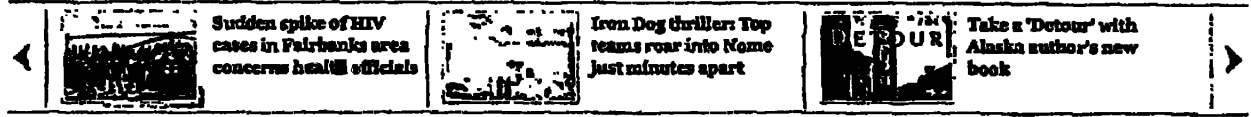
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Joe Miller

Ex-Fairbanks mayor: Borough was about to fire Joe Miller

Jill Burke | Oct 14, 2010



Jim Whitaker, former mayor of the Fairbanks North Star Borough, alleges that U.S. Senate candidate Joe Miller used borough computers in 2008 in a failed attempt to become head of the Alaska Republican Party.

Whitaker's accusation came Wednesday, two days after Miller refused to answer questions from the Alaska media about whether he had ever used borough offices or equipment for partisan activity. The allegation was first reported by Alaska Dispatch on

Sunday through an anonymous source.

At Monday's press conference, Miller vowed to stay silent on anything having to do with his background or private life until at least after the election. Miller's reluctance to talk about the allegations during his time at the borough upset Whitaker, prompting him to speak up.

"It did make me angry," said Whitaker, who was mayor of the Fairbanks North Star Borough from 2003 to 2009. "That event (politicking on borough time) happened on my watch, and I am obligated to tell the truth."

According to Whitaker, Miller -- a part-time attorney for the borough from June 2002 to September 2008 -- used other employees' computers to send "proxy votes to get himself elected as the chairman of the Republican Party."

Miller's campaign did not return a call or an e-mail Wednesday seeking a response to Whitaker's accusation.

In March 2008 -- during the Alaska GOP convention -- Miller was vocal about his support for ousting state party chairman Randy Ruedrich. "We're doing this so we can tell the public, 'Look, we're behind the public and its motivation to clean up government,'" Miller was quoted saying at the convention, according to ChampionNews.net. "That's what this is all about, and to make sure the public understands that the Republican Party is a party of ethics and not corruption."

The allegations about Miller's politicking on borough time are similar to what got Ruedrich in trouble in 2003 when he used state computers and e-mail to conduct Republican party business while working for the Alaska Oil and Gas Conservation Commission. His then-co-worker Sarah Palin blew the whistle on Ruedrich's activities, and he ended up paying a \$12,000 state ethics fine.

Whitaker called the computer use a "significant breach" of borough policy over which Miller likely would have been fired had it not been for his crucial role in a borough case involving the value of the trans-Alaska oil pipeline. Miller was reprimanded and was supposed to receive leave without pay, Whitaker said, although he didn't recall if the discipline was ever carried out.

While Miller resigned from the borough in 2009, Whitaker said that had Miller not left on his own he would have been fired.

The issue allegedly stemmed from Miller's unwillingness to cancel a hunting trip, time off for which his

EXHIBIT B

Branch Haymans June 27 at 11:30 AM

There is rumor that Joe is not eligible for rehire at the borough. Is this true?



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EXHIBIT

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J.S. Senate candidate Joe Miller was fired from his job as an attorney for the Fairbanks North Star Borough. Why?

So, I am also Joe.



WE KNOW PAID OUT.
BUT WHY WAS MILLER FIRED?

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Political Animal

Miller records to be released Monday

Joshua Saul | Jul 18, 2010

The conversation about Joe Miller's departure from the Fairbanks North Star Borough has been marked by a general lack of solid information. Miller says he resigned from his assistant attorney job, but maintains that he can't say more than that because of attorney-client confidentiality. Miller's boss at the borough, Rene Broker, says she can't say anything about Miller's record because of employee confidentiality.

Three news organizations, including Alaska Dispatch, have requested Miller's employment records from the borough. The borough isn't releasing the records to the press until Monday, but it did release them to Miller on Tuesday afternoon so he could review the records prior to their going public.

Miller campaign manager Paul Bauer declined to show Alaska Dispatch the records, which he said totaled about 150 pages, though he did say the campaign was considering the idea of holding a press conference Monday to release the records and explain the contents to reporters. There isn't anything damning in the records, Bauer said, but there are few documents that could be "misconstrued by an untrained eye."

"That's why it requires explanation," he said. "That's why we're not releasing it piecemeal."

Miller, a Republican who is running to unseat U.S. Sen. Lisa Murkowski, has been endorsed by Sarah Palin and the Tea Party Express, a national group headquartered in California. He worked part-time as an assistant borough attorney from 2002 to 2009. He has said repeatedly that he voluntarily resigned from his job with the borough. At a pro-life fundraiser held Monday at the home of gubernatorial candidate Bill Walker, Miller said definitively, "I was not asked to resign, and I was not fired."

Bauer, a former Anchorage assemblyman, showed Miller's resignation letter to two Anchorage reporters on July 1. A quick read of Miller's letter revealed serious friction between Miller and Broker over a conflict of interest between Miller's public and private work, his work on litigation related to the trans-Alaska pipeline, and vacation time he had requested to go elk hunting on Afognak Island.

Reached by phone, Jim Whitaker, a Republican who was borough mayor from 2003 to 2009, brought up the fact that Miller didn't include his borough employment in his official bio on his campaign website. "When an individual runs for a public office, there needs to be full disclosure," Whitaker said. "You can't just put the things you choose to; you must put all things on it."

Broker, the borough attorney, has continually declined to comment on Miller's performance or his departure from the borough. Albert Parrish, a former assistant attorney with the borough, and Cynthia Klepaski, a current assistant attorney, also both declined to comment on Miller's employment or his reason for leaving.

Speculation about Miller's departure from the Fairbanks North Star Borough first started after Andrew Halero, a political blogger and an open fan of Murkowski, posted a short note on his blog titled "We Know Palin Quit ... But why was Miller Fired?" The issue of Miller's departure from the borough has since been covered by the Anchorage Daily News, the Fairbanks Daily News-Miner, and the

EXHIBIT

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Associated Press. In a recent column, News-Miner columnist **Dermot Cole** argued that Miller should release his own personnel records and "drop this flimsy excuse" of "attorney-client privilege."

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How to maximize airline miles and get hot fares to watch



Tsunami debris will hit Alaska, other coastal states sooner than expected

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EXHIBIT

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of

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FAIRBANKS DAILY NEWS-MINER)
And Alaska Dispatch, LLC,)
)
Plaintiff,)
vs.)
)
FAIRBANKS NORTH STAR BOROUGH,)
)
Defendant.)
vs.)
)
JOSEPH MILLER,)
)
Intervenor,)
vs.)
)
JIM WHITAKER,)
)
Third-Party Defendant.)

Case No. 4FA-10-2886 CI (consolidated with 4FA-10-2990 CI)
VIDEOTAPED DEPOSITION OF JILL DOLAN
JANUARY 27, 2012

APPEARANCES:

FOR JOSEPH MILLER:	MR. JOHN J. TIEMESSEN
	Clapp, Peterson, Tiemessen,
	Thorsness & Johnson
	411 Fourth Avenue, Suite 300
	Fairbanks, Alaska 99701
	(907) 479-7707

FOR THE FAIRBANKS	MR. GREGORY FISHER
NORTH STAR BOROUGH:	MR. GARRETT PARKS
	Davis Wright Tremaine
	701 West 8th Avenue, Suite 800
	Anchorage, Alaska 99501
	(907) 257-5300

1 A I did know that.
 2 Q Okay. And so how -- what was the discussion -- and
 3 I'm -- how did Mayor Whitaker come into that discussion?
 4 A I think we were talking about -- I actually -- I -- you
 5 know what, I'm going to have to totally speculate to
 6 answer this. I -- I....
 7 MR. FISHER: Well, don't speculate.
 8 A Yeah, I really will.
 9 Q Okay. Let me -- let me -- let me -- let me give you
 10 potentially a way out. After you thought about it, was
 11 Mayor Whitaker a part of that 2010 discussion or summary
 12 of 2010 discussion with you and Ms. Broker about this
 13 subject?
 14 A I don't know when -- at some point I know that Ms. Broker
 15 and I had a conversation about why Mr. Miller wasn't
 16 terminated during that time and why there was, you know,
 17 a three-day suspension and a referral to EAP.
 18 And I know that one of the comments was made was
 19 that she had talked to Mayor Whitaker and that there
 20 was -- because of the TAPS matter, there was really no
 21 choice, that they -- that, you know, that he had done
 22 such good work, that they thought he was just super
 23 stressed and so they -- they had mitigated it. But I
 24 couldn't tell you -- timing-wise I couldn't tell you when
 25 that was exactly.

1 A Oh, not that I've been a party to, no.
 2 Q How about ones that you've heard about? Have you heard
 3 about any others?
 4 A I believe him and Ms. Broker had lunch at some point.
 5 Q When was this?
 6 A I don't remember when it was.
 7 Q Was this in two thousand -- after April of 2010?
 8 A I believe so, yes.
 9 Q And how did you learn about this lunch that -- that they
 10 had?
 11 A Ms. Broker told me.
 12 Q And what did she tell you about it?
 13 A She said that he had asked something about like, you
 14 know, oh, is it -- what's confidential or -- and she had
 15 said, you know, I honestly -- I think at that point, you
 16 know, we hadn't done any research or any looking into it,
 17 and she told him she didn't know, she couldn't tell him
 18 for sure.
 19 Q Anything else that she relayed about the -- the
 20 conversation at their lunch?
 21 A That's pretty much what I remember her telling me.
 22 Q And was this conversation prior to Mayor Whitaker's
 23 public statements regarding Mr. Miller in the fall of
 24 2010?
 25 A Yeah, it would have been before that.

1 Q Was part of that discussion that -- actually, let's back
 2 it up.
 3 If -- after the time that Mayor Whitaker was -- was
 4 no longer mayor of the borough and had departed, are you
 5 aware of any discussions between the borough attorney's
 6 office and -- and him regarding Mr. Miller?
 7 A Yes.
 8 Q And what are those discussions?
 9 A He and I had a conversation after court one day. It was
 10 the status hearing I think in summer of 2011 maybe. I
 11 can't remember exactly when it was. And he just asked
 12 me, you know, is this really not going to go away? Am
 13 I -- should I really go get a lawyer?
 14 And I just pretty much told him, you know, I can't
 15 give you legal advice. You should really go talk to
 16 someone if you haven't already and that he needed to be
 17 doing things in the case if he was going to protect his
 18 rights, and I pretty much said, I can't help you with
 19 that.
 20 Q Any other discussions that you're aware of between
 21 Mr. Whitaker and anyone in the -- in the borough
 22 attorney's office?
 23 A Discussions? I mean I've seen him like on the street a
 24 couple times, said hello.
 25 Q Discussions about Mr. Miller?

1 Q Did -- did Mr. Whitaker, to your knowledge, indicate as
 2 part of his conversation that he had perhaps already
 3 disclosed some information to people?
 4 A No, I've never heard that.
 5 Q Okay. Well, and then, you know, the discussion in
 6 terms of what's confidential, and just tell me if you've
 7 heard one way or the other is it, this is what I've said,
 8 I'm trying to find out....
 9 A No.
 10 Qif that's confidential, or is it, this is what I'm
 11 going to say, and I'm trying to find out if it's
 12 confidential?
 13 A My impression was -- mere was am I allowed to say more
 14 than it was anything else, you know. That's my
 15 impression, though. You know, I wasn't there.
 16 Q Right. Was -- other than Ms. Broker, was there anyone
 17 else there?
 18 A I have no idea.
 19 Q Do you know if that appointment was on her calendar at
 20 work?
 21 A I believe it would be. Usually those appointments are.
 22 Q And are those calendars kept in the ordinary course of
 23 business in the borough?
 24 A Yeah, they're -- I mean, we have -- they're on Outlook.
 25 Q Are they....

THE FOLLOWING WAS DROPPED OFF AT MY OFFICE,
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Dermet Cole *DC*
9/28/11

Pursuant to Alaska law and Fairbanks Northstar Borough authority and restrictions I am making a public records request on the following items, all of which are in relation to Joseph W Miller, either in his capacity as a Borough employee or as an outside attorney on contract for the Borough:

- 1) All papers, electronic records, email records or other documentation relating to Joseph W Miller having a weapon in his possession while trying to board an airplane to or from Anchorage. Please include in this request all documentation you have in written or electronic format such as incident reports, acknowledgements or any other document related to this issue, whether to Mr. Miller, from Mr. Miller or correspondence between others on behalf of the Borough involving Mr. Miller.
- 2) Any document, record, email or other piece of information in the Mayor's office, in a staff office or in the possession of the Borough Attorney (inside or outside) related to:
 - a. Mr. Miller's use of public property (i.e. Borough property or equipment) for partisan political purposes or activities;
 - b. Any action involving using other Borough staff's equipment or property for partisan political purposes;
 - c. Any incident reports related to a. and b.;
 - d. Any acknowledgements executed by Mr. Miller regarding a. and b.
 - e. Any disciplinary action reports or recommendations related to a. and b.
- 3) Any other non-personnel ~~not~~ protected related document, emails or electronic records related to any other action involving Mr. Miller that involved violating a law, rule, regulation or policy of the state or Borough governments, that reside in:
 - a. the Fairbanks Northstar Borough Mayor's office,
 - b. Borough staff offices
 - c. The Borough attorney's office, whether in house or under contract with an outside attorney

I ask for expedited treatment of this request.

COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

1
2 FAIRBANKS DAILY NEWS MINER)
3 And ALASKA DISPATCH, LLC,)
4 Plaintiffs,)
5 vs.)
6 FAIRBANKS NORTH STAR)
7 BOROUGH,)
8 Defendant.)
9 vs.)
10 JOSEPH MILLER,)
11 Intervenor,)
12 vs.)
13 JIM WHITAKER,)
14 Third-Party Defendant))

CASE NO. 4FA-10-2886 CI
(consolidated w/4FA-10-2890 CI)

ORDER DENYING THIRD-PARTY DEFENDANT JIM WHITAKER'S MOTION TO
DISMISS INTERVENOR MILLER'S THIRD-PARTY COMPLAINT

15 Third-Party Defendant, Jim Whitaker, having moved this
16 Court for Motion to Dismiss Intervenor Miller's Third-Party
17 Complaint, Intervenor Joseph Miller having opposed, and the
18 Court being fully advised in the matter;

19 **IT IS HEREBY ORDERED** that Third-Party Defendant Jim
20 Whitaker's Motion to Dismiss Intervenor Miller's Third-Party
21 Complaint is **DENIED**.
22

FILED
APR 18 2012
411 Fourth Avenue, Suite 300
Fairbanks, AK 99701-4711
(907) 479-7776 fax (907) 907-479-7966

A DIVISION OF JENSEN & JENSEN, LLP
411 Fourth Avenue, Suite 300
Fairbanks, AK 99701-4711
(907) 479-7776 fax (907) 907-479-7966

9
1 DATED this ____ day of _____, 2012, at Anchorage,
2 Alaska.

3 _____
4 Stephanie E. Joannides
5 Superior Court Judge

6 Certificate of Service

7 The undersigned hereby certifies that a true and correct copy of the
8 foregoing was served via U.S. Mail to counsel of record listed below
9 on this 18th day of April, 2012 on the following:

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Anchorage, Alaska 99501

17 BY: _____
18 
19
20
21
22
23

24 ORDER DENYING THIRD-PARTY DEFENDANT JIM WHITAKER'S MOTION TO DISMISS
25 INTERVENOR MILLER'S THIRD-PARTY COMPLAINT
26 Fairbanks Daily News-Miner et.al., vs. Fairbanks North Star Borough,
et.al., 4FA-10-2886 CI
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

1
2
3 FAIRBANKS DAILY NEWS MINER)
And Alaska Dispatch, LLC,)
4 Plaintiffs,)

FILED in the Trial Courts
State of Alaska, Fourth District

5 vs.)

MAY 03 2012

6 FAIRBANKS NORTH STAR)
BOROUGH,)
7 Defendant.)

By _____ Deputy
CASE NO. 4FA-10-02886 CI
(consolidated with 4FA-10-2990)

8
9 vs.)

10 JOSEPH MILLER,)
11 Intervenor,)

12 vs.)

13 JIM WHITAKER,)
14 Third-Party Defendant.)

15
16 INTERVENOR JOSEPH MILLER'S REPLY TO FAIRBANKS NORTH STAR
BOROUGH'S OBJECTION TO PROPOSED AMENDED ANSWER, CROSS-CLAIM,
17 AND THIRD PARTY COMPLAINT

18 Intervenor, Joe Miller, through counsel, hereby replies to
19 the Fairbanks North Star Borough's Objection to Intervenor's
20 Proposed Amended Answer, Cross-Claim, and Third Party
21 Complaint. Because Intervenor, Joseph Miller, made an
22 appropriate and timely motion to amend his cross claim, which
23

24 INTERVENOR JOSEPH MILLER'S REPLY TO FAIRBANKS NORTH STAR BOROUGH'S OBJECTION TO
PROPOSED AMENDED ANSWER, CROSS-CLAIM, AND THIRD PARTY COMPLAINT
25 *Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,*
et. al.; Case No.: 4FA-10-2886 CI

1 presents no prejudice to the Borough, because the Borough's
2 objection to Intervenor Miller's amended pleading is based
3 solely on issues of fact which should be resolved at trial, and
4 because this Court recently issued a routine pretrial order
5 allowing the amendment of pleadings without motion until May
6 30, 2012, the Court should accept Intervenor Miller's Proposed
7 Amended Answer, Cross-Claim and Third-Party Claim.

8
9 **I. FACTS**

10 Intervenor, Joseph Miller, is an attorney in private
11 practice and former part-time Fairbanks North Star Borough
12 employee. Mr. Miller ran for the office of U.S. Senator in
13 2010. During that campaign, as well as during the last few
14 months of Intervenor's employment with FNSB, a number of events
15 took places which are now at issue in this case.

16 On November 16, 2011, Intervenor Miller moved to amend his
17 original cross claims in this matter pursuant to Civil Rule 15.¹
18 Subsequently, in an effort to aid the Court's review of the
19 motion, Intervenor Miller submitted his proposed amended
20

21 ¹ Notably, Civil Rule 15 does not require that a proposed amended pleading be
22 filed with a motion to amend. Though the Borough claims that such
23 submission should be made as a matter of course and that it was improper to
24 move for amendment of the pleadings pursuant to Civil Rule 15 without
25 attaching the amended pleading to the motion, no such requirement actually
26 exists in Civil Rule 15.

1 answer, cross-claim and third party claim on April 17, 2012,
2 but inadvertently failed to identify it as a proposed amended
3 pleading, and the Borough objected. Not long after, it was
4 discovered that there had been an inadvertent omission of text
5 in the proposed amended pleading. While Mr. Miller does not
6 agree with the Borough's unilateral interpretation of Rule 15
7 as it relates to this motion practice, it seemed, given the
8 totality of the circumstances, that it would be prudent to
9 withdraw the proposed amended pleading and wait until the Court
10 ruled on the underlying motion to resubmit the proposed amended
11 pleading. Therefore on December 15, 2011, Intervenor Miller
12 filed a notice with the Court withdrawing his amended Answer,
13 Cross Claim and Third Party Claim.

14
15 On April 10, 2012, this Court held a hearing on a number
16 of pending motions in this case, during which Intervenor
17 Miller's motion to amend his cross claim was discussed. At that
18 hearing the Court directed that the proposed amended pleading
19 be submitted for consideration. Accordingly an amended pleading
20 was re-filed on April 17, 2012. On April 30, 2012, this Court
21 issued a Routine Pretrial Order wherein it set the deadline for
22
23

1 amending pleadings and joining parties without motion for May
2 30, 2012.

3
4 **II. LAW**

5 **A. Rule 15 Amended Pleadings**

6 Alaska Rule of Civil Procedure 15(a), in pertinent part,
7 states as follows:

8 (a)Amendments . . . a party may amend his pleading
9 only by leave of court or by written consent of the
10 adverse party; and **leave shall be freely given when
11 justice so requires**. A party shall plead in
12 response to an amended pleading within the time
13 remaining for response to the original pleading or
14 within ten (10) days after service of the amended
15 pleading, whichever period may be the longer,
16 unless the court otherwise orders. (emphasis
17 added).

18 Leave to amend pleadings under Rule 15(a) is traditionally
19 freely given in Alaska.² The courts have adopted and reiterated
20 a very liberal amendment policy based on principles articulated
21 by the United States Supreme Court in *Foman v. Davis*³:

22 Rule 15(a) declares that leave to amend "shall be
23 freely given when justice so requires".... If the
24 underlying facts or circumstances relied upon by a

25 ² *Wright v. Vickaryous*, 598 P.2d 490, 495 (Alaska 1979). See also *Betz v.*
26 *Chena Hot Springs Group*, 742 P.2d 1346 at 1348 (Alaska 1987).

³ 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962), quoted in *Betz*,
742 P.2d at 1348.

1 [party] may be a proper subject of relief, he ought
2 to be afforded an opportunity to test this claim on
the merits.... The leave sought should, as the
rules require, be "freely given."

3 A "pro-amendment ethos" dominates the intent and judicial
4 construction of Rule 15(a) in Alaska,⁴ and the trial court has
5 broad discretion in allowing or denying proposed amendments
6 after the initial period has passed under Rule 15.⁵

7 In deciding whether to allow a Rule 15 amendment to
8 pleadings the court applies a balancing test to decide whether
9 the amendment should be granted, weighing the degree of
10 prejudice to the opposing party against the hardship to the
11 movant if the amendment is denied.⁶ Absent undue delay, undue
12 prejudice, bad faith or dilatory motive, the court should
13 freely grant leave for the amendment of pleadings.⁷ It is
14 important to note that, when considering the issue of undue
15 delay, the court is usually making reference to a very late
16 filed motion on the eve of or during trial. "In the absence of
17 a motion filed on the eve of trial, "[l]eave to amend is
18
19

20 ⁴ *Miller v. Safeway, Inc.*, 102 P.3d 282, 293 (Alaska 2004).

21 ⁵ *Shooshanian v. Wagner*, 672 P.2d 455, 458 (Alaska 1983); *Wright v.*
Vickaryous, 598 P.2d 490, 495 (Alaska 1979).

22 ⁶ *Betz*, 742 P.2d at 1348, quoting *Shooshanian v. Wagner*, 672 P.2d 455, 458
(Alaska 1983).

23 ⁷ *Betz v. Chena Hot Springs Group*, 742 P.2d 1346, 1348 (Alaska 1987), (citing
Foman, 371 U.S. at 182, 83 S.Ct. 227).

1 liberally granted in Alaska,' and the court has long held that
2 leave should freely be given unless 'it would [result] in an
3 injustice.'"⁸

4 **B. The Implied Covenant of Good Faith and Fair Dealing in**
5 **Employment**

6 There is a covenant of good faith and fair dealing
7 implicit in every employment relationship in Alaska and every
8 employment contract (at will or otherwise) in Alaska is subject
9 to this implied covenant of good faith and fair dealing.⁹ The
10 covenant "generally requires employers to treat like employees
11 alike and act in a manner that a reasonable person would regard
12 as fair."¹⁰ The covenant focuses on the employer's conduct,
13 prohibiting the employer from dealing with the employee in a
14 manner that a reasonable person would regard as unfair.¹¹ The
15 court has stated that covenant does not lend itself to precise
16 definition, but it requires at a minimum that an employer not
17
18

19 ⁸ *Miller v. Safeway, Inc.*, 102 P.3d 282, 293 (Alaska 2004), quoting *Valdez*
20 *Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657, 671
(Alaska 2002).

21 ⁹ *Smith v. Anchorage Sch. Dist.*, 240 P.3d 834, 844 (Alaska 2010), (citing
Mitchell v. Teck Cominco Alaska, Inc., 193 P.3d 751, 760 (Alaska 2008)).

22 ¹⁰ *Mitchell*, 193 P.3d at 760-61.

23 ¹¹ *Smith v. Anchorage Sch. Dist.*, 240 P.3d 834, 844 (Alaska 2010) (quoting
Mitchell v. Teck Cominco Alaska Inc., 193 P.3d 751, 761 (Alaska 2008))
(internal quotation marks omitted).

1 impair the right of an employee to receive the benefits of the
2 employment agreement.¹²

3 III. DISCUSSION

4 Because the amendment of Intervenor Miller's Answer and
5 Cross Claim has been the subject of prior motion practice, much
6 of what is discussed in the Borough's motion is not new, but in
7 fact involves the restatement of many of the same arguments the
8 Borough has made on other occasions. Nonetheless, Intervenor
9 Miller responds to these arguments out of an abundance of
10 caution and to ensure that Mr. Miller's position is fully
11 presented.

12 **A. The Borough's Futility Argument is Improper As the** 13 **Proposed Amended Pleading Adequately Pleads a Cause of** 14 **Action Upon Which Relief May Be Granted.**

15 Under the guise of "futility", the Borough essentially makes
16 a motion for Summary Judgment claiming that Mr. Miller cannot
17 factually support his amended claims. See Objection at Page 5.
18 The Borough's objection misapplies the "futility rule" and is
19 therefore unpersuasive.

20 Rule 15(a) provides that "if the proposed change clearly is
21 frivolous or advances a claim or defense that is legally

22
23 ¹² *Mitford v. de Lasala*, 666 P.2d 1000, 1006-07 (Alaska 1983), quoting *Jones*
v. Central Peninsula Gen. Hosp., 779 P.2d 783, 789 (Alaska 1989).

1 insufficient on its face, the court may deny leave to amend."
2 *Taylor v. Johnston*, 985 P.2d 460, 464 (Alaska 1999). The
3 Borough does not establish that Intervenor Miller's newly plead
4 claims are frivolous or legally insufficient. Rather, the
5 Borough effectively asks this Court to weigh the factual
6 evidence in this case (based on the Borough's interpretation of
7 those facts) and find that Intervenor Miller cannot factually
8 support his newly plead claims. That is not the purpose of the
9 futility rule.

10 In civil cases, Alaska has a lenient notice pleading
11 standard. See *Bigley v. Alaska Psychiatric Institute*, 208 P.3d
12 168, 181 (Alaska 2009). Mr. Miller is not required to the
13 entire factual basis of his claims in his amended pleading, but
14 rather is required only to make a "short and plain statement of
15 the claim showing that the he is entitled to relief, and a
16 demand for judgment for the relief to which he deems himself
17 entitled." See Alaska R.Civ.P. 8(a). The Alaska Supreme Court
18 recognizes that Alaska's notice pleading requirements do not
19 necessitate an exhaustive recitation of the factual basis for a
20 Plaintiff's claims. See *Great Western Savings Bank v. George*
21 *W. Easley Col. J.V.*, 778 P.2d 569, 577-78 (Alaska
22

1 1989) (allowing a breach of contract claim to go forward without
2 specifically pleading the elements of contract formation).
3 Pleadings must be liberally construed, with the goal of
4 achieving substantial justice. Alaska R. Civ. P. 8(f); See also
5 *Sykes v. Melba Creek Mining, Inc.*, 952 P.2d 1164, 1168 (Alaska
6 1998); *Gamble v. Northstore Partnership*, 907 P.2d 477, 482
7 (Alaska 1995). Absent any substantive prejudice to the other
8 party, leave to amend pleadings is freely given when justice so
9 requires under Rule 15, even up to a point in time just prior
10 to trial.

11 In its objection, the Borough does not persuasively argue
12 it is prejudiced by this amended pleading, but rather devotes a
13 great deal of time to making arguments based on its own
14 interpretation of the facts of this case. The Borough's
15 objection makes cursory reference to undue delay, dilatory
16 motive and prejudice, but none is actually shown. Instead the
17 Borough focuses on arguments related to futility, improper
18 application of the doctrine of an implied covenant of good
19 faith and fair dealing in an employment contract. These
20 arguments regarding the substantive facts of the case (which
21 are heavily contested) should be made at trial or in a summary
22
23

1 judgment motion; they have no place in a Rule 15 amended
2 pleading analysis.

3 **B. Intervenor Miller's Claim for Breach of Good Faith and**
4 **Fair Dealing is Not Futile.**

5 The Borough's futility argument is based, in part, on
6 the Borough's contention that court should not act as a "super
7 personnel department."¹³ While Intervenor Miller maintains that
8 this is neither the time nor place to argue the underlying
9 facts of this case, it must be noted that the Borough's
10 argument is completely at odds with the actual factual record
11 developed thus far. To describe the Borough's specific promise
12 to remove a disciplinary letter from Mr. Miller's employment
13 file,¹⁴ and subsequent failure to do so, as a simple
14 administrative file-maintenance matter strains all credulity
15 and is necessarily a question of fact which must be resolved at
16 trial. Promises are the very heart of contract law and
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18

19 ¹³ See the Borough's Objection to Proposed Amended Answer, Cross Claim and
20 Third Party Complaint, page 6, filed with the court on April 24, 2012.

21 ¹⁴ This promise was clearly and unambiguously made in certain terms by
22 Borough Attorney Rene Broker King on at least two occasions, during
23 conversations with Mr. Miller. See Exhibits A (Promise to Remove Discipline
Memo) and B (Promise to Destroy Discipline Memo), transcripts of the two
conversations recorded by Mr. Miller which feature absolutely clear
statements on her part that when he resigned his position as an employee of
the Borough's legal department that the disciplinary letter which had
previously been placed in his file would be destroyed.

1 analysis, including promises made in an employment context.¹⁵
2 Multiple promises were made by the Borough and these promises
3 were breached. The question of whether an employer has
4 breached the implied covenant of good faith and fair dealing is
5 generally a question for the trier of fact.¹⁶ One promise, in
6 fact, was recorded by Mr. Miller and demonstrates unequivocally
7 that the Borough (through its agent Ms. Broker-King)
8 affirmatively guaranteed that Mr. Miller's disciplinary letter
9 was to be removed from his file:

10 Miller: So what you are saying is if I depart you'll
11 remove it [referencing the disciplinary letter]?

12 King: Yeah

13 Miller: Okay

14 King: Yeah, but I didn't want you, like, if you wanted
15 to leave- to be leaving here- oh, you didn't finish
16 your two years and so it is going to stay in there
forever.

17 Miller: Okay. What is . . . That's fine, that's all I
18 need to know Rene. That's it. That's all I need to

19 ¹⁵ On page six of its objection, the Borough argues that the failure to honor
20 the specifically articulated promise to remove an extremely damaging
21 disciplinary memo from Miller's personnel file was not an adverse employment
22 action. By way of comparison it then incredibly (on page seven) goes on to
23 argue that asking an employee to *work through lunch* might be a better
example of an adverse employment action. The absurdity of this comparison
makes it almost impossible to respond to it with anything less than
incredulity.

24 ¹⁶ *Pitka v. Interior Regional Housing Authority* 54 P.3d 785, 789 (Alaska
25 2002).

1 know. If you're going to destroy it when I leave
that's fine.

2 King: Yes. Yes.¹⁷

3 A promise which was made and not fulfilled is clearly the
4 basis of Mr. Miller's claim that the implied covenant of good
5 faith and fair dealing in an employment contract was breached
6 by the Borough, a claim which is entirely consistent with the
7 law related to the implied covenant.¹⁸ To say that the court has
8 no role in analyzing this issue is to essentially argue that
9 the court has no role in analyzing contract law cases, which is
10 simply an untenable position.

11
12 The Borough argues that removal of the disciplinary letter
13 from the personnel file was only a unilateral expectation on
14 Mr. Miller's part. This position is belied by the statement
15 made by Ms. Broker-King set forth above. Once again, however,
16 this claim has been adequately plead and the Borough's
17 arguments are based on factual matters in dispute which should
18 properly be resolved at trial. The removal of this letter from
19 Mr. Miller's personnel file was not a unilateral expectation;

20
21 ¹⁷ See Exhibit A, transcript of conversation between Miller and Broker King,
titled Promise to Remove Discipline Memo, recorded by Miller.

22 ¹⁸ The covenant "generally requires employers to treat like employees alike
and act in a manner that a reasonable person would regard as fair."
23 *Mitchell*, 193 P.3d at 760-61.

1 it was an exchange of promises bargained for in good faith -
2 the Borough would continue to benefit from Mr. Miller's
3 services as a contract employee, and Mr. Miller would benefit
4 from the removal of this letter upon his departure. Mr. Miller
5 fulfilled his part of the bargain; the Borough did not.

6 The Borough also argues that because the employment
7 relationship between the parties had already ended, Mr. Miller
8 cannot claim a breach of the implied covenant of good faith and
9 fair dealing in an employment contract. See Objection at Page
10 8. It adds some creative hyperbole to its argument by
11 indicating that if the court recognizes a right to a claim in
12 this context it will expose employers throughout Alaska to
13 expanding liability, unanticipated risk and "endless
14 litigation."¹⁹ In addition to being unreasonably alarmist in
15 nature, this argument also mischaracterizes the true nature of
16 the issue in contention. This is basic contract law. What
17 promises were made, which ones were kept, which were not, and
18 who was damaged in the process. To say that no issues related
19 to unfulfilled promises made as part of a prior employment
20 relationship can be litigated at a later time is a position
21

22
23 ¹⁹ See page 10 of the Borough's Objection to Proposed Amended Answer, Cross
Claim and Third Party Complaint.

1 which is not supported by Alaska law, which is why the Borough
2 made no citations in support of this argument.

3 In *Casey v. Semco Energy, Inc.* 92 P.3d 379 (Alaska 2004)
4 the court was faced with a case where promises were made to a
5 former employee of an energy company which were later allegedly
6 breached. The alleged breach occurred well after his employment
7 had ended. The court did not hold that the implied covenant of
8 good faith and fair dealing in an employment contract did not
9 apply because the employment relationship had ended. Instead it
10 examined the documents related to the alleged promises to
11 determine their validity, and did so at a point in time where
12 the employment relationship no longer existed. Clearly Alaska
13 courts understand that promises made to a former employee can
14 be breached after the employment has ended, and are therefore
15 still subject to analysis under the implied covenant of good
16 faith and fair dealing in an employment contract.
17

18 The Borough also attempts to argue that mistakes occur in
19 processing and maintenance of personnel filing systems, and
20 that a basic administrative mistake occurred on this occasion.
21 This position is contrary to the factual record which
22 demonstrates that Mr. Miller specifically asked Ms. Broker King
23

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1 at least two times to remove the letter from his file, which
2 she promised to do, but did not. See Exhibits A and B. Clearly
3 this defense by the Borough constitutes a question of fact to
4 be decided by a jury, not a basis for the Court to refuse to
5 allow Intervenor Miller to amend his complaint.

6 In *Miller v. Safeway*, 102 P.3d 282 (Alaska 2004) the Court
7 held that it was premature to conclude that an employee's
8 claims regarding a breach of the implied covenant of good faith
9 and fair dealing in a wrongful termination case had no merit.
10 *Id.* at 295. Therefore the Supreme Court reversed and remanded
11 the Superior Court's denial of the Plaintiff's motion to amend.
12 *Id.* Just as in *Miller v. Safeway* it would be premature here to
13 determine that Mr. Miller's allegation of a breach of the
14 covenant of good faith and fair dealing are without merit.
15 Whether the failure of the Borough to follow through on its
16 promise was intentional or negligent and whether it is excused
17 by the Borough's novel "basic administrative mistake" defense.
18 Therefore the Borough's argument in this regard is unfounded
19 and its objection to Mr. Miller's amended complaint should be
20 denied.
21

1 **C. Intervenor Miller's Amended Pleading is Not the Result of**
2 **Dilatory Behavior or Abusive Litigation Tactics.**

3 The Borough alleges that Mr. Miller has been dilatory and
4 has employed questionable litigation tactics and therefore Mr.
5 Miller's Amended Pleading should not be permitted. The Borough
6 presumptuously argues that Miller only filed the amended
7 pleading after the Borough "demonstrated that his principal
8 cross claims were subject to dismissal with prejudice."²⁰
9 However, the Borough fails to comprehend that it has not yet
10 "demonstrated" anything. Motions have been filed wherein the
11 Borough requests summary judgment, but oral argument on those
12 motions is still pending and this Court has not yet ruled. In
13 support of its position that simply filing a summary judgment
14 motion is sufficient to constitute resolution of questions of
15 both law and fact, the Borough cites *O'Callaghan v. Rue*, 996
16 P.2d 88 (Alaska 2000), a case related to fish and game issues
17 and salmon roe stripping regulations. In doing so the Borough
18 relies on truncated text quoted from another case where the
19 court stated that "courts are normally hesitant to allow
20 amendments after summary judgment motions and other dispositive
21

22
23 ²⁰ See Page 19 of the Borough's Objection to Proposed Amended Answer, Cross
Claim and Third Party Complaint.

1 motions have been filed." This text comes from *Jennings v.*
2 *State*, 566 P.2d 1304, 1312 (Alaska 1977). The Borough fails to
3 note that in *Jennings* (a wrongful death case), when the amended
4 pleading was denied, the court had *already granted a summary*
5 *judgment motion*, after a full exchange of discovery. This is
6 not the situation here where the motions for summary judgment
7 are still pending, discovery is ongoing, and trial is not
8 scheduled until January of 2013.

9 When deciding whether to allow a Rule 15 amendment to
10 pleadings the court applies a balancing test to decide whether
11 the amendment should be granted, weighing the degree of
12 prejudice to the opposing party against the hardship to the
13 movant if the amendment is denied.²¹ Absent undue delay, undue
14 prejudice, bad faith or dilatory motive, the court should
15 freely grant leave for the amendment of pleadings,²² even up to
16 the eve of trial.²³

17
18 Trial for this case has now been moved to January of 2013,
19 over 8 months away. The additional claims in the amended

20 ²¹ *Betz*, 742 P.2d at 1348, quoting *Shooshanian v. Wagner*, 672 P.2d 455, 458
21 (Alaska 1983).

22 ²² *Betz v. Chena Hot Springs Group*, 742 P.2d 1346, 1348 (Alaska 1987),
23 (citing *Foman*, 371 U.S. at 182, 83 S.Ct. 227).

24 ²³ *Miller v. Safeway, Inc.*, 102 P.3d 282, 293 (Alaska 2004), quoting *Valdez*
25 *Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657, 671
26 (Alaska 2002).

1 complaint will not cause any substantial burden to any party in
2 the preparation of their case, and will cause no delay in the
3 matter moving forward. Therefore the amended pleading can in no
4 way be described as either dilatory or prejudicial, or designed
5 to cause undue delay. Indeed, the actual motion to amend the
6 pleadings was made over five months ago; the submission of this
7 amended pleading at the Court's request in April of 2012 does
8 not make Intervener Miller dilatory when he filed his Motion to
9 Amend in conformance with the requirements of Civil Rule 16 in
10 November of 2011.

11
12 On page 19 of the Borough's brief, it once again argues
13 that Miller's previous filing of a pleading was done in
14 violation of the rules of established practice, but cite no law
15 to support this statement.²⁴ Mr. Miller is not required to
16 follow the Borough's unilateral interpretation of the civil
17 rules. In addition it is now a moot point. The original amended
18 pleading was withdrawn (at the Borough's request) and the
19

20 ²⁴ In this same section of the brief the Borough once again seems
21 determined to argue issues on behalf of other parties to this
22 litigation (in this case Mr. Whitaker), which is improper and which
23 Mr. Miller will offer no response other than to reiterate that the
24 claim against Mr. Whitaker is adequately plead under Civil Rule 8.

1 Borough is in receipt of the new amended pleading with a full
2 eight months to prepare its case in response to that pleading.
3 Therefore the borough has not been prejudiced by the proposed
4 amendment and has had notice of the proposed amended claims
5 against it since November of 2011. See Intervenor Miller's
6 Motion to Amend Complaint at 7-8 (identifying proposed
7 amendment to include claim of breach of good faith and fair
8 dealing).

9
10 **IV. CONCLUSION**

11 Because Intervenor, Joseph Miller, made an appropriate and
12 timely motion to amend his cross claim, which presents no
13 prejudice to the Borough, and because the Borough's objection
14 to Intervenor Miller's amended pleading is based solely on
15 issues of fact which should be resolved at trial, and because
16 this Court recently issued a routine pretrial order allowing
17 the amendment of pleadings without motion until May 30, 2012,
18 the Court should accept Intervenor Miller's Proposed Amended
19 Answer, Cross-Claim and Third-Party Claim.

20
21 DATED at Fairbanks, Alaska, this 3rd day of May, 2012.
22
23

1 CLAPP, PETERSON, TIEMESSEN,
2 THORSNESS & JOHNSON, LLC
3 Attorneys for Intervenor Joseph
4 Miller

5 By: 

6 Lisa C. Hamby
7 Alaska Bar No.: 0111063

8 Certificate of Service

9 The undersigned hereby certifies that a true and correct copy of the
10 foregoing was served via U.S. Mail to counsel of record listed below
11 on this 3rd day of May, 2012 on the following:

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promise to remove discipline memo

MILLER: So what you're saying is if I depart you'll remove it?

PROKER-KING: Yeah.

MILLER: Okay.

PROKER-KING: Yeah, but I didn't want you like if you wanted to leave to be leaving here oh, you didn't finish your two years and so it's going to stay on there forever.

MILLER: Okay. What is.. That's fine that's all I need to know Rene. That's it. That's all need to know. If you're going to destroy it when I leave, that's fine.

PROKER-KING: Yes. Yes.

MILLER: Umm. The next question is the confidentiality of it. How confidential is it?

PROKER-KING: It's a personnel record so it should be very confidential.

MILLER: Okay.

PROKER-KING: I mean. It's legally confidential.

MILLER: Okay.

PROKER-KING: Umm, now. People can't get it like under oath and records request because it would be personnel confidential. Umm, I mean I guess if it was somehow relevant in a court you know you can get some things under court order, that you can't get under, but a public records request we say no it's confidential.

MILLER: Okay, all right. That's all I needed to know.

PROKER-KING: Okay.

Promise to destroy discipline memo

MILLER: So would it go on the day I leave? Is that when you would have it destroyed?

BROKER-KING: Right.

BROKER-KING: Or as soon as you know you resigned we could go over there and tear it up.

MILLER: Okay.

BROKER-KING: That's fine with me.

MILLER: All right.

BROKER-KING: Because that's what I promised you... I mean that was the whole reason.

MILLER: Okay.

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 FAIRBANKS DAILY NEWS MINER)
4 And Alaska Dispatch, LLC,)

5 Plaintiffs,)

6 vs.)

7 FAIRBANKS NORTH STAR)
8 BOROUGH;)

9 Defendant.)

CASE NO. 4FA-10-2886 CI

(consolidated with 4FA-10-2990)

10 vs.)

11 JOSEPH MILLER,)

12 Intervenor,)

13 vs.)

14 JIM WHITAKER,)

15 Third-Party Defendant.)

FILED in the Trial Courts
State of Alaska Fourth District

OCT 22 2012

By _____ Deputy

16 INTERVENOR JOSEPH MILLER'S OPPOSITION TO
17 ALASKA DISPATCH'S MOTION FOR ATTORNEY FEES

18 Intervenor, Joseph Miller, through counsel of record,
19 hereby opposes the Alaska Dispatch's Motion for Attorney Fees.

20 1. Facts Relevant to the Recovery of Attorney's Fees and Costs.

21 Alaska Dispatch filed suit against the Fairbanks North
22 Star Borough ("FNSB") on October 11, 2010, requesting that FNSB

23
24
25 INTERVENOR JOSEPH MILLER'S OPPOSITION TO ALASKA DISPATCH'S MOTION FOR
ATTORNEY FEES

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1 release records concerning Mr. Miller's prior employment.¹ In
2 answering Alaska Dispatch's complaint, FNSB denied that the
3 records should be disclosed.² FNSB also moved to require Alaska
4 Dispatch to join Miller as a party or, alternatively, to
5 dismiss the complaint for failure to join an indispensable
6 party.³

7 On October 14, 2010, Joseph Miller, sensing that his
8 participation seemed inevitable, moved to intervene into this
9 lawsuit.⁴ On October 19, 2010, the Court granted Miller's
10 motion to intervene. This Order was distributed to the parties
11 on October 21, 2010.⁵ See Exhibit "A".

12 On October 20, 2010, Mr. Miller answered Alaska Dispatch's
13 Complaint, cross-claimed against FNSB for violating his privacy
14 rights and for indemnification, and asserted a third-party
15 claim against former borough Mayor Jim Whitaker for violating
16

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19 ¹ See Complaint for Access to Public Records Concerning U.S. Candidate Joe
20 Miller, dated October 11, 2010.
21 ² See FNSB's Answer to Alaska Dispatch's Complaint, dated October 15, 2010,
22 paragraphs 18-20.
23 ³ See FNSB's Motion to Require Alaska Dispatch to Join Joseph Miller as a
24 Party or, Alternatively, to Dismiss for Failure to Join an Indispensable
25 Party, dated October 12, 2010.
26 ⁴ See Motion to Intervene by Joseph Miller, dated October 14, 2010.
⁵ See Order Granting Motion to Intervene by Joseph Miller dated October 19,
2010, with clerk's certificate showing distribution on October 21, 2010,
attached as Exhibit "A".

1 his privacy rights.⁶ Mr. Miller never filed any claims against
2 Alaska Dispatch.

3 On October 22, 2010, FNSB moved to sever Mr. Miller's
4 cross-claims against FNSB and third-party claim against
5 Whitaker from the media Plaintiffs' claims for records
6 disclosure.⁷

7 On October 23, 2010, the Court ordered FNSB to release
8 certain records after 4:00 p.m. on October 26, 2010. On
9 October 26, 2010, the Court issued a written order allowing the
10 FNSB to release records before 4:00 p.m. on October 26, 2010,
11 if no party intended to file an expedited appeal.⁸ Exhibit "B".

12 On November 4, 2010, the Court denied the FNSB's motion to
13 sever, ordering that: "Currently it appears to the Court that
14 the documents issue is resolved."⁹

15 After the documents were released by the FNSB on October
16 26, 2010, the litigation continued on only Mr. Miller's cross-
17 claims and third-party claim against FNSB and Mr. Whitaker. As
18

19
20 ⁶ See Intervenor Joseph Miller's Answer to Alaska Dispatch's Complaint, Cross
Claim Against FNSB and Third-Party Claim Against Jim Whitaker, dated October
20, 2010.

21 ⁷ See FNSB's Opposition to Intervenor Joseph Miller's Motion for Expedited
Discovery and Civil Rule 56(f) Motion and FNSB's Motion to Sever, dated
22 October 22, 2010.

23 ⁸ See Order entered on Alaska Dispatch's Request for Clarification Regarding
Timing of Release of Public Records, dated October 26, 2010, attached hereto
as Exhibit "B".

24 ⁹ See Order Denying FNSB's Motion to Sever, dated November, 4, 2010.

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1 this Court has ruled, Alaska Dispatch was never a party to
2 these claims.¹⁰

3 Alaska Dispatch filed no substantive pleading from October
4 26, 2010 until March 23, 2012, when it filed an Opposition to
5 Miller's Motion to Compel Journalists' Testimony in Connection
6 with Cross-Claims Against FNSB.¹¹ Alaska Dispatch filed its
7 opposition to assert a journalists' privilege to protect Alaska
8 Dispatch and other news organizations and journalists from
9 disclosing their sources of information which were sought in
10 the litigation on Mr. Miller's cross-claims against FNSB. It
11 was not filed for the purpose of seeking relief on any claim
12 filed by Alaska Dispatch or to defend against any claim filed
13 by Mr. Miller against Alaska Dispatch. Alaska Dispatch did not
14 need to be a party to assert a journalists' privilege. Andrew
15 Halcro filed a similar opposition asserting his claim to a
16 journalist's privilege as a non-party participant on March 12,
17 2012.¹² Alaska Dispatch admitted in its opposition of March 23,
18 2010, that it had no reason for remaining a party and the

20 ¹⁰ See Log Notes of June 6, 2012 hearing at 2:35:44 - 2:36:46, 2:40:00.

21 ¹¹ See Memorandum of Alaska Dispatch in Opposition to Joe Miller's Motion to
22 Compel Journalists' Testimony in Connection with Cross-Claims Against
23 Fairbanks North Star Borough, dated March 23, 2012.

24 ¹² See Andrew Halcro's Opposition to Motion to Compel Testimony Regarding
25 Confidential Sources of Information Gathered in the Course of Reporting on
26 U.S. Senate Candidate Joseph Miller's Previous Employment, dated March 9,
2012.

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1 remaining disputes between the other parties did not involve
2 Alaska Dispatch.¹³ Although Alaska Dispatch blamed Mr. Miller
3 for its continued presence as a party, Alaska Dispatch did not
4 need Mr. Miller's agreement or stipulation to move for entry of
5 final judgment under Civil Rule 54(b). Such a motion was
6 available from November, 2010 onward.

7 After filing its opposition asserting a journalists'
8 privilege, Alaska Dispatch filed no other pleading until it
9 finally moved for entry of a Rule 54(b) final judgment on May
10 24, 2012, nineteen months after Alaska Dispatch prevailed on
11 its records disclosure claim and before any ruling on its
12 journalists' privilege.

13 In moving for entry of final judgment under Civil Rule
14 54(b), Alaska Dispatch asserted there was no just reason for
15 delaying entry of final judgment¹⁴, an assertion it could have
16 made just as strongly, if not more strongly, immediately after
17 October 26, 2010, before discovery and litigation had occurred
18 on the cross-claims and third-party claim. Alaska Dispatch
19 admitted: "Since the Dispatch prevailed in its public records
20
21

22 ¹³ See Memorandum of Alaska Dispatch in Opposition to Joe Miller's Motion to
23 Compel Journalists' Testimony in Connection with Cross-Claims Against
24 Fairbanks North Star Borough, p. 17, fn. 16.

25 ¹⁴ See Memorandum in Support of Motion for Entry of Final Judgment in Favor
26 of Alaska Dispatch Pursuant to Civil Rule 54(b), dated May 24, 2012.

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1 suit, Defendants Borough and Miller have generated thousands of
2 pages of pleadings and discovery, filed many motions, and taken
3 numerous depositions - and in the process have spent hundreds
4 of thousands of dollars litigating the claims not involving the
5 Dispatch."¹⁵ [Emphasis added]. As Alaska Dispatch articulated,
6 after the records were released, it had "no stake" in the
7 litigation or "dog in this fight."¹⁶

8 During oral argument on June 6, 2012, Alaska Dispatch
9 argued that the remainder of the lawsuit is a different case
10 than the case filed by Alaska Dispatch in October of 2010.¹⁷
11 "It's not our case... There is nothing further involving the
12 Dispatch... [T]here's no reason we should continue to be in this
13 case."¹⁸ FNSB argued that it would not have opposed entry of a
14 54(b) final judgment had Alaska Dispatch filed its motion a few
15 months earlier, but FNSB was concerned about getting bogged
16 down in motions on fees and costs at that time.¹⁹ Mr. Miller
17 admitted that he had filed no claim against Alaska Dispatch.²⁰
18 Mr. Miller opposed entering a Rule 54(b) final judgment only
19

20 ¹⁵ Id., at page 3.

21 ¹⁶ See Alaska Dispatch's Reply to Defendant Joe Miller's Opposition to the
22 Dispatch's Motion for Entry of Judgment Pursuant to Civil Rule 54(b), at
page 13.

23 ¹⁷ See log notes of June 6, 2012 hearing, 10:13:28.

24 ¹⁸ Id., 10:17:35.

25 ¹⁹ Id., 10:31:34.

26 ²⁰ Id., 10:21:20.

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1 because it would trigger the time limits for filing an appeal
2 and moving for costs and attorney's fees, at a time when the
3 remaining parties were still litigating and preparing for trial
4 on the cross-claims and third-party claim.²¹

5 At the conclusion of oral argument, the Court found that
6 there were never any claims against Alaska Dispatch and granted
7 Alaska Dispatch's motion for entry of final judgment, with a
8 30-day stay on the time limits for filing an appeal and moving
9 for fees and costs.²²

10 Two days later, on June 8, 2012, FNSB and Whitaker made a
11 Civil Rule 68 Offer of Judgment for entry of joint and several
12 liability in favor of Miller, with all parties to bear their
13 own attorney's fees and costs. Miller accepted this Offer of
14 Judgment on June 18, 2012.

15
16 In response to the court's status inquiry after the
17 accepted offer of judgment, all parties agreed that all pending
18 motions were moot, including Miller's motions to compel
19 disclosure of sources and the claim of any journalists'
20
21
22

23 ²¹ Id., 10:25:13

24 ²² Id., 2:34:12, 2:38:48.

1 privileges, and the case was finally concluded, except perhaps
2 for a motion by Alaska Dispatch for attorney's fees and costs.²³

3 On August 29, 2012, Final Judgment was entered in favor of
4 Joseph Miller against FNSB and Whitaker, jointly and severally,
5 in the total amount of \$5,000, with post-judgment interest and
6 the parties bearing their own costs and attorney's fees.²⁴

7 Final judgment was also entered in favor of Alaska Dispatch
8 against FNSB and Mr. Miller "for the reasons set forth in the
9 court's October 23, [2010] order"²⁵, in which FNSB was ordered
10 to release records to Alaska Dispatch.

11 According to Alaska Dispatch's counsel, he billed 123.1
12 hours of attorney's fees from September 9, 2010²⁶ through
13 October 19, 2010; when Mr. Miller was granted permission to
14 intervene in this lawsuit; 34.6 hours from October 20, 2010
15 through October 26, 2010, when Alaska Dispatch obtained its
16 relief against the FNSB; and 291 hours after October 27, 2010,
17 while the cross-claims and third-party claim between Mr. Miller
18

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21 ²³ See Status Reports dated June 20, 2012, of Miller, FNSB, Alaska Dispatch,
and Whitaker.

22 ²⁴ See Final Judgment entered on August 29, 2012.

23 ²⁵ The Final Judgment misidentified the year of this order as October 23,
2012, rather than October 23, 2010.

24 ²⁶ Fees were billed beginning more than a month before Alaska Dispatch even
filed its lawsuit against FNSB on October 11, 2010.

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1 and FNSB/Whitaker were being litigated.²⁷ Even after the court
2 ruled that Alaska Dispatch was entitled to a Rule 54(b) final
3 judgment on June 6, 2012, Alaska Dispatch continued involving
4 itself in the merits of the cross-claims and third-party claim
5 between Miller and FNSB/Whitaker, billing an additional 52.7
6 hours after June 6, 2012.²⁸

7 **2. Under Alaska Civil Rule 82(b)(2), Alaska Dispatch is**
8 **Entitled to 20% of its Attorney's Fees that Were Necessarily**
9 **and Reasonably Incurred in Pursuing its Records Release Claim**
10 **Against Mr. Miller.**

11 Under Alaska Civil Rule 82(b)(2), a prevailing party who
12 recovered a "no money judgment" in a case that "resolved
13 without trial" is entitled to "20 percent of its actual
14 attorney's fees that were necessarily incurred."

15 To the extent that Alaska Dispatch is a prevailing party
16 with respect to its records release claim, Alaska Dispatch's
17 recovery of attorney's fees against Mr. Miller should be
18 limited to 20 percent of the fees it incurred after Mr. Miller
19 intervened in this case on October 20, 2010 and until October
20 26, 2010, when Alaska Dispatch obtained all relief it sought.
21 Alaska Dispatch should not be entitled to any recovery against

22 ²⁷ See Invoice for Professional Services attached to the Declaration of
23 Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney
24 Fees, dated October 8, 2012.

²⁸ Id., pp. 19-22.

1 Mr. Miller for attorney's fees incurred before Mr. Miller
2 became a party to this lawsuit, as these were not necessarily
3 incurred with respect to any claim against Mr. Miller. After
4 Alaska Dispatch obtained its relief on October 26, 2010, the
5 litigation continued only on the cross-claims and third party
6 claim between Miller and FNSB/Whitaker; Alaska Dispatch was not
7 a party to the cross-claims or third-party claim and thus did
8 not necessarily or reasonably incur attorney's fees in its
9 pursuit or defense of any claim during their litigation.

10 **A. Alaska Dispatch Did Not Necessarily Incur Attorney's**
11 **Fees Because of Any Claim Against Mr. Miller Until October**
12 **20, 2010.**

13 Alaska Dispatch sued FNSB, and not Mr. Miller, when it
14 filed its Complaint for Access to Public Records on October 11,
15 2010. Mr. Miller was not a party to this lawsuit until after
16 this Court entered its order granting Mr. Miller's intervention
17 on October 19, 2010. See Exhibit "A".

18 According to Alaska Dispatch's counsel, from September 9,
19 2010 through October 19, 2010, he billed 123.1 hours of
20 attorney's fees, before any claim was asserted against Mr.

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1 Miller and before Mr. Miller was a party to this lawsuit.²⁹

2 These fees included time beginning on September 9, 2010, before
3 Alaska Dispatch even filed its lawsuit against FNSB on October
4 11, 2010. If Alaska Dispatch's argument is that it incurred
5 attorney's fees in preparing to file its complaint, Alaska
6 Dispatch filed its Complaint against FNSB, not Mr. Miller.
7 Alaska Dispatch's pre-litigation fees and costs were not
8 "necessarily incurred" in preparing to file any complaint
9 against Mr. Miller.

10 Any fees that were "necessarily incurred" with respect to
11 Alaska Dispatch's claims against FNSB from September 9, 2010
12 through October 20, 2010 (i.e., before Mr. Miller's
13 intervention), were not "necessarily incurred" because of any
14 claim against Mr. Miller and, thus, cannot be recovered from
15 Mr. Miller.
16

17 **B. Alaska Dispatch Did Not Necessarily or Reasonably
18 Incur Attorney's Fees After October 26, 2010.**

19 According to its counsel, Alaska Dispatch incurred most of
20 its attorney's fees (291 hours for total fees of \$72,750³⁰),
21

22 ²⁹ See Invoice for Professional Services attached to the Declaration of
23 Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney
24 Fees, dated October 8, 2012, pp. 1-5.

25 ³⁰ Fees were calculated at Alaska Dispatch's counsel's stated hourly rate of
26 \$250 for 291 hours to total \$72,750.

1 after it obtained the relief it sought in its Complaint via
2 FNSB's release of records on October 26, 2010.³¹

3 After October 26, 2010, the remaining litigation was (with
4 the exception of the 54(b) motion) exclusively on Mr. Miller's
5 cross-claims against FNSB and third-party claim against
6 Whitaker. This Court has ruled that Alaska Dispatch was not a
7 party to either of these claims.³² After October 26, 2010,
8 Alaska Dispatch had obtained all relief it sought and was not
9 defending against any claim. Alaska Dispatch remained in this
10 lawsuit only because after obtaining its relief, it failed to
11 move for entry of final judgment under Civil Rule 54(b) until
12 May 24, 2012. Alaska Dispatch did not require Mr. Miller's
13 agreement or stipulation to move for entry of a Civil Rule
14 54(b) final judgment and the failure to stipulate is not
15 grounds to not file the motion for eighteen months.
16

17
18 Remaining in this lawsuit after October 26, 2010
19 benefitted Alaska Dispatch by allowing it to attend depositions
20 and court hearings and keep abreast of this litigation, which
21 provided Alaska Dispatch with a first-hand source of

22 ³¹ See Invoice for Professional Services attached to the Declaration of
23 Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney
24 Fees, dated October 8, 2012, pp. 7-22.

³² See Log Notes of June 6, 2012 hearing at 2:35:44 - 2:36:46, 2:40:00.

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1 information for its news stories. Alaska Dispatch reported
2 frequently about Joe Miller, and this lawsuit, from October 27,
3 2010 through the present. See Alaska Dispatch's numerous
4 reports attached as Exhibit "C". FNSB and Whitaker also
5 benefitted because after October 26, 2010, Alaska Dispatch
6 participated as an advocate for FNSB and Whitaker.

7
8 However, attorney's fees and costs incurred by Alaska
9 Dispatch after October 26, 2010, were not "necessarily or
10 reasonably incurred" by Alaska Dispatch in pursuing its records
11 release claim or in any other claim or defense of Alaska
12 Dispatch, except perhaps to the limited extent that Alaska
13 Dispatch incurred reasonable fees when it moved for entry of a
14 Rule 54(b) final judgment on May 24, 2012.

15
16 **C. Any Recovery Against Mr. Miller is Limited to \$1,730 for
17 Fees Incurred Through October 26, 2010, Plus No More than
18 \$1,650 for Fees Incurred to Obtain Final Judgment After
19 October 26, 2010, Divided Evenly With FNSB.**

20 To the extent that Alaska Dispatch may be a prevailing
21 party with respect to its records release claim, Alaska Civil
22 Rule 82(b)(2) applies to a "no money judgment" that was
23 "resolved without trial", entitling Alaska Dispatch to "20
24 percent of its actual attorney's fees that were necessarily

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1 incurred" because of Mr. Miller's intervention on October 20,
2 2010, and until Alaska Dispatch obtained its relief on October
3 26, 2010.

4 According to its counsel, Alaska Dispatch was billed 34.6
5 hours of attorney's fees, for total fees of \$8,650³³, from the
6 time of Mr. Miller's intervention into this lawsuit on October
7 20, 2010 until Alaska Dispatch obtained its relief on October
8 26, 2010.³⁴ Applying Civil Rule 82(b)(2), Alaska Dispatch is
9 entitled to recover against Mr. Miller no more than 20 percent
10 of its attorney's fees incurred from October 20, 2010 through
11 October 26, 2010 (i.e., 20% of \$8,650), in the amount of \$1,730
12 for fees incurred through October 26, 2010.

13 If any fees are allowed after October 26, 2010, they must
14 be limited to fees that were necessarily and reasonably
15 incurred in obtaining a final judgment on Alaska Dispatch's
16 record release claim. On May 24, 2012, Alaska Dispatch moved
17 for entry of a Rule 54(b) final judgment on its records release
18 claim. Counsel's time entries show the Rule 54(b) motion was
19 worked on from May 15, 2012 through June 6, 2012, and that 63.9
20

21
22 ³³ Fees were calculated at Alaska Dispatch's attorney's stated hourly rate of
\$250 for 34.6 hours, to total \$8,650.

23 ³⁴ See Invoice for Professional Services attached to the Declaration of
Counsel in Support of Alaska Dispatch Motion for Award of Rule 82 Attorney
Fees, dated October 8, 2012, pp. 5-7.

1 combined hours were billed on the Rule 54(b) motion and on
2 other matters involving the cross-claims and third-party claim
3 that were unrelated to the Rule 54(b) motion.³⁵ Alaska Dispatch
4 has the burden of itemizing its attorney's fees that were
5 necessarily incurred in pursuit of its records release claim.
6 *Marron v. Stromstad*, 123 P.3d 992, 1013 (Alaska 2005). This is
7 not a case where "the amount of attorney's fees were so low and
8 the hours ... counsel expended ... were so minimal" that the
9 failure was harmless or the fees were reasonable per se.
10 *Capolicchio v. Levy*, 194 P.3d 373, 381 (Alaska 2008). In the
11 absence of an itemization that separates and isolates time
12 incurred on the records release claim from other matters, all
13 fees after October 26, 2010 should be denied.

14
15 Alaska Dispatch's counsel did not necessarily or
16 reasonably incur 63.9 hours of time in moving for and obtaining
17 final judgment, and indeed his combined time entries
18 demonstrate that he did not. Alaska Dispatch's memorandum in
19 support of its motion for entry of Rule 54(b) final judgment

20
21 ³⁵ Time was billed in preparing the Rule 54(b) motion on May 15, 2012 (3.8
22 hours), May 16, 2012 (3.3 hours), May 18, 2012 (3.2 hours), May 21, 2012
23 (4.4 hours), May 22, 2012 (4.1 hours), May 29, 2012 (2.3 hours), May 30,
24 2012 (2.7 hours), June 1, 2012 (0.9 hours), June 2, 2012 (6.4 Hours), June
25 3, 2012 (7.3 hours), June 4, 2012 (10.8 hours), June 5, 2012 (6.8 hours),
26 and June 6, 2012 (7.9 hours), to total 63.9 hours. However, most of these
time entries combined time on other issues that were not related to Alaska
Dispatch's motion for a Rule 54(b) final judgment.

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1 was only eight pages long. In addition, Alaska Dispatch filed
2 a nineteen-page reply to Miller's opposition and six-page reply
3 to FNSB's response to its motion. Even ascribing one hour of
4 time for researching and composing each page of the thirty-
5 three pages of briefing that was filed, Alaska Dispatch would
6 have incurred not more than 33 hours on its Rule 54(b) motion.
7 Using this very generous approach, Alaska Dispatch attorney's
8 fees would have been no more than \$8,250 (33 times \$250 hourly
9 rate) for obtaining a final judgment on its records release
10 claim.³⁶ If Alaska Dispatch is awarded any fees after October
11 26, 2010, they should be limited to twenty percent of \$8,250,
12 totaling no more than \$1,650 for attorney's fees to obtain
13 final judgment after October 26, 2010. Civil Rule 82(b)(2).

14
15 Any recovery of fees and costs against Mr. Miller should
16 be divided evenly with FNSB³⁷, with Mr. Miller and FNSB each

17
18 ³⁶ Even using Alaska Dispatch's counsel's inflated time entries, Alaska
19 Dispatch incurred no more than 63.9 hours on its records release claim after
20 October 26, 2010. Using these inflated time entries and a fee rate of \$250,
21 Alaska Dispatch's attorney's fees after October 26, 2010, to obtain a final
22 judgment on its records release claim were no more than \$15,975 (63.9 times
23 \$250), entitling Alaska Dispatch to attorney's fees of no more than \$3,195
24 (i.e., 20% of \$15,975) for obtaining final judgment on its records release
25 claim. Civil Rule 82(b)(2). However, because it is unreasonable that 63.9
26 hours were incurred on Alaska Dispatch's Rule 54(b) motion and its own time
27 entries demonstrate that time was incurred on other issues, substantially
28 less than \$3,195 should be awarded for attorney's fees after October 26,
29 2010.

³⁷ However, FNSB may owe additional fees and costs not owed by Mr. Miller,
such as for fees and costs incurred by Alaska Dispatch before October 20,

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1 responsible for one-half (50%) of the recovery. Alaska
2 Dispatch asserted a claim for the release of records against
3 FNSB (after FNSB insisted he was an indispensable party).³⁸ Mr.
4 Miller became involved in that claim only because he intervened
5 into the lawsuit between Alaska Dispatch and FNSB. As Alaska
6 Dispatch asserted precisely the same claim against both FNSB
7 and Mr. Miller, all fees and costs necessarily incurred in
8 pursuit of its records release claim were incurred against both
9 Mr. Miller and FNSB. Consequently, fees and costs assessed
10 against both Mr. Miller and FNSB should be evenly divided
11 between Mr. Miller and FNSB.³⁹

12 **3. Alaska Dispatch Is Not the Prevailing Party on Mr.
13 Miller's Cross-Claims and Third-Party Claim Against FNSB and
14 Whitaker.**

15 Most of the litigation in this case occurred after October
16

17 2010, when FNSB was the only defendant in this lawsuit.

18 ³⁸ See Complaint for Access to Public Records Concerning U.S. Candidate Joe
Miller, dated October 11, 2010.

19 ³⁹ This Court has discretion to divided liability for fees and costs between
FNSB and Miller or to impose joint and several liability.

20 "... [T]rial courts have great discretion to adapt awards of costs and fees to
the unique circumstances of a particular case", including discretion to
21 determine whether several liability or joint and several liability is
appropriate. *In re Soldotna Air Crash*, 835 P.2d 1215, 1222 (Alaska 1992);
Hughes v. Foster Wheeler Co., 932 P.2d 784, 792 (Alaska 1997). In this
22 case, imposing joint and liability will open the door to further disputes
and litigation as to each party's respective payment obligation, including
possible issues of contribution, and should be avoided. Dividing liability
23 for attorney's fees between Mr. Miller and FNSB and imposing several
liability on each will allow this matter to finally conclude without further
disputes and litigation.

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1 26, 2010, on Mr. Miller's cross-claims against FNSB and third-
2 party claim against Whitaker. With respect to this litigation
3 after October 26, 2010, Alaska Dispatch had no claim and was
4 defending against no claim. This litigation concluded when Mr.
5 Miller accepted FNSB's and Whitaker's Rule 68 offer of
6 judgment, and final judgment was entered in favor of Mr. Miller
7 against FNSB and Whitaker, jointly and severally, on August 29,
8 2012. The accepted offer of judgment provided that each party
9 would bear their own costs and attorney's fees, thus mooting
10 the issue of whether Mr. Miller or FNSB/Whitaker was the
11 prevailing party on the cross-claims and third-party claim for
12 recovery of attorney's fees and costs.⁴⁰ However, regardless of
13 whether Mr. Miller or FNSB/Whitaker was the prevailing party on
14 the cross-claims and third party claim, it is a certainty that
15 Alaska Dispatch was not the prevailing party on either the
16 cross-claims or third party claim.
17

18 As Alaska Dispatch was not the prevailing party on the
19 cross-claims or third party claim, Alaska Dispatch is not
20 entitled to recover any attorney's fees or costs incurred in

21 ⁴⁰ For Rule 82 attorney's fees, "... the prevailing party is the party who has
22 'successfully prosecuted or defended against the action, the one who is
23 successful on the main issue of the action and in whose favor the decision
24 or verdict is rendered and that judgment entered.' 'With few exceptions,
the party who obtains an affirmative recovery is considered prevailing.'" *Wooten v. Hinton*, 202 P.3d 1148, 1152 (Alaska 2009).

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1 litigating the cross-claims and third party claim. See AS
2 09.60.010 and Civil Rules 82(a) and 79(a).

3 Yet, most of the Dispatch's allegations of unreasonable,
4 vexatious, and bad faith conduct by Mr. Miller occurred after
5 October 26, 2010, during the litigation of the cross-claims and
6 third-party claim between Mr. Miller and FSNB/Whitaker (but not
7 Alaska Dispatch). As Alaska Dispatch was not the prevailing
8 party and cannot recover attorney's fees on the cross-claims
9 and third-party claim, the factors of Rule 82(b) (3) are
10 irrelevant to any recovery of fees on the cross-claims and
11 third-party claim. In addition, the factors of Rule 82(b) (3)
12 and allegations of Mr. Miller's subsequent conduct in
13 litigating his cross-claims and third-party claim against
14 FNSB/Whitaker are irrelevant to the recovery by Alaska Dispatch
15 on its records release claim that was resolved by October 26,
16 2010.
17

18 Nevertheless, Mr. Miller adamantly disputes Alaska
19 Dispatch's recounting, characterizations, and allegations that
20 his conduct and claims were frivolous, vexatious, or in bad
21 faith. Although Judge Burbank ordered that the records be
22 released, he did not find that Miller's privacy claims, or
23 FNSB's refusal to release the records, were frivolous,
24

25 INTERVENOR JOSEPH MILLER'S OPPOSITION TO ALASKA DISPATCH'S MOTION FOR
26 ATTORNEY FEES

Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
et. al.; Case No.: 4FA-10-2886 CI

Page 19 of 23

1 vexatious or in bad faith. The cross-claims and third-party
2 claim between Miller and FNSB/Whitaker were settled by the
3 parties through an accepted offer of judgment and entry of
4 final judgment, and the merits were never ruled upon.

5 CONCLUSION

6 Alaska Dispatch sued FNSB on October 11, 2010. Mr. Miller
7 was not a party to this lawsuit until October 20, 2010. All
8 fees incurred by Alaska Dispatch before October 20, 2010 were
9 not necessarily incurred in pursuing any claim against Mr.
10 Miller and may not be recovered against Mr. Miller.

11 Alaska Dispatch obtained all the relief it sought in its
12 Complaint when FNSB released records on October 26, 2010. At
13 that time, Alaska Dispatch could have moved for entry of a
14 Civil Rule 54(b) final judgment to extricate itself from this
15 case. All arguments that Alaska Dispatch made in support of
16 its motion for a Rule 54(b) final judgment in May of 2012 could
17 have been made even more strongly in October or November of
18 2010, before substantial discovery and motion practice had
19 occurred on the cross-claims and third-party claim. Alaska
20 Dispatch's motion for a Rule 54(b) final judgment did not
21 depend on any agreement or stipulation by Mr. Miller and, thus,
22 was not thwarted or delayed by Mr. Miller.
23
24

1 After Alaska Dispatch obtained its relief in October 26,
2 2010, litigation continued exclusively on Mr. Miller's cross-
3 claims and third-party claim against FNSB and Whitaker. As
4 Alaska Dispatch conceded, it had no "stake" in this litigation
5 or "dog in this fight."⁴¹ Attorney's fees after October 26,
6 2010 were not necessarily or reasonably incurred by Alaska
7 Dispatch on its records release claim or in its pursuit or
8 defense of any other claim, except to the limited extent that
9 Alaska Dispatch incurred reasonable attorney's fees in moving
10 for entry of a Rule 54(b) final judgment on its records release
11 claim on May 24, 2012, which was granted on June 6, 2012.

12
13 Alaska Dispatch was not the prevailing party on either Mr.
14 Miller's cross-claims against FNSB or third-party claim against
15 Mr. Whitaker. As such, Alaska Dispatch is entitled no recovery
16 of attorney's fees incurred in the litigation of Mr. Miller's
17 cross-claims and third-party claims.

18 The factors of Civil Rule 82(b)(3) are irrelevant to
19 Alaska Dispatch's recovery of attorney's fees on the cross-
20 claims and third party claim (i.e., Alaska Dispatch did not
21 prevail and cannot recover fees on these claims). Alaska

22
23 ⁴¹ See Alaska Dispatch's Reply to Defendant Joe Miller's Opposition to the
24 Dispatch's Motion for Entry of Judgment Pursuant to Civil Rule 54(b), at
25 page 13.

1 Dispatch's allegations of misconduct by Mr. Miller with respect
2 to his litigation of the cross-claims and third party claim are
3 vehemently disputed and irrelevant to Alaska Dispatch's
4 recovery of attorney's fees on its records release claim that
5 was resolved by October 26, 2010.

6 Joseph Miller thus requests that any recovery of
7 attorney's fees by Alaska Dispatch be limited to 20 percent of
8 the fees that were necessarily and reasonably incurred by
9 Alaska Dispatch in pursuing its records release claim from
10 October 20, 2010 through October 26, 2010, in an amount not to
11 exceed \$1,730. Civil Rule 82(b)(2). In addition, if Alaska
12 Dispatch is awarded any fees incurred after October 26, 2010,
13 they should be limited to necessary and reasonable fees
14 incurred to obtain final judgment on Alaska Dispatch' records
15 release claim, in an amount not to exceed \$1,650. *Id.*

17 As Alaska Dispatch pursued one records release claim
18 against both FNSB and Mr. Miller and all fees necessarily
19 incurred in pursuit of that claim were incurred against both
20 FNSB and Mr. Miller, any recovery by Alaska Dispatch against
21 both FNSB and Mr. Miller should be evenly split between FNSB
22 and Mr. Miller.

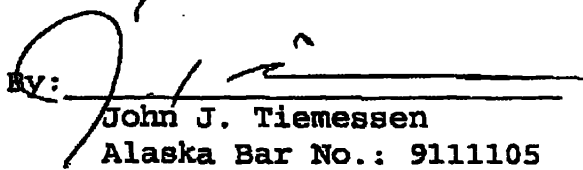
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25 INTERVENOR JOSEPH MILLER'S OPPOSITION TO ALASKA DISPATCH'S MOTION FOR
ATTORNEY FEES

26 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
et. al.; Case No.: 4FA-10-2886 CI

Page 22 of 23

1 DATED at Fairbanks, Alaska, this 22nd day of October, 2012.

2 CLAPP, PETERSON, TIEMESSEN,
3 THORSNESS & JOHNSON, LLC
4 Attorneys for Joseph Miller

5 By: 
6 John J. Tiemessen
Alaska Bar No.: 9111105

7 CERTIFICATE OF SERVICE

8 I certify that a copy of this document
9 was served via first class mail on the following individuals:

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Anchorage, AK 99501

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15 731 N Street
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16
17 Dated: 10/22/12 By: Candice Chase

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 FOURTH JUDICIAL DISTRICT AT ANCHORAGE

FAIRBANKS DAILY NEWS MINER,)

Plaintiff,

vs.

FAIRBANKS NORTH STAR
 BOROUGH,

Defendant.

Clapp Peterson Van Flein Thomassen & Thornness LLC
 CVTT File # 2548-1 Date Rec'd 10-22-10
 Date Served _____ Response Due _____
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2886
 Case No. 4FA-10-~~2890~~ CI

ORDER GRANTING MOTION TO INTERVENE BY JOSEPH MILLER

The Court, having reviewed the Motion to Intervene by Joseph Miller, and any response thereto, GRANTS the Motion. The Court finds that intervention is proper and mandatory under Civil Rule 24(a). The Court orders Mr. Miller to file an appearance, through counsel, and a response to the Complaint within 20 days.

Oct. 19, 2010

By *Joseph A. Burnes*
 Superior Court Judge

Certificate of Service:

The undersigned hereby certifies that a true and correct copy of the foregoing was served via U.S. Mail this 14th day of October, 2010 on the following:

John Burns, Esq. (fax 456-5055)
 Borgeson & Burns
 100 Cushman Street, Suite 311
 Fairbanks, Alaska 99701

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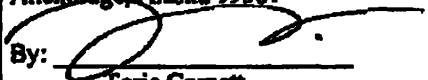
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 Case No. 4AN-10-2890 CI
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Jill Dolan, Esq. (Fax 459-1155)

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John McKay, Esq.
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By: 
Torie Cornett

Order Granting Motion to Intervene
Fairbanks Daily News Miner v. Fairbanks North Star Borough
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 Attorney for Alaska Dispatch

Clegg Peterson Van Fleet Thompson & Thompson LLC
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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 FOURTH JUDICIAL DISTRICT AT FAIRBANKS**

**FAIRBANKS DAILY NEWS-MINER,
 ALASKA DISPATCH, LLC, and**
 Plaintiff,

and **ANCHORAGE DAILY NEWS and
 ASSOCIATED PRESS,**
 Intervenor/Plaintiff

v.

**FAIRBANKS NORTH STAR
 BOROUGH,**
 Defendant.

JOSEPH W. MILLER,
 Intervenor/Defendant

Case No. 4FA-10-2886 CI

**ALASKA DISPATCH'S REQUEST FOR CLARIFICATION
 REGARDING TIMING OF RELEASE OF PUBLIC RECORDS**

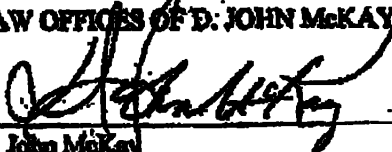
On October 23 this court ordered the release of certain public records relating to Senate candidate Joe Miller's employment with the North Star Borough. The court ordered that the documents not be released before 4 p.m. today, to ensure that the parties could appeal its ruling to the Supreme Court if they wished. Mr. Miller has publicly announced that he is not appealing.

the court's ruling. Plaintiffs request that the court clarify that if the Borough determines, in consultation with counsel for Mr. Miller, that he is not appealing the court's ruling, the Borough is free to release the disclosable records before 4 p.m. today.

In case the court feels that a formal order is necessary to clarify this matter, a proposed order is provided below.

Dated at Anchorage, Alaska this 26th day of October, 2010.

LAW OFFICES OF D. JOHN MCKAY


D. John McKay
Attorney for Alaska Dispatch

ORDER

If the defendant Fairbanks North Star Borough determines through notice from or consultation with counsel for the parties that none of the parties intends to appeal or seek a stay of this court's October 23 order, the Borough is free to provide to the public the records this court has ruled are disclosable without writing until 4 p.m.

Dated at Fairbanks, Alaska, this 26th day of October, 2010.


Hon. Winston S. Burbank
Superior Court Judge (pro tem)

Filed To:
McKay, Burns, Broker,
Zimmerman, VanFleet, Harnstad.
10.26.10. *fw*

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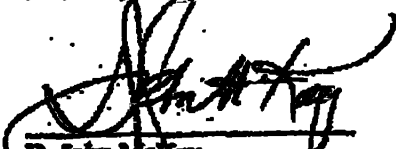
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Alaska Beat

Joe Miller campaign lawsuit ends with final ruling from judge

Alaska Dispatch | Sep 12, 2012

Former Alaska U.S. Senate candidate Joe Miller's long-running lawsuit against the Fairbanks North Star Borough has come to a close after a disagreement over the meaning of a judgment signed earlier this summer. In the settlement, the borough agreed to pay \$5,000 to Miller to end a costly legal battle over whether someone with the borough illegally leaked information about Miller's time working there. The judgment, signed by both parties in June, denied any admission of fault on the borough's part. Yet Miller went on to argue that, by its nature, a judgment admits fault.

The Fairbanks Daily News-Miner reports that Superior Court Judge Stephanie Joannides issued a formal judgment in the case that has finally ended the issue. Without much elaboration, she cited the signed judgment as the final word on the issue.

"The Offer of Judgment disclaiming any fault by Fairbanks North Star Borough and Jim Whitaker was accepted on June 20, 2012 by Intervenor Defendant, Cross Claimant and third Party Plaintiff Joseph Miller," Judge Joannides wrote.

Borough Mayor Luke Hopkins told the News-Miner "My view is that it's done, and I guess it's goodbye Joe."

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Alaska GOP's 'old guard' questions what happened to 'new guard' funds

Amanda Coyne | Jul 30, 2012



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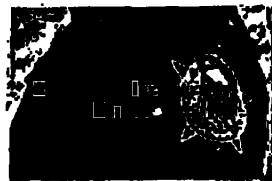
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Frank McQueary, assistant treasurer of the Republican Party of Alaska, sent an email to GOP party officials on Monday about "potentially improper fundraising by Chair Elect Russ Millette."

McQueary wrote that as assistant treasurer of the party, along with his role as standing rules chair, he has had "horrorous enquiries forwarded to me regarding both interpretations of the rules and questions concerning the financial aspects of fundraising."

Millette was not immediately available for comment.

McQueary told the group that he had contacted the Alaska Public Offices Commission (APOC), the state agency that monitors elections, seeking an opinion on whether funds have been properly reported by Millette.

At issue is more than \$1,600 raised by the splinter group, or ad hoc committee, that met June 9 in a church after the reconvening of the Republican Party Convention, McQueary said.

"To the best of my belief, the funds in question were not turned over to the party for reporting purposes, nor have they been reported by any other organization," McQueary wrote.

Money raised by any political party must be documented and reported. The APOC indicated it's investigating the issue.

McQueary said that party practice dictates that donor information is received for money raised. If the donor is unknown, the party sends the money to the state Department of Revenue.

Funds were requested at various times before and during the meeting. Some of that money was used, according to a transcript of the meeting, to pay for a parliamentarian the group had hired from Washington state.

At the end of the meeting, Millette told the group that it had collected \$1624.60. "This covers expenses for (the parliamentarian), which includes his airfare," Millette told the group. He also said that another person in the crowd, Gene Brokaw, was paying for the church and that members could pay him back.

The business manager of the church confirmed that it had charged the group \$200 to use the building.

The June 9 reconvening was the brainchild of Millette, Alaska's next chair of the Alaska GOP. He put out a call for state Republicans to finish what they started during the tumultuous state GOP convention in late April. Millette is a supporter of GOP presidential candidate Ron Paul.

With the help of failed 2010 U.S. Senate candidate Joe Miller, Millette captured the hearts and minds of Alaska's Paul supporters and dissatisfied Republicans to win the state GOP chairmanship at the April convention.

The war between the two factions of Alaska's GOP has brewed since. At the June 9 reconvening, the group voted to censure U.S. Sen. Lisa Murkowski for joining "far left interest groups" and "maliciously attacking" Joe Miller, who ran as a Tea Party candidate in the 2010 U.S. Senate race, but lost in the general election to Murkowski's write-in campaign.




Censuring didn't stop with Murkowski. The group also voted to censure a handful of Republican Party officials who weren't in the room, including McQueary.

Millette will become chair of the party early next year. In the meantime, he is the finance chair of the party, and old party boss Randy Ruedrich is still in charge.

Correction: The original story said that Millette was treasurer of the party. That's incorrect. He is currently finance chair.

Contact Amanda Coyne at Amanda@alaskadispatch.com

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Politics Joe Miller's leftover money resurfaces

Alaska Dispatch | Jul 24, 2012

Joe Miller's new federal campaign committee — Citizens for Joe Miller — is flush with more than \$435,000, according to a July quarterly filing with the Federal Election Commission. The committee was formed in early June after Miller replaced his previous campaign committee, Joe Miller for U.S. Senate.

The source of the nearly half-million dollars was Miller's old committee. Funds left over after the old committee paid all of its debts were transferred to the new committee.

But, the new committee has yet to declare what candidate it will work on behalf of. Citizens for Joe Miller is listed as a primary campaign committee, but because it has not raised or spent more than \$5,000 on a candidate or campaign, it has argued it is not required to name its beneficiary.

Miller, who is working on building a his former campaign website into a conservative-minded online news outlet, won't say what his future political aspirations may be. He's keeping his options open, according to a spokesperson.

There is speculation Miller may be eyeing a run against U.S. Sen. Mark Begich in 2014. If he does, financially he's not too far behind Alaska's junior Senator. With a campaign account currently at \$529,000, Begich has about \$100,000 more than Miller.

But as demonstrated by his previous race against write-in candidate U.S. Sen. Lisa Murkowski and Democratic challenger Scott McAdams, Miller has the ability to raise a good deal of money in a short period of time, and Alaskans have shown a willingness to shovel money into high-stakes, contentious elections.

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Politics

One-time Senate candidate Joe Miller reinvents himself as online news publisher

Jill Burke | Jul 17, 2012



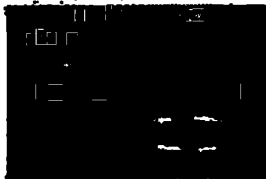
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Grudgingly slow, rural Alaska's honeybuckets are getting refilled

In the same month Joe Miller declared himself to be an online publisher, the Federal Elections Commission warned the one-time U.S. Senate hopeful that he had unfinished FEC business. What Miller has to gain from his latest ventures isn't entirely clear, but by July 26 he's supposed to publicly reveal any future political aspirations he may have.

A conservative Republican who ran on a platform of restoring the nation's political system to one driven by a strict interpretation of the constitutional framework established by the founding fathers, Miller didn't take his loss to incumbent Lisa Murkowski easily. She'd run an unprecedented write-in campaign after losing the primary to Miller, and won.

Nearly two years after his initial trouncing of Murkowski in Alaska's August primary, Miller shows no signs of slowing down. But, after putting to rest a lawsuit (which Alaska Dispatch was a party to until June) with his former employer, the Fairbanks North Star Borough, and trying a brief stint with an Outside tea-party political action committee, the Western Representation PAC, Miller has recently reinvented himself.

During the campaign, Miller found a loyal bloc of supporters, and droves of them. Unhappiness about the economic condition of the country and big-government social policies was abundant and easy to tap into. He had a pulpit, a new, louder voice and people who wanted to hear more.

On Independence Day this year, he announced he'd transformed his former campaign website, joemiller.us, into a full-blown online news outlet. The banner at the top of the page features a headshot of Miller and the words "Restoring Liberty, published by Joe Miller." Since then, the page has filled with columns, news stories and videos he believes his audience — which Miller estimates to be thousands of conservative readers — will want to view.

"After the close of the campaign, Kathleen and I continued to receive feedback from like-minded patriots throughout country asking that we stay engaged. We resurrected the JoeMiller.us website in May 2011. Since then, we've seen incredible growth. It's obvious that people throughout the country are desperate for the real news, with biases of the establishment media stripped away," Miller wrote in a July 4 column introducing the revamped site and its mission.

But there appears to be more on Miller's mind than managing stories and content. A month before the site overhaul, and as the lawsuit with the borough was winding down, Miller put his federal campaign committee, Joe Miller for U.S. Senate, to bed. He filed paperwork to officially terminate it, and transferred its remaining \$435,459 to a new federal committee, Citizens for Joe Miller.

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Citizens for Joe Miller lists itself as a "principal campaign committee," but it has not officially identified -- other than the obvious reference in its name -- which candidate it was established to support.

The FEC didn't like the lack of detail, and notified the committee on June 21 that the new organization is required to name a candidate, the office sought, and the candidate's party affiliation. It told Citizens for Joe Miller it wanted an answer by July 26.

In a response sent to the FEC soon after it got the commission's letter, the committee refused to name names. Because the committee has not raised or spent \$5,000 in furtherance of a federal candidacy, it doesn't believe it is required to provide the information sought by the FEC.

The timing behind Miller's choice to close one election bank account and start anew, and what, if any strategic gain is to be had by it, isn't clear. A Fairbanks Daily News-Miner article in June chronicled how the FEC committee-switching had become a point of interest in Miller's lawsuit against the Fairbanks North Star Borough, which once employed him as a part-time government lawyer.

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Politics

Joe Miller secretly recorded conversations, says borough court filing

Alaska Dispatch | Jun 22, 2012

Fairbanks Daily News-Miner columnist **Dermot Cole** reports an interesting tidbit from court documents in the long-running lawsuit involving the borough personnel records of failed Republican U.S. Senate candidate Joe Miller.

Attorneys representing the Fairbanks North Star Borough in the matter say that Miller secretly recorded conversations with borough employees, including Borough Attorney Rene Broker.

In Alaska legal circles, Miller had a reputation of being in the habit of recording conversations with other parties, whether openly or not.

Cole reports that attorneys for the Fairbanks North Star Borough on June 13 filed a "Motion to Compel Discovery" of all records of secret audio recordings Miller made of conversations with borough employees, as well as with reporters, senior campaign staff and political advisers.

In a letter dated May 13, Greg Fisher, an attorney for the borough, said that Miller secretly recorded conversations with Borough Attorney Rene Broker and by doing so Miller "breached fiduciary duties he owed the FNSB by secretly taping another lawyer discussing FNSB Legal Department subjects and by failing to disclose those tapes (which are public records under law)."

In the June 13 motion, the borough was to receive from Miller "A complete copy of any recording you have made of another party, party representative or witness to this litigation."

Miller was also to provide a copy of any recordings he or anyone working on his behalf made of Alaska Dispatch reporter Jill Burke "or any other reporter or journalist during the 2010 U.S. Senate campaign."

Miller was scheduled to be deposed on July 31, but the case has been settled, and the deposition won't occur.

Read much, much more from Cole, [here](#), and for the bonus round, read what Miller spokesman Bill Peck had to say to Cole, [here](#).

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Joe Miller: Failed Senate candidate settles lawsuit with North Star Borough

Ananda Coyne | Jun 19, 2012



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Grudgingly slow, rural Alaska's honeybuckets are getting retired

Failed Alaska U.S. Senate candidate Joe Miller declared victory in his long legal battle with the Fairbanks North Star Borough on Tuesday, the day that he was supposed to provide information to the court about how he was paying for his lawsuit.

On Monday, Miller accepted a \$5,000 judgement against the borough and former Fairbanks Mayor Jim Whitaker. The judgement was offered by the borough.

The borough mayor, Luke Hopkins, said it offered the judgement because it was in the "taxpayer's best interests to put a stop to this litigation and legal expenses with this low monetary offer."

Hopkins was also surprised that Miller accepted, given that he initially said that he would do so for \$50,000, and then \$25,000. He originally claimed that he had over \$160,000 in damages.

In a press release, Miller acknowledged that the judgment is "minimal." However, he said that this was "never a case about money. Rather, this case was about getting at the truth and setting the record straight. There is now a permanent record doing just that."

In a press release, however, the borough took issue with that statement. "This case confirmed that Miller engaged in misconduct at his work, lied about his misconduct, and was disciplined."

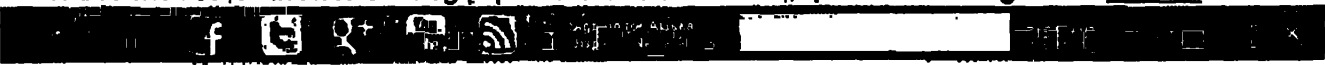
The borough said that the judgement should not be "construed as an admission of fault in any respect."

The dispute sprang from Miller's years as a part-time lawyer for borough, evolved into a lawsuit involving journalists, including the Alaska Dispatch, and began a debate over the First Amendment rights of bloggers:

It started in 2010, when Miller ran against U.S. Sen. Lisa Murkowski, R-Alaska, in the GOP primary. Miller's work experience was conspicuously missing from his employment history, an omission that was quickly noticed by media. For a while, Miller fielded questions about it. But the more reporters demanded explanations, the more the candidate dug in and refused to talk openly.

The first to push the point was citizen blogger/reporter Andrew Haloro, who, during summer 2010, posted a two-line blog entry – "Say it ain't so Joe" – which read: "U.S. Senate candidate Joe Miller was fired from his job as an attorney for the Fairbanks North Star Borough. Why?"

The rumor floated in Haloro's blog piqued the media's interest, and it wasn't long before Miller's



Eventually, the press corps, led by Alaska Dispatch, sued the borough for the release of these public records and won. (The Dispatch was a party to the suit until earlier this month.) The records showed Miller, against borough policy, had sneaked co to the computers of colleagues working at the borough, used the access to pad a political poll he was involved in, then lied about it to try to cover up what he had done. (It was at this time, too, that Miller has been convinced that Alaska Republican Party Chairman Randy Ruedrich was plotting to kill him. According to his colleagues at the time, Miller talked about plots against his life, computer hijacking, a bug in his office, and even requested that the mayor hire a security detail to protect Miller.)

Miller was not fired, as Politico's blog claimed. He was, however, barred for three years from re-employment at the borough because he didn't give enough notice prior to his departure.

After Miller lost in the general election to Murkowski's write-in campaign, he sued the borough, claiming that someone in the office illegally leaked information about Miller's time at the borough.

The judgement admits to none of this, however, and for all the time and money involved in the case, the only salient fact that seems to have emerged is that the former mayor of the borough, Jim Whitaker, had a meeting with Renee Breker, Miller's supervisor, about Miller's time at the borough and what could be said to the press about that time.

When deposed about the meeting, Breker claimed attorney-client privilege, even though Whitaker was no longer the mayor. Whether or not Breker and Whitaker could claim such privilege was scheduled to be argued in front of a judge next week.

The borough contends the law is very specific that former mayors can seek advice about events that occurred while they were in office.

Miller still believes that someone at the borough leaked the information, his lawyer John Tiemessen said. "But every case has a point of diminishing returns," he said. "Maybe you haven't beaten under every bush and overturned every rock, but you've done enough that you have a pretty good idea of what's going on," he said.

Miller sought legal fees, but he refused to provide information about whether or not he or his leftover campaign officers were footing the bill for those fees. He had said that until January 2011, his lawyers were paid a flat fee of \$10,000 a month. Since then, however, he's denied that his campaign has paid for the legal fees.

The judge ordered him to provide such information by Monday, but he accepted the judgement instead.

CORRECTION: This story was updated June 18, 2012. It has been corrected to describe the judgment as a judgment, not a settlement.

Contact Amanda Coyne at [amanda\(at\)alaskadispatch.com](mailto:amanda(at)alaskadispatch.com)

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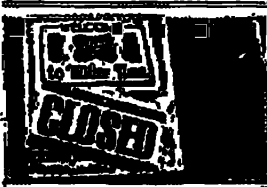
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Commentary

Time to throw out Alaska's 2010 US Senate race trash

Andrew Halcro | Jul 08, 2012



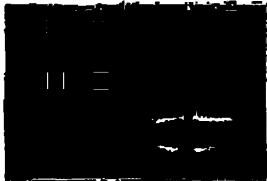
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Grudgingly slow, rural Alaska's honeybuckets are getting retired

Over the last two years, nobody has been more responsible for the tragic Joe Miller narrative more than Joe Miller himself. His improbable victory, his sensational collapse and his frivolous post-election lawsuits. Alaskario really dodged a bullet with this guy.

I'm not going to rehash the political implosion that became known as Joe Miller 2010. But now that the lawsuits are settled, I do have a lot of questions about a man who campaigned on his mettle, but yet possessed none. A man who campaigned on honor and trust but is proving he has neither.

How do you do?

How do you explain how a man campaigns heavily on being a Bronze Star recipient, yet needs to be squired to his own events by a phalanx of private security guards? Former co-workers called his behavior "bizarre."

How do you explain how a man who campaigns as a conservative and a friend of taxpayers, files two frivolous lawsuit against both state and local governments, costing taxpayers a truckload of legal fees?

Or how about a man who says he'd spent \$100,000 on legal fees, and then suddenly settles for \$5,000? Oh yeah, and he settles the day before the court's deadline ordering him to come clean on who was paying his legal bills.

But why would the court have to order him anyway?

You'd think given the outcome the last time he went to court to stiff-arm the public's right to know, he'd be more transparent.

And what's to make of his former boss stating in a deposition that she could have revealed "embarrassing" details from his personal life during the election if she really wanted to cause damage?

Finally, how do you explain how a man campaigns on the U.S. Constitution, but attempts to litigate away First Amendment rights? Or a man who has his lawyer argue that the court should allow him to daisy-chain a journalist's confidential source, which is akin to the court sanctioning a legal fishing expedition?

It's apparent from his actions over the last two years that this guy has acted like a bull in search of a china shop. A candidate who started hurling rocks when the press started hurling legitimate questions. A noninee who wouldn't show up at his own campaign event without Moses and Rocks in tow. And a failed candidate, whose litigious ways against government has reaffirmed his claim to being a friend of the taxpayer.

I've grown tired of his attempts to persuade the court system to validate conspiracy theories. I've grown tired of his legal arguments that were tortured and without merit. And I've grown tired by the







to believe he is the victim.

"I lied about accessing all of the computers. I then admitted about accessing the computers, but lied about what I was doing." (Joe Miller email to his employer 3/17/08)

They say in politics the longer you're away, the more fondly you're remembered. However, Joe Miller has done everything within his power to ensure that he is remembered as a man who lied, cheated and then sued, because voters found out the truth.






Andrew Halcro is the publisher of AndrewHalcro.com, a blog devoted to Alaska issues and politics, where this commentary first appeared. He is president of Halcro Strategies and Avis/Alaska Rent-A-Car, his family business. Halcro served in the Alaska House of Representatives from 1999 to 2003, and he ran for governor in 2006 as an Independent. He was deposed by Miller attorneys in February during court proceedings connected to the court case mentioned above.

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Commentary

Joe Miller loses again

Craig Medred | Jun 21, 2012



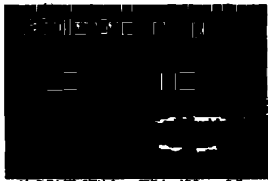
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OPINION: Failed Alaska U.S. Senate candidate Joe Miller is clearly one of those people who believes losing once makes you a loser forever.

He'd be well served to get over it and accept that the reality of life is that we often fail to get what we want. All of us. Miller's inability to accept defeat gracefully (Memo to Joe: Nobody says you have to like it) is how he got in a pickle in this state in the first place. And he seems to have learned nothing.

He was back to his old tricks this week after tilling on what had been a stupid and misguided lawsuit intended to punish representatives of the Fairbanks North Star Borough because he thought they revealed that he'd gotten into trouble for some shady politicking while employed there as a part-time attorney. Miller believes the revelations that he was reprimanded in Fairbanks for secretly using the computers of co-workers to try to dummy up a Republican Party poll – and lying about it to try and cover this up when he got caught – cost him a seat in the U.S. Senate.

It didn't. What cost Miller a seat in the Senate was Miller's handling of what had happened in Fairbanks. He couldn't bring himself to publicly admit "I made a huge mistake," treat it as the sort of human failure to which we are all prone, and move beyond it as really too petty for much discussion with weighty Alaska and national policies to be debated. But then, if he'd done that, Miller might have looked like a bit of a loser, at least in his own eyes. And he clearly can't accept this.

This week, when he finally settled his way out of the lawsuit against the borough for the paltry sum of \$5,000, he couldn't concede the suit was a loser and gracefully suggest it was time at last for everyone to move on. Oh no. Miller had to instead try to claim victory.

"Fairbanks, Alaska. June 18, 2012 – Today, the Fairbanks North Star Borough and its former Mayor Jim Whitaker have admitted that they are liable for a judgment to Joe Miller," declared the official media statement from JoeMiller.US Restoring Liberty. "Mr. Miller accepted the Borough and Mr. Whitaker's offer to allow the entry of a final judgment against them and in Joe Miller's favor."

"This case was never about damages," Miller claimed.

Right. Let's forget that Miller started all of this claiming over \$160,000 in damages, and consider for a moment the realities of the legal system in this country. It's all about money. And in cases like this, if you want the lawsuit to mean anything, it is about squeezing enough money out of the individuals involved to send a message to others. A West Point graduate who attended Yale Law School can't hardly have missed this.

So the Borough is going to pay \$5,000 to without admitting it or Whitaker did anything wrong and

Big whoop!

That chicken-feed settlement is supposed to stop anyone in any municipality anywhere in the state from spilling the news on dirt in the personnel file of the next Joe Miller to run for statewide office? I don't think so. And that's a good thing. The judge had it right, and made it sweet and simple. Miller didn't have any expectation that this stuff would be private once he declared for office.

Alaska voters, strangely enough, have a right to know about the character of the people running. Miller is clearly a character. What kind of character Joe Miller was – and had – became a pivotal matter in his challenge to incumbent Sen. Lisa Murkowski.

Everybody knows by now the story of the meteoric rise and tragic fall of Joe Miller, or they should. Miller got himself involved in politics back in 2008 because he thought the Alaska Republican Party poorly run. Fair enough. Former, half-term Republican Gov. Sarah Palin thought the same thing. She thought a change in leadership necessary. So did Miller. Fair enough. Miller was smart enough to recognize he and Palin lacked the votes to stage a democratic coup. Fair enough.

So he tried to rig a poll using the computers of coworkers to vote while they were away from their desk. Not fair.

Stupid it was then. Stupid it remains now. Stupid and childish.

Miller himself obviously recognized that when his bosses at the Fairbanks North Star Borough caught onto his little trick. So he tried to lie his way out of it. Even stupider. All of which he did because he didn't want to lose his bid to reshape the Alaska Republican Party and end up in his view looking like a loser.

Starting to see a pattern here?

Now flash ahead to the election of 2010. Miller staged one of the greatest upsets in Alaska political history to unseat Murkowski in the Republican primary. He thought he had a lock on a Senate seat. He was riding high. He tweeted about looking for office furniture in Washington, D.C., and then bits and pieces of his 2008 Fairbanks problem began to leak out. Miller should have, at that point, just ripped the scab off the wound and got it all out there, something like:

"I was reprimanded by the borough in 2008. I was so consumed by my desire to fix the Republican Party in Alaska I got carried away and foolishly got on the computers of co-workers to try to pad an online poll. It was stupid. It was childish. I don't know what I was thinking at the time. It seemed to me like some sort of harmless inside joke that wasn't going to hurt anybody. I know now that I was wrong. I shouldn't have done it. I long ago apologized to the people with whom I was working. In the big scheme of things, it was a sign of a small flaw in my character, which I was always trying to improve, and now it is time to move on to bigger issues."

The Miller faithful would have rallied round. The people who put him over the top in the primary would have redoubled their efforts for the general election. They would have been all over Alaska telling everyone that was foolish, silly mistake on the part of an honorable, distinguished winner of a Bronze Star for service in the Gulf War of 1991 should not disqualify him from office.

There is a strong possibility they could have swayed enough independents to Miller's cause to help him win the election. A lot of people fundamentally liked what he was saying about the need for fiscal responsibility in the government of this country.

There is an even stronger possibility this admission might have influenced Murkowski's decision to run against him in the general as an independent. That run was a long shot. She wasn't expected to win, but she knew there was dirt hidden in Fairbanks. The Murkowski family is extremely well connected there. And it didn't take much to learn about the dirt in Fairbanks. Too many people knew the Miller story.

It was destined to come out. Even Miller had to know that, but accepting it and admitting you acted like a loser is a hard thing to do when you think losing anything makes you a loser.



ended this craziness.

"Nevertheless, this was never a case about money," it added, repeating what had been said only a few lines earlier. "Rather, this case was about getting at the truth and setting the record straight. There is now a permanent record doing just that."

"Getting at the truth"? Right.

Joe Miller thinks Alaskans are going to remember what? That he settled a lawsuit with the North Star Borough with an agreement they pay him \$5,000 just to go away? When he and the borough were each spending twice that much each month on this case, and things were heating up as they prepared for trial; when he was up against a deadline set by the court to provide overdue documents; when his deposition had just been scheduled for next month? Who wouldn't? Who cares? The borough was spending a lot more in attorney fees to deal with the paperwork this dog of a suit required them to post in court.

The borough would have been crazy not to settle. No one is going to remember this check.

The "truth" everyone is going to remember is what came before it: That Miller tried to rig an online poll. That Miller lied about rigging an online poll. That Miller was reprimanded. That Miller tried to cover up the reprimand when he ran for the Senate. That his goons restrained and then handcuffed Alaska Dispatch editor Tony Hopfinger after he followed Miller into the hallway of an Anchorage school, after a public meeting, in order to ask questions about what exactly had happened in Fairbanks. That Miller's lie was finally pried out of the borough by a Freedom of Information Act suit filed by Alaska Dispatch and other media organizations. That the revelations about what Miller had been trying to cover up helped cost him the Senate seat that was in his grasp. And that Miller's response to all of this was to sue the borough and its former mayor claiming it was all their fault.

No, it wasn't. It was all Joe Miller's fault.

And it cost him the election because he couldn't take responsibility, because he couldn't admit he'd acted like a loser, and find a graceful way to move on. But he clearly couldn't do this because to Miller admitting to acting like a loser is the same as being a loser. It sorts of forces an objective person to wonder if -- all his good ideas aside -- Miller really is a loser.

Contact Craig Madred at [craig\(at\)alaskadispatch.com](mailto:craig(at)alaskadispatch.com)

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The Concerned

Who's really to blame for failed U.S. Senate candidate Joe Miller's meltdown?

Scott Woodham | May 17, 2012



TO: Joe Miller
CC: Russ Millette
Subject: Unknowns

Dear Failed Republican U.S. Senate Candidate,

We The Concerned think congratulations are in order after the recent leadership change in the Alaska Republican Party. Congratulations!

Sure, sure, we know you've denied being responsible for "the coup," but we think that's just more of the trademark, extreme modesty Alaskans have come to expect from you. The alternative -- that you're still waging a paranoid, covert war against ideological enemies deep behind enemy lines -- is just too creepy for us to consider.

We also know you're excited about the election of Russ Millette to the party's top post. Randy Ruedrich's ouster must be especially sweet for you. According to disciplinary documents released by court order during your campaign for U.S. Senate in 2010 -- as well as press reports at the time -- you've been working toward that goal since at least 2008. You may recall that's when you went on your Fairbanks North Star Borough ex-workers' computers to rig an online political poll to gauge support for overthrowing Ruedrich, then got caught.

RELATED: Joe Miller's paranoid attempt to overthrow the Alaska Republican Party

Talk about persistence! Here's to four years of hard work finally paying off! The election didn't go your way, but by gum we The Concerned admire your sticktoitiveness in working for change in the Alaska GOP. We even said as much when we wrote in November 2010 to support any efforts to find employment after your Senate campaign ended. How'd that work out anyway? You're apparently doing just fine even though your legal bills must be getting pretty big by now.

You've said via your lawyers that you've been spending \$10,000 a month on attorney fees for over a year now, which is longer. This litigation dates back to October 2010. That's when media outlets, Alaska Dispatch first among them, sued the Fairbanks North Star Borough for public access to information that would either validate or destroy rumors that were swirling around to the effect that you -- a little-known figure in Alaska politics -- might not be cut out for the U.S. Senate.

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But only the claims you've filed against those you think were responsible for exposing your wrongdoing are still active today and costing you, the borough and others all of this money.

You kept saying during the 2010 election that you wanted to come clean and answer any questions about your past, but you never did. At every opportunity you stymied inquiry. Members of your

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personal security detail even handcuffed and detained Alaska Dispatch's editor when he asked you about it at a campaign event. Remember that? Ah, great times.

When the matter moved into the courts, you fought disclosure every step of the way. All over something that should arguably be public information, even if you hadn't been running for U.S. Senate. After all, if a government employee was disciplined for misusing government equipment to a personal end, shouldn't the public know about it?

Either way, to us it seemed you were hoping to be mixing in a Senate office before any information came out. Few had any real knowledge about why you left the borough or what your superiors had written in your employment file. But you surely did. And we can see now why you tried to prevent voters from learning about it prior to the election.

A judge ruled that a heavily redacted set of borough employment records you didn't want anyone to find out about had been public records all along. The case is continuing because, among other things, of claims you're pursuing against the borough to recoup the money you've spent in 2010 trying to keep your nefarious actions as an employee of the borough from seeing the light of the day.

Alaska Dispatch is still a party to the suit, and though your attorneys have asked to depose some of its staffers, it isn't directly involved in the dispute between you and the borough and others. But the expenses continue on Dispatch's end, tens of thousands of dollars to date. The matter is on track to appear before a jury in early 2013, but we have no idea what purpose that would serve or how it would help you contribute to Alaska's politics.

Let's assume for a second that a jury finds in your favor, finds that someone indeed torpedoed your Senate run by inappropriately divulging parts of your record as a public employee that should have been kept private. No evidence of that has been presented whatsoever, and some have argued Alaska and borough law provide no basis for your claims, but let's assume you can prove it all in court and that the jury agrees with you. What exactly would you claim as damages? The Senate seat? How much is one of those worth anyway?

Maybe you'd claim damage to your good name, ability to continue making a living in politics or in private law practice? If anything, it was your handling of the whole affair — your repeated stonewalling of legitimate but uncomfortable questions — that did more damage to your future in Alaska politics than any alleged leak. And in fact, maybe you think a trial would provide an opportunity for you to fight the appearance of government corruption — that's right in your political wheelhouse, isn't it? Think of all the support that would drum up!

We're not sure you got this (and judging from how much animosity you've continued to express toward the media and some fellow Republicans, you probably haven't), but the court-ordered release isn't why you lost that election. Not the media, not members of the Republican Party, and certainly not voters. Your political platform isn't even the reason you lost. Alaskans are probably more receptive than most other Americans to notions of tiny government, great personal responsibility and East German-style border fences. But no matter where they stand politically, Alaskans can't stand fakers or stonewallers. We can't believe we have to tell you this, but you're the one most responsible for your campaign's implosion.

Lurking in the shadows, conducting huddled conferences with conventioners but taking pains to avoid any public connection to their victory, and acting terrified and defensive when members of the press ask what you're doing, is not the way to go about repairing the damage you did to your reputation among the Alaska electorate in 2010. We don't know the best way forward for you, or even if you ever want to hold public office anymore, but we know more of the same skullduggery and denials ain't it. It can earn you a "blue ticket" in this state.

We believe that you do indeed want to work in politics, and some of us even think you're acting out of a sincere desire to better our nation and state. But why creep around so much? Aren't openness, transparency and inclusion the new standards of Alaska's GOP political machinery, as Miller has said since being elected? A new set of ideological standards are supposed to be forthcoming, and as we understand it, woe shall befall any Republican who doesn't fall into line. But surely working for what you believe are positive changes isn't anything to be embarrassed about, is it? Why all the subterfuge?

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Given the shake-up at this year's convention, it's no wonder you feared for your life in 2008. Now we completely understand why you tried to convince the Fairbanks North Star Borough to install extra security measures in the office you worked in part-time. All those Republican-masquerading types would have felt really threatened if they'd known what was coming their way.

Of course, as you noted at the end of a post-convention teleconference you led recently, the work's not completely done for people who love liberty. If there isn't a quorum at another convention in Anchorage on June 8, Millette noted, "we'll have to have another attack." And that concerns us. Maybe in your head you really are still waging a secret war against fellow Alaskans you think are your enemies.

Good luck with all that,

The Concerned

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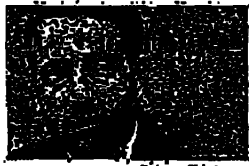
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Joe Miller in court seeking to compel journalists to reveal sources

Jill Burke | Apr 22, 2012



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Just as Journalism Week – the Alaska Press Club's annual conference – wrapped up in Anchorage over the weekend, a legal case of interest to the profession is making its way through Alaska's court system. At issue is whether a plaintiff in a civil lawsuit should have the right to interrogate journalists about their sources and why they chose to write their stories. Former U.S. Senate candidate Joe Miller, still stinging from his 2010 write-in defeat to incumbent Lisa Murkowski, believes he should be allowed to do this. Alaska Dispatch and others believe his request is off base and improper.

Full disclosure: Alaska Dispatch remains a party to the case, although it plans to file a motion to be released from the litigation. Other media entities are no longer involved.

Although the case is not directly about the press corps, it has roped the press corps in as Miller attempts to seek damages related to his election loss. He's going after his former employer, fueled by the belief that someone there leaked word of his misdeeds that should, he believes, have stayed under wraps.

For years, Miller served as a part-time lawyer for the Fairbanks North Star Borough, adeptly handling some of its biggest and most-important cases. Yet this recent work experience went conspicuously missing from the employment history Miller's campaign put out to voters. It didn't take long for people to catch on to the missing detail. For a while, Miller fielded questions about it. But the more reporters kept demanding explanations, the more the candidate dug in and refused to talk openly.

Miller eventually released an incomplete set of his employment records from the borough. What was he working so hard to hide? Eventually, the press corps, led by Alaska Dispatch, sued the borough for the release of these public records and won. The records showed Miller had, against borough policy, used an ex-collaborator's computers, used the access to pad a political poll he was involved in, then lied about it to try to cover up what he had done. He was ultimately disciplined for the behavior.

Miller: Who talked?

Miller has long believed he was the victim of an injustice, that someone within the borough, either a past or current employee, leaked confidential information from his personal file to the media and others. In seeking to remedy the harm he believes this caused him, he has sued his former employer on two fronts. He wants the borough to pay his legal costs from the initial freedom-of-information lawsuit, which he jumped into hoping to prevent disclosure of records about him. Miller claims the borough has a legal obligation to do so because he's a former

employee. His rationale is that the lawsuit stems from his employment as a borough lawyer, and not his candidacy for a powerful public office. In the second prong of his suit against the borough, he wants to ferret out whether someone talked who should not have.

Enter journalists as targets for deposition.

In an attempt to get at this second question – who talked to whom and when – Miller has deposed journalists, a blogger and his former colleagues. The media, including the blogger who first questioned Miller's employment history with the borough and the manner in which he left, have claimed privilege, arguing that they are protected under both the federal and state constitution from the kind of inquiries that grind against the tenets of their profession.

What's more – Miller is not arguing that lies were told about him. He's unhappy that the truth came out, revealed in a trail of documents that rightfully should have been accessible to the public to begin with.

Rocky relationship with press

As a candidate, Miller's relationship with the press corps has been rocky, if not combative, at least verbally – and once, literally.

Miller and Alaska Dispatch made national headlines in October 2010 when a member of a private security team working a Miller town-hall event at a public middle school arrested and detained Dispatch editor Tony Hopfinger. Hopfinger had aggressively asked Miller questions about the candidate's work history with the borough. In media reports following the handcuffing, Miller characterized Hopfinger as an unstable blogger they feared could be prone to violence. This characterization served two purposes: diminish Hopfinger's status as a respected journalist in the state, and imply that it was the press – Hopfinger – that had caused its own consequences by acting badly.

The faint of having handcuffed a reporter at a public event for seeking answers the public had a right to know stuck with Miller for the rest of the election.

Alaska Dispatch attorney John McKay has argued Miller's desire to go after members of the press is wrong. Other people, including Miller, could have and likely did talk about Miller's misdeeds at the time they occurred. This means Miller has other avenues he could pursue to get at the information he seeks, rather than targeting journalists. And it means that the information he felt should have stayed private all along, was in fact not private.

'Put an end to it'

Below are a few excerpts from McKay's motion about why the court should deny Miller the opportunity to force journalists to testify:

"The press – indeed, all citizens – have the right to engage in such activities without being embroiled in years of litigation, subject to retaliation, or grilled about what has motivated or influenced them to learn and discuss public officials, public affairs, and candidates for public office," and,

"In October 2010, Joe Miller's private guards wrongfully arrested a reporter for trying to ask questions about what was in the records he was trying to conceal. Now, a year and a half later, he is asking a government official, this court, to compel the press to answer questions about why they had the temerity to seek these public records: Who might have put them up to asking for these records? What were their motivations, or the motivation or affiliations of their sources? Were they fellow travelers with his political opponents? This is unseemly and unjustified. The court should put an end to it."

In an interesting twist, Miller has argued that reporters and journalists who are parties to the legal proceeding should not be protected by privilege because they are directly involved in the litigation. This legal right is a time honored tradition to obtain evidence and information relevant to the case. But McKay has asked the court to reject Miller's analysis on this point, and has urged the court to see it as an unseemly tactic to get around the protections afforded to members of the fourth estate – a dangerous precedent to penalize citizens who are exercising their right to obtain public records.

Read McKay's full motion in the PDF attached to this article.

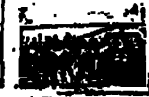
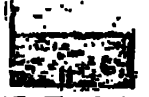

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Alaska Beat

Miller depositions: Fairbanks editor draws line in the sand

Alaska Dispatch | Feb 10, 2012

According to the Fairbanks Daily News-Miner, the depositions by attorneys representing former Senate candidate Joe Miller continued Thursday, with Fairbanks Daily News-Miner Managing Editor Rod Boyce being questioned for two hours.

Miller is suing the Fairbanks North Star Borough in a claim that information from his personnel file was improperly leaked to the media, and then the public, during his 2010 bid for U.S. Senate.

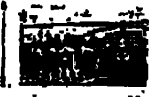
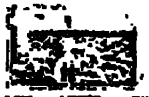

Information in the personnel file was the subject of a lawsuit by news outlets, including the News-Miner and Alaska Dispatch, and the case resulted in a court order for the borough to release portions of it.

The News-Miner reports that on Thursday, Boyce refused to answer most of Miller attorney John Tiemessen's questions. In his refusals, Boyce cited a state law protecting news organizations who refuse to reveal informants.

Boyce also refused to discuss whether any possible leaks were made by current or former borough employees or elected officials, their relatives or friends. He also refused to confirm even the existence of such sources.

Boyce did, however, discuss two instances of sources that had become public knowledge. The first was an anonymous letter sent to his paper in September, and the second were two on-record interviews, in the month before the election which Miller lost, with former borough Mayor Jim Whitaker.

Read much, much more, [here](#).

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News

Alaska troopers 'throw book' at questionable resident over fishing

Craig Medred | Nov 29, 2011



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Concerns over Permanent Fund managers' residency

For years there have been rumors of non-residents sneaking into the Alaskans-only dipnet fishery at the mouth of the Kenai River to score salmon before scurrying South for the winter, and now the Alaska State Troopers claim they've caught one of the scofflaws. Troopers have charged a Colorado real estate agent with illegally obtaining an Alaska resident fishing license so he could get one of those coveted Alaskan-only dipnet permits.

Realtor Anthony Bartell calls the allegation "total crap." He and troopers have been down this residency road before, he said, adding that Troopers were wrong the first time and they are wrong again. Bartell does not deny he spends most of the year Outside. But, he added, this is because his time is split almost equally among four residences. He established legal residency in Alaska back in the 1990s, he said, and he has maintained it ever since.

"I'm a well-to-do guy," he said. "I'm not trying to save \$100 (on a fishing license). I'm an Alaska resident. I've been on the Kenai 20 summers. It's where my heart is, and home is where the heart is." And, he adds, he did not dipnet. He picked up the dipnet permit with an eye to trying out this wild-and-crazy technique for catching fish, but he never joined the mob at the mouth of the Kenai slaughtering salmon. He preferred to catch his fish with a rod and reel.

No matter how he caught them, however, this is a touchy subject in the 49th state. Oil might be what fuels the Alaska economy, but fish — especially salmon — drive northern emotions. Alaskans tend to think of the bounty of salmon that return to the 49th state as "their" fish. More than a few residents are prone to get upset about the coolers full of salmon flowing south through Anchorage's Ted Stevens International Airport every summer.

A brief exchange from a popular outdoor forum is indicative of the heated feelings on this topic: when one commenter notes that Alaskans really "hate" non-resident fishermen, a purported local responds that vitriol stems from, among other things, summertime RV traffic.

"Many of us have seen stacks and stacks of boxes at the airport, or the rows of RV's that stay for the max limit of 2 weeks in campgrounds (before moving 15 miles down the road and repeating the pattern) complete with smokers, vacuum packers, and chest freezers, etc.," wrote a commenter named AlaskaHippie. "We've heard folks like this brag about visiting Alaska 'on the cheap' and then scurrying South with hundreds of pounds of processed fish to give away to friends or family or, in some cases, SELL for profit."

These emotions, of course, are a little out of touch with reality. Somewhere short of 200 million salmon were harvested in Alaska this year. About 176 million were caught and killed in commercial fisheries. State studies indicate about 80 percent of these commercially caught salmon are hauled in by non-residents, but the commercial catch by non-residents is little noticed.

Exhibit C

What is noticed is the recreational catch, and Alaskans are extremely possessive about it. State law requires newcomers to the north must spend one complete calendar year in the state before qualifying for a resident hunting or fishing license. When it was alleged in 2010 that U.S. Senate candidate Joe Miller, a man who had by then won the state Republican primary and looked to have a lock on one of the state's two Senate seats, might have once illegally obtained a resident license it became a big deal even though it had happened 16 years earlier when Miller was a law student at Yale. Miller eventually lost the election to write-in Republican incumbent Lisa Murkowski.

Needless to say, Alaskans take this residency thing seriously. A spokeswoman for the Alaska State Troopers couldn't say how many citations the agency annually writes for what it calls "False Statement on Sport Fish/Hunting License," but the number is in the dozens if not the hundreds. Almost daily Trooper dispatch logs contain one or several reports like this:

On 11/11/2011, Anchorage Wildlife Troopers contacted Brandan Chetwood, age 24 of Anchorage, after an investigation was conducted to determine his residency status. Investigation revealed that Chetwood moved to Alaska only 7 months prior to purchasing his license. However, claimed to be a resident on his 2011 Sport Fish/Hunting license. Chetwood's license was seized ...

Chetwood appears to be a student studying the culinary arts in Alaska. He got the usual ticket. Bartell, on the other hand, got the book thrown at him. Troopers charged him with "False Statement Sport License Applications x3 (Misdemeanors), False Statement Personal Use Permit Application x1 (Violation), Obtain Personal Use Salmon Permit When Not Eligible x1 (Misdemeanor), Fail to Return Personal Use Permit x2 (Violations).

On 11/17/11, the Kenai Office of Judicial Services served a summons to Anthony J. Bartell from Beaver Creek, Colorado. Through an investigation by the Soldotna Post of the Alaska Wildlife Troopers, Anthony Bartell is being charged with 4 misdemeanors and 3 violations. All of the charges are a result of residency issues for Mr. Bartell. Investigation revealed that Bartell was traveling to Alaska in June and departing in August annually between 2009 and 2011. While in Alaska, Bartell would stay in a 5th wheel travel trailer inside an RV Park. In 2009, 2010 and 2011, Bartell purchased resident sport fishing license in Alaska. During 2010 and 2011, Bartell obtained Upper Cook Inlet Personal Use Salmon Permits. The three violations have a total bail set at \$730. The four Misdemeanor charges will be arraigned in the District Court in Kenai.

Reached by telephone in Colorado, Bartell said troopers "called my 60-year-old mother in Michigan and said, 'Your son's got warrants out for him. We're going to arrest him. Where is he?' I don't even know how they got her number."

Bartell was eventually arraigned telephonically. He is facing potential jail time, though it's unlikely he would go to jail even if convicted. Judges usually suspend the sentence. A Yakutat fishing guide found guilty of never opening 12 complete months in Alaska -- though he had a home here and usually often spent more than half the year in Alaska -- was in 2010 sentenced to a year in jail, but the judge suspended all of that time.

What constitutes Alaska residency?

The difference between Yakutat guide Ron Pelissier and Bartell, at least as Bartell tells the story, is that the Realtor spent 12 consecutive months in Alaska in the late 1990s to establish his legal residency and has, in his opinion, retained it ever since. Troopers, however, contend he lost his residency when he obtained a Colorado driver's license in 2008. There's a story behind that, Bartell said. Because of new immigration rules between the U.S. and Canada, he needed to get a passport to drive through Canada to get back to Alaska in 2008, and he was in a hurry.

Authorities in Colorado wouldn't grant him a passport there using an Alaska driver's license as ID, he said. So he went and got a Colorado driver's license.

When he got back to Alaska, he added, he went to the state Division of Motor Vehicles and got his Alaska driver's license reinstated. "I didn't feel like there was anything I was doing wrong," he said.

He didn't even think about what he had done until earlier this year when a trooper called him to say troopers were investigating the possible theft of his boat. An Alaska friend of Bartell's had been stopped towing the boat from Kenai to Homer for winter storage.

Bartell said it quickly became clear from the questions the trooper asked that the call was about something other than the boat.

"But it was unfathomable they would come back with this now," he added. In 2002, Bartell was charged with five counts of illegally obtaining a fishing license. He went to court. He presented state ID and a history of being in the state regularly since establishing official residency. He told the judge his story about splitting his time between four states -- Alaska, Colorado, North Dakota and Michigan -- and how when he had to pick one as his home state, he picked Alaska.

"The case was supposed to be dismissed," Bartell said. "Now, it's really out of control. I think some of it stems from the fact I never have and never will collect a Permanent Fund Dividend. That came out in court, too. I'm not trying to scam money. (But troopers seem) of the opinion any Alaskan should collect the fund."

Ergo, anyone who doesn't collect a PFD, as Alaskans call their annual state check of more than \$1,000, isn't really an Alaskan. The Permanent Fund Dividend is a giant share-the-wealth plan designed to split the oil wealth of America's largest state with some 700,000 Alaskans. It has been and remains wildly popular with governors past and present, including self-proclaimed "common-sense conservative" Sarah Palin.

Bartell said he wouldn't take the money because he's not trying to take things from Alaska. He wants to be part of the state because he loves it, and in that regard he said he now feels "absolutely blindsided. ... Three years later, they've done the same thing again. This is going down the same road twice. It's costing me a fortune."

But he plans to fight it again. It's the principle of the thing. He considers Alaska his country. He loves the place, and he clearly loves his fishing, like many in Alaska. The ad on the logo for Bartell's Colorado company, "Field of Streams Real Estate," sports a fly fishermen playing a fish.

A Kenai River salmon maybe?

CORRECTION: This story was corrected on Nov. 29, 2011 to clarify that the status of Senate candidate Joe Miller's residency for fish and game licensing purposes for the year in question remains unclear. Miller was splitting his time between Alaska and Yale Law School when he obtained his license in 1995. The law at the time (AS16.05.940(26)) defined as resident as "a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state..." Miller bought his license on July 31, 1995. He had established his voting residence in the state on Sept. 16, 1994. The 12-month requirement for voting residence would not have been reached until Sept. 16, 1995. The residency definition was later amended because it is likely unconstitutional to require people to register to vote. Miller has always maintained he considered himself an Alaska when he obtained the resident license.

Contact Craig Medred at scraig@alaskadispatch.com



Senators call on Ted Stevens' prosecutors to be heard



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More Fugvog fallout?

Amanda Coyne

How do Alaska politicians dress up for Halloween? As themselves!

Oct 31, 2011



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Last Halloween felt so much like Halloween. The whole state seemed to be in the spirit. Or at least it felt like that from the rather small confines of the Alaska Dispatch world headquarters. As some of our long-time readers may recall, we were very much enmeshed in senatorial politics this time last year. And in that world, at least, Halloween was full bore. Remember the rather desperate commercial a rather desperate Joe Miller ran against Sen. Lisa Murkowski, which began with: "My opponent is not a witch?" and featured cackling witchy laughter and bubbling caldrons?

By then, though, election day was right around the corner and although Murkowski had lost to Miller in the Republican primary, she was running as a write-in candidate and was feeling rather confident, in large part due to the

handcuffing of a certain reporter by Miller's security guards. So Murkowski one-upped her Republican opponent. She went trick-or-treating with her "security detail"; her three young nephews wearing dark suits and pipe cleaner earplugs, with their candy buckets handcuffed to their wrists. And naturally, she sent out a photo documenting the scene.

This year seems to find Alaskans less in the spirit of aprils, at least from my nodule. I called all afternoon and I couldn't find one prominent Alaskan who was dressing up. As of yet, Anchorage Mayor Dan Sullivan hasn't gotten back to me. (Could it be that he's too frightened of my follow-up Port of Anchorage questions?)

Rep. Don Young, apparently, will be himself tonight, which is well ... appropriate?

You know the candle has gone out in the pumpkin when Anchorage School District Superintendent Carol Comeau – the fun one in the bunch – isn't costuming-up. Her favorite custom, she recalled, came from her days back as an elementary school principal, when she'd dressed as a clown.

Gov. Sean Parnell is out of town, same as he was in 2010. Staff will head to the governor's mansion to pass out candy. His spokeswoman Sharen Leighow said that he was actually in town in 2009, and his staff dressed up as M&Ms.

Who wore the green one, I wonder? Who was yellow?

Rep. Les Gara? Nope, it's his wife's birthday, he said. The last time he remembers being at an actual Halloween party was about 10 years ago, when former Rep. Ethan Berkowitz wore a bigger nose and bigger eyeglasses and was Les Gara for the evening. Double, double toil and trouble!

Anchorage Police Department Chief Mark Mew isn't dressing in costume, but he promised that if in the unlikely event a kid knocks on his Hilland Road door, he and his wife will "don our ancient rubbed cone-heads when we answer. Not that today's kids will know when the Cone Heads are, but it will have to do in a pinch," he waxes.

Mew's favorite costume ever? In his words:

Between the skull makeup and the hood, nobody at the party knew who I was. I never said a word until the end of the evening, when identities were revealed. I just shuffled around slowly all night, occasionally condemning someone to death by pointing a skeleton finger at them. I won best costume for that one.

At least U.S. Sen. Mark Begich didn't forget what day it was; but then again, he has an 8-year-old son, who tonight is going to dress as an Angry Bird (costume made by his mom). On the Senator floor, Begich passed out "No Frankenfish" buttons to every Senate office on Capitol Hill, attached with a "scary note" about the dangers of Frankenfish, according to a statement from his office.

"I'll continue to fight against Frankenfish because the biggest scare families get on Halloween night could come from their dinner plate, not the trick-or-treaters on the front porch," Begich said in a press release. *Boo!!*

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Politics

Joe Miller holds Juneau rally on tea party cruise stop-over

Alaska Dispatch | Sep 01, 2011

Former Alaska Republican U.S. Senate candidate Joe Miller took time to deliver a speech and meet with supporters Tuesday evening in Juneau. Miller's appearance occurred on a brief stop-over during the Conservative Political Action Committee's second annual cruise through Southeast Alaska, hosted this year aboard the Celebrity Millennium by a tea party coalition and the American Conservative Union.

At the Juneau event, Miller explained his new political action committee, the Restoring Liberty Alaska PAC, its overall goals and solicited support for its future plans. He said the PAC will, in the Juneau Empire's paraphrase, "represent and organize citizens now ignored by the state's institutions and political parties," and focus its efforts on a handful of key state-level races in Alaska, both primary and general elections, and possibly some local elections.

A promotional flyer for the event lays out the PAC's main objectives:

The objective of Restoring Liberty Alaska PAC is to impact campaigns across the state for the benefit of all Alaskans. We will fight to elect state and local candidates, dedicated to the principles of limited government and free of corruption, elected here at home. We will also fight to defeat candidates who reject an original construction of the U.S. Constitution. We will work to elect candidates who accept the important role of the state in our federal system, practice Thomas Jefferson's mandate of nullification of unconstitutional laws and assert states' rights under the 10th Amendment. Finally, we will work to restore vote integrity to Alaska elections.

A dozen or so people attended the rally, which Miller joked to the audience was a pretty good turnout in Juneau, a city not known for its conservative flavor.

At the event, Miller said Sen. Lisa Murkowski's record since her re-election has been no surprise to him and that his campaign was right to portray her as "a liberal."

Although the number of write-in ballots challenged by the Miller campaign was smaller than Murkowski's margin of victory, Miller also reiterated his contention that several elements of state government worked together during his ballot challenge in order to prevent him from winning a Senate seat.

Miller was joined at the event by conservative personalities Jerome Corsi and Victoria Jackson, both of whom leveled strong criticism of President Barack Obama, claiming respectively that his birth certificate is a forgery and that he's actually a communist.

Read more from the Empire, [here](#).

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Commentary

Joe Miller: Many in GOP helping U.S. toward socialism

Joe Miller | Jul 30, 2011



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At Yale Law School, Joe Miller discovers Federalist Society

Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

Some Republicans, and not just those supporting Mitt Romney for president, have questioned my "Stop Romney" campaign, announced by the Western Representation PAC several weeks ago. Given the likelihood that Romney will be the GOP's next nominee, they believe my work will ultimately hurt Republicans' efforts to retake the White House in 2012.

My perspective is that another Bush-like presidency, particularly in terms of big government growth, would be devastating to the country. We'd be in the same bankrupt position that another four years of Obama would bring us. If we're going to avoid the catastrophes lurking around the corner, more of the same – even with a Republican label – is not the answer.

RELATED: Read more about former U.S. Senate candidate

Joe Miller

Some of my critics don't understand that many in the GOP have played an active role in our nation's self-destruction. We'll call these the "ill-informed followers." Others fully recognize that Republicans have been in the driver's seat during much of our drive toward socialism, but they and their cronies enjoy the fruits of this largesse. These are the "crony capitalists." Still others are simply progressives who see the Republican Party as yet another means of imposing their leftist vision on the U.S. and the world at large. They are the RINOs – Republicans in Name Only.

Of course, there are varying shades and mixtures of the above players. For example, even where a Republican, like Alaska's Lisa Murkowski, is driven by a progressive agenda that includes support for federal funding to Planned Parenthood, homosexuals in the military, activist judges and internationalism, she finds herself surrounded by the crony capitalists: multibillion dollar Alaska Native Corporations that directly benefit from Murkowski's vigorous support for their no-bid federal contracting.

Editor's note: The previous are only the first few paragraphs of this commentary and are reproduced here with permission from World Net Daily, where this commentary first appeared. To continue reading, [click here](#).

Joe Miller ran as a Republican in Alaska's 2010 U.S. Senate race. He currently serves as chairman of the Western Representation PAC, a political action committee formed "to battle corruption in government, no matter its source" and support candidates who support "good government, free markets, and personal freedom."

The views expressed here are the writer's own and are not necessarily endorsed by Alaska Dispatch. Alaska Dispatch welcomes a broad range of viewpoints. To submit a piece for consideration, e-mail commentary@alaskadispatch.com.

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Grudgingly slow, rural Alaska's honeybuckets are getting retired



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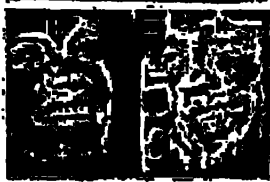
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Politics

Is Michele Bachmann's campaign a Joe Miller tea-party redux?

Amanda Coyne | Jul 26, 2011



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Facts about Michele Bachmann and her presidential bid

In 2010, those outside of Alaska's close political circles knew little about Republican senatorial candidate Joe Miller. He was still the new kid on the political tundra, and the new kid on the tundra was challenging the GOP establishment in Alaska. No more powerful symbol of that "establishment," in his eyes, was Republican Sen. Lisa Murkowski.

There were plenty of reasons to believe that was true. A moderate Republican, Lisa Murkowski had been appointed to her seat by her father, the newly-elected Gov. Frank Murkowski, who had held the same Senate seat for more than two decades. Lisa Murkowski's image wasn't helped by the fact that her father went on to become one of the most unpopular governors in the country — and in Alaska history — by the time his lone term was up in 2006.

And then along came Sarah Palin, who eventually became a Joe Miller

supporter.

For a few months at least, candidate Miller was on fire. Representing the nascent tea party movement, he campaigned on self-reliance, on budget cuts, on reducing (or eliminating) federal spending.

He was articulate and his resume was nearly perfect: a West Point grad, an Iraq war veteran and a Yale Law School degree. All of this allowed him to achieve the nearly unthinkable by winning the Republican nomination, unseating the powerful incumbent (Lisa) Murkowski.

He had all going for him. But as fall approached, things began to go wrong. As Alaskans are now well aware, it was discovered that Miller accepted federal subsidies from a farm he owned in Kansas. That he got low income health care for his family. That his wife was on unemployment after she lost her job working for her husband. And then perhaps the worst thing: reporters, including Alaska Dispatch, dug enough into his background to find that in 2008 Miller secretly used coworkers' computers, while employed as a part-time attorney for the Fairbanks North Star Borough, in his quest to unseat Alaska Republican Party Chairman Randy Ruedrich. (Read the Alaska Dispatch coverage of Miller here.)

With the right spokesperson, and perhaps with a different candidate, all of this could have perhaps been weathered. But as the revelations began to unfold, Joe Miller, who once was relatively available and accessible, began to crawl into his shell, which seemed to be grow more brittle by the day. At a rather bizarre October press conference, he said that he wouldn't answer any more personal questions. "We've drawn a line in the sand. You can ask me about background, you can ask me about personal issues — I'm not going to answer," he said.

Reporters walked away not only confused, but also increasingly suspicious, which eventually and inevitably translated into public suspicion.

Miller wasn't alone. In fact, his response seemed to come straight from the tea party playbook. Sharon Angle, the Republican candidate who ran against and lost to Senate Majority Leader Harry

questions about her bizarre **statements about "Second Amendment" remedies**, abolishing Social Security and the Environmental Protection Agency.

When it was discovered that Delaware U.S. Senate candidate Christine O'Donnell, who won that state's Republican Party primary, used campaign funds for **personalized expenses**, she heeded Sarah Palin's advice and **went underground**.

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Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



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Political Animal

Joe Miller won't appeal fees for election challenge

Alaska Dispatch | Jul 22, 2011

According to a Thursday press release, former Alaska Republican candidate for U.S. Senate Joe Miller has decided not to appeal a recent Superior Court decision that he reimburse the state of Alaska more than \$17,000 for costs incurred by his challenge of election results. Miller explained in the release, "I've chosen not to appeal, recognizing that course would have spent money that hard-working Americans entrusted to me. Given the amount at issue, it simply does not make good financial sense to move forward with the appeal. Pyrrhic victories are not my goal." Read the release, here, and read CNN's blog report, here.

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Joe Miller ordered to pay state's legal fees in election challenge

Alaska Dispatch | Jun 24, 2011

Joe Miller owes the state of Alaska \$17,700. That's according to a state judge, who on Friday ordered Miller to pay legal fees the state had accrued in the failed candidate's challenge to the 2010 U.S. Senate election. Judge William Carey ruled that "the main thrust of Miller's challenge to the election was not ... to promote and preserve constitutional protections," the Associated Press reports in the Fairbanks Daily News-Miner. Rather, Carey found that Miller's intent was personally motivated: He wanted to win the election outright. And he wanted the "benefits" that come with winning. However, Carey ruled that Miller wasn't on the hook for the legal fees accrued by the election winner, write-in incumbent Sen. Lisa Murkowski. Murkowski lost the Republican primary to Miller. Read more on the Miller-Murkowski election drama here, and see the AP story here.

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Politics

Tea party launches campaign to stop Mitt Romney

Eric Christopher Adams | Jun 02, 2011



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Mitt Romney on Thursday unveiled his campaign to lead the United States, saying that "Barack Obama has failed America." Meanwhile, the Nevada-based political action committee directed by Alaska's unsuccessful 2010 Republican U.S. Senate nominee, Fairbanks lawyer Joe Miller, unveiled its "campaign to prevent the nomination of ... Mitt Romney for president."

The tea party's Western Representative political action committee has purchased the domain StopRomney.org, which currently jumps to a Facebook page heavily branded with WesternPAC literature. Registration information for the website indicates it was created Wednesday, one day before Romney made his run at the White House official.

Miller joined the Sparks, Nev.-based conservative PAC in March, a little more than five months after losing the U.S. Senate race to write-in candidate (and incumbent) Lisa Murkowski, and a little more than three months after Miller lost his legal challenges to the election's validity.

In a prepared statement, WesternPAC accused Romney, the former CEO of Bein Capital and former governor of Massachusetts, of changing his position on key conservative issues like "gun rights, gay rights, abortion, immigration and health care."

The statement says Miller "is committed" to making sure Romney did not lead the GOP ticket against Obama, comparing Romney to U.S. Sen. John Kerry, the 2004 Democratic presidential candidate who lost to George W. Bush and was branded by Republicans as a "flip-flopper" on the Iraq war.

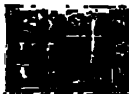
"In a matchup against Obama, tea party voters are looking for a consistent constitutional conservative," Miller said in the press release. "We will never get behind Mitt Romney."

WesternPAC claims to have 250,000 "supporters" across the country. The press release hinted that the group intends to influence the 2012 race but has not yet endorsed any of the dozen or so Republican candidates testing the waters for a run against Obama.

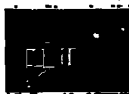
Romney campaigned for the 2008 Republican presidential nomination but came in second to eventual nominee U.S. Sen. John McCain of Arizona, who chose then-Alaska Gov. Sarah Palin to run on the ticket as vice president.

Contact Eric Christopher Adams at [eric\(at\)alaskadispatch.com](mailto:eric(at)alaskadispatch.com)

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In Alaska, whose hunting and fishing rights matter most?



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Politics

Joe Miller ramps up

Jill Burke | May 25, 2011



Joe Miller may have lost his fight to unseat U.S. Senator Lisa Murkowski. But he certainly didn't lose his voice. The attorney, war veteran and aspiring politician appears to be taking a cue from the one-time Alaska governor he admired enough to help push into office: Even if you don't get picked, keep picking on the opponent, in this case any politician or policy that doesn't comport with your platform.

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Alaska's Joe Miller to headline California fundraiser

On the same weekend Palin has fueled speculation about a potential presidential bid by announcing an East-coast bus tour, Miller has signaled to his supporters that he, too, has big, although perhaps less lofty, plans. And like Palin, Miller has recently turned up in Arizona. Wednesday night, he and sheriff Joe Arpaio were scheduled to be featured guests at a fundraiser for Maricopa County attorney Bill Montgomery.

The same day, Miller gave his followers a head's up, via his newly revamped senate campaign website, that his quest to inject constitutional conservative values into the political power structure was far from over. Indeed, just as Palin did after losing her White House bid in 2008, Miller has turned his elevated profile into a bull horn to advocate on a broad level the tea party principles he's so committed to.

Miller is now not only the chairman of the Nevada-based Western Representation Political Action Committee, created to push tea-party ideals, but has also launched Alaska-based and national "Restoring Liberty" political action committees, and is in serious talks to launch his own radio show.

"If you are really 'Fed Up' and want the return of states' control of our freedom, come join us for the first statewide effort intent on Restoring Liberty," reads a flier promoting the group's upcoming inaugural event in Fairbanks June 3. "It's time to get serious about taking our state back, and there is no better place to kick off the Restoring Liberty Alaska PAC than in Fairbanks, where the first ratification of the state constitution was held."

The flier continues:

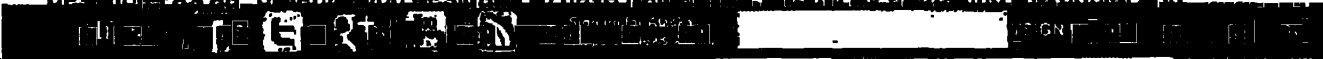
We will fight to get state and local candidates, dedicated to the principles of limited government and free of corruption, elected here at home. We will also fight to defeat candidates who reject the original constitution of the U.S. Constitution. We will work to elect candidates who accept the important role of the state in our federal system, practice Thomas Jefferson's mandate of nullification of unconstitutional laws and assert states' rights under the Tenth Amendment. Finally, we will work to restore vote integrity to Alaska elections.

Not mentioned on the flier, but noted in his May 25 post on his website is that Miller also remains unwavering in his support of the pro-life movement.

The Alaska-based Restoring Liberty PAC registered with the Alaska Public Offices Commission in February, and a group with the same name (Restoring Liberty) registered that same month with the Federal Elections Commission.

Wait, there's more.

Miller has also created a non-profit called the Restoring Liberty Action Committee, which he describes as an "organization designed to have nationwide impact by educating the public and




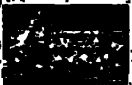

of national concern through public discussions, research and analysis, and legal work."

This sounds a lot like the Miller we met on the campaign trail in 2010—conservative, committed, vocal. But what was then a guy seemingly coming out of nowhere with a grassroots base now looks to perhaps be a rising soldier in a larger, more organized effort.

Miller hasn't hinted whether he'll jump into another race. But becoming the man with the microphone is how he's managed to try to influence from the sidelines what he sought, but lost, at the ballot box.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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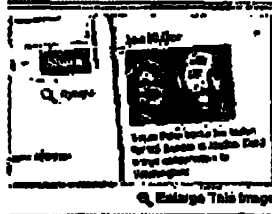
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Political Animal

Poll: Alaskans hold dim view of Sarah Palin, Joe Miller

Amanda Coyne | Apr 20, 2011



A new poll by local pollster David Dittman should be fairly disheartening to former Gov. Sarah Palin, and onetime U.S. senate candidate Joe Miller.

The poll questioned 400 Alaskans during a two-week period in March on their views of Palin, Miller and the job their congressional delegation was doing in Washington. The news was fairly good for the delegation, but not so good for Palin and for Miller.

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Some of the results on Palin:

- 61 percent of Alaskans had an "unfavorable" view
- 39 percent of those had a "very unfavorable" view
- 13 percent had a "very favorable" view

The former governor's numbers had fallen since an April 2010 Dittman poll, when 46 percent responded favorably and 52 percent of respondents viewed her unfavorably.

Miller's numbers are even worse than that. A whopping 73 percent of Alaskans had an unfavorable view of him, with 53 percent "very unfavorable."

Miller is the newly hired chairman for the Nevada-based Western Representation Political Action Committee, a group he has described as an "up and coming tea party PAC" with a mission to "elect constitutional conservatives."

As far as we know, Miller still calls Alaska home. But he did soloun Outside recently to make the rounds for tea party tax day events in Kansas and Idaho. One tweet said that he was in the land of "patriots."

Alaskans are famously hard on their politicians, but not impossibly hard. Voters have turned on politicians in the recent past for nepotism and corruption allegations. Quitting on the job or having a reporter handcuffed for asking questions on the campaign trail probably didn't help Palin or Miller, respectively.

Indeed, all three members of the state's congressional delegation received "excellent or good" approval ratings above 50 percent. Congressman Don Young enjoyed a 63 percent approval rating, with 32 percent disapproving. Democratic Sen. Mark Begich's approval was at 57 percent, with 33 percent disapproving.

Republican Sen. Lisa Murkowski got a 71 percent approval rating, making her the most popular among the delegation, according to the poll. Just 27 percent of respondents disapproved of her job.

Contact Amanda Coyne at [amanda\(at\)alaskadispatch.com](mailto:amanda(at)alaskadispatch.com)

[CORRECTION: This article was updated April 20, 2011. It originally stated that 26 percent of Alaskans responded favorably when asked how they viewed Sarah Palin in April 2010. The actual percentage of Alaskans who responded favorably regarding Palin was 46 percent.]

Attachment Size
Dittman Research poll results (PDF) 24.38 KB

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Political Animal

Joe Miller hits tax-day rally circuit

Jill Burke | Apr 14, 2011



(210 miler am)es

Joe Miller is stepping away from his chosen home of Alaska to lend his vision for America to Idaho as well as his home state of Kansas. The former U.S. Senator hopeful is making five rounds as a guest speaker at tax-day tea party events in those states.

Miller speaks Thursday night at a tax day rally in northern Idaho. On Saturday he'll be at a rally in Manhattan, Kan. and on Monday he'll attend a gathering in Salina, Kan., where he grew up.

"There is still much work to be done to get our country back on the right path," Miller said in a prepared statement about his

appearance at the events.

During his talks Miller will touch on familiar themes: President Obama is failing; federal spending is out of control and the country remains headed toward financial collapse, and it is voters who hold the power to turn things around.

"I anticipate 2012 will be another watershed election year with the Tea Party playing a pivotal role," Miller said.

Miller is the newly hired chairman for the Nevada-based Western Representation Political Action Committee, a group he has described as an "up and coming tea party PAC" with a mission to "elect constitutional conservatives."

Meanwhile, while Miller makes stops in the Lower 48, tax day tea party events will also be taking place in Alaska.

On Friday in Fairbanks, rallies will be held over the lunch hour and the afternoon commute across from the Wal-Mart near Old Steese and Johanson. On Saturday, Wasilla-based Conservative Patriots Group will host a "Liberty for We the People" concert and rally at the Menard Sports Center in the afternoon from 1:30-4:30.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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Political Animal

Voter intent bill prompted by 2010 Senate race passes full Legislature

Patti Epler | Apr 14, 2011

A measure that makes it clear a voter's intent takes precedence when casting a write-in vote has passed the Legislature and now goes to the governor for signature.

Senate Bill 31, sponsored by Sen. Joe Thomas of Fairbanks, grew out of the 2010 U.S. Senate race. Fairbanks attorney Joe Miller beat incumbent Sen. Lisa Murkowski in the August primary so Murkowski launched a write-in campaign and came back to defeat Miller in the November general election. But Miller challenged thousands of write-in ballots on the grounds that the voter didn't write her name exactly as it appeared in election paperwork. Miller tried to invalidate ballots with minor misspellings and even those where the voter had dotted an i with a smiley face or a heart.

The Alaska Supreme Court as well as the federal court rejected his legal arguments, and state justices made it clear that voter intent is what should prevail if it can be determined.

The bill that now goes to Gov. Sean Parnell directs the elections supervisor to disregard minor misspellings and other things as long as the intent of the voter is clear. The measure also addresses ballot security by making it clear ballots will be counted in Juneau.

Parnell can sign the measure, veto it, or allow it to become law without his signature.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com)

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Politics

Joe Miller takes to the sea

Jill Burke | May 31, 2011

One of Alaska's tea party pillars has signed on to participate in an upcoming "Tea Party at Sea" cruise organized by World Net Daily. Joe Miller, the U.S. Senate candidate who gave Republican incumbent Lisa Murkowski a run for her money but couldn't defeat her, is now among the August cruise's featured speakers.

The cruise is described as an excursion that will bring faith-minded patriots together to share and feed their conservative political views. Miller's role is being billed as that of "personal Alaska cruise guide."

In the months since the election, Miller has regrouped and expanded his reach. He's now the chairman of Nevada-based Western Representation Political Action Committee, a group founded and inspired by tea party ideals. He's also recently launched the Alaska-based "Restoring Liberty" PAC, registered both at the state and federal level. And there's talk he plans to land himself a radio gig.

Miller and WND won't be the only folks with political agendas cruising Alaska waters this summer. Former Arkansas Gov. Mike Huckabee, who pursued but didn't land the 2008 Republican presidential nomination, will leave Seattle June 5 on a ship headed for southeast Alaska as the guest host for the Alaska Freedom Cruise.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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Political Animal

Joe Miller makes list of 'unimaginably ridiculous' joining political establishment

Alaska Dispatch | Mar 28, 2011

Former Alaska U.S. Senate candidate Joe Miller has made the POLITICO list of "unimaginably" ridiculous 2010 congressional candidates to cash in on their lame campaigning and extend that 15 minutes of fame into something resembling a political career.

POLITICO lumped Miller in with other nationally-lampooned losers, including former Senate candidate Sharron Angle of Nevada – who ran unsuccessfully to unseat U.S. Senate Majority Leader Harry Reid – and Delaware U.S. Senate hopeful Christine O'Donnell, who ran a television ad claiming, "I'm not a witch ... I'm you."

Miller's fortunes in the campaign began to fade after his security guard handcuffed Alaska Dispatch editor Tony Hopfinger for asking questions that Miller had avoided answering. Things didn't get any better after reports surfaced that he misused government computers for politicking and then lied about it. He ultimately lost to write-in opponent (and incumbent senator) Lisa Murkowski.

POLITICO notes that all three tea party-supported candidates made headlines for bucking the Republican Party and running as "anti-establishment" conservatives. And now they're trying to join the establishment, whether as political action committee directors or future candidates.

"They've all, in their own ways, gained notoriety from their losses, and they're either trying to cash in or further their political careers," said national GOP consultant John Feathers. "All of them have criticized career politicians, but it kind of takes away their message when they've started making a career out of politics." Read the full POLITICO story.

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Political Animal

Joe Miller chosen to chair conservative action committee

Alaska Dispatch | Mar 23, 2011

According to a press release (re-posted below) issued by Western Representation PAC, former Republican US Senate candidate Joe Miller, of Fairbanks, will be taking over as chairman of the Nevada-based conservative action committee. According to the release, the committee supported Miller's winning candidacy in Alaska's 2010 Republican Senate primary, and more recently conducted an ad campaign in support of Wisconsin Gov. Scott Walker during the high-profile fight over collective bargaining powers of public employees' unions. Read the full release announcing Miller's new position below.

SPARKS, NV – Western Representation PAC, one of the largest and fastest-growing conservative action groups in the country, announced today that former Alaska US Senate Republican nominee Joe Miller, is the PAC's new Chairman. Miller is replacing Dustin Stockton, who founded the PAC and has assumed the role of Chief Strategist for the organization.

Regarding the announcement Miller said, "I am thrilled to be joining the Western Representation PAC. Despite being formed fairly recently, the PAC was able to gain strong support and make an important impact during the 2010 election cycle. We plan to build on that great start and bring the voice of 'We the People' to bear even more as we move towards 2012."

Miller joins the organization as it continues its campaign against the overbearing influence and unsustainable cost of government employee unions. Western Representation PAC spearheaded the nationwide support for Gov. Scott Walker. The group launched an aggressive ad campaign supporting Walker's commitment to balanced budgets and ending compulsory unionism. We will be supporting similar efforts across the country.

"We couldn't be more excited to have Joe Miller join our team," said Stockton. "His character, and his commitment to protecting the values that make America the greatest nation on Earth, make Joe the perfect man to chair our organization."

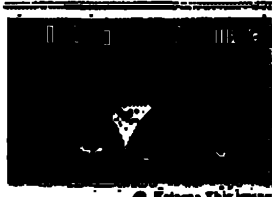
Western Representation PAC supported Miller in his stunning primary victory over Sen. Lisa Murkowski. The group also ran independent expenditure campaigns in Nevada and Massachusetts.

Stockton formed Western Representation PAC with his father, Roger Stockton, in early 2009, with the goal of making a difference in the political process. Beginning with no financial or political backing, the organization has become one of the largest and fastest-growing political organizations in the nation thanks to over 250,000 supporters across the country.

Alaska Militias

Alaska militia 'supply sergeant' vanishes as alleged murder plot unfolds

Craig Medred, Jill Burde, Patti Epler | Mar 22, 2011



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Five days after members of an Interior Alaska militia group were arrested in connection with plots to kill Alaska State Troopers, judges and others, Anchorage businessman William Fulton -- a man once identified as the "supply sergeant" for the Alaska Citizens Militia -- went missing. He has not been seen since.

Fulton was the owner of Drop Zone, a military surplus store on Spenard Road. He gained some notoriety during the 2010 U.S. Senate race when, acting as security for failed candidate Joe Miller, he handcuffed and detained Alaska Dispatch editor Tony Hopfinger at a public meeting.

On March 15, a Drop Zone employee arrived at work to find Anchorage attorney Wayne Anthony Ross waiting for him in the parking lot. Ross had documents, signed by Fulton, handing over the shop with all its debts and assets to the employee.

The militia's email lists, websites and Internet chat groups where Fulton was an active participant under the names "Drop Zone Bill," "DZ" and "Bob Bob" started buzzing. "Anybody know what happened to DZ?" queried a poster named ironartist.

Others began to theorize that Fulton had gone underground to ready a "safe room" for the "fallout that could possibly be coming."

"He just dropped off the map," said Norm Olson of Nikiski, head of the Alaska Citizens Militia, in a recent interview. "I have no idea what happened to him. I couldn't figure out why Bill had gone underground."

Now, as more details emerge as to the arrests of six Fairbanks-area militia members, including references in criminal indictments to unnamed militia members who appear to have helped state and federal authorities, some are beginning to wonder whether Fulton is connected to the investigation.

"That would be a good question to ask and a good question to get answered," said Ross, who also holds a power of attorney signed by Fulton giving him control of the two houses Fulton owns in Anchorage.

"You're not just off on a hilly of your own here," said Ross, a well-known defense attorney and Alaska's attorney general for the briefest of periods.

Ross will say little else about his client's mysterious and sudden disappearance. He did say he'd heard the rumors that Fulton is either wanted by authorities in connection with the Fairbanks case or that he is being protected as a witness.

"If that was true," Ross said, "that would answer the question as to why he disappeared. I think the FBI would be the one to answer."

Anyone involved as a federal undercover operative monitoring Alaska militias -- or even suspected of helping informants -- might do well to change names, Ross further suggested.

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There are no charges pending against Fulton, according to both FBI spokesman Eric Gonzales in Anchorage and Lt. Dave Parker of the Anchorage Police Department.

As to questions about witness protection, Gonzales said, "if he were (there), we wouldn't be allowed to comment on that."

Fulton, who had shut down his security agency in December and was just operating the surplus store, did not respond to e-mails sent to two accounts he's used in the fairly recent past to send notes and comments to Alaska Dispatch. Those e-mails also did not bounce back as undeliverable.

But Fulton's ties to several state militia groups and Fairbanks militia leader Schaefter Cox are evident in the Internet chatter going back months. While there is no evidence publicly linking Fulton to a role in the state and federal cases currently playing out against Cox and his militia associates, Fulton appears to have been well aware that Cox was headed for serious trouble for some time. A web-based forum hosted by Google for the Alaska Citizens Militia chronicles some of the discussions Fulton and others have had regarding Cox's escalating brambles with the justice system.

Cox, Lonnie Vernon and his wife Karen Vernon, Coleman Barney and his wife Rachel Barney, and Michael Anderson face various state and federal charges in connection with an alleged conspiracy that included plotting to kill judges, an IRS agent and Alaska State Troopers. The group allegedly amassed a large weapons cache that contained automatic weapons, silencers and hand grenades, all of which are illegal, and numerous other high-powered weapons and thousands of rounds of ammunition.

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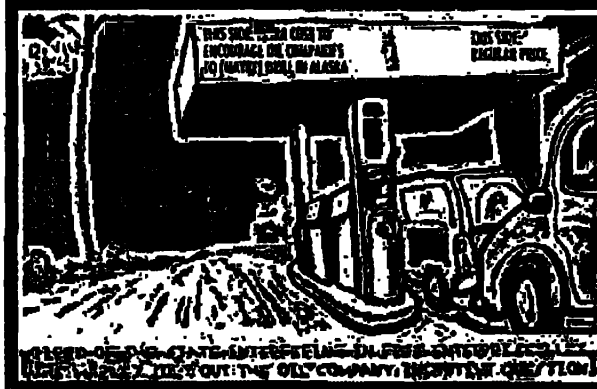
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Peter Dunlap-Shohl | Mar 18, 2011



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Political Animal

Joe Miller denies connection to jailed Alaska militia leader

Alaska Dispatch | Mar 12, 2011

On March 12, JoeMiller.us, the web site of 2010 Republican U.S. Senate candidate Joe Miller, sent out a public announcement to e-mail subscribers denying connection to an Alaska militia leader arrested this week near Fairbanks.

The release seems to dispute a phrase from a recent Reuters report about the raid and arrests of five people in Fairbanks earlier this week for, among other charges, allegedly plotting to murder multiple Alaska State Troopers and a federal judge.

In the statement of disavowance, Miller refers to an Anchorage Daily News news aggregate item centrally linking readers to a September 2010 Salon.com article quoting militia leader Schaeffer Cox, among those arrested in the recent raid.

The aggregate item notes that Cox criticised Miller in the interview for seeking office, but doesn't mention that Salon also paraphrases Cox saying that, at the time of publication anyway, he "personally knows and likes" Miller.

Miller's message is presented below without alteration.

Miller Responds to False Allegations

Former US Senate Candidate Joe Miller is disputing the media's characterization of him as a "close friend and associate" of arrested Alaska Militia leader Schaeffer Cox. Mr. Miller became acquainted with Mr. Cox through Republican Party politics, not unlike many other State leaders. Mr. Cox offered no tangible support to Miller's run for the US Senate; he was neither a campaign contributor nor volunteer, and, save for public forums during the campaign, has had no contact with Mr. Miller subsequent to his run-ins with the law early last year. To the contrary, Cox himself was critical of Miller during last fall's campaign. ("Schaeffer Cox of Fairbanks, commander of the Alaska Pacemakers Militia, tells Salon he isn't a Miller supporter.") Mr. Miller has never had any connection to any of Mr. Cox's militia organizations, and in no way condones any lawless behavior.

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Pundit: 'The Tea Party needs leadership. Time for Joe Miller'

Alaska Dispatch | Feb 21, 2011



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The Hill's "pundits blog" contributor Bernie Quigley has again written an opinion of support for Joe Miller, former Alaska Republican U.S. Senate candidate. In his latest piece supporting Miller, Quigley extends and updates an opinion he registered last November in a supportive column titled "Joe Miller for President," published as the Senate recount battle was nearing a close in Juneau. Quigley writes that before the recent fight over public labor unions in Wisconsin "the Tea Party was only an abstraction. Now it is a real movement." He then poses a question, "What's next for the Tea Party?" And no, it's not 'finally earning status as a capitalized proper noun'. Quigley thinks the embryonic political party on the far right is in danger of being absorbed by more entrenched elements of the Republican party and that it faces a "fork in the road." Quigley thinks the right leader could keep the young movement from being co-opted by traditional Republicans, and he thinks Miller is the best choice among "an 'American Idol' lineup of eccentrics and middle-talent dilettantes," gearing up for the GOP's pre-2012 presidential debate season:

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Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

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But one stands apart, Joe Miller; Yale Law School, West Point, combat veteran in Iraq with a whole group of kids. In this crowd of idea people he stands alone as a man of substance, fidelity and action. The Tea Party needs to continue heading west to Rick Perry in Texas and Joe Miller in Alaska, not turn back now to Vermont and Connecticut.

Read much more, [here](#).

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Political Animal

Write-in bill passes state Senate

Patti Epler | Feb 14, 2011

The Senate has unanimously passed a bill that would give voters the benefit of the doubt when they write in a candidate's name on a ballot.

The bill was prompted by the U.S. Senate race last year. Incumbent Sen. Lisa Murkowski, after losing the primary to Fairbanks attorney Joe Miller, waged a write-in campaign for the general election and ended up with about 10,000 votes more than Miller. Miller challenged the ballots in court, contending that the way Murkowski's name was written on the ballot had to be exact. He wanted state election officials to throw out ballots with minor misspellings, even ballots where the name had a smiley face or heart as the dot on an i.

The Alaska Supreme Court as well as the federal court rejected his legal arguments, and state justices made it clear that voter intent is what should prevail if it can be determined.

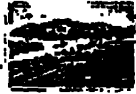
Several senators introduced legislation to adopt the language in the Supreme Court ruling as state law. The Senate voted 18-0 Monday to pass the Senate Bill 31.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com).

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Political Animal

Alaska's Joe Miller to headline California fundraiser

Patti Epler | Feb 11, 2011

The Joe Show is headed for California next month when three of the country's more famous Joes headline a Tea Party Express fundraiser.

Alaska's own Joe Miller is set to appear on the same political stage as Arizona's Sheriff Joe Arpaio (who dubbed himself America's Toughest Sheriff a few years ago) and Joe "The Plumber" Wurzelbacher (who came to prominence in the 2008 presidential campaign).

An invitation to the March 24 fundraiser at a private residence just north of Half Moon Bay is making the rounds today -- and the blogs.

But in case you're interested, ticket prices range from \$212 to \$2,012. The money goes to the Campaign to Defeat Barack Obama.

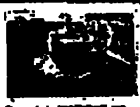
And in case you've forgotten yesterday's news, the Tea Party Express is the California-based outfit that heavily backed Joe Miller's U.S. Senate campaign against Sen. Lisa Murkowski last year. Recent federal campaign reports show the group spent \$618,224 on behalf of Miller and \$49,442 to work against Murkowski.

Contact Patti Epler at pattief@alaskadispatch.com.

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Cartoons

Joe Miller goes shopping

Peter Dunlap-Shohl | Feb 06, 2011



©2010 Peter Dunlap-Shohl | Frozengrin.blogspot.com

Cartoonist Peter Dunlap-Shohl takes a wild guess on where Joe Miller will spend his leftover campaign funds.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 25 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at Frozengrin.blogspot.com.

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Political Animal

Drop Zone is back in Joe Miller's most recent campaign report

Patti Epler | Feb 04, 2011

Former U.S. Sen. candidate Joe Miller's most recent federal campaign finance report has been posted on the Federal Election Commission website and perhaps the most interesting thing is the Drop Zone security agency has finally made an appearance.

Readers will remember Drop Zone security guards are the ones who detained and handcuffed Alaska Dispatch editor Tony Hopfinger on Oct. 17 at a public town hall at a middle school in Anchorage. This after Hopfinger tried to ask Miller questions about the circumstances of his departure from the Fairbanks North Star Borough. Miller walked away without answering and when Hopfinger tried to follow the Drop Zone security team "chest bumped" him back, grabbed him and handcuffed him saying he assaulted a still unidentified bystander and that he was trespassing. Anchorage police arrived and let him loose. No charges were filed against anyone.

The Miller campaign has never reported an expenditure to Drop Zone or owner William Fulton for that security service, and in fact the two off-duty military guys who were helping Fulton that day told Hopfinger they were campaign volunteers (albeit the only ones dressed in black suits, white shirts and ties, and wearing radio earpieces).

The year-end report filed Jan. 31 now lists a payment of \$315 to Drop Zone but not for the infamous October town hall. This payment on Dec. 28 is for "Rebuild Personnel Services/Equipment," according to the report, suggesting Miller continued to keep Fulton and Drop Zone around even after the town hall incident, which garnered international attention for Miller and not in a good way.

The report shows Miller still had about \$825,000 in the campaign bank at the end of January. That briefly lit up the political blogosphere with people wondering whether he was planning another run for office, maybe against U.S. Rep. Don Young in two years or perhaps Sen. Mark Begich in 2014. On Thursday, RealClearPolitics.com reported a conversation with Miller campaign spokesman Randy DeSoto in which DeSoto said Miller may form a new political action committee which would allow him to keep his fundraising machine going.

And that's a good thing for the Miller campaign crew, who records show, made tens of thousands of dollars off the "grassroots" campaign. About a dozen Alaska residents and a few from Outside have appeared regularly in Miller's FEC reports as consultants of various stripes, ranging from political strategists to fundraising consultants to "travel/logistics consulting" and "compliance consulting," the tag for Miller's campaign treasurer who fills out the FEC reports. There's no sign of payroll taxes like other campaigns report for staff who are paid a salary rather than reported as "consultants."

As of Friday morning, no year-end FEC reports had been posted for Lisa Murkowski or Scott McAdams.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com).

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Alaska Natives irate at state fishing restrictions: 'Stay out of my life'



Are Alaska State Troopers becoming a wilderness taxi service?



'Duty to produce' Alaska's natural gas? Just shoot me already.



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Political Animal

'Dan Rather Reports' on Murkowski and Miller

Alaska Dispatch | Feb 02, 2011

Remember the "Dan Rather Reports" camera crew seen following Sen. Lisa Murkowski around Juneau at a recent celebration of her write-in victory?

Well, the episode of the veteran newscaster's HDNet current-events show that takes a long look at Murkowski's unlikely write-in victory, "Come Write-in, Senator," is ready for broadcast.

In fact, the episode may have already premiered on HDNet on Tuesday, Feb. 1, but a search for confirmation of that has proven infuriatingly fruitless.

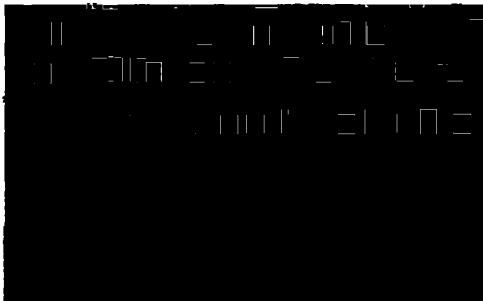
In any case, the episode is available for download now on iTunes (\$1.99), and the show's page lists the episode for upcoming rebroadcasts on Feb. 5 and 6, at 8 a.m. AKST. If you miss it then, you may have to wait to see if it shows up eventually on HDNet's free on-demand page. And, of course, if you'd like to go old-school and read the transcript, click here for the .pdf.

Rather was able to interview people close to Murkowski and her campaign, and he had the chance to speak with Murkowski's opponent, Republican primary winner Joe Miller.

According to a Huffington Post blog entry teasing the episode, Rather says Miller told him that the tea party movement will become a "major third party force" in 2012, and that Sen. Murkowski had strong words for her colleague Sen. Jim DeMint, of South Carolina, who pressed to have her stripped of Senate seniority when she announced her write-in campaign. "What he did was inappropriate and wrong," she said.

To Alaskans who watch politics closely, there won't be much new besides that in the Rather report, but it's worth seeing for the refresher of the race, and not only to see Murkowski carve some smooth downhill turns on a brisk bluebird day or to check out Miller's collection of hunting trophies.

A preview of the episode has been made available online at YouTube. Watch it below.



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Alaska Beat

Feds: Joe Miller earmarked campaign funds for 'recount'

Alaska Dispatch | Feb 08, 2011

Joe Miller ended the year with more than \$800,000 in his campaign war chest, while the victor of Alaska's U.S. Senate race, incumbent Republican Lisa Murkowski finished 2010 with less than half that, according to numbers from The Associated Press. Federal Elections Commission financial disclosures indicate Miller had \$825,000 and Murkowski \$321,060. "Miller has not said whether he'll seek another political office, possibly challenging U.S. Sen. Mark Begich, D-Alaska, in 2014, or U.S. Rep. Don Young, a fellow Republican, in 2012," the AP's story noted. Recent updates to Miller's webpage, along with random commentary and tweets on the politics of Alaska's Congressional delegation – especially Murkowski – lead Alaskans to conclude that Miller isn't going anywhere. Indeed, the AP notes that "Miller has said he wants to remain a part of the political debate." Some of the money Miller reported in the last quarter was earmarked for a "recount fund," the AP says. Read the full story.

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Alaska Beat

Joe Miller hands over 30,000 Fairbanks-North Star Borough e-mails

Alaska Dispatch | Feb 01, 2011

The Fairbanks North Star Borough has received 30,000 e-mails from former U.S. Senate candidate Joe Miller, according to the Associated Press, "effectively ending his former employer's investigation into e-mails gone from his inbox when he resigned in 2009." The borough told the AP that Miller handed over the e-mails – which became a controversy during his campaign to unseat incumbent Sen. Lisa Murkowski – sometime in January, after demands that he submit any in his possession that related to his work as a part-time attorney. The borough's investigation into Miller's missing e-mails appears to have begun sometime in the fall, according to records cited by the AP. Miller allegedly told the borough that the 30,000 e-mails were "all he had."

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Political Animal

Joe Miller 'still concerned' about Sealaska bill

Alaska Dispatch | Jan 31, 2011

According to a [press release](#) from former Republican U.S. Senate nominee Joe Miller's Senate campaign website, he's still concerned about the Sealaska land-swap bill. The release calls the bill "one of the defining issues" of the August Senate primary and notes it attracted criticism for being a "special-interest bromodrome." The Miller campaign's [release](#) links readers to the final installment of a recent six-part series by Alaska Public Radio on the proposed land deal. The [APRN report](#) Miller's release links to details economic impacts of the land swap and states that Rep. Don Young plans to re-submit the bill to the 112th Congress in its original form.

Miller expressed concern that the original bill was being submitted without revisions, "Certainly everyone will not be happy with the final product, but hopefully most of the issues can be addressed. However, I am very concerned with the fact that Rep. Young apparently hasn't been listening. I hope he will follow Senator Murkowski's lead and take all of the interests of the region under advisement before putting his bill forward."

The release goes on to say that Miller supports settling Native land claims under ANCSA and increasing private land ownership, but that he hopes competing interests in the area of the swap can be balanced by revisions to the bill. Miller said, "I continue to support the transfer of public land into private hands, and it is gratifying that we may have been able to play a part in getting another hearing for folks who were feeling disenfranchised by the process. I hope there can be a compromise that all sides will be able to live with."

Read more, [here](#).

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Politics

Joe Miller: A voter lawsuit still active over Alaska's Senate race

Jill Burke | Jan 12, 2011

Although Lisa Murkowski just renewed her oath of office for a second full term as one of Alaska's U.S. Senators, and her fervent rival Joe Miller has called off his fight over her election win, a half dozen voters are still trying to perve the State of Alaska and its Division of Elections screwed up.

On Dec. 10, one day after Miller lost the first in a series of three court cases regarding the fairness of the ballot count and the validity of votes, a small group of known Miller supporters filed their own lawsuit over the same issues in federal court.

As Miller unsuccessfully fought before the Alaska Supreme Court and U.S. District Court to block ballots containing misspellings of Murkowski's name and those with other perceived flaws or handling errors, the six-voter plaintiff's group of Miller allies was waiting for its complaints to also be heard.

Harold Frederick Rudolph, Sr., Gerald Gugel, Jr., April J. Pugh, Kevin Hite, John M. McKenzie and Lola G. McKenzie claim that the state violated the Voting Rights Act by accepting misspellings on write-in ballots, using different counting methods for different types of candidates (ballots for write-in candidates underwent a hand review whereas ballots for candidates with pre-printed names were assessed by machine) and by allowing some voters to vote without showing identification.

For reasons not explained in the complaint, the group's attorney, Thomas Wickwire, identifies all plaintiffs except for Hite as being Alaska Native.

Wickwire is from Fairbanks and appears to be the same Thomas Wickwire who used his personal plane to whisk Miller to a few campaign events. Those jaunts resulted in some controversy when an activist filed a complaint questioning whether Miller should have paid more for the flights, per campaign finance rules.

The state of Alaska has denied the group's claims, and in a court filing responding to the lawsuit, called the lawsuit moot, further suggesting that the issues raised are beyond the statute of limitations.

Unlike Miller's election challenges, which were heard speedily, the voters' case hasn't yet gotten very far. On Jan. 5 U.S. District Court Judge Ralph Beistline -- the same federal judge who last month decisively ruled against Miller and shut down his election challenge -- ordered the dissatisfied voters and the state to meet within three weeks and come up with a schedule by which to proceed.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).



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Cartoons

Required reading for Joe Miller

Peter Dunlap-Shohl | Jan 01, 2011



RECOMMENDED READING FOR JOE MILLER
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Cartoonist Peter Dunlap-Shohl on Joe Miller's post-election fight for U.S. Senate.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 25 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at FrozenGrin.blogspot.com

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Joe Miller

Joe Miller admits defeat in Alaska's U.S. Senate race

Patti Epler | Dec 31, 2010

Joe Miller has given up his legal fight to wrest a U.S. Senate seat away from incumbent Lisa Murkowski, but promised local supporters and national TV audiences on Friday that he will continue the battle for conservative political values.

Confident and personable, Miller told reporters and dozens of supporters at a press conference in Anchorage that he did not regret the last few weeks of court wrangling over the way the election was conducted.

"I've been criticized for seeking to apply the rule of law to this election and I've paid a price for that," he said. "I knew that my motives and indeed my judgment would be called into question. What is true is that I fought this fight so the candidates of the future would not have to do so."

RELATED: What's next for Joe Miller?

Miller pointed to recent statements by lawmakers that they would look to clarify election laws in the upcoming session, and a decision by Lt. Gov. Mead Treadwell to review the way the election was conducted as validation of his court challenges, which dragged on for weeks and took the case from federal court through all levels of state court and back to a federal judge who earlier this week dismissed Miller's case and allowed the election to be certified.

"The courts have spoken," Miller said Friday, telling his supporters who want him to continue appealing in the federal system "I hear you, but the time has come to accept the practical realities of our current legal situation. We shall abide by the courts decisions, even if we do not agree with them."

But Miller also made clear he doesn't intend to stop advocating for the same issues that he embraced during the campaign. "I know for a fact that standing down is not an option," he said. "Exactly what form that will take, I don't know yet."

Miller said he has no plans to run for another office. He also has not re-opened his Fairbanks law practice and doesn't intend to do so, he said, because "frankly, our effort is not done."

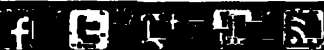
"Now is the time for us to engage in a national conversation about the role of the federal government and its relationship with the states and the need to responsibly balance the federal budget," he said.

Miller, who earlier in the week also indicated he may continue to pursue politics, said he will remain an advocate for constitutional conservatism. "This is not the beginning of the end. It's the end of the beginning," he said.

Miller acknowledged the campaign has cost his family personally and financially and that he is essentially living off money the campaign paid him back for a \$100,000 loan he'd made at the beginning of the race.



Appearing on CNN news after the press conference, Miller indicated he did not intend to call Murkowski and personally concede. "I have not called her and in fact I don't have her number," he said, adding that "I think we already have conceded."

Miller, a Republican backed by the tea party and former Alaska Gov. Sarah Palin, had beaten Murkowski in the Alaska GOP's August primary, but then lost in the general election after Murkowski



that mistakes were made during his campaign, but he didn't mention specifics. His campaign suffered after his security guards handcuffed Alaska Dispatch's editor and the public learned of his misdeeds while he was working as a part-time attorney at the Fairbanks North Star Borough. After the election, Miller refused to accept the vote tally which placed Murkowski nearly 10,300 votes ahead of him. He mounted a series of court challenges, alleging the ballot count was unfair. One of his biggest complaints was that ballots containing misspellings of Murkowski's name had been counted as valid.

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Political Animal

Rep. Young talks climate, earmarks, and a possible Miller challenge

Alaska Dispatch | Dec 31, 2010

Congressman Don Young speaking with KTVA-TV's Matt Felling about a variety of topics, everything from climate change models and legislative earmarks to the notion that former Republican Senate candidate Joe Miller could challenge Rep. Young in 2012 for the U.S. House. "I think Joe's a little old for the job," Young says. Watch the interview below in two parts.

Part One:

Part Two:



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Politics

Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

Craig Medred | Dec 31, 2010



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The communique-driven media relations of former Gov. Sarah Palin were gone Friday when protege Joe Miller met the Alaska media to bring to an end a long and bitter campaign for one of the state's two U.S. Senate seats.

The communique-driven media relations of former Gov. Sarah Palin were gone Friday when protege Joe Miller met the Alaska media to bring to an end a long and bitter campaign for one of the state's two U.S. Senate seats.

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Alaska GOP: Time for Joe Miller to end his campaign

Miller held what used to be called a "press conference" in an empty, 20-by-80-foot room in a Midtown Anchorage strip mall between a sub-sandwich joint and a pizzeria. He stood behind a podium in front of fake, fluted pillars and the flags of Alaska and the United States to read a speech, and when he was done he actually conferences.

It was a big change from his previous encounter with Alaska reporters when he called a conference at the Denaina Center downtown and then arrived to spit – figuratively not literally – in their faces. At that gathering, Miller told Alaska reporters he wasn't going to answer any more of their questions about his past; accused some of them of being out to get him; and then scurried out the backdoor of the building.

From then on in a unique twist on Palin's approach, as well as other tea party candidates, toward what they call the "lamestream media," Miller would talk only to the national reporters of conservative Fox News, liberal CNN and even leftist MSNBC. His only contacts with most of Alaska's media were through spokesman Randy DeSoto, whose answer to almost everything was nothing, and Anchorage talk show host Dan Fagan who became the de facto propoganda minister for Miller for Senate, although Fagan's propogandizing did begin to diminish after Miller started tipping legal windrails in the wake of his election loss to write-in candidate and incumbent Republican Sen. Lisa Murkowski.

RELATED: What's next for Joe Miller?

Miller formally gave up that jousting on Friday in front of the press, but still felt moved to defend it, arguing it was all about clean elections and noting some Alaska lawmakers are now talking about new statutory language to clarify what voters might write down on a ballot to make their write-in desires clear. At this moment, the view of the state Division of Elections – as unanimously endorsed by the Alaska Supreme Court – is that a ballot will be counted if the voter's intent is clear.

Thus, Alaska voters faced with a spelling challenge like Smythe, one of those strange variations on the spelling of Smith, can write the latter and still see their vote count. Or they can, as they did this year, write Murkowski or Murcowksi, or Murcowolky and still score a vote for Murkowski. It is, however, worth noting that Alaska voters did smarter than all of the pundits expected prior to this election, and even after the misspellings of Murkowski were placed in reserve pending the outcome of post-election lawsuits by Miller, there were a couple thousand more people who'd managed to spell Murkowski right than had merely colored an oval next to Miller's name.

On Friday, Miller blasted entrenched opinion and rejected Alaska interests, most notably Alutian

Murkowski campaign victory, but his accusations did not carry the venom of the past nor did his behavior. During the election campaign, Miller became nationally famous as the candidate whose personal security guards manhandled and then handcuffed Alaska Dispatch editor Tony Hopfinger because he was judged to be pursuing Miller too aggressively with questions.

There was no security visible when Miller met the media this time. He arrived with his wife in a SUV a few minutes behind schedule. He rushed in the strip mall's front door, past reporters and a throng of TV cameras and disappeared into the back of the small space.

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Political Animal

State plans to seek court costs from Miller

Alaska Dispatch | Dec 29, 2010

According to The Associated Press (via the Fairbanks Daily News-Miner), the state of Alaska plans to seek reimbursement for court costs that it incurred during the challenge to the U.S. Senate election count filed by Republican nominee Joe Miller. The state is eligible to seek reimbursement of up to 20 percent of its total costs. The state Department of Law says the costs totaled \$79,722.50, and it plans to seek \$15,957.55. Read a bit more, here.

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Alaska Beat

Joe Miller campaign lawsuit ends with final ruling from judge

Alaska Dispatch | Sep 12, 2012

Former Alaska U.S. Senate candidate Joe Miller's long-running lawsuit against the Fairbanks North Star Borough has come to a close after a disagreement over the meaning of a judgment signed earlier this summer. In the settlement, the borough agreed to pay \$5,000 to Miller to end a costly legal battle over whether someone with the borough illegally leaked information about Miller's time working there. The judgment, signed by both parties in June, denied any admission of fault on the borough's part. Yet Miller went on to argue that, by its nature, a judgment admits fault.

The Fairbanks Daily News-Miner reports that Superior Court Judge Stephanie Joannides issued a formal judgment in the case that has finally ended the issue. Without much elaboration, she cited the signed judgment as the final word on the issue.

"The Offer of Judgment disclaiming any fault by Fairbanks North Star Borough and Jim Whitaker was accepted on June 20, 2012 by Intervenor Defendant, Cross Claimant and third Party Plaintiff Joseph Miller," Judge Joannides wrote.

Borough Mayor Luke Hopkins told the News-Miner "My view is that it's done, and I guess it's goodbye Joe."

Read more from the News-Miner.

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Alaska GOP's 'old guard' questions what happened to 'new guard' funds

Amanda Coyne | Jul 30, 2012



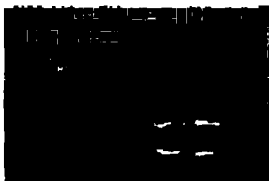
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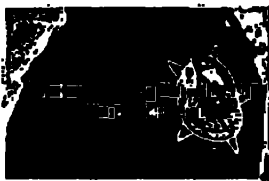
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Frank McQueary, assistant treasurer of the Republican Party of Alaska, sent an email to GOP party officials on Monday about "potentially improper fundraising by Chair Elect **Rue Miller**."

McQueary wrote that as assistant treasurer of the party, along with his role as standing rules chair, he has had "numerous enquiries forwarded to me regarding both interpretations of the rules and questions concerning the financial aspects of fundraising."

Miller was not immediately available for comment.

McQueary told the group that he had contacted the Alaska Public Offices Commission (APOC), the state agency that monitors elections, seeking an opinion on whether funds have been properly reported by Miller.

At issue is more than \$1,600 raised by the splinter group, or ad hoc committee, that met June 9 in a church after the reconvening of the Republican Party Convention, McQueary said.

"To the best of my belief, the funds in question were not turned over to the party for reporting purposes, nor have they been reported by any other organization," McQueary wrote.

Money raised by any political party must be documented and reported. The APOC indicated it's investigating the issue.

McQueary said that party practice dictates that donor information is received for money raised. If the donor is unknown, the party sends the money to the state Department of Revenue.

Funds were requested at various times before and during the meeting. Some of that money was used, according to a transcript of the meeting, to pay for a parliamentarian the group had hired from Washington state.

At the end of the meeting, Miller told the group that it had collected \$1624.60. "This covers expenses for (the parliamentarian), which includes his airfare," Miller told the group. He also said that another person in the crowd, Gene Brokaw, was paying for the church and that members could pay him back.

The business manager of the church confirmed that it had charged the group \$200 to use the building.

The June 9 reconvening was the brainchild of Miller, Alaska's next chair of the Alaska GOP. He put out a call for state Republicans to finish what they started during the tumultuous state GOP convention in late April. Miller is a supporter of GOP presidential candidate Ron Paul.

With the help of failed 2010 U.S. Senate candidate Joe Miller, Millette captured the hearts and minds of Alaska's Paul supporters and dissatisfied Republicans to win the state GOP chairmanship at the April convention.

The war between the two factions of Alaska's GOP has brewed since. At the June 9 reconvening, the group voted to censure U.S. Sen. Lisa Murkowski for joining "far left interest groups" and "maliciously attacking" Joe Miller, who ran as a Tea Party candidate in the 2010 U.S. Senate race, but lost in the general election to Murkowski's write-in campaign.

Censoring didn't stop with Murkowski. The group also voted to censure a handful of Republican Party officials who weren't in the room, including McQueary.

Millette will become chair of the party early next year. In the meantime, he is the finance chair of the party, and old party boss Randy Ruedrich is still in charge.

Correction: The original story said that Millette was treasurer of the party. That's incorrect. He is currently finance chair.

Contact Amanda Coyne at Amanda@alaskadispatch.com

Email



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Politics

Joe Miller's leftover money resurfaces

Alaska Dispatch | Jul 24, 2012

Joe Miller's new federal campaign committee – Citizens for Joe Miller – is flush with more than \$435,000, according to a July quarterly filing with the Federal Election Commission. The committee was formed in early June after Miller moved his previous campaign committee, Joe Miller for U.S. Senate.

The source of the nearly half-million dollars was Miller's old committee. Funds left over after the old committee paid all of its debts were transferred to the new committee.

But the new committee has yet to declare what candidate it will work on behalf of. Citizens for Joe Miller is listed as a primary campaign committee, but because it has not raised or spent more than \$5,000 on a candidate or campaign, it has argued it is not required to name its beneficiary.

Miller, who is working on building a his former campaign website into a conservative-minded online news outlet, won't say what his future political aspirations may be. He's keeping his options open, according to a spokesperson.

There is speculation Miller may be eying a run against U.S. Sen. Mark Begich in 2014. If he does, financially he's not too far behind Alaska's junior Senator. With a campaign account currently at \$529,000, Begich has about \$100,000 more than Miller.

But as demonstrated by his previous race against write-in candidate U.S. Sen. Lisa Murkowski and Democratic challenger Scott McAdams, Miller has the ability to raise a good deal of money in a short period of time, and Alaskans have shown a willingness to shovel money into high-stakes, contentious elections.

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Politics

One-time Senate candidate Joe Miller reinvents himself as online news publisher

Jill Burke | Jul 17, 2012



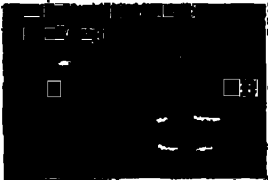
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In the same month Joe Miller declared himself to be an online publisher, the Federal Elections Commission warned the one-time U.S. Senate hopeful that he had unfinished FEC business. What Miller has to gain from his latest ventures isn't entirely clear, but by July 26 he's supposed to publicly reveal any future political aspirations he may have.

A conservative Republican who ran on a platform of restoring the nation's political system in one driven by a strict interpretation of the constitutional framework established by the founding fathers, Miller didn't take his loss to incumbent Lisa Murkowski easily. She'd run an unprecedented write-in campaign after losing the primary to Miller, and won.

Nearly two years after his initial trouncing of Murkowski in Alaska's August primary, Miller shows no signs of slowing down. But, after putting to rest a lawsuit (which Alaska Dispatch was a party to until June) with his former employer, the Fairbanks North Star Borough, and trying a brief stint with an Outside tea-party political action committee, the Western Representation PAC, Miller has recently reinvented himself.

During the campaign, Miller found a loyal bloc of supporters, and drove of them. Unhappiness about the economic condition of the country and big-government social policies was abundant and easy to tap into. He had a pulpit, a new, louder voice and people who wanted to hear more.

On Independence Day this year, he announced he'd transformed his former campaign website, joemiller.us, into a full-blown online news outlet. The banner at the top of the page features a headshot of Miller and the words "Restoring Liberty, published by Joe Miller." Since then, the pages have filled with columns, news stories and videos he believes his audience — which Miller estimates to be thousands of conservative readers — will want to view.

"After the close of the campaign, Kathleen and I continued to receive feedback from like-minded patriots throughout country asking that we stay engaged. We resurrected the JoeMiller.us website in May 2011. Since then, we've seen incredible growth. It's obvious that people throughout the country are desperate for the real news, with biases of the establishment media stripped away," Miller wrote in a July 4 column introducing the revamped site and its mission.

But focus appears to be more on Miller's mind than managing stories and content. A month before the site overhaul, and as the lawsuit with the borough

was winding down, Miller put his federal campaign committee, Joe Miller for U.S. Senate, to bed. He filed paperwork to officially terminate it, and transferred its remaining \$435,469 to a new federal committee: Citizens for Joe Miller.

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Citizens for Joe Miller lists itself as a "principal campaign committee," but it has not officially identified — other than the obvious reference in its name — which candidate it was established to support.

The FEC didn't like the lack of detail, and notified the committee on June 21 that the new organization is required to name a candidate, the office sought, and the candidate's party affiliation. It told Citizens for Joe Miller it wanted an answer by July 26.

In a response sent to the FEC soon after it got the commission's letter, the committee refused to name names. Because the committee has not raised or spent \$5,000 in furtherance of a federal candidacy, it doesn't believe it is required to provide the information sought by the FEC.

The timing behind Miller's choice to close one election bank account and start anew, and what, if any strategic gain is to be had by it, isn't clear. A Fairbanks Daily News-Miner article in June chronicled how the FEC committee-switching had become a point of interest in Miller's lawsuit against the Fairbanks North Star Borough, which once employed him as a part-time government lawyer.

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Politics

Joe Miller secretly recorded conversations, says borough court filing

Alaska Dispatch | Jun 22, 2012

Fairbanks Daily News-Miner columnist **Dermot Cole reports** an interesting tidbit from court documents in the long-running lawsuit involving the borough personnel records of failed Republican U.S. Senate candidate Joe Miller.

Attorneys representing the Fairbanks North Star Borough in the matter say that Miller secretly recorded conversations with borough employees, including Borough Attorney Rene Broker.

In Alaska legal circles, Miller has had a reputation of being in the habit of recording conversations with other parties, whether openly or not.

Cole reports that attorneys for the Fairbanks North Star Borough on June 13 filed a "Motion to Compel Discovery" of all records of secret audio recordings Miller made of conversations with borough employees, as well as with reporters, senior campaign staff and political advisers.

In a letter dated May 13, Greg Fisher, an attorney for the borough, said that Miller secretly recorded conversations with Borough Attorney Rene Broker and by doing so Miller "breached fiduciary duties he owed the FNSB by secretly taping another lawyer discussing FNSB Legal Department subjects and by failing to disclose those tapes (which are public records under law)."

In the June 13 motion, the borough was to receive from Miller "A complete copy of any recording you have made of another party, party representative or witness to this litigation."

Miller was also to provide a copy of any recordings he or anyone working on his behalf made of Alaska Dispatch reporter Jill Burke "or any other reporter or journalist during the 2010 U.S. Senate campaign."

Miller was scheduled to be deposed on July 31, but the case has been settled, and the deposition won't occur.

Read much, much more from Cole, [here](#), and for the bonus round, read what Miller spokesman Bill Peck had to say to Cole, [here](#).

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Joe Miller: Failed Senate candidate settles lawsuit with North Star Borough

Amanda Coyne | Jun 18, 2012



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Failed Alaska U.S. Senate candidate Joe Miller declared victory in his long legal battle with the Fairbanks North Star Borough on Tuesday, the day that he was supposed to provide information to the court about how he was paying for his lawsuit.

On Monday, Miller accepted a \$5,000 judgment against the borough and former Fairbanks Mayor Jim Whitaker. The judgement was offered by the borough.

The borough mayor, Luke Hopkins, said it offered the judgement because it was in the "taxpayer's best interests to put a stop to this litigation and legal expenses with this low monetary offer."

Hopkins was also surprised that Miller accepted, given that he initially said that he would do so for \$50,000, and then \$25,000. He originally claimed that he had over \$160,000 in damages.

In a press release, Miller acknowledged that the judgment is "minimal." However, he said that this was "never a case about money. Rather, this case was about getting at the truth and setting the record straight. There is now a permanent record doing just that."

In a press release, however, the borough took issue with that statement. "This case confirmed that Miller engaged in misconduct at his work, lied about his misconduct, and was disciplined."

The borough said that the judgement should not be "construed as an admission of fault in any respect."

The dispute sprang from Miller's years as a part-time lawyer for borough, evolved into a lawsuit involving journalists, including the Alaska Dispatch, and began a debate over the First Amendment rights of bloggers.

It started in 2010, when Miller ran against U.S. Sen. Lisa Murkowski, R-Alaska, in the GOP primary. Miller's work experience was conspicuously missing from his employment history, an omission that was quickly noticed by media. For a while, Miller fielded questions about it. But the more reporters demanded explanations, the more the candidate dug in and refused to talk openly.

The first to push the point was citizen blogger/reporter Andrew Halcro, who, during summer 2010, posted a two-line blog entry -- "Say it ain't so Joe" -- which read: "U.S. Senate candidate Joe Miller was fired from his job as an attorney for the Fairbanks North Star Borough. Why?"

The rumor floated in Halcro's blog piqued the media's interest, and it wasn't long before Miller's

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Eventually, the press corps, led by Alaska Dispatch, sued the borough for the release of these public records and won. (The Dispatch was a party to the suit until earlier this month.) The records showed Miller, against borough policy, had sneaked on to the computers of colleagues working at the borough, used the access to read a political poll he was involved in, then lied about it to try to cover up what he had done. (It was at this time, too, that Miller became convinced that Alaska Republican Party Chairman Randy Riedrich was plotting to kill him. According to his colleagues at the time, Miller talked about plots against his life, computer hijacking, a bug in his office, and even requested that the mayor hire a security detail to protect Miller.)

Miller was not fired, as Halcro's blog claimed. He was, however, barred for three years from re-employment at the borough because he didn't give enough notice prior to his departure.

After Miller lost in the general election to Murkowski's write-in campaign, he sued the borough, claiming that someone in the office illegally leaked information about Miller's time at the borough.

The judgement admits to none of this, however, and for all the time and money involved in the case, the only salient fact that seems to have emerged is that the former mayor of the borough, Jim Whitaker, had a meeting with Rance Breker, Miller's supervisor, about Miller's time at the borough and what could be said to the press about that time.

When deposed about the meeting, Breker claimed attorney-client privilege, even though Whitaker was no longer the mayor. Whether or not Breker and Whitaker could claim such privilege was scheduled to be argued in front of a judge next week.

The borough contends the law is very specific that former mayors can seek advice about events that occurred while they were in office.

Miller still believes that someone at the borough leaked the information, his lawyer John Tiemessen said. "But every case has a point of diminishing returns," he said. "Maybe you haven't beaten under every bush and overturned every rock, but you've done enough that you have a pretty good idea of what's going on," he said.

Miller sought legal fees, but he refused to provide information about whether he or his leftover campaign staffers were footing the bill for those fees. He had said that until January 2011, his lawyers were paid a flat fee of \$10,000 a month. Since then, however, he's denied that his campaign has paid for the legal fees.

The judge ordered him to provide such information by Monday, but he accepted the judgement instead.

CORRECTION: This story was updated June 18, 2012. It has been corrected to describe the judgment as a judgment, not a settlement.

Contact Amanda Coyne at [amanda\(at\)alaskadispatch.com](mailto:amanda(at)alaskadispatch.com)

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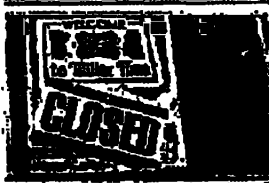
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Commentary

Time to throw out Alaska's 2010 US Senate race trash

Andrew Halcro | Jul 08, 2010



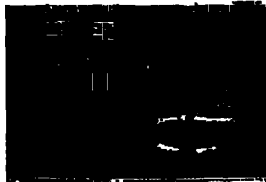
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Grudgingly slow, rural Alaska's honeybuckets are getting retired

Over the last two years, nobody has been more responsible for the tragic Joe Miller narrative more than Joe Miller himself. His improbable victory, his sensational collapse and his frivolous post-election lawsuits. Alaskans really dodged a bullet with this guy.

I'm not going to rehash the political implosion that became known as Joe Miller 2010. But now that the lawsuits are settled, I do have a lot of questions about a man who campaigned on his mettle, but yet possessed none. A man who campaigned on honor and trust but is proving he has neither.

How do you do?

How do you explain how a man campaigns heavily on being a Bronze Star recipient, yet needs to be squired to his own events by a phalanx of private security guards? Former co-workers called his behavior "bizarre."

How do you explain how a man who campaigns as a conservative and a friend of taxpayers, files two frivolous lawsuits against both state and local governments, costing taxpayers a truckload of legal fees?

Or how about a man who says he'd spent \$150,000 on legal fees, and then suddenly settles for \$5,000? Oh yeah, and he settles the day before the court's deadline ordering him to come clean on who was paying his legal bills.

But why would the court have to order him anyway?

You'd think given the outcome the last time he went to court to stiff-arm the public's right to know, he'd be more transparent.

And what's to make of his former boss stating in a deposition that she could have revealed "embarrassing" details from his personal life during the election if she really wanted to cause damage?

Finally, how do you explain how a man campaigns on the U.S. Constitution, but attempts to litigate away First Amendment rights? Or a man who has his lawyer argue that the court should allow him to daisy-chain a journalist's confidential source, which is akin to the court sanctioning a legal fishing expedition?

It's apparent from his actions over the last two years that this guy has acted like a bull in search of a china shop. A candidate who started hurling rocks when the press started hurling legitimate questions. A nominee who wouldn't show up at his own campaign event without Marge and Rocky in tow. And a failed candidate, whose litigious ways against government has redefined his claim to being a friend of the taxpayer.

I've grown tired of his attempts to persuade the court system to validate conspiracy theories. I've grown tired of his legal arguments that were tortured and without merit. And I've grown tired by the

to believe he is the victim.


"I lied about accessing all of the computers. I then admitted about accessing the computers, but lied about what I was doing." (Joe Miller email to his employer 3/17/08)

They say in politics the longer you're away, the more fondly you're remembered. However, Joe Miller has done everything within his power to ensure that he is remembered as a man who lied, cheated and then sued, because voters found out the truth.


Andrew Halcro is the publisher of AndrewHalcro.com, a blog devoted to Alaska issues and politics, where this commentary first appeared. He is president of Halcro Strategies and Avis/Alaska Rent-A-Car, his family business. Halcro served in the Alaska House of Representatives from 1999 to 2003, and he ran for governor in 2006 as an Independent. He was deposed by Miller attorneys in February during court proceedings connected to the court case mentioned above.

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Joe Miller loses again

Craig Medred | Jun 21, 2012



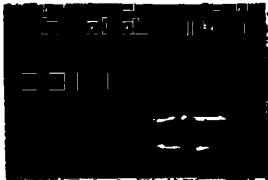
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OPINION: Failed Alaska U.S. Senate candidate Joe Miller is clearly one of those people who believes losing once makes you a loser forever.

He'd be well served to get over it and accept that the reality of life is that we often fail to get what we want. All of us. Miller's inability to accept defeat gracefully (Mormon to Joe: Nobody says you have to like it) is how he got in a pickle in this state in the first place. And he seems to have learned nothing.

He was back to his old tricks this week after bailing on what had been a stupid and misguided lawsuit intended to punish representatives of the Fairbanks North Star Borough because he thought they revealed that he'd gotten into trouble for some shady politicking while employed there as a part-time attorney. Miller believes the revelations that he was reprimanded in Fairbanks for secretly using the computers of co-workers to try to dummy up a Republican Party poll -- and lying about it to try and cover this up when he got caught -- cost him a seat in the U.S. Senate.

It didn't. What cost Miller a seat in the Senate was Miller's handling of what had happened in Fairbanks. He couldn't bring himself to publicly admit "I made a huge mistake," treat it as the sort of human failure to which we are all prone, and move beyond it as really too petty for much discussion with weighty Alaska and national policies to be debated. But then, if he'd done that, Miller might have looked like a bit of a loser, at least in his own eyes. And he clearly can't accept this.

This week, when he finally settled his way out of the lawsuit against the borough for the paltry sum of \$5,000, he couldn't concede the suit was a loser and gracefully suggest it was time at last for everyone to move on. Oh no. Miller had to instead try to claim victory.

"Fairbanks, Alaska. June 18, 2012 -- Today, the Fairbanks North Star Borough and its former Mayor Jim Whitaker have admitted that they are liable for a judgment to Joe Miller," declared the official media statement from JoeMiller.us Restoring Liberty. "Mr. Miller accepted the Borough and Mr. Whitaker's offer to allow the entry of a final judgment against them and in Joe Miller's favor."

"This case was never about damages," Miller claimed.

Right. Let's forget that Miller started all of this claiming over \$160,000 in damages, and consider for a moment the realities of the legal system in this country. It's all about money. And in cases like this, if you want the lawsuit to mean anything, it is about squeezing enough money out of the individuals involved to send a message to others. A West Point graduate who attended Yale Law School can't hardly have missed this.

So the Borough is going to pay \$5,000 to without admitting it or Whitaker did anything wrong and

Big whoop!

That chicken-feed settlement is supposed to stop anyone in any municipality anywhere in the state from spilling the news on dirt in the personnel file of the next Joe Miller to run for statewide office? I don't think so. And that's a good thing. The judge had it right, and made it sweet and simple. Miller didn't have any expectation that this stuff would be private since he declared for office.

Alaska voters, strangely enough, have a right to know about the character of the people running. Miller is clearly a character. What kind of character Joe Miller was — and had — became a pivotal matter in his challenge to incumbent Sen. Lisa Murkowski.

Everybody knows by now the story of the meteoric rise and tragic fall of Joe Miller, or they should. Miller got himself involved in politics back in 2008 because he thought the Alaska Republican Party poorly run. Fair enough. Former, half-term Republican Gov. Sarah Palin thought the same thing. She thought a change in leadership necessary. So did Miller. Fair enough. Miller was smart enough to recognize he and Palin lacked the votes to stage a democratic coup. Fair enough.

So he tried to rig a poll using the computers of coworkers to vote while they were away from their desk. Not fair.

Stupid it was then. Stupid it remains now. Stupid and childish.

Miller himself obviously recognized that when his bosses at the Fairbanks North Star Borough caught onto his little trick. So he tried to lie his way out of it. Even stupider. All of which he did because he didn't want to lose his bid to reshape the Alaska Republican Party and end up in his view looking like a loser.

Starting to see a pattern here?

Now flash ahead to the election of 2010. Miller staged one of the greatest upsets in Alaska political history to unseat Murkowski in the Republican primary. He thought he had a lock on a Senate seat. He was riding high. He tweeted about looking for office furniture in Washington, D.C., and then bits and pieces of his 2008 Fairbanks problem began to leak out. Miller should have, at that point, just ripped the scab off the wound and got it all out there, something like:

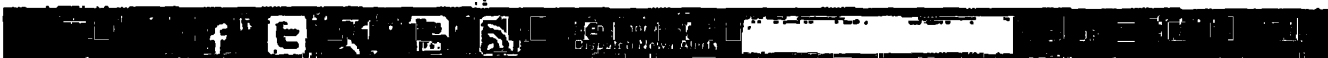
"I was reprimanded by the borough in 2008. I was so consumed by my desire to fix the Republican Party in Alaska I got carried away and foolishly got on the computers of co-workers to try to pad an online poll. It was stupid. It was childish. I don't know what I was thinking at the time. It seemed to me like some sort of harmless inside joke that wasn't going to hurt anybody. I know now that I was wrong. I shouldn't have done it. I long ago apologized to the people with whom I was working. In the big scheme of things, it was a sign of a small flaw in my character, which I am always trying to improve, and now it is time to move on to bigger issues."

The Miller faithful would have rattled round. The people who put him over the top in the primary would have redoubled their efforts for the general election. They would have been all over Alaska telling everyone that nice foolish, silly mistake on the part of an honorable, distinguished winner of a Bronze Star for service in the Gulf War of 1991 should not disqualify him from office.

There is a strong possibility they could have swayed enough independents to Miller's cause to help him win the election. A lot of people fundamentally liked what he was saying about the need for fiscal responsibility in the government of this country.

There is an even stronger possibility this admission might have influenced Murkowski's decision to run against him in the general as an independent. That run was a long shot. She wasn't expected to win, but she knew there was dirt hidden in Fairbanks. The Murkowski family is extremely well connected there. And it didn't take much to learn about the dirt in Fairbanks. Too many people knew the Miller story.

It was destined to come out. Even Miller had to know that, but accepting it and admitting you acted like a loser is a hard thing to do when you think losing anything makes you a loser.



ended this craziness.

"Nevertheless, this was never a case about money," it added, repeating what had been said only a few lines earlier, "Rather, this case was about getting at the truth and setting the record straight. There is now a permanent record doing just that."

"Getting at the truth"? Right.

Joe Miller thinks Alaskans are going to remember what? That he settled a lawsuit with the North Star Borough with an agreement they pay him \$5,000 just to go away? When he and the borough were each spending twice that much each month on this case, and things were heating up as they prepared for trial; when he was up against a deadline set by the court to provide overdue documents; when his deposition had just been scheduled for next month? Who wouldn't? Who cares? The borough was spending a lot more in attorney fees to deal with the paperwork this dog of a suit required them to post in court.

The borough would have been crazy not to settle. No one is going to remember this check.

The "truth" everyone is going to remember is what came before it: That Miller tried to rig an online poll. That Miller lied about rigging an online poll. That Miller was reprimanded. That Miller tried to cover up the reprimand when he ran for the Senate. That his goons restrained and then handcuffed Alaska Dispatch editor Tony Hopfinger after he followed Miller into the hallway of an Anchorage school, after a public meeting, in order to ask questions about what exactly had happened in Fairbanks. That Miller's file was finally pried out of the borough by a Freedom of Information Act suit filed by Alaska Dispatch and other media organizations. That the revelations about what Miller had been trying to cover up helped cost him the Senate seat that was in his grasp. And that Miller's response to all of this was to sue the borough and its former mayor claiming it was all their fault.

No, it wasn't. It was all Joe Miller's fault.

And it cost him the election because he couldn't take responsibility, because he couldn't admit he'd acted like a loser, and find a graceful way to move on. But he clearly couldn't do this because to Miller admitting to acting like a loser is the same as being a loser. It sorts of forces an objective person to wonder if -- all his good ideas aside -- Miller really is a loser.

Contact Craig Medred at [craig\(at\)alaskadispatch.com](mailto:craig(at)alaskadispatch.com)

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The Concerned

Who's really to blame for failed U.S. Senate candidate Joe Miller's meltdown?

Scott Woodham | May 17, 2012



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TO: Joe Miller
CC: Rose Millette
Subject: Unknowns

Dear Failed Republican U.S. Senate Candidate,

We The Concerned think congratulations are in order after the recent leadership change in the Alaska Republican Party. Congratulations!

Sure, sure, we know you've denied being responsible for "the coup," but we think that's just more of the trademark, extreme modesty Alaskans have come to expect from you. The alternative -- that you're still waging a paranoid, covert war against ideological enemies deep behind enemy lines -- is just too creepy for us to consider.

We also know you're excited about the election of Russ Millette to the party's top post. Randy Ruedrich's ouster ought to be especially sweet for you.

According to disciplinary documents released by court order during your campaign for U.S. Senate in 2010 -- as well as press reports at the time -- you've been working toward that goal since at least 2008. You may recall that's when you went on your Fairbanks North Star Borough co-workers' computers to rig an online political poll to gauge support for overthrowing Ruedrich, then got caught.

RELATED: Joe Miller's paranoid attempt to overthrow the Alaska Republican Party

Talk about persistence! Here's to four years of hard work finally paying off!

The election didn't go your way, but by gum we The Concerned admire your sticktoitiveness in working for change in the Alaska GOP. We even said as much when we wrote in November 2010 to support any efforts to find employment after your Senate campaign ended. How'd that work out anyway? You're apparently doing just fine even though your legal bills must be getting pretty big by now.

You've said via your lawyers that you've been spending \$10,000 a month on attorney fees for over a year now, maybe longer. This litigation dates back to October 2010. That's when media reports, Alaska Dispatch first among them, sued the Fairbanks North Star Borough for public access to information that would either validate or destroy rumors that were swirling around to the effect that you -- a little-known figure in Alaska politics -- might not be cut out for the U.S. Senate.

But only the claims you've filed against those you think were responsible for exposing your wrongdoing are still active today and costing you, the borough and others all of this money.

You kept saying during the 2010 election that you wanted to come clean and answer any questions about your past, but you never did. At every opportunity you stymied inquiry. Members of your

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personal security detail even handcuffed and detained Alaska Dispatch's editor when he asked you about it at a campaign event. Remember that? Ah, good times.

When the matter moved into the courts, you fought disclosure every step of the way. All over something that should arguably be public information, even if you hadn't been running for U.S. Senate. After all, if a government employee was disciplined for misusing government equipment to a personal end, shouldn't the public know about it?

Either way, to us it seemed you were hoping to be relaxing in a Senate office before any information came out. Few had any real knowledge about why you left the borough or what your superiors had written in your employment file. But you surely did. And we can see now why you tried to prevent voters from learning about it prior to the election.

A judge ruled that a heavily redacted set of borough employment records you didn't want anyone to find but about had been public records all along. The case is continuing because, among other things, of claims you're pursuing against the borough to recoup the money you've spent in 2010 trying to keep your nefarious actions as an employee of the borough from seeing the light of the day.

Alaska Dispatch is still a party to the suit, and though your attorneys have asked to depose one of its staffers, it isn't directly involved in the dispute between you and the borough and others. But the expenses continue on Dispatch's end, tens of thousands of dollars to date. The matter is on track to appear before a jury in early 2013, but we have no idea what purpose that would serve or how it would help you contribute to Alaska's politics.

Let's assume for a second that a jury finds in your favor, finds that someone indeed torpedoed your Senate run by inappropriately divulging parts of your record as a public employee that should have been kept private. No evidence of that has been presented whatsoever, and some have argued Alaska and borough law provide no basis for your claims, but let's assume you can prove it all in court and that the jury agrees with you. What exactly would you claim as damages? The Senate seat? How much is one of those worth anyway?

Maybe you'd claim damage to your good name, ability to continue making a living in politics or in private law practice? If anything, it was your handling of the whole affair — your repeated stonewalling of legitimate but uncomfortable questions — that did more damage to your future in Alaska politics than any alleged leak. And in fact, maybe you think a trial would provide an opportunity for you to fight the appearance of government corruption — that's right in your political orientation, isn't it? Think of all the support that would sure up!

We're not sure you get this (and judging from how much animosity you've continued to express toward the media and some fellow Republicans, you probably haven't), but the court-ordered release isn't why you lost that election. Not the media, not members of the Republican Party, and certainly not voters. Your political platform isn't even the reason you lost. Alaskans are probably more receptive than most other Americans to notions of tiny government, great personal responsibility and East German-style border fences. But no matter where they stand politically, Alaskans can't stand fakery or shysters. We can't believe we have to tell you this, but you're the one most responsible for your campaign's implosion.

Lurking in the shadows, conducting huddled conferences with conventioners but taking pains to avoid any public connection to their victory, and acting terrified and defensive when members of the press ask what you're doing, is not the way to go about repairing the damage you did to your reputation among the Alaska electorate in 2010. We don't know the best way forward for you, or even if you even want to hold public office anymore, but we know more of the same skulduggery and denials ain't it. It can earn you a "blue ticket" in this state.

We believe that you do indeed want to work in politics, and some of us even think you're acting out of a sincere desire to better our nation and state. But why creep around so much? Aren't openness, transparency and inclusion the new standards of Alaska's GOP political machinery, as Milette has said since being elected? A new set of ideological standards are supposed to be forthcoming, and as we understand it, woe shall befall any Republican who doesn't fall into line. But surely working for what you believe are positive changes isn't anything to be embarrassed about, is it? Why all the subterfuge?

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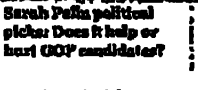

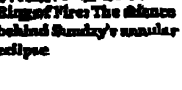
Given the shake-up at this year's convention, it's no wonder you feared for your life in 2008. Now we completely understand why you tried to convince the Fairbanks North Star Borough to install extra security measures in the office you worked in part-time. All those Republican-masquerading types would have felt really threatened if they'd known what was coming their way.

Of course, as you noted at the end of a post-convention teleconference you led recently, the work's not completely done for people who love liberty. If there isn't a quorum at another convention in Anchorage on June 8, Millette noted, "we'll have to have another attack." And that concerns us. Maybe in your head you really are still waging a secret war against fellow Alaskans you think are your enemies.

Good luck with all that,

The Concerned

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Joe Miller in court seeking to compel journalists to reveal sources

Jim Burke | Apr 28, 2012



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Just as Journalism Week – the Alaska Press Club's annual conference – wrapped up in Anchorage over the weekend, a legal case of interest to the profession is making its way through Alaska's court system. At issue is whether a plaintiff in a civil lawsuit should have the right to interrogate journalists about their sources and why they chose to write their stories. Former U.S. Senate candidate Joe Miller, still stinging from his 2010 write-in defeat to incumbent Lisa Murkowski, believes he should be allowed to do this. Alaska Dispatch and others believe his request is off base and improper.

Full disclosure: Alaska Dispatch remains a party to the case, although it plans to file a motion to be released from the litigation. Other media entities are no longer involved.

Although the case is not directly about the press corps, it has roped the press corps in as Miller attempts to seek damages related to his election loss. He's going after his former employer, fueled by the belief that someone there leaked word of his misdeeds that should, he believes, have stayed under wraps.

For years, Miller served as a part-time lawyer for the Fairbanks North Star Borough, adeptly handling some of its biggest and most important cases. Yet this recent work experience was conspicuously missing from the employment history Miller's campaign put out to voters. It didn't take long for people to catch on to the missing detail. For a while, Miller fielded questions about it. But the more reporters kept demanding explanations, the more the candidate dug in and refused to talk openly.

Miller eventually released an incomplete set of his employment records from the borough. What was he working so hard to hide? Eventually, the press corps, led by Alaska Dispatch, sued the borough for the release of these public records and more. The records showed Miller had, against borough policy, cracked on to his colleagues' computers, used the access to pad a political poll he was involved in, then lied about it to try to cover up what he had done. He was ultimately disciplined for the behavior.

Miller: Who talked?

Miller has long believed he was the victim of an injustice, that someone within the borough, either a past or current employee, leaked confidential information from his personal files to the media and others. In seeking to remedy the harm he believes this caused him, he has sued his former employer on two fronts. He wants the borough to pay his legal costs from the initial freedom-of-information lawsuit, which he jumped into hoping to prevent disclosure of records about him. Miller claims the borough has a obligation to do so because he's a former

employee. His rationale is that the lawsuit stems from his employment as a borough lawyer, and not his candidacy for a potential public office. In the second prong of his suit against the borough, he wants to ferret out whether someone talked who should not have.

Enter journalists as targets for deposition.

In an attempt to get at this second question – who talked to whom and when – Miller has deposed journalists, a blogger and his former colleagues. The media, including the blogger who first questioned Miller's employment history with the borough and the manner in which he left, have claimed privilege, arguing that they are protected under both the federal and state constitution from the kind of inquiries that grind against the tenets of their profession.

What's more – Miller is not arguing that lies were told about him. He's unhappy that the truth came out, revealed in a trail of documents that rightfully should have been accessible to the public to begin with.

Rocky relationship with press

As a candidate, Miller's relationship with the press corps has been rocky, if not combative, at least verbally – and once, literally.

Miller and Alaska Dispatch made national headlines in October 2010 when a member of a private security team working a Miller town-hall event at a public middle school arrested and detained Dispatch editor Tony Hopfinger. Hopfinger had aggressively asked Miller questions about the candidate's work history with the borough. In media reports following the handcuffing, Miller characterized Hopfinger as an unstable blogger they feared could be prone to violence. This characterization served two purposes: diminish Hopfinger's status as a respected journalist in the state, and imply that it was the press – Hopfinger – that had caused its own consequences by acting badly.

The act of having handcuffed a reporter at a public event for asking answers the public had a right to know stuck with Miller for the rest of the election.

Alaska Dispatch attorney John McKay has argued Miller's desire to go after members of the press is wrong. Other people, including Miller, could have and likely did talk about Miller's misdeeds at the time they occurred. This means Miller has other avenues he could pursue to get at the information he seeks, rather than targeting journalists. And it means that the information he felt should have stayed private all along, was in fact not private.

'Put an end to it'

Below are a few excerpts from McKay's motion about why the court should deny Miller the opportunity to force journalists to testify:

"The press – indeed, all citizens – have the right to engage in such activities without being embroiled in years of litigation, subject to retaliation, or grilled about what has motivated or influenced them to learn and discuss public officials, public affairs, and candidates for public office," and,

"In October 2010, Joe Miller's private guards wrongfully arrested a reporter for trying to ask questions about what was in the records he was trying to conceal. Now, a year and a half later, he is asking a government official, this court, to compel the press to answer questions about why they had the temerity to seek those public records; Who might have put them up to asking for these records? What were their motivations, or the motivation or affiliations of their sources? Were they fellow travelers with his political opponents? This is unseemly and unjustified. The court should put an end to it."

In an interesting twist, Miller has argued that reporters and journalists who are parties to the legal proceeding should not be protected by privilege because they are directly involved in the litigation. This legal right is a time honored-tradition to obtain evidence and information relevant to the case. But McKay has asked the court to reject Miller's analysis on this point, and has urged the court to see it as an unseemly tactic to get around the protections afforded to members of the fourth estate – a dangerous precedent to penalize citizens who are flexing their right to obtain public records.

Read McKay's full motion in the PDF attached to this article.

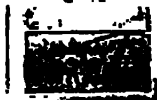
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Alaska Beat

Miller depositions: Fairbanks editor draws line in the sand

Alaska Dispatch | Feb 10, 2012

According to the Fairbanks Daily News-Miner, the depositions by attorneys representing former Senate candidate Joe Miller continued Thursday, with Fairbanks Daily News-Miner Managing Editor Rod Boyce being questioned for two hours.

Miller is suing the Fairbanks North Star Borough in a claim that information from his personnel file was improperly leaked to the media, and then the public, during his 2010 bid for U.S. Senate.

Information in the personnel file was the subject of a lawsuit by news outlets, including the News-Miner and Alaska Dispatch, and the case resulted in a court order for the borough to release portions of it.

The News-Miner reports that on Thursday, Boyce refused to answer most of Miller attorney John Tiemessen's questions. In his refusals, Boyce cited a state law protecting news organizations who refuse to reveal informants.

Boyce also refused to discuss whether any possible leaks were made by current or former borough employees or elected officials, their relations or friends. He also refused to confirm even the existence of such sources.

Boyce did, however, discuss two instances of sources that had become public knowledge. The first was an anonymous letter sent to his paper in September, and the second were two on-record interviews, in the month before the election which Miller lost, with former borough Mayor Jim Whitaker.

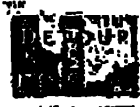
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Alaska troopers 'throw book' at questionable resident over fishing

Craig Medred | Nov 29, 2011



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For years there have been rumors of non-residents sneaking into the Alaskans-only dipnet fishery at the mouth of the Kenai River to score salmon before scurrying South for the winter, and now the Alaska State Troopers claim they've caught one of the scofflaws. Troopers have charged a Colorado real estate agent with illegally obtaining an Alaska resident fishing license so he could get one of those coveted, Alaskan-only dipnet permits.

Realtor Anthony Bartell calls the allegation "total crap." He and troopers have been down this residency road before, he said, adding that Troopers were wrong the first time and they are wrong again. Bartell does not deny he spends most of the year outside. But he added, this is because his time is split almost equally among four residences. He established legal residency in Alaska back in the 1990s, he said, and he has maintained it ever since.

"I'm a well-to-do guy," he said. "I'm not trying to save \$100 (on a fishing license). I'm an Alaska resident. I've been on the Kenai 20 summers. It's where my heart is, and home is where the heart is."

And he adds, he did not dipnet. He picked up the dipnet permit with an eye to trying out this wild-and-crazy technique for catching fish, but he never joined the mob at the mouth of the Kenai slaughtering salmon. He preferred to catch his fish with a rod and reel.

No matter how he caught them, however, this is a touchy subject in the 49th state. Oil might be what fuels the Alaska economy, but fish — especially salmon — drive northern emotions. Alaskans tend to think of the bounty of salmon that return to the 49th state as "their" fish. More than a few residents are prone to get upset about the coolers full of salmon flowing south through Anchorage's Ted Stevens International Airport every summer.

A brief exchange from a popular outdoor forum is indicative of the heated feelings on this topic: when one commenter notes that Alaskans really "hate" non-resident fishermen, a purported local responds that vitriol stems from, among other things, summertime RV traffic.

"Many of us have seen stacks and stacks of boxes at the airport, or the rows of RV's that stay for the max limit of 2 weeks in campgrounds (before moving 15 miles down the road and repeating the pattern), complete with smokers, vacuum packers and chest freezers, etc," wrote a commenter named AlaskaHippie. "We've heard folks like this brag about visiting Alaska 'on the cheap' and then scurrying South with hundreds of pounds of processed fish to give away to friends or family, or, in some cases, SELL for profit."

These emotions, of course, are a little out of touch with reality. Somewhere short of 200 million salmon were harvested in Alaska this year. About 176 million were caught and killed in commercial fisheries. State studies indicate about 80 percent of these commercially caught salmon are hauled in by non-residents, but the commercial catch by non-residents is little noticed.

Exhibit C

What is noticed is the recreational catch, and Alaskans are extremely possessive about it. State law requires newcomers to the north must spend one complete calendar year in the state before qualifying for a resident hunting or fishing license. When it was alleged in 2010 that U.S. Senate candidate Joe Miller, a man who had by then won the state Republican primary and looked to have a lock on one of the state's two Senate seats, might have once illegally obtained a resident license it became a big deal even though it had happened 16 years earlier when Miller was a law student at Yale. Miller eventually lost the election to write-in Republican incumbent Lisa Murkowski.

Needless to say, Alaskans take this residency thing seriously. A spokeswoman for the Alaska State Troopers couldn't say how many citations the agency annually writes for what it calls "False Statement on Sport Fish/Hunting License," but the number is in the dozens if not the hundreds. Almost daily Trooper dispatch logs contain one or several reports like this:

On 11/11/2011, Anchorage Wildlife Troopers contacted Brandon Chetwood, age 24 of Anchorage, after an investigation was conducted to determine his residency status. Investigation revealed that Chetwood moved to Alaska only 7 months prior to purchasing his license. However, claimed to be a resident on his 2011 Sport Fish/Hunting license. Chetwood's license was seized ...

Chetwood appears to be a student studying the ordinary arts in Alaska. He got the usual ticket. Bartell, on the other hand, got the book thrown at him. Troopers charged him with "False Statement Sport License Applications x3 (Misdemeanors), False Statement Personal Use Permit Application x1 (Violation), Obtain Personal Use Salmon Permit When Not Eligible x1 (Misdemeanor), Fail to Return Personal Use Permit x2 (Violations).

On 11/17/11, the Kenai Office of Judicial Services served a summons to Anthony J. Bartell from Beaver Creek, Colorado. Through an investigation by the Soldotna Post of the Alaska Wildlife Troopers, Anthony Bartell is being charged with 4 misdemeanors and 3 violations. All of the charges are a result of residency issues for Mr. Bartell. Investigation revealed that Bartell was traveling to Alaska in June and departing in August annually between 2009 and 2011. While in Alaska, Bartell would stay in a 5th wheel travel trailer inside an RV Park. In 2009, 2010 and 2011, Bartell purchased resident sport fishing license in Alaska. During 2010 and 2011, Bartell obtained Upper Cook Inlet Personal Use Salmon Permits. The three violations have a total bail set at \$730. The four Misdemeanor charges will be arraigned in the District Court in Kenai.

Reached by telephone in Colorado, Bartell said troopers "called my 80-year-old mother in Michigan and said, 'Your son's got warrants out for him. We're going to arrest him. Where is he?' I don't even know how they got her number."

Bartell was eventually arraigned telephonically. He is facing potential jail time, though it's unlikely he would go to jail even if convicted. Judges usually suspend the sentence. A Yakutat fishing guide found guilty of never spending 12 complete months in Alaska -- though he had a home here and usually often spent more than half the year in Alaska -- was in 2010 sentenced to a year in jail, but the judge suspended all of that time.

What constitutes Alaska residency?

The difference between Yakutat guide Ron Pelissier and Bartell, at least as Bartell tells the story, is that the Realtor spent 12 consecutive months in Alaska in the late 1990s to establish his legal residency and has, in his opinion, retained it ever since. Troopers, however, contend he lost his residency when he obtained a Colorado driver's license in 2008. There's a story behind that, Bartell said. Because of new immigration rules between the U.S. and Canada, he needed to get a passport to drive through Canada to get back to Alaska in 2008, and he was in a hurry.

Authorities in Colorado wouldn't grant him a passport there using an Alaska driver's license as ID, he said. So he went and got a Colorado driver's license.

When he got back to Alaska, he added, he went to the state Division of Motor Vehicles and got his Alaska driver's license reinstated. "I didn't feel like there was anything I was doing wrong," he said.

He didn't even think about what he had done until earlier this year when a trooper called him to say troopers were investigating the possible theft of his boat. An Alaska friend of Bartell's had been stopped towing the boat from Kenai to Homer for winter storage.

Bartell said it quickly became clear from the questions the trooper asked that the call was about something other than the boat.

"But it was unfathomable they would come back with this now," he added. In 2002, Bartell was charged with five counts of illegally obtaining a fishing license. He went to court. He presented state ID and a history of being in the state regularly since establishing official residency. He told the judge his story about splitting his time between four states -- Alaska, Colorado, North Dakota and Michigan -- and how when he had to pick one as his home state, he picked Alaska.

"The case was supposed to be dismissed," Bartell said. "Now, it's really out of control. I think some of it stems from the fact I never have and never will collect a Permanent Fund Dividend. That came out in court, too. I'm not trying to scam money. (But troopers seem) of the opinion any Alaskan should collect the fund."

Ergo, anyone who doesn't collect a PFD, as Alaskans call their annual state check of more than \$1,000, isn't really an Alaskan. The Permanent Fund Dividend is a giant share-the-wealth plan designed to split the oil wealth of America's largest state with some 700,000 Alaskans. It has been and remains wildly popular with governors past and present, including self-proclaimed "common-sense conservative" Sarah Palin.

Bartell said he wouldn't take the money because he's not trying to take things from Alaska. He wants to be part of the state because he loves it, and in that regard he said he now feels "absolutely blindsided. ... Three years later, they've done the same thing again. This is going down the same road twice. It's costing me a fortune."

But he plans to fight it again. It's the principle of the thing. He considers Alaska his country. He loves the place, and he clearly loves his fishing, like many an Alaskan. The art on the logo for Bartell's Colorado company, "Field of Streams Real Estate," sports a fly fishermen playing a fish.

A Kenai River salmon maybe?

CORRECTION: This story was corrected on Nov. 29, 2011 to clarify that the status of Senate candidate Joe Miller's residency for fish and game licensing purposes for the year in question remains unclear. Miller was splitting his time between Alaska and Yale Law School when he obtained his license in 1995. The law at the time (AS16.05.940(26)) defined as resident as "a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state..." Miller bought his license on July 31, 1995. He had established his voting residence in the state on Sept. 16, 1994. The 12-month requirement for voting residence would not have been reached until Sept. 16, 1995. The residency definition was later amended because it is likely unconstitutional to require people to register to vote. Miller has always maintained he considered himself an Alaska when he obtained the resident license.

Contact Craig Medred at [craig\(at\)alaskadispatch.com](mailto:craig(at)alaskadispatch.com)



Senators call on Ted Stevens' prosecutors to be fired



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Amanda Coyne

How do Alaska politicians dress up for Halloween? As themselves!

Oct 31, 2011



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Last Halloween felt so much like Halloween. The whole state seemed to be in the spirit. Or at least it felt like that from the rather small confines of the Alaska Dispatch world headquarters. As some of our long-time readers may recall, we were very much enmeshed in senatorial politics this time last year. And in that world, at least, Halloween was full bore. Remember the rather desperate commercial a rather desperate Joe Miller ran against Sen. Lisa Murkowski, which began with: "My opponent is not a witch?" and featured cackling witchy laughter and bubbling cauldrons?

By then, though, election day was right around the corner and although Murkowski had lost to Miller in the Republican primary, she was running as a write-in candidate and was feeling rather confident, in large part due to the handcuffing of a certain reporter by Miller's security guards. So Murkowski one-upped her Republican opponent. She went trick-or-treating with her "security detail"; her three young nephews wearing dark suits and pipe cleaner earpieces, with their candy buckets handcuffed to their waists. And naturally, she sent out a photo documenting the scene.

This year seemed to find Alaskans less in the spirit of spirits, at least from my circle. I called all afternoon and I couldn't find one prominent Alaskan who was dressing up. As of yet, Anchorage Mayor Dan Sullivan hasn't gotten back to me. (Could it be that he's too frightened of my follow-up Port of Anchorage questions?)

Rep. Dan Young, apparently, will be himself tonight, which is well ... appropriate?

You know the catnip has gone out in the pumpkin when Anchorage School District Superintendent Carol Comeau – the fun one in the bunch – isn't costuming-up. Her favorite custom, she recalled, came from her days back as an elementary school principal, when she'd dressed as a clown.

Gov. Sean Parnell is out of town, same as he was in 2010. Staff will head to the governor's mansion to pass out candy. His spokeswoman Sharon Lingham said that he was actually in town in 2009, and his staff dressed up as M&Ms.

Who wore the green one, I wonder? Who was yellow?

Rep. Les Gara? Nope, it's his wife's birthday, he said. The last time he remembers being at an actual Halloween party was about 10 years ago, when former Rep. Ethel Berkovetz wore a bigger nose and bigger eyeglasses and was Les Gara for the evening. Double, double toil and trouble!

Anchorage Police Department Chief Mark Mew isn't dressing in costume, but he promised that if in the unlikely event a kid knocks on his Hiland Road door, he and his wife will "don our ancient rubbed cone-heads when we answer. Not that today's kids will know who the Cone Heads are, but it will have to do in a pinch," he wrote.

Mew's favorite costume ever? In his words:

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Between the skull makeup and the hood, nobody at the party knew who I was. I never said a word until the end of the evening, when identities were revealed. I just shuffled around slowly all night, occasionally condemning someone to death by pointing a skeleton finger at them. I won best costume for that one.

At least U.S. Sen. Mark Begich didn't forget what day it was; but then again, he has an 8-year-old son, who tonight is going to dress as an Angry Bird (costume made by his mom). On the Senator floor, Begich passed out "No Frankenfish" buttons to every Senate office on Capitol Hill, attached with a "scary note" about the dangers of Frankenfish, according to a statement from his office.

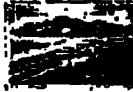
"I'll continue to fight against Frankenfish because the biggest scare families get on Halloween night could come from their dinner plate, not the trick-or-treaters on the front porch," Begich said in a press release. *Boo!!*

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Steve Armstrong: Not too late to save polar bears, and ourselves



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Politics

Joe Miller holds Juneau rally on tea party cruise stop-over

Alaska Dispatch | Sep 01, 2011

Former Alaska Republican U.S. Senate candidate Joe Miller took time to deliver a speech and meet with supporters Tuesday evening in Juneau. Miller's appearance occurred on a brief stop-over during the Conservative Political Action Committee's second annual cruise through Southeast Alaska, hosted this year aboard the Celebrity Millennium by a tea party coalition and the American Conservative Union.

At the Juneau event, Miller explained his new political action committee, the Restoring Liberty Alaska PAC, its overall goals and solicited support for its future plans. He said the PAC will, in the Juneau Empire's paraphrase, "represent and organize citizens now ignored by the state's institutions and political parties," and focus its efforts on a handful of key state-level races in Alaska, both primary and general elections, and possibly some local elections.

A promotional flyer for the event lays out the PAC's main objectives:

The objective of Restoring Liberty Alaska PAC is to impact campaigns across the state for the benefit of all Alaskans. We will fight to get state and local candidates, dedicated to the principles of limited government and free of corruption, elected here at home. We will also fight to defeat candidates who reject an original construction of the U.S. Constitution. We will work to elect candidates who accept the important role of the state in our federal system, practice Thomas Jefferson's mandate of nullification of unconstitutional laws and assert states' rights under the 10th Amendment. Finally, we will work to restore vote integrity to Alaska elections.

A dozen or so people attended the rally, which Miller joked to the audience was a pretty good turnout in Juneau, a city not known for its conservative flavor.

At the event, Miller said Sen. Lisa Murkowski's record since her re-election has been no surprise to him and that his campaign was right to portray her as "a liberal."

Although the number of write-in ballots challenged by the Miller campaign was smaller than Murkowski's margin of victory, Miller also reiterated his contention that several elements of state government worked together during his ballot challenge in order to prevent him from winning a Senate seat.

Miller was joined at the event by conservative personalities Jerome Corsi and Victoria Jackson, both of whom leveled strong criticism of President Barack Obama, claiming respectively that his birth certificate is a forgery and that he's actually a communist.

Read more from the Empire, [here](#).

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Commentary

Joe Miller: Many in GOP helping U.S. toward socialism

Joe Miller | Jul 30, 2011



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Some Republicans, and not just those supporting Mitt Romney for president, have questioned my "Stop Romney" campaign, announced by the Western Representation PAC several weeks ago. Given the likelihood that Romney will be the GOP's next nominee, they believe my work will ultimately hurt Republicans' efforts to retake the White House in 2012.

My perspective is that another Bush-like presidency, particularly in terms of big government growth, would be devastating to the country. We'd be in the same bankrupt position that another four years of Obama would bring us. If we're going to avoid the catastrophes lurking around the corner, more of the same — even with a Republican label — is not the answer.

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- Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

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Joe Miller

Some of my critics don't understand that many in the GOP have played an active role in our nation's self-destruction. We'll call these the "ill-informed followers." Others fully recognize that Republicans have been in the driver's seat during much of our drive toward socialism, but they and their cronies enjoy the fruits of this largesse. These are the "crony capitalists." Still others are simply progressives who see the Republican Party as yet another means of imposing their leftist vision on the U.S. and the world at large. They are the RINOs — Republicans in Name Only.

Of course, there are varying shades and mixtures of the above players. For example, even where a Republican, like Alaska's Lisa Murkowski, is driven by a progressive agenda that includes support for federal funding to Planned Parenthood, homosexuals in the military, activist judges and internationalism, she finds herself surrounded by the crony capitalists: multibillion dollar Alaska Native Corporations that directly benefit from Murkowski's vigorous support for their no-bid federal contracting.

Editor's note: The previous are only the first few paragraphs of this commentary and are reproduced here with permission from World Net Daily, where this commentary first appeared. To continue reading, [click here](#)

Joe Miller ran as a Republican in Alaska's 2010 U.S. Senate race. He currently serves as chairman of the Western Representation PAC, a political action committee formed "to battle corruption in government, no matter its source" and support candidates who support "good government, free markets, and personal freedom."

The views expressed here are the writer's own and are not necessarily endorsed by Alaska Dispatch. Alaska Dispatch welcomes a broad range of viewpoints. To submit a piece for consideration, e-mail commentary@alaskadispatch.com.

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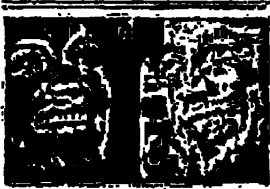
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Is Michele Bachmann's campaign a Joe Miller tea-party redux?

Amanda Coyne | Jul 26, 2011



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In 2010, those outside of Alaska's close political circles knew little about Republican senatorial candidate Joe Miller. He was still the new kid on the political tundra, and the new kid on the tundra was challenging the GOP establishment in Alaska. No more powerful symbol of that "establishment," in his eyes, was Republican Sen. Lisa Murkowski.

There were plenty of reasons to believe that was true. A moderate Republican, Lisa Murkowski had been appointed to her seat by her father, the newly-elected Gov. Frank Murkowski, who had held the same Senate seat for more than two decades. Lisa Murkowski's image wasn't helped by the fact that her father went on to become one of the most unpopular governors in the country – and in Alaska history – by the time his lone term was up in 2006.

And then along came Sarah Palin, who eventually became a Joe Miller supporter.

For a few months at least, candidate Miller was on fire. Representing the nascent tea party movement, he campaigned on self-reliance, on budget cuts, on reducing entitlement programs, on ending out of control federal spending.

He was articulate and his resume was nearly perfect: a West Point grad, an Iraq war veteran and a Yale Law School degree. All of this allowed him to achieve the nearly unthinkable by winning the Republican nomination, unseating the powerful incumbent (Lisa) Murkowski.

He had all going for him. But as fall approached, things began to go wrong. As Alaskans are now well aware, it was discovered that Miller accepted federal subsidies from a farm he owned in Kansas. That he got low income health care for his family. That his wife was on unemployment after she lost her job working for her husband. And then perhaps the worst thing: reporters, including Alaska Dispatch, dug enough into his background to find that in 2008 Miller secretly used coworkers' computers, while employed as a part-time attorney for the Fairbanks North Star Borough, in his quest to unseat Alaska Republican Party Chairman Randy Ruedrich. (Read the Alaska Dispatch coverage of Miller here.)

With the right spokesperson, and perhaps with a different candidate, all of this could have perhaps been weathered. But as the revelations began to unfold, Joe Miller, who once was relatively available and accessible, began to crawl into his shell, which seemed to be grow more brittle by the day. At a rather bizarre October press conference, he said that he wouldn't answer any more personal questions. "We've drawn a line in the sand. You can ask me about background, you can ask me about personal issues – I'm not going to answer," he said.

Reporters walked away not only confused, but also increasingly suspicious, which eventually and inevitably translated into public suspicion.

Miller wasn't alone. In fact, his response seemed to come straight from the tea party playbook. Sharron Angle, the Republican candidate who ran against and lost to Senate Majority Leader Harry

questions about her bizarre **statements about "Second Amendment" remedies**, abolishing Social Security and the Environmental Protection Agency.

When it was discovered that Delaware U.S. Senate candidate Christine O'Donnell, who won that state's Republican Party primary, used campaign funds for personal expenses, she heeded Sarah Palin's advice and **went underground**.

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Political Animal

Joe Miller won't appeal fees for election challenge

Alaska Dispatch | Jul 22, 2011

According to a Thursday [press release](#), former Alaska Republican candidate for U.S. Senate Joe Miller has decided not to appeal a recent Superior Court decision that he reimburse the state of Alaska more than \$17,000 for costs incurred by his challenge of election results. Miller explained in the release, "I've chosen not to appeal, recognizing that course would have spent money that hard-working Americans entrusted to me. Given the amount at issue, it simply does not make good financial sense to move forward with the appeal. Pyrrhic victories are not my goal." Read the release, [here](#), and read CNN's blog report, [here](#).

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News

Joe Miller ordered to pay state's legal fees in election challenge

Alaska Dispatch | Jun 24, 2011

Joe Miller owes the state of Alaska \$17,700. That's according to a state judge, who on Friday ordered Miller to pay legal fees the state had accrued in the failed candidate's challenge to the 2010 U.S. Senate election. Judge William Carey ruled that "the main thrust of Miller's challenge to the election was not ... to promote and preserve constitutional protections," the Associated Press reports in the Fairbanks Daily News-Miner. Rather, Carey found that Miller's intent was personally motivated: He wanted to win the election outright. And he wanted the "benefits" that come with winning. However, Carey ruled that Miller wasn't on the hook for the legal fees accrued by the election winner, write-in incumbent Sen. Lisa Murkowski. Murkowski lost the Republican primary to Miller. Read more on the Miller-Murkowski election drama here, and see the AP story here.

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Politics

Tea party launches campaign to stop Mitt Romney

Eric Christopher Adams | Jun 02, 2011



George Thibault

Mitt Romney on Thursday unveiled his campaign to lead the United States, saying that "Barack Obama has failed America." Meanwhile, the Nevada-based political action committee directed by Alaska's unsuccessful 2010 Republican U.S. Senate nominee, Fairbanks lawyer Joe Miller, unveiled its "campaign to prevent the nomination of ... Mitt Romney for president."

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The tea party's Western Registration political action committee has purchased the domain StopRomney.org, which currently jumps to a Facebook page heavily branded with WesternPAC literature. Registration information for the website indicates it was created Wednesday, one day before Romney made his run at the White House official.

Miller joined the Sparks, Nev.-based conservative PAC in March, a little more than five months after losing the U.S. Senate race to write-in candidate (and incumbent) Lisa Murkowski, and a little more than three months after Miller lost his legal challenges to the election's validity.

In a prepared statement, WesternPAC accused Romney, the former CEO of Bain Capital and one-term governor of Massachusetts, of changing his position on key conservative issues like "gun rights, gay rights, abortion, immigration and health care."

The statement says Miller "is committed" to making sure Romney did not lead the GOP ticket against Obama, comparing Romney to U.S. Sen. John Kerry, the 2004 Democratic presidential candidate who lost to George W. Bush and was branded by Republicans as a "flip-flopper" on the Iraq war.

"In a matchup against Obama, tea party voters are looking for a consistent constitutional conservative," Miller said in the press release. "We will never get behind Mitt Romney."

WesternPAC claims to have 250,000 "supporters" across the country. The press release hinted that the group intends to influence the 2012 race but has not yet endorsed any of the dozen or so Republican candidates testing the waters for a run against Obama.

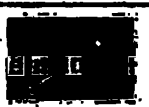
Romney campaigned for the 2008 Republican presidential nomination but came in second to eventual nominee U.S. Sen. John McCain of Arizona, who chose then-Alaska Gov. Sarah Palin to run on the ticket as vice president.

Contact Eric Christopher Adams at [eric\(at\)alaskadispatch.com](mailto:eric(at)alaskadispatch.com)

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Politics

Joe Miller ramps up

Jill Burke | May 26, 2011



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Alaska GOP chairman 'troubled' by Joe Miller's post-election fight

Alaska's Joe Miller to headline California fundraiser

Joe Miller may have lost his fight to unseat U.S. Senator Lisa Murkowski. But he certainly didn't lose his voice. The attorney, war veteran and aspiring politician appears to be taking a cue from the one-time Alaska governor he admitted enough to help push into office: Even if you don't get picked, keep picking on the opponent, in this case any politician or policy that doesn't comport with your platform.

On the same weekend Palin has fired speculation about a potential presidential bid by announcing an East-coast bus tour, Miller has signaled to his supporters that he, too, has big, although perhaps less lofty, plans. And like Palin, Miller has recently turned up in Arizona. Wednesday night, he and sheriff Joe Arpaio were scheduled to be featured guests at a fundraiser for Maricopa County attorney Bill Montgomery.

The same day, Miller gave his followers a head's up, via his newly revamped senate campaign website, that his quest to inject constitutional conservative values into the political power structure was far from over. Indeed, just as Palin did after losing her White House bid in 2008, Miller has turned his elevated profile into a bull horn to advocate on a broad level the tea party principles he's so committed to.

Miller is now not only the chairman of the Navaea-based Western Representation Political Action Committee, created to push tea-party ideals, but has also launched Alaska-based and national "Restoring Liberty" political action committees, and is in serious talks to launch his own radio show.

"If you are really 'Fed Up' and want the return of states' control of our freedom, come join us for the first statewide effort intent on Restoring Liberty," reads a flier promoting the group's upcoming inaugural event in Fairbanks June 3. "It's time to get serious about taking our state back, and there is no better place to kick off the Restoring Liberty Alaska PAC than in Fairbanks, where the first ratification of the state constitution was held."

The flier continues:

We will fight to get state and local candidates, dedicated to the principles of limited government and free of corruption, elected here at home. We will also fight to defeat candidates who reject an original constitution of the U.S. Constitution. We will work to elect candidates who accept the important role of the state in our federal system, practice Thomas Jefferson's mandate of nullification of unconstitutional laws and assert states' rights under the Tenth Amendment. Finally, we will work to restore vote integrity to Alaska elections.

Not mentioned on the flier, but noted in his May 25 post on his website is that Miller also remains unwavering in his support of the pro-life movement.

The Alaska-based Restoring Liberty PAC registered with the Alaska Public Offices Commission in February, and a group with the same name (Restoring Liberty) registered that same month with the Federal Elections Commission.

Wait, there's more.

Miller has also created a non-profit called the Restoring Liberty Action Committee, which he describes as an "organization designed to have nationwide impact by assisting the public and



of national concern through public discussions, research and analysis, and legal work."

This sounds a lot like the Miller we met on the campaign trail in 2010—conservative, committed, vocal. But what was then a guy seemingly coming out of nowhere with a grassroots base now looks to perhaps be a rising soldier in a larger, more organized effort.

Miller hasn't hinted whether he'll jump into another race. But becoming the man with the microphone is how he's managed to try to influence from the sidelines what he sought, but lost, at the ballot box.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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Alaska Federation of Natives Emphasizes on politics with an eye on elections



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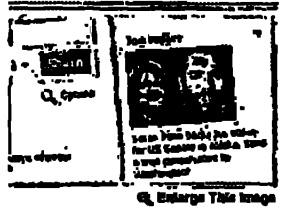
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Political Animal

Poll: Alaskans hold dim view of Sarah Palin, Joe Miller

Amanda Coyne | Apr 20, 2011



A new poll by local pollster David Dittman should be fairly disheartening to former Gov. Sarah Palin, and onetime U.S. senate candidate Joe Miller.

The poll questioned 400 Alaskans during a two-week period in March on their views of Palin, Miller and the job their congressional delegation was doing in Washington. The news was fairly good for the delegation, but not so good for Palin and for Miller.

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Some of the results on Palin:

- 81 percent of Alaskans had an "unfavorable" view
- 39 percent of those had a "very unfavorable" view
- 13 percent had a "very favorable" view

The former governor's numbers had fallen since an April 2010 Dittman poll, when 46 percent responded favorably and 52 percent of respondents viewed her unfavorably.

Miller's numbers are even worse than that. A whopping 73 percent of Alaskans had an unfavorable view of him, with 53 percent "very unfavorable."

Miller is the newly hired chairman for the Nevada-based Western Representation Political Action Committee, a group he has described as an "up and coming tea party PAC" with a mission to "elect constitutional conservatives."

As far as we know, Miller still calls Alaska home. But he did sojourn Outside recently to make the rounds for tea party tax day events in Kansas and Idaho. One tweet said that he was in the land of "patriots."

Alaskans are famously hard on their politicians, but not impossibly hard. Voters have turned on politicians in the recent past for nepotism and corruption allegations. Quitting on the job or having a reporter handcuffed for asking questions on the campaign trail probably didn't help Palin or Miller, respectively.

Indeed, all three members of the state's congressional delegation received "excellent or good" approval ratings above 50 percent. Congressman Don Young enjoyed a 63 percent approval rating, with 32 percent disapproving. Democratic Sen. Mark Begich's approval was at 57 percent, with 33 percent disapproving.

Republican Sen. Lisa Murkowski got a 71 percent approval rating, making her the most popular among the delegation, according to the poll. Just 27 percent of respondents disapproved of her job.

Contact Amanda Coyne at [amanda\(at\)alaskadispatch.com](mailto:amanda(at)alaskadispatch.com)

[CORRECTION: This article was updated April 20, 2011. It originally stated that 26 percent of Alaskans responded favorably when asked how they viewed Sarah Palin in April 2010. The actual percentage of Alaskans who responded favorably regarding Palin was 40 percent.]

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Political Animal

Joe Miller hits tax-day rally circuit

Jill Burke | Apr 14, 2011



1210 miller amiles

Joe Miller is stepping away from his chosen home of Alaska to lend his vision for America to Idaho as well as his home state of Kansas. The former U.S. Senator hopeful is making the rounds as a guest speaker at tax-day tea party events in those states.

Miller speaks Thursday night at a tax day rally in northern Idaho. On Saturday he'll be at a rally in Manhattan, Kan. and on Monday he'll attend a gathering in Salina, Kan., where he grew up.

"There is still much work to be done to get our country back on the right path," Miller said in a prepared statement about his

appearance at the events.

During his talks Miller will touch on familiar themes: President Obama is failing, federal spending is out of control and the country remains headed toward financial collapse, and it is voters who hold the power to turn things around.

"I anticipate 2012 will be another watershed election year with the Tea Party playing a pivotal role," Miller said.

Miller is the newly hired chairman for the Nevada-based Western Representation Political Action Committee, a group he has described as an "up and coming tea party PAC" with a mission to "elect constitutional conservatives."

Meanwhile, while Miller makes stops in the Lower 48, tax day tea party events will also be taking place in Alaska.

On Friday in Fairbanks, rallies will be held over the lunch hour and the afternoon commute across from the Wal-Mart near Old Steese and Johanson. On Saturday, Wasilla-based Conservative Patriots Group will host a "Liberty for We the People" concert and rally at the Menard Sports Center in the afternoon from 1:30-4:30.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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Political Animal

Voter intent bill prompted by 2010 Senate race passes full Legislature

Patti Epler | Apr 14, 2011

A measure that makes it clear a voter's intent takes precedence when casting a write-in vote has passed the Legislature and now goes to the governor for signature.

Senate Bill 31, sponsored by Sen. Joe Thomas of Fairbanks, grew out of the 2010 U.S. Senate race. Fairbanks attorney Joe Miller beat incumbent Sen. Lisa Murkowski in the August primary so Murkowski launched a write-in campaign and came back to defeat Miller in the November general election. But Miller challenged thousands of write-in ballots on the grounds that the voter didn't write her name exactly as it appeared in election paperwork. Miller tried to invalidate ballots with minor misspellings and even those where the voter had dotted an i with a smiley face or a heart.

The Alaska Supreme Court as well as the federal court rejected his legal arguments, and state justices made it clear that voter intent is what should prevail if it can be determined.

The bill that now goes to Gov. Sean Parnell directs the elections supervisor to disregard minor misspellings and other things as long as the intent of the voter is clear. The measure also addresses ballot security by making it clear ballots will be counted in Juneau.

Parnell can sign the measure, veto it, or allow it to become law without his signature.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com)

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Politics

Joe Miller takes to the sea

Jill Burke | May 31, 2011

One of Alaska's tea party pillars has signed on to participate in an upcoming "Tea Party at Sea" cruise organized by World Net Daily. Joe Miller, the U.S. Senate candidate who gave Republican incumbent Lisa Murkowski a run for her money but couldn't defeat her, is now among the August cruise's featured speakers.

The cruise is described as an excursion that will bring faith-minded patriots together to share and feed their conservative political views. Miller's role is being billed as that of "personal Alaska cruise guide."

In the months since the election, Miller has retrauped and expanded his reach. He's now the chairman of Nevada-based Western Representation Political Action Committee, a group founded and inspired by tea party ideals. He's also recently launched the Alaska-based "Restoring Liberty" PAC, registered both at the state and federal level. And there's talk he plans to land himself a radio gig.

Miller and WND won't be the only folks with political agendas cruising Alaska waters this summer. Former Arkansas Gov. Mike Huckabee, who pursued but didn't land the 2008 Republican presidential nomination, will leave Seattle June 5 on a ship headed for southeast Alaska as the guest host for the Alaska Freedom Cruise.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com)

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Political Animal

Joe Miller makes list of 'unimaginably ridiculous' joining political establishment

Alaska Dispatch | Mar 28, 2011

Former Alaska U.S. Senate candidate Joe Miller has made the POLITICO list of "unimaginably" ridiculous 2010 congressional candidates to cash in on their lame campaigning and extend that 15 minutes of fame into something resembling a political career.

POLITICO lumped Miller in with other nationally-lampooned losers, including former Senate candidate Sharron Angle of Nevada – who ran unsuccessfully to unseat U.S. Senate Majority Leader Harry Reid – and Delaware U.S. Senate hopeful Christine O'Donnell, who ran a television ad claiming, "I'm not a witch ... I'm you."

Miller's fortunes in the campaign began to fade after his security guard handcuffed Alaska Dispatch editor Tony Hopfinger for asking questions that Miller had avoided answering. Things didn't get any better after reports surfaced that he misused government computers for politicking and then lied about it. He ultimately lost to write-in opponent (and incumbent senator) Lisa Murkowski.

POLITICO notes that all three tea party-supported candidates made headlines for bucking the Republican Party and running as "anti-establishment" conservatives. And now they're trying to join the establishment, whether as political action committee directors or future candidates.

"They've all, in their own ways, gained notoriety from their losses, and they're either trying to cash in or further their political careers," said national GOP consultant John Feehery. "All of them have criticized career politicians, but it kind of takes away their message when they've started making a career out of politics." Read the full POLITICO story.

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Political Animal

Joe Miller chosen to chair conservative action committee

Alaska Dispatch | Mar 23, 2011

According to a press release (re-posted below) issued by **Western Representation PAC**, former Republican US Senate candidate Joe Miller, of Fairbanks, will be taking over as chairman of the Nevada-based conservative action committee. According to the release, the committee supported Miller's winning candidacy in Alaska's 2010 Republican Senate primary, and more recently conducted an ad campaign in support of Wisconsin Gov. Scott Walker during the high-profile fight over collective bargaining powers of public employees' unions. Read the full release announcing Miller's new position below.

SPARKS, NV – Western Representation PAC, one of the largest and fastest-growing conservative action groups in the country, announced today that former Alaska US Senate Republican nominee Joe Miller, is the PAC's new Chairman. Miller is replacing Dustin Stockton, who founded the PAC and has assumed the role of Chief Strategist for the organization.

Regarding the announcement Miller said, "I am thrilled to be joining the Western Representation PAC. Despite being formed fairly recently, the PAC was able to gain strong support and make an important impact during the 2010 election cycle. We plan to build on that great start and bring the voice of 'We the People' to bear even more as we move towards 2012."

Miller joins the organization as it continues its campaign against the overbearing influence and unsustainable cost of government employee unions. Western Representation PAC spearheaded the nationwide support for Gov. Scott Walker. The group launched an aggressive ad campaign supporting Walker's commitment to balanced budgets and ending compulsory unionism. We will be supporting similar efforts across the country.

"We couldn't be more excited to have Joe Miller join our team," said Stockton. "His character, and his commitment to protecting the values that make America the greatest nation on Earth, make Joe the perfect man to chair our organization."

Western Representation PAC supported Miller in his stunning primary victory over Sen. Lisa Murkowski. The group also ran independent expenditure campaigns in Nevada and Massachusetts.

Stockton formed Western Representation PAC with his father, Roger Stockton, in early 2009, with the goal of making a difference in the political process. Beginning with no financial or political backing, the organization has become one of the largest and fastest-growing political organizations in the nation thanks to over 250,000 supporters across the country.

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Alaska Militias

Alaska militia 'supply sergeant' vanishes as alleged murder plot unfolds

Craig Medved, Jill Burke, Pat Epler | Mar 22, 2011



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Five days after members of an Interior Alaska militia group were arrested in connection with plots to kill Alaska State Troopers, judges and others, Anchorage businessman William Fulton — a man once identified as the "supply sergeant" for the Alaska Citizens Militia — went missing. He has not been seen since.

Fulton was the owner of Drop Zone, a military surplus store on Spenard Road. He gained some notoriety during the 2010 U.S. Senate race when, acting as security for failed candidate Joe Miller, he handcuffed and detained Alaska Dispatch editor Tony Hopfinger at a public meeting.

On March 15, a Drop Zone employee arrived at work to find Anchorage attorney Wayne Anthony Ross waiting for him in the parking lot. Ross had documents, signed by Fulton, handing over the shop with all its debts and assets to the employee.

The militia's email lists, websites and Internet chat groups where Fulton was an active participant under the names "Drop Zone Bill," "DZ" and "Bob Bob" started buzzing.

"Anybody know what happened to DZ?" queried a poster named ironartist.

Others began to theorize that Fulton had gone underground to ready a "safe room" for the "fallout that could possibly be coming."

"He just dropped off the map," said Norm Olson of Nikiski, head of the Alaska Citizens Militia, in a recent interview. "I have no idea what happened to him. I couldn't figure out why Bill had gone underground."

Now, as more details emerge as to the arrests of six Fairbanks-area militia members, including references in criminal indictments to unnamed militia members who appear to have helped state and federal authorities, some are beginning to wonder whether Fulton is connected to the investigation.

"That would be a good question to ask and a good question to get answered," said Ross, who also holds a power of attorney signed by Fulton giving him control of the two houses Fulton owns in Anchorage.

"You're not just off on a fairy of your own here," said Ross, a well-known defense attorney and Alaska's attorney general for the briefest of periods.

Ross will say little else about his client's mysterious and sudden disappearance. He did say he'd heard the rumors that Fulton is either wanted by authorities in connection with the Fairbanks case or that he is being protected as a witness.

"If that was true," Ross said, "that would answer the question as to why he disappeared. I think the FBI would be the one to answer."

Anyone involved as a federal undercover operative monitoring Alaska militias — or even suspected of being an informant — might try to disappear, Ross further suggested.

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Schaeffer Cox, 'sovereign citizen'

Joe Miller denies connection to jailed Alaska militia leader



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There are no charges pending against Fulton, according to both FBI spokesman Eric Gonzales in Anchorage and Lt. Dave Parker of the Anchorage Police Department.

As to questions about witness protection, Gonzales said, "If he were (there), we wouldn't be allowed to comment on that."

Fulton, who had shut down his security agency in December and was just operating the surplus store, did not respond to e-mails sent to two accounts he's used in the fairly recent past to send notes and comments to Alaska Dispatch. Those e-mails also did not bounce back as undeliverable.

But Fulton's ties to several state militia groups and Fairbanks militia leader Schaeffer Cox are evident in the Internet chatter going back months. While there is no evidence publicly linking Fulton to a role in the state and federal cases currently playing out against Cox and his militia associates, Fulton appears to have been well aware that Cox was headed for serious trouble for some time. A web-based forum hosted by Google for the Alaska Citizens Militia chronicles some of the discussions Fulton and others have had regarding Cox's escalating clashes with the justice system.

Cox, Lonnie Vernon and his wife Karen Vernon, Coleman Barney and his wife Rachel Barney, and Michael Anderson face various state and federal charges in connection with an alleged conspiracy that included plotting to kill judges, an IRS agent and Alaska State Troopers. The group allegedly amassed a large weapons cache that contained automatic weapons, silencers and hand grenades, all of which are illegal, and numerous other high-powered weapons and thousands of rounds of ammunition.

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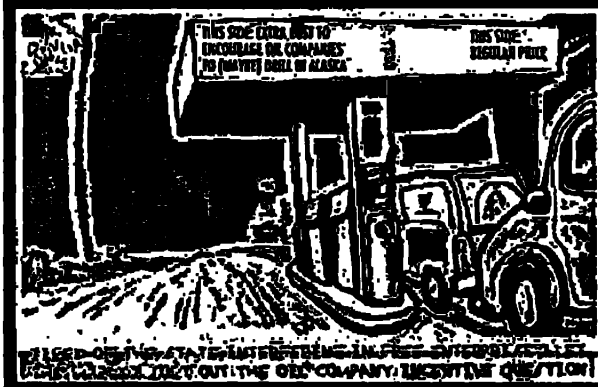
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Peter Dunlap-Shohl | Mar 18, 2011



Cartoons: Alaska by Peter Dunlap-Shohl

Mar 26, 2011

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Political Animal

Joe Miller denies connection to jailed Alaska militia leader

Alaska Dispatch | Mar 12, 2011

On March 12, JoeMiller.us, the web site of 2010 Republican U.S. Senate candidate Joe Miller, sent out a public announcement to e-mail subscribers denying connection to an Alaska militia leader arrested this week near Fairbanks.

The release seems to dispute a phrase from a recent Reuters report about the raid and arrests of five people in Fairbanks earlier this week for, among other charges, allegedly plotting to murder multiple Alaska State Troopers and a federal judge.

In the statement of disavowal, Miller refers to an Anchorage Daily News news aggregate item centrally linking matters to a September 2010 Salon.com article quoting militia leader Schaeffer Cox, among those arrested in the recent raid.

The aggregate item notes that Cox criticised Miller in the interview for seeking office, but doesn't mention that Salon also paraphrases Cox saying that, at the time of publication anyway, he "personally knows and likes" Miller.

Miller's message is presented below without alteration.

Miller Responds to False Allegations

Former US Senate Candidate Joe Miller is disputing the media's characterization of him as a "close friend and associate" of arrested Alaska Militia leader Schaeffer Cox. Mr. Miller became acquainted with Mr. Cox through Republican Party politics, not unlike many other State leaders. Mr. Cox offered no tangible support to Miller's run for the US Senate; he was neither a campaign contributor nor volunteer; and, save for public forums during the campaign, has had no contact with Mr. Miller subsequent to his run-ins with the law early last year. To the contrary, Cox himself was critical of Miller during last fall's campaign. ("Schaeffer Cox of Fairbanks, commander of the Alaska Peacemakers Militia, tells Salon he isn't a Miller supporter.") Mr. Miller has never had any connection to any of Mr. Cox's militia organizations, and in no way condones any lawless behavior.

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Political Animal

Pundit: 'The Tea Party needs leadership. Time for Joe Miller'

Alaska Dispatch | Feb 21, 2011



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Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

For Joe Miller, stress, lies and politics tainted his borough job. recidive show

The Hill's "pundits blog" contributor Bernie Quigley has again written an opinion of support for Joe Miller, former Alaska Republican U.S. Senate candidate. In his latest piece supporting Miller, Quigley extends and updates an opinion he registered last November in a supportive column titled "Joe Miller for President," published as the Senate recount battle was nearing a close in Juneau. Quigley writes that before the recent fight over public labor unions in Wisconsin "the Tea Party was only an abstraction. Now it is a real movement." He then poses a question, "What's next for the Tea Party?" And no, it's not "finally earning status as a capitalized proper noun". Quigley thinks the embryonic political party on the far right is in danger of being absorbed by more entrenched elements of the Republican party and that it faces a "fork in the road." Quigley thinks the right leader could keep the young movement from being co-opted by traditional Republicans, and he thinks Miller is the best choice among "an 'American Idol' lineup of eccentrics and middle-talent dilettantes," gearing up for the GOP's pre-2012 presidential debate season.

But one stands apart, Joe Miller, Yale Law School, West Point, combat veteran in Iraq with a whole group of kids. In this crowd of idea people he stands alone as a man of substance, fidelity and action. The Tea Party needs to continue heading west to Rick Perry in Texas and Joe Miller in Alaska, not turn back now to Vermont and Connecticut.

Read much more, [here](#).



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Political Animal

Write-in bill passes state Senate

Patti Epler | Feb 14, 2011

The Senate has unanimously passed a bill that would give voters the benefit of the doubt when they write in a candidate's name on a ballot.

The bill was prompted by the U.S. Senate race last year. Incumbent Sen. Lisa Murkowski, after losing the primary to Fairbanks attorney Joe Miller, waged a write-in campaign for the general election and ended up with about 10,000 votes more than Miller. Miller challenged the ballots in court, contending that the way Murkowski's name was written on the ballot had to be exact. He wanted state election officials to throw out ballots with minor misspellings, even ballots where the name had a smiley face or heart as the dot on an i.

The Alaska Supreme Court as well as the federal court rejected his legal arguments, and state justices made it clear that voter intent is what should prevail if it can be determined.

Several senators introduced legislation to adopt the language in the Supreme Court ruling as state law. The Senate voted 18-0 Monday to pass the Senate Bill 31.

Contact Patti Epler at pattif@alaskadispatch.com.

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Political Animal

Alaska's Joe Miller to headline California fundraiser

Patti Epler | Feb 11, 2011

The Joe Show is headed for California next month when three of the country's more famous Joes headline a Tea Party Express fundraiser.

Alaska's own Joe Miller is set to appear on the same political stage as Arizona's Sheriff Joe Arpaio (who dubbed himself America's Toughest Sheriff a few years ago) and Joe "The Plumber" Witzelbacher (who came to prominence in the 2008 presidential campaign).

An invitation to the March 24 fundraiser at a private residence just north of Half Moon Bay is making the rounds today -- and the blogs.

But in case you're interested, ticket prices range from \$212 to \$2,012. The money goes to the Campaign to Defeat Barack Obama.

And in case you've forgotten yesterday's news, the Tea Party Express is the California-based outfit that heavily backed Joe Miller's U.S. Senate campaign against Sen. Lisa Murkowski last year. Recent federal campaign reports show the group spent \$618,224 on behalf of Miller and \$49,442 to work against Murkowski.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com).

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Cartoons

Joe Miller goes shopping

Peter Dunlap-Shohl | Feb 06, 2011



©2010 Peter Dunlap-Shohl | Frozenrin.blogspot.com

Cartoonist Peter Dunlap-Shohl takes a wild guess on where Joe Miller will spend his leftover campaign funds.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 25 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at Frozenrin.blogspot.com

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Political Animal

Drop Zone is back in Joe Miller's most recent campaign report

Patti Epler | Feb 04, 2011

Former U.S. Sen. candidate Joe Miller's most recent federal campaign finance report has been posted on the Federal Election Commission website and perhaps the most interesting thing is the Drop Zone security agency has finally made an appearance.

Readers will remember Drop Zone security guards are the ones who detained and handcuffed Alaska Dispatch editor Tony Hopfinger on Oct. 17 at a public town hall at a middle school in Anchorage. This after Hopfinger tried to ask Miller questions about the circumstances of his departure from the Fairbanks North Star Borough. Miller walked away without answering and when Hopfinger tried to follow the Drop Zone security team "chest bumped" him back, grabbed him and handcuffed him saying he assaulted a still unidentified bystander and that he was trespassing. Anchorage police arrived and let him loose. No charges were filed against anyone.

The Miller campaign has never reported an expenditure to Drop Zone or owner William Fulton for that security service, and in fact the two off-duty military guys who were helping Fulton that day told Hopfinger they were campaign volunteers (albeit the only ones dressed in black suits, white shirts and ties, and wearing radio earpieces).

The year-end report filed Jan. 31 now lists a payment of \$315 to Drop Zone but not for the infamous October town hall. This payment on Dec. 28 is for "Racoon Personnel Services/Equipment," according to the report, suggesting Miller continued to keep Fulton and Drop Zone around even after the town hall incident, which garnered international attention for Miller and not in a good way.

The report shows Miller still had about \$825,000 in the campaign bank at the end of January. That briefly lit up the political blogosphere with people wondering whether he was planning another run for office, maybe against U.S. Rep. Don Young in two years or perhaps Sen. Mark Begich in 2014. On Thursday, RealClearPolitics.com reported a conversation with Miller campaign spokesman Randy DeSoto in which DeSoto said Miller may form a new political action committee which would allow him to keep his fundraising machine going.

And that's a good thing for the Miller campaign crew, who, records show, made tens of thousands of dollars off the "grassroots" campaign. About a dozen Alaska residents and a few from Outside have appeared regularly in Miller's FEC reports as consultants of various stripes, ranging from political strategists to fundraising consultants to "travel/logistics consulting" and "compliance consulting," the tag for Miller's campaign treasurer who fills out the FEC reports. There's no sign of payroll taxes like other campaigns report for staff who are paid a salary rather than reported as "consultants."

As of Friday morning, no year-end FEC reports had been posted for Lisa Murkowski or Scott McAdams.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com).



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Political Animal

'Dan Rather Reports' on Murkowski and Miller

Alaska Dispatch | Feb 02, 2011

Remember the "Dan Rather Reports" camera crew seen following Sen. Lisa Murkowski around Juneau at a recent celebration of her write-in victory?

Well, the episode of the veteran newscaster's HDNet current-events show that takes a long look at Murkowski's unlikely write-in victory, "Come Write-in, Senator," is ready for broadcast.

In fact, the episode may have already premiered on HDNet on Tuesday, Feb. 1, but a search for confirmation of that has proven infuriatingly fruitless.

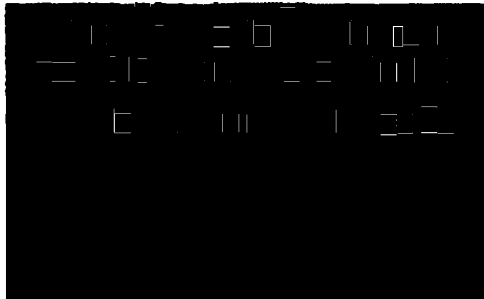
In any case, the episode is available for download now on iTunes (\$1.99), and the show's page lists the episode for upcoming rebroadcasts on Feb. 5 and 6, at 8 a.m. AKST. If you miss it then, you may have to wait to see if it shows up eventually on HDNet's free on-demand page. And, of course, if you'd like to go old-school and read the transcript, click here for the .pdf.

Rather was able to interview people close to Murkowski and her campaign, and he had the chance to speak with Murkowski's opponent, Republican primary winner Joe Miller.

According to a Huffington Post blog entry teasing the episode, Rather says Miller told him that the tea party movement will become a "major third party force" in 2012, and that Sen. Murkowski had strong words for her colleague Sen. Jim DeMint, of South Carolina, who pressed to have her stripped of Senate seniority when she announced her write-in campaign. "What he did was inappropriate and wrong," she said.

To Alaskans who watch politics closely, there won't be much new besides that in the Rather report, but it's worth seeing for the refresher of the race, and not only to see Murkowski carve some smooth downhill turns on a brisk bluebird day or to check out Miller's collection of hunting trophies.

A preview of the episode has been made available online at YouTube. Watch it below.



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Alaska Beat

Feds: Joe Miller earmarked campaign funds for 'recount'

Alaska Dispatch | Feb 02, 2011

Joe Miller ended the year with more than \$800,000 in his campaign war chest, while the victor of Alaska's U.S. Senate race, incumbent Republican Lisa Murkowski finished 2010 with less than half that, according to numbers from The Associated Press. Federal Elections Commission financial disclosures indicate Miller had \$825,000 and Murkowski \$321,060. "Miller has not said whether he'll seek another political office, possibly challenging U.S. Sen. Mark Begich, D-Alaska, in 2014, or U.S. Rep. Don Young, a fellow Republican, in 2012," the AP's story noted. Recent updates to Miller's webpage, along with random commentary and tweets on the politics of Alaska's Congressional delegation — especially Murkowski — lead Alaskans to conclude that Miller isn't going anywhere. Indeed, the AP notes that "Miller has said he wants to remain a part of the political debate." Some of the money Miller reported in the last quarter was earmarked for a "recount fund," the AP says. Read the full story.

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Alaska Beat

Joe Miller hands over 30,000 Fairbanks-North Star Borough e-mails

Alaska Dispatch | Feb 01, 2011

The Fairbanks North Star Borough has received 30,000 e-mails from former U.S. Senate candidate Joe Miller, according to the Associated Press, "effectively ending his former employer's investigation into e-mails gone from his inbox when he resigned in 2009." The borough told the AP that Miller handed over the e-mails — which became a controversy during his campaign to unseat incumbent Sen. Lisa Murkowski — sometime in January, after demands that he submit any in his possession that related to his work as a part-time attorney. The borough's investigation into Miller's missing e-mails appears to have begun sometime in the fall, according to records cited by the AP. Miller allegedly told the borough that the 30,000 e-mails were "all he had."

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Political Animal

Joe Miller 'still concerned' about Sealaska bill

Alaska Dispatch | Jan 31, 2011

According to a [press release](#) from former Republican U.S. Senate nominee Joe Miller's Senate campaign website, he's still concerned about the Sealaska land-swap bill. The release calls the bill "one of the defining issues" of the August Senate primary and notes it attracted criticism for being a "special-interest bandwagon." The Miller campaign's release links readers to the final installment of a recent six-part series by Alaska Public Radio on the proposed land deal. The [APRN report](#) Miller's release links to details economic impacts of the land swap and states that Rep. Don Young plans to re-submit the bill to the 112th Congress in its original form.

Miller expressed concern that the original bill was being submitted without revisions, "Certainly everyone will not be happy with the final product, but hopefully most of the issues can be addressed. However, I am very concerned with the fact that Rep. Young apparently hasn't been listening. I hope he will follow Senator Murkowski's lead and take all of the interests of the region under advisement before putting his bill forward."

The release goes on to say that Miller supports settling Native land claims under ANCSA and increasing private land ownership, but that he hopes competing interests in the area of the swap can be balanced by revisions to the bill. Miller said, "I continue to support the transfer of public land into private hands, and it is gratifying that we may have been able to play a part in getting another hearing for folks who were feeling disenfranchised by the process. I hope there can be a compromise that all sides will be able to live with."

Read more, [here](#).



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Politics

Joe Miller: A voter lawsuit still active over Alaska's Senate race

Jill Burke | Jan 12, 2011

Although Lisa Murkowski just renewed her oath of office for a second full term as one of Alaska's U.S. Senators, and her fervent rival Joe Miller has called off his fight over her election win, a half dozen voters are still trying to prove the State of Alaska and its Division of Elections screwed up.

On Dec. 10, one day after Miller lost the first in a series of three court cases regarding the fairness of the ballot count and the validity of votes, a small group of known Miller supporters filed their own lawsuit over the same issues in federal court.

As Miller unsuccessfully fought before the Alaska Supreme Court and U.S. District Court to block ballots containing misspellings of Murkowski's name and those with other perceived flaws or handling errors, the six-voter plaintiff's group of Miller allies was waiting for its complaints to also be heard.

Harold Frederick Rudolph, Sr., Gerald Gugel, Jr., April J. Pugh, Kevin Hite, John M. McKenzie and Lola G. McKenzie claim that the state violated the Voting Rights Act by accepting misspellings on write-in ballots, using different counting methods for different types of candidates (ballots for write-in candidates underwent a hand review whereas ballots for candidates with pre-printed names were assessed by machine) and by allowing some voters to vote without showing identification.

For reasons not explained in the complaint, the group's attorney, Thomas Wickwire, identifies all plaintiffs except for Hite as being Alaska Native.

Wickwire is from Fairbanks and appears to be the same Thomas Wickwire who used his personal plane to whisk Miller to a few campaign events. Those jaunts resulted in some controversy when an activist filed a complaint questioning whether Miller should have paid more for the flights, per campaign finance rules.

The state of Alaska has denied the group's claims, and in a court filing responding to the lawsuit, called the lawsuit moot, further suggesting that the issues raised are beyond the statute of limitations.

Unlike Miller's election challenges, which were heard speedily, the voters' case hasn't yet gotten very far. On Jan. 5 U.S. District Court Judge Ralph Beistline -- the same federal judge who last month decisively ruled against Miller and shut down his election challenge -- ordered the dissatisfied voters and the state to meet within three weeks and come up with a schedule by which to proceed.

Contact Jill Burke at jill@alaskadispatch.com.



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Cartoons

Required reading for Joe Miller

Peter Dunlap-Shohl | Jan 01, 2011



RECOMMENDED READING FOR JOE MILLER ©2010 Peter Dunlap-Shohl | Frozingin.blogspot.com

Cartoonist Peter Dunlap-Shohl on Joe Miller's post-election fight for U.S. Senate.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 28 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at Frozingin.blogspot.com.

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Joe Miller

Joe Miller admits defeat in Alaska's U.S. Senate race

Paul Epler | Dec 31, 2010

Joe Miller has given up his legal fight to wrest a U.S. Senate seat away from incumbent Lisa Murkowski, but promised local supporters and national TV audiences on Friday that he will continue the battle for conservative political values.

Confident and personable, Miller told reporters and dozens of supporters at a press conference in Anchorage that he did not regret the last few weeks of court wrangling over the way the election was conducted.

"I've been criticized for sneaking to apply the rule of law to this election and I've paid a price for that," he said. "I knew that my motives and indeed my judgment would be called into question. What is true is that I fought this fight so the candidates of the future would not have to do so."

RELATED: What's next for Joe Miller?

Miller pointed to recent statements by lawmakers that they would look to clarify election laws in the upcoming session, and a decision by Lt. Gov. Mead Treadwell to review the way the election was conducted as validation of his court challenges, which dragged on for weeks and took the case from federal court through all levels of state court and back to a federal judge who earlier this week dismissed Miller's case and allowed the election to be certified.

"The courts have spoken," Miller said Friday, telling his supporters who want him to continue appealing in the federal system "I hear you, but the time has come to accept the practical realities of our current legal situation. We shall abide by the courts decisions even if we do not agree with them."

But Miller also made clear he doesn't intend to stop advocating for the same issues that he embraced during the campaign. "I know for a fact that standing down is not an option," he said. "Exactly what form that will take, I don't know yet."

Miller said he has no plans to run for another office. He also has not re-opened his Fairbanks law practice and doesn't intend to do so, he said, because "frankly, our effort is not done."

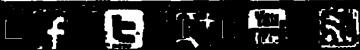
"Now is the time for us to engage in a national conversation about the role of the federal government and its relationship with the states and the need to responsibly balance the federal budget," he said.

Miller, who earlier in the week also indicated he may continue to pursue politics, said he will remain an advocate for constitutional conservatism. "This is not the beginning of the end. It's the end of the beginning," he said.

Miller acknowledged the campaign has cost his family personally and financially and that he is essentially living off money the campaign paid him back for a \$100,000 loan he'd made at the beginning of the race.

Appearing on CNN news after the press conference, Miller indicated he did not intend to call Murkowski and personally concede. "I have not called her and in fact I don't have her number," he said, adding that "I think we already have conceded."

Miller, a Republican backed by the tea party and former Alaska Gov. Sarah Palin, had beaten Murkowski in the Alaska GOP's August primary, but then lost in the general election after Murkowski



that mistakes were made during his campaign, but he didn't mention specifics. His campaign suffered after his security guards handcuffed Alaska Dispatch's editor and the public learned of his misdeeds while he was working as a part-time attorney at the Fairbanks North Star Borough.

After the election, Miller refused to accept the vote tally which placed Murkowski nearly 10,300 votes ahead of him. He mounted a series of court challenges, alleging the ballot count was unfair. One of his biggest complaints was that ballots containing misspellings of Murkowski's name had been counted as valid.

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Political Animal

Rep. Young talks climate, earmarks, and a possible Miller challenge

Alaska Dispatch | Dec 31, 2010

Congressman Don Young speaking with KTVA-TV's Matt Felling about a variety of topics, everything from climate change models and legislative earmarks to the notion that former Republican Senate candidate Joe Miller could challenge Rep. Young in 2012 for the U.S. House. "I think Joe's a little old for the job," Young says. Watch the interview below in two parts.

Part One:

Part Two:

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Politics

Joe Miller concedes 2010 Alaska US Senate race. But is there victory in defeat?

Craig Medred | Dec 31, 2010



Enlarge this image

The communique-driven media relations of former Gov. Sarah Palin were gone Friday when protege Joe Miller met the Alaska media to bring to an end a long and bitter campaign for one of the state's two U.S. Senate seats.

The communique-driven media relations of former Gov. Sarah Palin were gone Friday when protege Joe Miller met the Alaska media to bring to an end a long and bitter campaign for one of the state's two U.S. Senate seats.

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Alaska's Joe Miller: Burned at the ballot box?

Alaska GOP: Time for Joe Miller to end his campaign

Miller held what used to be called a "press conference" in an empty, 20-by-80-foot room in a Midtown Anchorage strip mall between a sub-sandwich joint and a pizzeria. He stood behind a podium in front of fake, fluted pillars and the flags of Alaska and the United States to read a speech, and when he was done he actually conferenced.

It was a big change from his previous encounter with Alaska reporters when he called a conference at the Denaina Center downtown and then arrived to spit — figuratively not literally — in their faces. At that gathering, Miller told Alaska reporters he wasn't going to answer any more of their questions about his past; accused some of them of being out to get him; and then scurried out the backdoor of the building.

From then on in a unique twist on Palin's approach, as well as other tea party candidates, toward what they call the "lamestream media," Miller would talk only to the national reporters of conservative Fox News, liberal CNN and even leftist MSNBC. His only contacts with most of Alaska's media were through spokesman Randy DeSoto, whose answer to almost everything was nothing, and Anchorage talk show host Dan Fagan who became the de facto propaganda minister for Miller for Senate, although Fagan's propagandizing did begin to diminish after Miller started tipping legal windmills in the wake of his election loss to write-in candidate and incumbent Republican Sen. Lisa Murkowski.

RELATED: What's next for Joe Miller?

Miller formally gave up that jousting on Friday in front of the press, but still felt moved to defend it, arguing it was all about clean elections and noting some Alaska lawmakers are now talking about new statutory language to clarify what voters might write down on a ballot to make their write-in desires clear. At this moment, the view of the state Division of Elections — as unanimously endorsed by the Alaska Supreme Court — is that a ballot will be counted if the voter's intent is clear.

Thus, Alaska voters faced with a spelling challenge like Smythe, one of those strange variations on the spelling of Smith, can write the latter and still see their vote count. Or they can, as they did this year, write Murkowski or Mufkowski, or Murcowoky and still score a vote for Murkowski. It is, however, worth noting that Alaska voters did smarter than all of the pundits expected prior to this election, and even after the misspellings of Murkowski were placed in reserve pending the outcome of post-election lawsuits by Miller, there were a couple thousand more people who'd managed to spell Murkowski right than had merely colored an oval next to Miller's name.

On Friday, Miller blandly entered that pitiful and moribund Alaska internet, most notably Native

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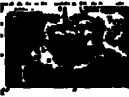
Murkowski campaign victory, but his accusations did not carry the venom of the past nor did his behavior. During the election campaign, Miller became nationally famous as the candidate whose personal security guards manhandled and then handcuffed Alaska Dispatch editor Tony Hopfinger because he was judged to be pursuing Miller too aggressively with questions.

There was no security visible when Miller met the media this time. He arrived with his wife in a SUV a few minutes behind schedule. He rushed in the strip mall's front door, past reporters and a throng of TV cameras and disappeared into the back of the small space.

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Political Animal

State plans to seek court costs from Miller

Alaska Dispatch | Dec 29, 2010

According to The Associated Press (via the Fairbanks Daily News-Miner), the state of Alaska plans to seek reimbursement for court costs that it incurred during the challenge to the U.S. Senate election count filed by Republican nominee Joe Miller. The state is eligible to seek reimbursement of up to 20 percent of its total costs. The state Department of Law says the costs totaled \$79,722.50, and it plans to seek \$15,957.55. Read a bit more, here.

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Joe Miller

Joe Miller still wants to work for you

Jill Burke | Dec 28, 2012



Now that he's run for public office twice and lost both times, the man who nearly seized Lisa Murkowski's U.S. Senate seat can't shake his taste for politics.

Although Joe Miller has failed to convince Alaskans to elect him to public office – the first time was six years ago when he ran for state representative in Fairbanks – he has along the way proven to be a formidable opponent.

And this week Miller said he is likely to remain in politics, despite that the Alaska Supreme Court and a federal judge

rejected his claims that the Senate election was unfair and that the state will Thursday officially certify Murkowski as the winner.

"I have run for office at both the state and federal level; in both primary and general elections, and am likely to do so in the future," Miller told a federal court judge in an affidavit Monday, one day before the same judge dismissed his case.

Unlike his high-profile supporter, former Gov. Sarah Palin, Miller – a Fairbanks attorney with eight children – possesses no political credentials other than running unsuccessfully twice for public office.

RELATED: Read more Joe Miller coverage

In 2004, running for a seat in the state House against Democrat David Guttenberg, Miller lost by just over 300 votes. In the years that followed he became increasingly active with the Alaska Republican Party, aligned himself with the rising aspirations of Palin, and by 2010 was ready to again jump into the political arena – this time taking on Palin's foe, Lisa Murkowski.

The tea party-backed political insurgent had enough momentum to beat Murkowski in the Alaska GOP's August primary. But then he lost to her in the general election after Murkowski staged a historic write-in campaign. Miller still managed to win more than 90,000 votes in the three-way race (Democrat Scott McAdams won 80,016 votes; Murkowski won 101,000). Miller challenged the election results, losing three court battles to undo various aspects of the vote count amid cries from many Alaskans that he give up his fight. As of Tuesday night, he had yet to concede to Murkowski.

Miller's apparently learned much from the experience. And in his affidavit, he explains where this may take him in the future:

"I have interacted with party officials, donors, supporters, and members of the general public in connection with my candidacy. I have been asked to endorse, contribute money to, and vote for other candidates. I am also a spokesperson for lower taxes, limited government, and a return to the principles of the U.S. Constitution, and aggressively have advocated on behalf of these principles on numerous occasions on television, the radio the Internet, and in newspapers."

Miller didn't mention his new-found status as a self-made pundit simply to add flare to his legal argument. He did so to try to convince the judge his livelihood as a multifaceted political operative was directly tied to how big or small his loss might prove to be. Where before he has claimed his

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about who wins or loses, Miller's court filing reveals he personally has much more at stake.

In his affidavit, Miller goes on to say:

"One measure of a candidate's likelihood of success, ability to attract public support, ability to fundraise, and credibility as a spokesperson for his or her causes is the margin by which he or she lost any previous elections. The smaller the margin of a candidate's loss, the greater the likelihood the candidate will be able to run in future elections, successfully fundraise, attract public support, provide meaningful endorsements to other candidates, and act effectively as a spokesperson for his or her causes."

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Joe Miller

Alaska's Senate race: Miller relents on certification, plans federal suit

Alaska Dispatch | Dec 27, 2010

Late Sunday, Joe Miller's Senate campaign issued a media release saying that he will drop his fight to block the Alaska Division of Elections from certifying the U.S. Senate election, noting that a deciding factor was for Alaska to have full representation in the Senate when new members are sworn in at the beginning of 2011.

Last week, the Alaska Supreme court ruled unanimously against Senate election challenges brought to court by insurgent conservative Republican nominee Joe Miller.

Miller won't be giving up the fight in federal court, however. The release says he will be moving forward with a federal suit, "for the sake of the integrity of the election." Specifically, it says Miller "will be filing a motion in federal court to stay the post certification election contest timeline until after the federal case has concluded."

It has yet to be seen what ground Miller's federal case may argue from, but the release notes several issues that his legal team thinks warrant "further review," issues that include:

Whether the U.S. Constitution's Election Clause was violated by ignoring the legislature's mandatory provisions for write-in candidates; whether the U.S. Constitution's Equal Protection Clause was violated by the different vote counting standards that were applied, dependent on the candidate in question; and other issues such as at least hundreds of felons voting and at least hundreds of ballots being filled out by a handful of people.

Read the complete release [here](#) via the campaign site [JoeMiller.us](#).

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Joe Miller

In Alaska, Joe Miller steps aside for Lisa Murkowski to take Senate seat

Amanda Paulson | The Christian Science Monitor | Dec 27, 2010

This just in: Joe Miller is dropping his efforts to keep Lisa Murkowski from being certified as the winner in Alaska's Senate race.

Mr. Miller, who lost to Senator Murkowski's write-in campaign in an upset, has argued that thousands of write-in votes for Murkowski should not have been counted. He is continuing with a federal suit - "for the sake of the integrity of the election" - but he says he is withdrawing his objection to the certification so that Alaska can have its full delegation seated next month. That means Murkowski will be sworn in on Jan. 5 with the rest of the 112th Congress.

"This decision will allow Alaskans to focus on bringing fairness and transparency to our elections process without distraction of the certification issue," Miller said in a statement.

Murkowski, meanwhile, appears to have seen her election as a license to break with Republican leaders and become the maverick that Joe Miller once promised to be. This is especially so because of the rift that occurred with the Republican Party when she lost to Miller in the primary and was urged by party leadership not to oppose him as a write-in candidate.

This month, Murkowski earned the distinction of being the only Republican to vote for all four pieces of controversial legislation backed by President Obama: the DREAM Act, the tax-cut compromise, the repeal of "don't ask, don't tell," and the START arms-control agreement.

Murkowski is still a Republican, but she seems to feel less of a necessity to follow in lock step with a party leadership that largely abandoned her.

"She's a person who makes up her own mind, does what she thinks is right, and always keeps the concerns of her state at the forefront," Sen. Susan Collins (R) of Maine - another of the dwindling Senate moderates - told Politico.

Murkowski herself says, "I certainly took a strong message from my write-in campaign in Alaska." She told RealClearPolitics, "Alaskans want to be heard on the issues. They don't necessarily want to be tied to a political label or party position."

Indeed, she's already being heralded by many in the emerging "No Labels" movement - a group of centrist Republicans and Democrats that is trying to move beyond "hyper-partisanship" (and has attracted its share of derision).

Many Republicans, not surprisingly, have criticized Murkowski's independence.

"In supposedly voting 'for Alaska,' Lisa Murkowski must make the case why the Bush tax cuts shouldn't be permanent, why we're rewarding people for breaking our immigration laws, why [don't ask, don't tell] was not working and why the Senate should not take further time to review START," Miller spokesman Randy DeSoto told Politico.

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News

Alaska's Joe Miller loses again, this time in state Supreme Court

Jill Burke | Dec 22, 2010

Five days after taking Joe Miller's election complaints under advisement, the Alaska Supreme Court has ruled unanimously against the failed U.S. Senate hopeful on every court in his lawsuit.



Read the Alaska Supreme Court's ruling: Miller v Treadwell Decision

"We affirm the decision of the Superior Court in all respects," the justices wrote in an order handed down early Wednesday afternoon. "There are no remaining issues raised by Miller that prevent this election from being certified."

In a prepared statement, Miller called the decision disappointing, accused the judges of ignoring the "plain text of Alaska law," and said his campaign was reviewing the ruling and "weighing" its options.

In the winner's circle, it was a different story. We're "elated," said Kevin Sweeney, incumbent Sen. Lisa Murkowski's campaign manger, in a prepared statement.

"We anticipated today's decision by the Supreme Court," Sweeney said. "We also anticipate that Joe will continue to pursue his baseless claims in federal court until his money runs out."

The ruling eliminates all but one possible obstacle to certifying Murkowski as the winner of the Nov. 2 election.

Murkowski, cited here as a write-in candidate, beat Miller by more than 10,000 votes in the general election — a stunning win in the face of what many considered a nearly impossible quest to keep her seat. After her loss to Miller in the primary, a write-in campaign became the only way for Murkowski to stay in the race.

Because state courts aren't the only legal arena Miller has pursued for relief, certification can't occur until a federal court first gives the OK. Miller also lodged a complaint in federal court. In that case — the first filed by Miller — U.S. District Court Judge Ralph Beistline put a mandatory hold on certification of the race's results pending review by the lower courts. Last week Beistline signaled his willingness to lift that order once a ruling from the Alaska Supreme Court came in.

If Miller decides to keep up the fight, nothing prevents him from waging ongoing challenges after Murkowski is validated by the state as the election winner and sent back to Washington, D.C., Beistline noted.

The state of Alaska and Murkowski's attorneys have asked judges at all levels to move swiftly so that the election can be certified by the first week in January, in time for Murkowski to be sworn into office and seated when the next session of Congress convenes on Jan. 5. It's possible that certification could happen even sooner.

Miller has until 9 a.m. Monday to appeal the Supreme Court's decision, per a schedule issued late Wednesday by Beistline. The state's reply to any claims Miller may make is due two days later on Dec. 29. Beistline will then take the issue of certification and any remaining legal issues under advisement. During a press conference Wednesday, Lt. Gov. Road Treadwell, who functions as the overseer of elections, said the senate race's "double overtime" is over. He expected certification to take place sometime between Christmas and the New Year.

Miller believes elections officials wrongfully used "voter intent" as a guideline when choosing whether

Division of Elections did not give adequate notice about its time frame to conduct the count. He claims the hand review that write-in ballots undergo gives write-in candidates an unfair advantage. He has also alleged other improprieties, including the mishandling of ballots, poorly kept records about whether voters had been properly identified, and the possibility felons were allowed to vote.

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With 'Deadliest Catch' cameras onboard, crabbers head to Bristol Bay



Alaska Federation of Natives: Emphasis on politics with an eye on elections



Alaska Airlines ups airfare war ante with \$399 roundtrip to L.A.

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Political Animal

Supreme Court recesses in Senate lawsuit

Jill Burke | Dec 17, 2010

Update, 3:50 p.m.: The parties completed oral argument and the court has recessed. Attorneys for Miller, the state and Murkowski have left the courtroom to await a decision from the Supreme Court; the justices did not indicate when that order might be issued. Check back this evening for a full report from the courtroom.

Original story: Oral arguments are underway in Joe Miller's appeal to the Alaska Supreme Court, in which Miller disputes several aspects of the vote count in the Nov. 2 election for U.S. Senate.

Miller was in the courtroom as four justices entered promptly at 1:30 p.m., as was spokesman Randy DeSoto. Also in attendance: new Lt. Gov. Mead Treadwell, who has taken the reins -- and leadership of the Division of Elections -- from former Lt. Gov. Craig Campbell, who did not seek re-election in November; state Republican Party chair Randy Ruedrich; and Alaska Constitutional Convention delegate Vic Fischer.

Miller will have 30 minutes to make his case, as will the Division of Elections, while incumbent Lisa Murkowski will get 10 minutes. Although Murkowski is not a party to Miller's appeal, she did file her own appeal regarding some 2,000 ballots she thinks should have been counted for her but were not. Murkowski wants the state to count ballots that were filled out for "Lisa M." or on which her name was written but the oval next to it was not filled in. Elections staff said no to these ballots.

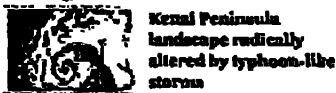
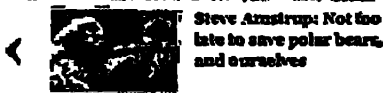
Miller defeated Murkowski in the primary, but Murkowski, who was forced to mount a write-in campaign to stay in the race, beat him in the general election by more than 10,000 votes as the count currently stands.

Miller believes election officials should not have been allowed to use "voter intent" as a guideline when choosing whether to count write-in ballots with misspellings and other imperfections. He also believes the Division of Elections did not give his campaign adequate notice of its intended timelines for the hand count of write-in ballots, and the policy of using machines to tally ballots for party nominees versus the hand review process by which write-in ballots are evaluated is unfair. He has alleged other improprieties, including mishandling of ballots, poorly kept voter identification records, and a claim that felons were allowed to vote. Alaska Superior Court Judge William Carey of Ketchikan, who oversaw the case, rejected every one of Miller's complaints.

This is a developing story. Check back later in the day for updates.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).

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Politics

Supreme Court justices grill parties on Senate election questions

Jill Burke | Dec 17, 2010



The third installment of courtroom drama in Joe Miller's dogged attempt to throw out thousands of votes for his opponent, Lisa Murkowski, ended today with a cliffhanger. After about an hour and 45 minutes of listening to oral arguments and peppering the parties with their own questions, four justices from the Alaska Supreme Court took the case under advisement and strolled out of sight.

Miller, who trails Murkowski by more than 10,000 votes, first took his election fight to federal court, then to state court, where he lost. His

appeal of the lower court's decision to the Alaska Supreme Court makes this venture number three on his journey through the halls of justice, hoping the courts will undo what he characterizes as a miscarriage of the voters' will on Election Day. The federal case remains open, and will resume after a decision comes in from the supreme court.

The audience gathered for Friday's hearing was like a who's who of Alaska's political landscape, past and present. Joe Miller was there, flanked by attorneys Michael Morley from the nation's capitol and Thomas Van Flein, legal eagle to Sarah Palin, who herself endorsed Miller. Murkowski had two attorneys on hand, as did the State of Alaska. Newly elected Lt. Gov. Mead Treadwell watched the proceedings alongside Gail Fenumiai, director of the Alaska Division of Elections and the woman Miller has portrayed as an unelected bureaucrat with the power to influence the outcome of an election by making subjective decisions about which ballots count and which ones don't. Also in the audience: Randy Ruedrich, chair of the Alaska Republican Party, Murkowski campaign manager Kevin Swanson, Murkowski's public relations guru John Tracy, and Alaska Constitutional Convention delegate Vic Fischer, who remains active in politics in the state he helped frame in the mid-1950s. Reporters, other attorneys and members of the public filled out the ranks of onlookers.

"Hopefully this is the last chapter," said Ruedrich, who backed Yale-educated, tea party-endorsed Gulf War veteran Miller after he defeated Murkowski in the primary.

Ruedrich has since called for Miller to call it quits.

Miller awaits a Supreme Court decision

After the hearing, Miller told a reporter he thought things went very well and he was pleased to see the high court's justices did not feel his case was frivolous. When asked if, in the event he loses the appeal, he'll keep up the fight in federal court, perhaps pushing all the way to the U.S. Supreme Court, Miller hedged. His campaign and his legal team would wait for the Alaska Supreme Court's decision to come in before deciding what to do, he said.

Yet just a few days ago, on Dec. 14, Miller told Fox News host Neil Cavuto that his legal challenge is about the "rule of law."

"We are fighting the right fight and we are going to continue it," Miller told Cavuto.

Miller believes election officials should not have been allowed to use "voter intent" as a guideline




He also believes that the Division of Elections did not give adequate notice about its intended timelines for the hand count review of write in ballots, and that the policy of using machines to tally ballots for party nominees versus the hand review process by which write-in ballots are evaluated is unfair. Names of party nominees were pre-printed on the ballot, unlike those for write-in candidates. He has also alleged other improprieties, including the mishandling of ballots, poorly kept records about whether voters had been properly identified, and a claim that felons were allowed to vote. Alaska Superior Court Judge William Carey of Ketchikan, who oversaw the case, rejected every one of Miller's complaints.

Murkowski attorney: Miller is 'denying reality'

Miller stands to gain the most mileage by pushing for the court's to uphold a "clear cut, bright line rule" regarding the way a write-in candidate's name appears on the ballot. "If the candidate's name is on the ballot, the ballot is valid. If it is not, the ballot is invalid," Miller attorney Morley argued.

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Joe Miller

Miller appeals to Alaska Supreme Court

Jill Burke | Dec 13, 2010

U.S. Senate candidate Joe Miller has appealed his election case to the Alaska Supreme Court.

He had until noon Monday to give notice of an appeal with the state's highest court over aspects of the Nov. 2 election results he continues to dispute. On Friday, a lower court judge ruled against Miller on every count. The decision maintained Murkowski's sizeable lead -- more than 10,000 votes -- over the Republican Senate hopeful, who's received backing from the national tea party movement.

On Friday, the same day Alaska Superior Court Judge William Casey ruled against Miller, the Alaska Supreme court set a speedy schedule in anticipation that the case would come the way.

The Supreme Court will hold oral arguments in the case Friday afternoon.

In a press release issued Monday afternoon, candidate Miller accused the judge of "essentially nullifying state law," contending that prior to Friday's ruling, Alaska elections law required write-in ballots had to exactly match a candidate's declaration of candidacy.

"... But now, after Judge Carey's ruling, such ballots will be counted as long as an unelected bureaucrat believes he or she can determine or guess what a voter intended," Miller said.

The "unelected bureaucrats" Miller refers to, presumably, are Alaska residents working under the state's Division of Elections, which is overseen by the office of the lieutenant governor.

Meanwhile, the state is also looking to fast-track a similar but separate election case filed by Miller in federal court.

Last month, a federal judge ordered the state to hold off on certifying the results of the Alaska's U.S. Senate race until the state courts had a chance to hear and rule on Miller's claims that the election count was conducted in a manner favoring the write-in independent candidate, Murkowski, and on his allegations of illegal voting and misconduct by election workers.

Judge Carey ruled Friday that the count was fairly conducted within the bounds of the law and that the candidate had presented no evidence of wrongdoing. Even if he had, the judge ruled, none of it would have been great enough to change the outcome.

The State of Alaska and its Division of Elections would like the federal court to address any lingering issues between now and the start of the new year, essentially book-ending the Christmas holiday with election-related matters.

A briefing schedule was proposed last week by the state leading up to Christmas Eve, a Friday, and suggests scheduling a hearing, should one be necessary, the week of Dec. 27, urging a decision by New Year's Eve, Friday, Dec. 31.

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Cartoons

Miller still appealing to undecideds

Peter Dunlap-Shohl | Dec 12, 2010



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Cartoonist Peter Dunlap-Shohl on Joe Miller's post-election fight for U.S. Senate.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 25 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at Frozengirl.blogspot.com.

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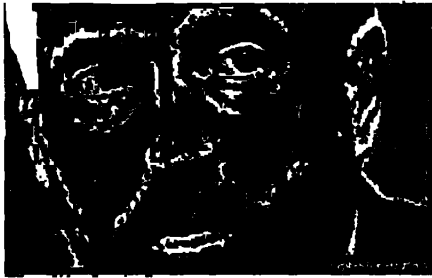
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News

GOP candidate Miller loses Alaska elections case

Jill Burke | Dec 10, 2010



Alaska is one step closer to seating its next U.S. senator, but still not close enough to guarantee the person, presumably incumbent Lisa Murkowski, will be representing the state when the new session of Congress gets underway in January.

Friday afternoon, a superior court judge ruled against U.S. Senate hopeful, Republican Joe Miller in his attempt to challenge the outcome of the Nov. 2 election and the procedures used to arrive at the final vote count.

Superior Court Judge William Carey of Ketchikan, who presided over the case, ruled against Miller on each of the several aspects

of his complaint. Even had Miller prevailed on particular points, none would have changed the vote count enough to make a difference in the outcome of the election, Carey ruled.

It does not appear Miller will be deterred by the defeat.

"The core American values of equal protection under the law and fundamental fairness in this election require that the Miller ballots are counted and reviewed in the same fashion as Lisa Murkowski's, by hand, and that the final count includes only those who are eligible to vote," Miller spokesperson Randy DeSoto said in a prepared statement issued in response to Judge Carey's decision. "When we've ensured that these issues have been addressed, then we'll have an accurate count, and if Lisa Murkowski's tally is greater than Joe's, then he will certainly honor that result."

DeSoto's statement reveals a primary concern was that write-in ballots for Murkowski benefitted from a hand review, while ballots that went to Miller only received a machine count.

Still, "... Murkowski won the election by over 2,000 unchallenged votes and the statutory interpretation does not change this outcome," Judge Carey wrote in Friday's decision. "No matter what interpretation this Court makes, and even if the court finds that Miller is correct and only correctly spelled ballots for Murkowski are to be counted, Miller would not be entitled to relief because the outcome does not change."

Judge Carey ruled Alaska election law allows a write-in vote to count as long as the name written on the ballot is the same as the name that "appears" on the candidate's declaration of candidacy. In his opinion, Judge Carey determined that the law did not state that write-in votes should count only if they were "exactly" as the name appears in Division of Elections voter pamphlets. Because the law does not explicitly require an exact standard, flexibility is implied, Carey added.

"'Appears' does not mean 'exactly,' 'precisely,' or 'perfectly,' but rather 'close to,' 'like' or 'resembles,'" he continued. The law does not require perfection or precision, he said, "but rather a close, apparent, approximation known to the viewer upon first look." [Read the full ruling here \(PDF\)](#)

Miller accusations unsubstantiated

Preliminary results from Election Day placed the incumbent Sen. Murkowski's write-in campaign 10,300 votes ahead of Miller, the tea-party backed candidate endorsed by former Gov. Sarah Palin, whose stunning primary upset made him the Republican Party's official nominee for the Nov. 2 election.

Miller claims many aspects of the way votes were cast and counted were unusual, unfair or possibly illegal. He has filed complaints in both state and federal court seeking relief.

Miller believes the state overreached by giving the Division of Election authority to determine "voter intent." He called the different processes for counting different types of ballots unfair. He claimed the state was improper in its acceleration of the timeline for its count and in the way it announced the process by which the count would be undertaken. He alleged voter fraud and ballot tampering may have occurred, and that felons may have illegally been allowed to vote.

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Joe Miller

State sounds off on Miller's sex offenders

Alaska Dispatch | Dec 09, 2010

The Alaska elections director disputes Alaska Senate candidate Joe Miller's claim that "hundreds" of felons may have illegally voted, according to the Associated Press, which also reports that Miller's campaign compared sex offender data to voter rolls.

Gail Fenumial told the AP that the Division of Elections regularly compares its voter rolls to data released by the Department of Corrections, removing those who cannot legally vote. What's more, Fenumial said, many of the sex offenders Miller referenced in court on Wednesday may have, in fact, had their voting rights reinstated.

Read more in the [Fairbanks Daily News-Miner](#).

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Joe Miller

Judge hears arguments in Miller's Senate battle; decision won't come before Friday

Patli Epler | Dec 08, 2010

Don't expect a ruling in Joe Miller's challenge of Lisa Murkowski's apparent win in the U.S. Senate race until sometime Friday, Ketchikan Superior Court Judge William Carey told attorneys who spent two hours arguing their cases on Wednesday morning.

The judge also said he'd immediately allow a brief stay, no matter what he ruled, so either side could appeal to the Alaska Supreme Court.

Little new was presented in the way of arguments to the court on Wednesday. The state and Murkowski contend the judge should rule in their favor now and say there is no need for time-consuming investigations into allegations of fraud or misconduct as Miller wants.

Assistant attorney general Joanne Grace described the ballot-counting process as "very open" with observers for both Miller and Murkowski present at all times. When the count was finished, Murkowski was ahead by about 10,300 votes and Miller's observers had challenged about 8,000, giving Murkowski a lead of more than 2,100 votes even if all the challenges stand, she said.

The Alaska Supreme Court has set a very high standard for post-election challenges to discourage losing candidates from tying up the final results simply because they're disgruntled, Grace said.

She asked the court to recognize that the legal fight is not going to change the outcome of the election — that Murkowski has prevailed — and grant the state's motion for summary judgment now.

Miller: Elections officials shouldn't arbitrarily interpret law

Miller is seeking to overturn the election results on five different grounds, including violations of the state's own administrative rules, or because some ballots were counted by hand and others by a machine or because some votes may have been improperly cast, for instance, by people who didn't show identification.

Miller's main argument, according to his attorney Michael Morley, is that ballots that misspelled Murkowski's name, even by a single letter, should not be counted. He told the judge that state law requires the name written in on the ballot to match the name on the paperwork filed by a candidate with the state elections office.

Morley began his presentation by quoting James Madison: "If men were angels, no government would be necessary." He pointed out that the Legislature worded the statute the way it did because it didn't want elections officials arbitrarily interpreting it. He said the spectrum of votes the state had to consider ranged from ballots that displayed bad penmanship to misspellings to "Lisa M." instead of her full name. An elections worker shouldn't be arbitrarily deciding what should count and what shouldn't, he said.

But Grace, along with Murkowski attorney Tim McKeever, urged the judge to follow previous Supreme Court rulings that have come down on the side of voter intent. Grace said Miller's "standard of perfection" was not appropriate.

Miller "wants the vote count changed so he wins, not because voters chose him but rather based on

She said the state has a duty to preserve every voter's choice if it can. "Alaska is not populated by 700,800 clones," she said.

People come from different back grounds and cultures and have differing abilities to perfectly write in a long name, but that doesn't mean they can't make the choice on who to vote for, Grace said.

McKeever argued that, logically, voter intent is clear on every write-in ballot whether the name is spelled correctly or not. Simply by choosing to write in a candidate rather than filling in the oval next to a name that's printed on the ballot shows the voter intended someone else, he said.

"There can be no clearer intention of the voter's intent," he said.

McKeever pointed out that Murkowski's margin of unchallenged votes actually has grown by about 3,000 – up from 2,100 – because Miller has withdrawn challenges of ballots where voters wrote "Murkowski, Lisa" and minor misspellings. He asked the court to encourage Miller to clarify whether he will withdraw challenges on other ballots where the name was written below the line, for instance, or used her title "Senator" or dotted an I with a heart.

"It substantially increases the margin of unchallenged votes," McKeever said.

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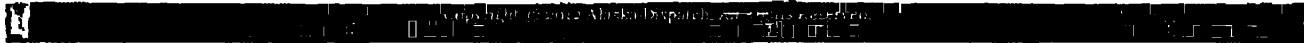
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Joe Miller

Miller releases spotty finance report

Patti Epflr | Dec 06, 2010

U.S. Senate candidate Joe Miller's latest campaign finance report is finally available for public inspection — all 727 pages of it — and there's some interesting stuff in it and some interesting stuff that's not there.

Missing is any mention of payments to Drop Zone Security or William Fulton, the crack security team that detained and handcuffed Alaska Dispatch editor Tony Hopfinger when he tried to ask Miller questions at a public town hall at Central Middle School.

Miller does report a payment of \$400 to the Anchorage School District for a "facility rental" for the Oct. 17 event. The Fairbanks attorney has said the district required him to provide security for the event and thus he brought in Drop Zone guys — a three-man team made up of Fulton and two off-duty Army soldiers. There is no disbursement to Fulton or Drop Zone or the other two for security services and no in-kind contribution on Fulton's behalf just in case he wanted to donate his services to Miller's campaign.

Fulton owns and operates the security agency out of a military surplus store by the same name on Spenard Road.

Miller's spokesman Randy DeSoto did not respond to a request for comment for this story.

The Federal Election Commission report covers contributions and expenditures made from Oct. 14 through Nov. 22. Miller's previous filings did not show any expenditures for security services, either, even though photos of the candidate on primary night, Aug. 24, show Fulton hovering near him at Election Central, dressed in his security attire - black suit, white shirt and tie.

Also missing in this most recent filing is an overwhelming presence of Alaska supporters. Page after page of contributions list plenty of money from all over the country, but relatively few from Alaska residents. DeSoto also had no comment on why Alaskans seemed to stop giving Miller their financial support in the week or so before the Nov. 2 election.

The report shows Miller took in more than \$1.1 million between Oct. 14 and Nov. 22 bringing his total for the entire campaign to more than \$3 million. That compares to the \$4.2 million campaign incumbent Sen. Lisa Murkowski reported with \$331,889 coming in this latest campaign period. (Murkowski's full report is not yet publicly available on the FEC website; her campaign released the six-page summary last week.)

Much of Miller's campaign cash since Oct. 14 came via the Senate Conservatives Fund, the political action committee headed by South Carolina Sen. Jim DeMint, in the form of donations earmarked for Miller, either for the general election (before Nov. 2), or the recount process afterward. More than \$500,000 came directly from the committee, the report shows, and tens of thousands dollars more are listed on page after page of individual contributions.

For all the time Miller has been spending in court contesting the election and the assistance from attorneys through the recount process that began Nov. 10, the report lists a lone payment of \$20,000 on Nov. 3 to Thomas Van Flein's law firm for legal services. There's no other expenditure for legal services in the period from Oct. 14 through Nov. 22. National Republican groups sent lawyers to monitor the recount.

Miller did pay himself \$96,597 on Oct. 31 and Nov. 3. The report doesn't say what the money is for —

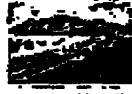
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Steve Amstrup: Not too late to save polar bears, and ourselves



Lawyers clean up in Unalaska's EPA wastewater fight



Kenai Peninsula landscape radically altered by typhoon-like storm

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Joe Miller

Fairbanks: Miller, Van Flein play loose with facts

Craig Medred | Dec 07, 2010

Anchorage attorney Thomas Van Flein has found his integrity challenged by the Fairbanks North Star Borough.

Van Flein serves as attorney-on-retainer to Alaska celebrity and ex-Gov. Sarah Palin, plus her buddy, Republican Alaska Senate candidate Joe Miller.

In a letter to Van Flein Tuesday, the borough charged he was "either not communicating with [Miller] or both of you are intentionally misrepresenting information in order to cast this office in a negative light (or possibly to deceive the public)."

The client in this case is Miller, an attorney for the borough before he quit to run for the U.S. Senate against Alaska incumbent Sen. Lisa Murkowski.

Before that happened, Miller left the borough in the midst of a disagreement with his bosses, and on the way out the door, the borough charges, he **conducted a big computer dump of his e-mail**, including documents relating to litigation in which he was involved.

The borough says it wants Miller to reveal what he removed from borough computers, or explain why he can't.

Miller contends he did nothing wrong. During an interview with an Anchorage talk show host on Tuesday, he said he regularly dumped e-mail while at the borough, and couldn't recall making any special dump before leaving the borough.

Borough attorney Jill Dolan says Miller, and possibly Van Flein, both seem to have some problems with the truth. In her letter to Van Flein, she accused him of tossing around "facts that Mr. Miller knows to be untrue."

Contact Craig Medred at [craig\(at\)alaskadispatch.com](mailto:craig(at)alaskadispatch.com)

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Political Animal

Miller to Begich: Stop 'fiddling while Rome burns'

Alaska Dispatch | Dec 07, 2010

Republican Senate nominee Joe Miller responded with a press release just hours after Sen. Mark Begich issued a statement calling for Miller to abandon his court challenge of the election, which it appears Miller has lost to incumbent senator and Republican write-in candidate Lisa Murkowski. Miller's statement follows below, reprinted here verbatim.

Recently, Mark Begich issued a statement asking Joe Miller to drop his legal challenge to the election ballot issues. In response, Joe Miller said Begich should "get back to work and stop wasting time in D.C." Joe Miller explained that Begich fails to understand either the legal issues or the reasons why the challenge has been made. Miller stated, "What is vital is that the people of Alaska can trust the election process. The Miller campaign has stated repeatedly, all we want is for all the votes to be counted in accordance with Alaska Statutes." Contrary to Begich's assertion, personal ambition has nothing to do with the legal issues, and such a statement reflects a serious misunderstanding if not a complete ignorance about the election process and the issues involved. I think Begich would better serve Alaska by working on a budget that does not bankrupt our country instead of fiddling away while Rome burns," said Miller.

Campaign spokesman Randy DeSeto added, "It should be of great concern that Mark Begich, who is so aligned with President Obama's failed Big Government policies, feels so anxious to make sure Lisa Murkowski stands by his side in the Senate."

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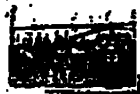
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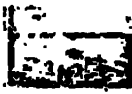
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Joe Miller

Joe Miller's fight over deleted e-mails marches on

Jill Burke | Dec. 06, 2010

Asked by his former employer to explain what he did with thousands of e-mails, U.S. Senate candidate Joe Miller responded Monday with some questions of his own, including wondering why the borough is taking such a "heavy-handed" approach to a situation he believes is being blown out of proportion.

The Fairbanks North Star Borough, where Miller worked for seven years as a part-time attorney, imposed a Manday deadline for Miller to hand over any e-mails or documents in his possession that relate to borough business. By late Monday afternoon, Miller had replied via a letter (PDF) through his attorney, Thomas Van Flein, but it appears Miller did not turn over any records.

The borough is also awaiting an explanation from Miller about how and why thousands of e-mails went missing from his borough account in the weeks leading up to his resignation in August 2009 before deciding whether to seek criminal charges. Borough attorney Jill Dolan has said the next step is for the borough administration to decide "whether we think it was an intentional deletion or not."

The borough is also prepared to seek advice from the Alaska Bar Association on how to handle Miller's unexplained conduct. Because it is an attorney ethics issue, said Rene Broder, Miller's former boss at the borough, she wants guidance on what she and Miller are required to do under the circumstances.

"I just want some assistance in determining what happened here and making sure we have all the records that we should have," Broder said. "I have no interest in going against his bar license." If the borough decides to refer the matter for criminal prosecution, it could go to either Fairbanks Police or the District Attorney's office, she said.

The borough and Miller have been in a standoff over the e-mails for weeks. Miller has denied any wrongdoing and has criticized the borough for waiting more than a year before pursuing the e-mail issue, alleging that the borough only raised the issue this fall as a way to hurt Miller's reputation before the Nov. 2 General Election.

In his latest letter to the borough, Miller claims his deletion of e-mails complied with the borough's own computer use policy. The policy encourages account holders to promptly delete read e-mails and to purge any that aren't needed in the long term.

"Please explain why you would threaten criminal action against an employee who apparently acted in conformance with the Borough's e-mail policy," Van Flein wrote. "In addition, has the borough threatened criminal action against all other employees who complied with this policy?"

"It strikes us as more than heavy handed to threaten an employee with a crime that requires the 'knowing' destruction of public records when the Borough policy actually requires the deletion of such emails," he continued.

While such a policy exists, according to the borough, Miller is incorrectly trying to use it as cover when there are additional laws and policies that apply to the legal department, where he worked when he was at the borough.

"We not only have our computer use and retention policy for the borough," Dolan said in a recent interview, but the borough must also follow the state records act and has a duty to retain evidence in cases it is litigating. "We can't destroy records in an ongoing case."

The borough has disputed that Miller's sudden deletion of more than 15,000 e-mails is somehow representative of his normal routine. The e-mails didn't disappear methodically over time, his former bosses have said. They disappeared in a burst, weeks before he ended up leaving. And since Miller was deeply involved in important litigation — the valuation of the trans-Alaska pipeline — Miller's bosses were distressed to find his e-mail box empty, particularly since they believe he was keenly aware of his duty to protect — and not delete — potential case evidence.

Once during the TAPS litigation, it was Miller's e-mail account that the legal team sought to fulfill a court-related obligation to deliver materials it had to the other parties, according to Broker. When another employee's relevant e-mails were inadvertently deleted, it was Miller's e-mail account that the team tapped to obtain the needed items.

"The record destruction policy is not followed when you have a litigation hold," Broker said.

The borough's e-mail system is backed up two times a day and also weekly, monthly and yearly. By going to the most recent backup, the borough recovered more than 15,000 e-mails that Miller had attempted to get rid of in the mass dump. But concerns remain that some e-mails are still missing.

Miller has asked the borough to verify that it has checked its hard files for copies of e-mails it may be concerned about. It would be "puzzling" if those were missing, Van Flein wrote, since Miller had a habit of printing out important e-mails.

But storing e-mails through a printed copy or electronically is yet another point of contention between the former government attorney and his former colleagues.

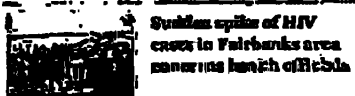
"If 15,000 e-mails had been printed off, we'd know it," Broker said. "They'd be somewhere in our office, particularly if they had been printed off a day or two before they were deleted. It would have overwhelmed our system."

Besides, records are kept electronically so that they can be easily searched, she said.

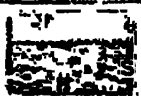
In his Dec. 6 letter, Miller requested a list of the e-mails the borough had managed to restore so that he could ascertain what, if anything, might be missing.

Without the list, the search will take more time and "we would have to address the borough's obligation to pay for the time that would entail," Miller's lawyer said.

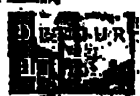
Contact Jill Burke at jill@alaskadispatch.com.



Sudden spike of HIV cases in Fairbanks area concerning health officials



Iron Dog thriller Top teams roar into Nome just minutes apart



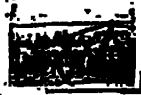
Take a 'Detour' with Alaska author's new book

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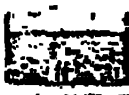
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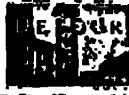
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Take a 'Detour' with Alaska author's new book

Political Animal

Miller's e-mail explanation due Monday

Jill Burke | Dec 06, 2010

UPDATED: Here's what Joe Miller's lawyer had to say in response to the Fairbanks North Star Borough.

The Fairbanks North Star Borough, where U.S. Senate candidate Joe Miller once worked as a part-time attorney, is losing patience in its quest to get answers from Miller about how and why thousands of e-mails went missing from his borough account in the weeks leading up to his resignation in August 2009.

"A former employer of Republican Joe Miller is threatening to take its concerns about missing e-mails to investigators or the Alaska Bar Association if Miller doesn't immediately respond to questions surrounding the matter," The Associated Press reports. "The Fairbanks North Star Borough set a Monday deadline for Miller to provide any e-mails or any other documents he has in his possession relating to FNSB business."

Although the borough isn't yet sure what its final move will be, borough attorney Rene Broker, who was also Miller's boss, told Alaska Dispatch in a recent interview that she would go to lawyers at the Alaska Bar Association for advice before deciding whether to recommend criminal prosecution. It's an attorney ethics issue, Broker said, and she wants guidance on what she and Miller, who are both attorneys, are required to do under these circumstances.

"I just want some assistance in determining what happened here and making sure we have all the records that we should have," she said. "I have no interest in going against his bar license." If the borough decides to refer the matter for criminal prosecution, it could go to either Fairbanks police or the District Attorney's office, Broker said.

The borough and Miller have been in a standoff over the e-mails for weeks. Miller has denied any wrongdoing and has also criticized the borough for waiting more than a year before pursuing the e-mails, alleging that the borough only raised the issue this fall as a way to hurt Miller's reputation before the Nov. 2 General Election. The borough, which was able to restore more than 15,000 of the e-mails by utilizing its back-up system, called claims "preposterous" that any damage to Miller's political image was intended.

Connect Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).



Sudden spike of HIV cases in Fairbanks area concerns health officials



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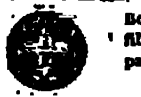
Political Animal

Miller: Murkowski's seniority not an issue






Alaska Dispatch | Dec 02, 2012

Joe Miller doesn't believe Lisa Murkowski's seniority is in jeopardy should his legal challenge to the U.S. Senate election results move slowly, the tea party-backed candidate told **KTVA Channel 11**. Check out Matt Felling's interview with Miller from Thursday evening.

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Race in the Arctic is on, but US and Alaska are riding a nag



Video: What happens when a moose wanders into an Alaska hospital?

Joe Miller

The case of Joe Miller's missing e-mails

Jill Burke | Dec 02, 2010



In October, as Alaska Dispatch and other media faced off with U.S. Senate candidate Joe Miller in court over the release of his employment records, Miller was quietly battling another firestorm that was building to a head under the noses of Alaskan voters.

The Fairbanks North Star Borough, where Miller spent seven years working as a part-time government attorney, had put the tea party-backed candidate on notice that it was reviewing whether Miller should face criminal charges over e-mails that went missing from

his borough account in August 2009. The borough's questioning of Miller over the missing e-mails was confirmed to Alaska Dispatch this week, and the criminal investigation remains a possibility still today.

"I don't want to overreact, but I do feel like I need to get to the bottom of it," borough attorney and Miller's former supervisor, Rene Broker, said Thursday from her office in Fairbanks.

At issue are some 15,000 e-mails that vanished from Miller's borough e-mail account, a find Broker made in the days following Miller's abrupt resignation from the borough in August 2009. More than a year later, Broker is still waiting to hear from Miller about how the e-mails managed to get deleted.

Although questions surrounding the missing e-mails have lingered for more than a year, it's only been recently that the borough has directly confronted Miller over what took place.

In October Broker told Miller in a letter that destruction of e-mail records is a felony. Broker said she wants to know whether all of the missing data has been recovered and why it initially vanished from Miller's account. She said this information will help the borough decide how to proceed. Currently, the borough is operating in a "factual vacuum," Broker said.

"I don't know what happened here," she said, "and I don't feel good about referring it for criminal prosecution until I understand that."

Letters from October between the borough and Miller's attorneys obtained by Alaska Dispatch show Miller responded to linker's concerns a little more than a month ago. In those letters, however, he did not offer details that might alleviate the borough's concerns, but he did accuse the borough of illegally trying to interfere with the election by threatening a candidate.

On this issue, the Alaska Republican Party, which backed Miller in the general election but is now urging him to concede in light of write-in candidate Lisa Murkowski's apparent win, is once again on Miller's side.

Alaska GOP chairman Randy Ruedrich calls the borough's efforts to look into the vanishing e-mails nothing more than a political smear by a Democratic administration against a Republican candidate. If the borough had the e-mails backed up, as would be expected, Ruedrich wonders what the big deal is and why it has become an issue so many months after the fact.

"This is cheap drama," he said. "The whole thing is disgraceful -- I have no idea what (the borough's)

purpose is. I just find the whole thing disgusting."

A request for comment from the Miller campaign was not returned.

The case of the missing e-mails

By Sept. 9, 2009, just over a week after Miller had resigned from the Fairbanks North Star Borough, records show that Broker had become aware that something was "very wrong." Miller's e-mail account was empty. Her discomfort was obvious in an e-mail she wrote at the time to the borough's IT department:

"Uh, how can years of e-mails (e.g. public records) disappear? And when exactly did they disappear? I'm extremely alarmed now as we are only in 2008 of at least 4 subsequent years of (trans-Alaska pipeline) litigation years which will mean that all of his e-mails dating back from 2006 through 2009 are discoverable but you're telling me they are no longer on the system? I need to get to the bottom of this immediately."

As a borough attorney, Miller at the time was involved in sensitive and important litigation involving valuation of the trans-Alaska pipeline, which carries more than 10 percent of U.S. domestic oil production.

All of Miller's sent e-mails were gone, as were any e-mails more than one month old.

Steve Smith, the borough's IT supervisor, suspected the answer was simple: Miller "pruned" his e-mails often, routinely keeping his account fairly clean. But Broker insisted that so many e-mails missing on such a large scale was highly unusual.

Ultimately, the borough restored more than 15,000 of Miller's e-mails by retrieving them from backup servers. But there's no way to know if everything was successfully recovered, Broker said. Although the matter of how and why the e-mails went missing remained unresolved in late 2009 after Miller left his job, Broker decided to back off for a while. Hoping for calmer heads after the dust over Miller's sudden departure had settled, she assumed that eventually an explanation would come.

'Investigating this matter'

Less than a year after leaving the borough, Miller launched a lofty political goal, emerging as a conservative insurgent on a mission to seize Murkowski's Senate seat. With each campaign success came heightened public scrutiny, and suddenly the borough found itself dealing with mounting requests for information about Miller and his employment history.

It was in one such request, dated Sept. 16, that the borough became aware that knowingly suppressing or concealing a public record is a crime under Alaska law. A Washington, D.C.-based political strategy and research firm called New Partners -- which boasts a long list of operatives who have helped successful Democratic bids for office, including Barack Obama's presidential campaign -- had included a reference to the criminal statutes in a letter requesting access to Miller-related records.

Three weeks later the borough sent a letter to Miller stating that it "recently discovered that the destruction of public records is a criminal act." In the Oct. 7 letter, borough attorney Jill Dolan asked that Miller preserve any public records he may have -- e-mails or other documents -- relating to borough business, including e-mails sent to or from six personal accounts he was known to use.

"The (Fairbanks North Star Borough) is investigating this matter, and whether it should be reported to authorities to determine whether criminal charges are appropriate," Dolan wrote. "Any information Mr. Miller has in this regard will be helpful in making this determination."

As Dolan and Broker worked to clear up the strange e-mail episode, they and Miller were in the middle of a separate and very public battle over the release of Miller's employment records. Alaska Dispatch wanted access to items previously withheld from Miller's file and had put the borough on notice that it was prepared to take the dispute to court.

At the time, questions had been raised over whether Miller had been disciplined in 2008 for using

government computers for his own political gain. But with just weeks before the election, Alaskans had no way to know that another situation involving professional ethics and on-the-job behavior was also unfolding.

"We took great lengths to protect his privacy," Dolan said Thursday from Fairbanks. "We certainly did not treat that as something we were going to throw out in the open prior to the election."

Internal e-mails from 2009 related to the concerns over the e-mail dump were among those withheld by the borough from the initial release of Miller's personnel file this summer. When it decided to try to bring the matter to a close, it worked to remain discreet, Dolan said, and took steps not to copy its Oct. 7 letter sent to Miller regarding the missing e-mails to anyone.

It was only after the media sued and won over records withheld from Miller's personnel file, and a judge ordered the release of more information, that documents pertaining to Miller's missing e-mails became public.

Miller's 'line in the sand'

The fact that Miller had been notified that he was at risk of a possible criminal investigation, unbeknownst to the public, raises new questions about whether that knowledge was among the issues weighing on him when he decided to cut off media questions about his past.

Four days after the borough gave Miller this notice, and with questions piling up over accusations that Miller had used borough computers for his own political gain, he told a room full of reporters that "we've drawn a line in the sand. You can ask me about background, you can ask about personal issues — I'm not going to answer."

Less than a week later, his security guards handcuffed Alaska Dispatch's editor at a town hall meeting after the journalist asked the Senate candidate questions about his history with the borough. The following weekend, on Oct. 22, a judge ordered the borough to release more of Miller's employment records.

Meanwhile, a standoff had erupted between Miller and the borough over the deleted e-mails, and the Nov. 2 election was just days away.

Threatening a candidate is a crime, Miller's lawyer says

Within three days of receiving notification from the borough that it was looking into the e-mail issue, Miller attorney Thomas Van Flein fired back. He accused the borough of interfering with the election, and also took issue with the borough's fears that important documents might have gone missing. It's the Internet, and "all along the electronic highway, servers are dutifully copying the email, the replies, the entire chain," Van Flein told the borough in his response. Deleting an e-mail doesn't eliminate its existence altogether, he reasoned.

Besides, Miller printed copies of everything for the borough's "hard files." And the borough's e-mail policy encourages employees to maintain clean accounts. "If, as Ms. Dolan states, the deletion of an e-mail is now a criminal offense at the Borough, it feels like everyone at the Borough will have to be indicted, and the Borough itself will be complicit in soliciting such 'crimes'," he wrote.

Van Flein, who has also been Sarah Palin's lawyer, raised the stakes even further. "It is rather transparent that the Borough has no legitimate concern over these e-mails, and the fact that it has waited 14 months to now mention it, contemporaneously with an election, ties the threatening letter temporally with this election," he said. "What was your purpose — to falsely threaten Mr. Miller with criminal prosecution to intimidate him so he would stand down his campaign? I can tell you that is how the letter reads."

Threatening to accuse someone of a crime and to hurt their reputation is a crime under federal law, Van Flein said. And he noted that under state law, spreading false information about a candidate is considered campaign misconduct and a misdemeanor.

Later that same day — Oct. 28 — the borough told Van Flein his accusations of election tampering

were "preposterous" and took exception to Van Flein's version of Miller's e-mail habits. The borough never found the hard copies of files that Miller claimed he'd made, Dolan said in a letter responding to Van Flein. The borough "has no evidence that this ever occurred," she wrote, adding "In fact, Mr. Miller completely cleaned out his office prior to his alleged unplanned resignation from FNSB employment and no hard copies of e-mails were found."

Dolan continued: "Mr. Miller was not regularly deleting e-mails -- the evidence is that he deleted all of his e-mails around the same time, just shortly before he resigned. Mr. Miller has an ethical duty to preserve files both during and after his representation of the FNSB because it was his client, and he has a duty to surrender to his client any papers and property to which the client is entitled."

In interviews Thursday, Dolan and Broker said they've heard nothing further from Miller or his attorneys and that the investigation into the deleted e-mails remains under way.

If the borough decides to refer the matter for criminal prosecution, it could go to either Fairbanks police or the district attorney's office, Broker said. But the borough isn't sure what its final move will be.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).



Former Palin aide Bailey faced nearly \$25,000 for insider details in his book



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Joe Miller

Ketchikan Judge to hear Miller's election case

Jill Burke | Nov 30, 2010

One day after it was moved out of Fairbanks to Juneau, Joe Miller's legal fight has been bouncing among available judges. For now, Judge William Carey of Ketchikan is assigned to preside over the case, provided Miller doesn't exercise his right to bump the proceedings to another judge's courtroom.

Ketchikan sits on an island near Alaska's southern border with Canada, 235 miles south of the state capitol of Juneau. It's not yet clear whether Carey will attend Wednesday's status hearing in person or if he will run things from afar by calling in by phone. The case was ordered out of Fairbanks earlier this week to get it closer to the physical location of the ballots in case they need to undergo inspection as the case moves forward.

After arriving in Juneau, the case was first assigned to Judge Phillip Pallenberg, who immediately recused himself. It then went to Judge Trevor Stephens of Ketchikan, who was promptly taken off the case following a peremptory strike made by the state of Alaska Department of Law, which is representing the Division of Elections. The Department of Law declined to comment on why the state's attorneys didn't want Stephens on the case. Peremptory strikes aren't uncommon and each side is allowed to make one.

Pallenberg was appointed to the bench in 2007 by Gov. Sarah Palin and Stephens in 2000 by Gov. Tony Knowles, and both men were retained for near terms in the Nov. 2 election. Prior to the election they were recommended for retention by the Alaska Judicial Council, on which Miller's wife, Kathleen Tompkins-Miller, sits. Council records show that Tompkins-Miller voted with the council to make a recommendation to retain both judges.

Judge William Carey is a 2008 Palin appointee.

Contact Jill Burke at jill@alaskadispatch.com.

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Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



Boy Scouts' perversion files: Alaska abuse cases part of larger problem

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Joe Miller

Miller election case moved to Juneau

Jill Burke | Nov 29, 2010

Joe Miller won't be waging his legal fight over the outcome of Alaska's U.S. Senate race from his hometown of Fairbanks. On Monday afternoon, a Fairbanks judge ruled that Juneau is a better location, and Miller was there in the courtroom to hear the news for himself.

Superior Court Judge Douglas Blankenship initially ruled that the Fourth Judicial District in Fairbanks was a proper venue for the case, given Fairbanks is one of the state's voting districts. If the case could be restricted to a purely legal argument and there was no need to get into matters of fact to be decided at trial, the case would be OK to remain in Fairbanks, he said. But anticipating that issues are likely to arise over the ballots themselves, Blankenship went on to rule that Fairbanks would be an inconvenient location for the state, causing unnecessary time and expense.

"It is my belief that this case should be transferred to the First Judicial District in Juneau," Blankenship told the courtroom, noting that the ballots and election registers are located in Juneau, and that it didn't serve the people of Alaska, or the need for an expeditious outcome, by changing the venue and the judge later in the process.

Blankenship also expressed concerns about damaging the integrity of the election -- the very issue on which the legal challenges are mounted -- by moving election registers or ballots away from where they are currently stored.

"Further movement of the original ballots is a risk and, as I stated, we are here for the integrity of the election and performing any acts that further risk the integrity of the election may not be prudent," he said.

Because he is moving the case to Juneau, Blankenship chose not to rule on whether to allow Lisa Murkowski to join the case. He will leave that decision to a Juneau judge.

In a court filing earlier Monday, Murkowski, through her attorney Tim McKeever, argued that not only does Miller's court action directly affect her, she has her own disputes with the Division of Elections over the vote count and can't rely on the division to adequately represent her interests. Murkowski believes ballots on which the oval was not filled properly but on which her name was written should be counted as valid. Currently, those ballots are excluded from the official count.

The Murkowski team is also taking aim at Miller's claims of unfairness and impropriety with the ballot count, calling the allegations "a sharp detour away from both the truth and reality." Among the misrepresentations, according to McKeever, is Miller's allegation that he didn't have time to mobilize election observers in time for the hand count of write-in ballots in Juneau. But Alaska Republican Party Chairman Randy Ruedrich directly contradicts that representation in a signed affidavit accompanying Murkowski's filing.

Ruedrich, who says he had frequent contact with the Miller campaign and staffer Matt Johnson via phone, calls Miller's claims of unfairness and inability to prepare "false and self-serving."

On Nov. 5, two days after the count timeline was announced, Ruedrich said in his affidavit, "I was told by Mr. Johnson that (the Miller campaign was) ready for the hand count, they had made travel arrangements and had the necessary number of folks recruited to help with the hand count. No one told me that they were unable to recruit and train observers for that hand count." The count was to

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At Monday's hearing, Thomas Van Flein, Miller's lawyer, indicated that the Miller campaign did have some observers on the first day of the count, but not enough to cover every table. He claims it took a day or two to have everyone in place.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).

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Steve Amstrup: Not too late to save polar bears, and ourselves



Lawyers clean up in Unalaska's EPA wastewater fight



Kenai Peninsula landscape radically altered by typhoon-like storms

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Joe Miller

Alaska's Senate race: Miller pushes on with legal fight

J.R. Burke | Nov 29, 2010



Don Derogier photo

Joe Miller won't be waging his legal fight over the outcome of Alaska's U.S. Senate race from his hometown of Fairbanks. On Monday, a Fairbanks judge ruled that Juneau is a better location, and Miller was there in the courtroom to hear the news for himself.

"I appreciated his conscientious approach," Miller said of the judge's decision at a brief press conference held in the hallway outside the courtroom following the hearing.

Superior Court Judge Douglas Blankenship initially ruled that the Fourth Judicial District in Fairbanks was a proper venue for the case, given Fairbanks is one of the state's voting districts.

If the case could be restricted to a purely legal argument and there was no need to get into matters of fact to be decided at trial, the case would be OK to remain in Fairbanks, as Miller had argued, he said.

Miller, who ran in the Senate race on the GOP ticket, is challenging write-in candidate Lisa Murkowski's apparent victory. The state has awarded Murkowski 101,088 votes -- more than 10,000 compared to the 90,740 votes that went to Miller. Miller has challenged 8,159 of Murkowski's votes, but even with that group tossed out, she remains 2,189 votes ahead of him, or 1.19 percent of the total votes cast between them. He'd need to shave that gap to a little more than 900 -- or .5 percent of the total votes cast for the two candidates -- in order to force the state to pay for a recount. Otherwise, if he requests a recount, Miller will need to foot the bill.

Anticipating that issues are likely to arise over the ballots themselves, Judge Blankenship went on to rule that Fairbanks would be an inconvenient location for the state, causing unnecessary time and expense in litigating matters of fact in addition to matters of law. Blankenship identified several matters of fact that might arise:

More coverage from Monday's hearing
[Joe Miller's day in court](#)

- The venue is not the most convenient for accepting ballots, 900 more ballots that may result in his reelection;
- allegations by Miller that the Alaska Division of Elections changed the timing of its count;
- issues surrounding how machine-counted ballots were treated compared to those that underwent a hand-review;
- issues concerning whether precinct registers reveal irregularities or violations of procedure;
- and whether ballots deemed defective should have been counted but weren't.

"It is my belief that this case should be transferred to the First Judicial District in Juneau," Blankenship told the courtroom, noting that the ballots and election registers are located in Juneau, and that it didn't serve the people of Alaska, or the need for an expeditious outcome, by changing the venue and the judge later in the process.

"There's a statewide import to getting this done promptly and efficiently," he said.

Miller attorney Thomas Van Flein agreed that moving quickly was in everyone's interest. "We all recognize there is a short time frame," Van Flein said.

Blankenship also expressed concerns about damaging the integrity of the election -- the very issue on which the legal challenges are mounted -- by moving election registers or ballots away from where they are currently stored.

Politics

Murkowski seeks to join rival's election lawsuit

Jill Burke | Nov 24, 2010

Lisa Murkowski wants in on the ballot count fight that's now in state court in Fairbanks. With the case, filed Monday by unrelenting rival Joe Miller, now in play, Miller has effectively delayed certification of the election -- previously scheduled for Nov. 29 -- until after the state court resolves the questions of fairness and lawful procedure that Miller has raised.

Murkowski has a clear vested interest in closely monitoring legal back-and-forth that is likely to take place between Miller's lawyers and lawyers for the Division of Elections, against which the case is filed. Miller wants to close the vote gap that now separates him and Murkowski, and for obvious reasons Murkowski has no interest in seeing that happen. Plus, she wants the case dealt with swiftly to ensure a smooth swearing-in, scheduled to take place in Washington, D.C., in early January.

Both sides say they're also fighting on behalf of Alaska voters. For Miller, that means making sure imperfect votes (those with misspellings) don't cancel out perfectly cast votes. In the case of this particular election, that also means making sure people who voted for Miller have a better chance of not being outnumbered by people who voted for Murkowski. Murkowski's goal is just the opposite -- to ensure as many votes as possible are tallied and considered legitimate as long as "voter intent" can be determined.

"By intervening in the case, Sen. Murkowski seeks to protect the thousands of voters that Mr. Miller seeks to disenfranchise," said Murkowski campaign manager Kevin Sweeney in a prepared statement.

Sweeney, who calls Miller's case "baseless," also thinks there's a chance that Murkowski's lead could increase as a result of the court review, as her attorneys plan to argue that write-in votes on which the oval was not filled in, but on which Murkowski's name was written, should also count.

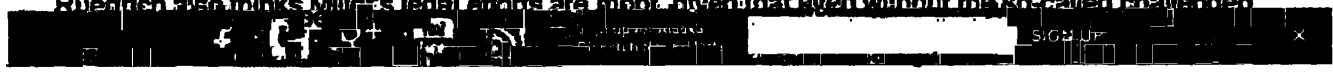
"He could be spending tens of thousands of dollars in legal fees in order to lose by an even larger margin," Sweeney said in an interview Wednesday.

The Murkowski campaign also believes Fairbanks is a poor choice of venue and thinks that Juneau, where the ballots were analyzed and where many witnesses are located, is a better place to hear the case. Miller has declined to respond to requests made by Alaska Dispatch seeking clarification of why he chose to file the case in Fairbanks. If the state doesn't try to move the case out of Fairbanks, Murkowski will, Sweeney said. (On Wednesday afternoon, after our interview with Sweeney, the state did file for a change of venue.)

But before that can happen, a judge must allow Murkowski to join the case as an interested or affected party. Wednesday, she filed the necessary paperwork, but a judge must still weigh in.

Miller's post-election legal challenges aren't winning him any favors within the Alaska Republican Party, which supported him as the people's choice coming out of the August primary. "I am troubled by the unfounded concerns and inaccurate claims expressed by the Joe Miller campaign organization, its supporters and associated individuals," said Randy Ruedrich, the party's chair, in a written statement in which he debunks five of the Miller campaign's claims of election-related malfeasance stemming from the ballot count, including one he paints as a bogus "conspiracy theory."

Ruedrich also thinks Miller's legal efforts are moot, given that even without the so-called challenged



"Lisa Murkowski has 92,929 unchallenged Write-in Votes. Joe Miller has 90,740 votes. The Miller campaign has no outstanding contested ballots for the courts to rule on," Ruedrich wrote. "Lisa Murkowski has won this 2010 U.S. Senate race without adding one challenged counted ballot for Lisa Murkowski."

Even Republican former Sen. Norm Coleman, who eventually ceded the bitterly contentious 2008 Minnesota race to now-Sen. Al Franken, has called on Miller to give up the ghost.

"I think that race is over," Coleman told C-SPAN.

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Lance Armstrong doesn't have a doping problem. He has a money problem.



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Joe Miller

Lt. gov.: Miller election claims 'baseless'

Alaska Dispatch | Nov 24, 2010

Alaska Lieutenant Governor Craig Campbell has so far defended the way the state's Division of Elections has handled the ballot count in the contentious Senate race, but he stepped it up a notch in a recent, prepared statement. According to The Associated Press (via [The Washington Post](#)), Lt. Gov. Campbell's statement dismisses as "baseless" several claims that have been made by candidate Joe Miller in a recent lawsuit in state court. Campbell said that if such allegations continue without response, he believes it "could make members of the public lose trust in a lawful, reliable and consistent process." Miller spokesman Randy DeSoto responded that Campbell "has miserably failed" at his duty to oversee Alaska elections and reiterated Miller's contention that state law is unequivocal on the subject of correctly spelling a write-in candidate's name, adding that Campbell has done an about-face on the issue of "voter intent" since the election ended. Read much more from the AP, [here](#).

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Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



Boy Scouts 'perversion filter': Alaska abuse cases part of larger problem

Politics

Miller-Murkowski: State seeks change of venue in election case

Jill Burke | Nov 24, 2010

The State of Alaska wants Joe Miller's lawsuit over the Nov. 2 election's ballot count moved from Fairbanks to Juneau, and it wants the case to move along at a speedy clip, according to court papers (PDF) filed late Wednesday.

By 5 p.m. it had at least part of its wish: Superior Court Judge Douglas Blankenship has agreed to expedite his decisions on whether to change venues and also on whether to let Lisa Murkowski join the case.

The state wants the issue of venue decided within two working days after the Thanksgiving holiday — no later than Monday, Nov. 29. And it is urging expediency in the case as a whole, arguing that any delays impeding the Jan. 3, 2011 swearing in of Alaska's next U.S. senator serve only to hurt the people of Alaska.

"Time is of the essence," wrote assistant attorneys general Sarah Felix and Michael Barnhill, who are handling the case.

Meanwhile, the state's incumbent senator and the candidate the Alaska Republican Party has declared the clear winner — Lisa Murkowski — is trying to also have a voice in the case. She's filed to intervene on her own behalf, since the ballot counting issues Miller is raising directly affect her. Like the State of Alaska, Murkowski is also urging the judge that matters in the case must be decided quickly.

"If she cannot be sworn in on (Jan. 3, 2011) the State of Alaska will suffer serious, and irreparable, harm," argued Scott M. Kendall, one of her attorneys.

If the election isn't certified in time, Alaska's Senate seat will be vacant and "there are numerous critical issues facing our nation and Alaskans deserve to have full representation in the United States Senate," Kendall wrote in his motion to speed up a decision on whether to let Murkowski join the case.

But that's not the only downside. Murkowski could lose her seniority, dropping from 43rd to 100th, and, "if she is not sworn in as a member, may not be eligible for re-election as ranking member of the Senate Energy and Natural Resources Committee (or of any subcommittee on the Appropriations Committee)," Kendall argued. "The effect on Alaska from the loss of these positions would be very harmful and could be long lasting."

Senate committees organize themselves shortly after the start of the new Congress, and if Murkowski or any senator isn't properly seated in time, they may miss out on key assignments.

As for the issue of whether to hear the case in Fairbanks or Juneau, the state and Murkowski have said Juneau is the better choice.

The state argues that the 258,713 ballots cast in the 2010 election are securely stored in Juneau, its Division of Elections is headquartered there and much of its staff lives there, as do the dozens of part-time workers brought in to help with the count. Holding court in Fairbanks will unnecessarily force the state to spend money on travel for witnesses, not to mention finding and paying for a secure

the safety and security of the ballots while en route to Fairbanks (likely at great cost to the Division), accidents happen in Alaska," the state's attorneys wrote. "There is no need to jeopardize the security of the ballots and registers by transporting them at this point."

The state also believes that Juneau is the proper place to hear the case since it's where the ballot counting occurred.

"The ends of justice will be promoted by transferring this case to Juneau. Public expense will be saved, and ballot security ensured," wrote Felix and Barnhill.

The state expects Miller to continue his fight in federal court, where Miller's election-related legal battles first began, after the state court case is decided, causing further delay to certification. The state is pushing for the state court case to wrap up in time for the federal case to also be heard in advance of certification of the election.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).

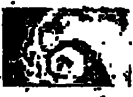
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Joe Miller

Alaska GOP chairman 'troubled' by Joe Miller's post-election fight

Alaska Dispatch | Nov 24, 2010

Alaska Republican Party chairman Randy Ruedrich has again declared Lisa Murkowski the winner in the U.S. Senate race. And he has this to say about Joe Miller: "I am troubled by the unfounded concerns and inaccurate claims expressed by the Joe Miller campaign organization, its supporters and associated individuals."

Ruedrich and Miller haven't always seen eye-to-eye, though Ruedrich did support Miller after the tea party candidate won the GOP primary. Now that Murkowski is the apparent winner in the general election, Ruedrich thinks Miller should give up his legal challenges to the vote count and the Alaska Division of Elections.

Here's a statement from Ruedrich posted on the state GOP's website:

The integrity of Alaska election operations is critical. All Alaskans need to be confident that Alaska elections are fair and conducted with the highest integrity. As your chairman, I have worked closely with the Division of Elections for six election cycles. My personal involvement has convinced me that the DOE conducts first-rate operations. The precinct officials are an excellent set of dedicated Alaskans. I am troubled by the unfounded concerns and inaccurate claims expressed by the Joe Miller campaign organization, its supporters and associated individuals.

Write-in Counting and Voter Intent: Lt. Governor Leman claims to have followed the precise words in the Alaska State statutes in the 2004 and 2006 elections that occurred during his oversight of the Division of Elections.

It needs to be pointed out that there was no significant write-in effort for any candidate during those two election cycle. However in the 2004 General Election, Governor Tony Knowles requested a recount of the U.S. Senate ballots. The original ballot count was 309,937 total with 149,446 for Lisa Murkowski and 139,878 for Knowles. The Diebold AccuVote machines were used in that election as they were this year.

Mr. Leman's DOE Director abdicated the recount using Diebold AccuVote machines with one enhancement. When a ballot for the U.S. Senate race was rejected by a machine, the DOE Director reviewed the ballot to attempt to determine the voter's intent. The recount found 310,978 ballots with countable votes. That was an increase of 1,041 votes determined by Lt. Governor Leman's Director of Elections based on determining voter intent. Murkowski's vote increased to 149,773 while Knowles's vote increased to 140,094.

A witness present during the entire recount confirms these recount details. Further the witness did not see Lt. Governor Leman anywhere around the recount location. Lt. Governor Leman must have forgotten that the Division he supervised did apply voter intent in the 2004 U.S. Senate recount and that process increased the vote count by 1,041.

2) Counting Write-In Votes

The 1990 Governor's race featured a significant write-in campaign. Alaskan voters executed 43,571 write-in votes for governor. The Division of Elections reported the write-ins in their online election

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political figures and folk heroes.

Alaskans definitely provided adequate write-ins. Spelling issues were not disclosed in the DOE documentation and I do not recall any spelling/penmanship issues raised during the 1998 write-in count.

3) A blogger supporting the Miller litigation reported:

What else hasn't been reported in the news is: an audit (audit is in attachment below) was conducted on 40 (out of 438) precincts in Alaska and out of the 40 precincts while most had a 100% accuracy in the vote count, some had a significant amount of votes missed. In District 24, precinct 555, there were 43 missed votes. In District 33, precinct 710, there were 70 missed votes and in District 37, precinct 714, there were 28 missed votes.

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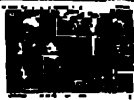
Joe Miller

Joe Miller: 'We can't be making up stuff'

Alaska Dispatch | Nov 23, 2010

KTVA reporter Matt Felling interviewed GOP Senate candidate Joe Miller about his latest court challenge over the election. The Alaska Division of Elections didn't follow the rules during the vote count, he says. "We can't be making up stuff as we go along. I think all Alaskans would agree with that. We have to have a standard."

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Alaska Natives bristle at state fishing restrictions: 'Stay out of my life'



Are Alaska State Troopers becoming a wilderness tax service?



'Duty to produce' Alaska's natural gas? Just about me already.

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Political Animal

Miller takes election fight to state court

Jill Burke | Nov 22, 2012

U.S. Senate hopeful Joe Miller, trailing behind incumbent Lisa Murkowski, makes a few new claims about misdeeds from Election Day that, he believes, could affect the final vote tally. Still, much of Miller's election lawsuit, filed Monday in state court in Fairbanks, is unsurprising. It raises many of the same claims already lodged in a companion lawsuit filed earlier this month in federal court:

- The state had an unlawful counting method (allowing misspellings), which nullified or canceled out votes cast by voters who followed every rule.
- The director for the Division of Elections abused her power and acted as a "super voter" by using her discretion to determine "voter intent" in cases of imperfect ballots (including those with misspellings), to the benefit of write-in candidates (like Murkowski) and to the detriment of other candidates (as with Miller, the Republican Party nominee).
- The count was discriminatory, allowing machine-rejected write-in ballots to get a second chance for inclusion during the hand count, while machine-rejected ballots for candidates with pre-printed names had no second chance.
- Miller wasn't ready in time to monitor the count. Hundreds, if not thousands, more of Murkowski's votes would have been challenged for misspellings or other errors had Miller had time to get his ballot-counting teams mobilized in time (Miller claims an accelerated schedule imposed by the Division of Elections prevented him from getting his people together sooner).

But at least three aspects of his latest legal effort are new. Miller argues that misspellings on the write-in ballots, which division staff counted for Murkowski, may actually have been protest votes — votes meant not to count for Murkowski but to "mock" a write-in candidate.

He's also raising new allegations of Election Day improprieties. Miller says his legal team's analysis of election records shows that in many cases voters do not appear to have shown identification or were personally known to the election worker before casting a regular ballot. He also claims there are several cases where the write-in candidate's name was not written by the individual voter, and that unless in certain cases, like if the voter was disabled or illiterate, such assistance should have been prohibited.

The issue of how much voter assistance is allowable may be contentious as Miller's case proceeds. In October, a statewide manager with the Division of Elections told Alaska Dispatch that workers are on hand to assist a voter who needs it, including helping a Native language speaker spell a write-in candidate's name. Basically, any assistance a voter may need to cast their vote is provided if the voter asks for it, the manager said.

In Miller's complaint — which is categorized as an "election contest or recount appeal" in the state's online record system — Miller continues to criticize the write-in ballot assessments made by Gail Perumiai, director of the Alaska Division of Elections.

"Witnesses to exercise of her discretion describe the process as entirely subjective, inconsistent and whimsical," wrote Thomas Van Flein, Miller's attorney, in the lawsuit.

Monday's filing in state court satisfies conditions from a federal judge, who made his court-ordered delay of the certification of the election contingent on Miller filing his case in state court. Had Miller not filed by the state of Alaska's District Court Judge Ralph Bristling's order would have been

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Political Animal

Updated: Miller gains no traction in federal court, sues in state court

Jill Burke | Nov 22, 2010

Updated 3:55 p.m.: Miller filed suit in Alaska Superior Court Monday. The complaint (PDF) names Lt. Gov. Craig Campbell and the state Division of Elections as defendants and requests an injunction prohibiting the state from counting a variety of challenged write-in ballots and a declaratory judgement that the state violated Alaska statutes by improperly counting certain ballots for Murkowski.

Original Story: On Friday, when U.S. District Court Judge Ralph Beistline told Joe Miller his claims of an unfair ballot count won't be dealt with right away, he meant it. After that order, Miller went on to file two new motions seeking relief, again, in federal court. He wants his machine-rejected ballots and opponent Lisa Murkowski's machine-rejected ballots processed using the same method, and he is asking that the election not be certified until the ballots have undergone the same standard of review.

On Monday, Beistline issued an order reminding everyone that all matters pertaining to the federal case were on hold — including those raised late Friday — until after the same claims have a chance to be resolved in state court. Today is the deadline Beistline set for Miller to file the state case. If he doesn't, Beistline's order to place the Nov. 29 certification of election results on hold becomes void.

Miller argues that voters for write-in candidate Murkowski who didn't properly fill in an oval got "a second bite at the apple" during the hand count of write-in ballots when elections staff individually reviewed ballots for counting and legitimacy. If voter intent could be discerned, elections staff was allowed to include imperfect ballots as valid. Miller claims he would have gained more votes if ballots cast for him that had oval imperfections and were thus rejected by the automatic machines were also put through the secondary review process. Different counting standards for different candidates is unconstitutional, Miller argues.

While there are a flurry of allegations from the Miller campaign about various election-related improprieties, only two court cases have thus far been filed by Miller related to election matters. He filed one in federal court in Anchorage on Nov. 8 in an attempt to stop the Alaska Division of Elections in discerning "voter intent" during the hand count of write-in votes (Miller argues misspellings of Murkowski's name are not legal and that the elections staff has no authority to interpret otherwise). On Nov. 15, he filed a separate lawsuit in state court in Juneau to gain access to election records (Miller argued that division staff, busy with the hand-counts under way, wasn't giving his attorneys swift access to voter records. He wanted to find out if votes in some communities exceeded the number of registered voters.) Miller has since dismissed the Juneau case.

Why file in federal court first?

In an e-mail Friday, Miller attorney Thomas Van Flein explained that Miller's campaign filed in federal court "because it has original jurisdiction for federal constitutional issues, including the Elections Clause issue we raised. The federal judge agreed with that. But before addressing the federal constitutional issue, we are to first determine if the state courts will compel the division of elections to comply with the terms established by the state legislature. If the state courts do so, then there may not be a significant Elections Clause issue to resolve in federal court."

than 1 percent -- between him and Murkowski. Also in interviews with Fox News last week, Miller repeatedly called the Alaska's ballot counting process a "circus" and said he was keeping up the fight because he owes it to Alaska voters.

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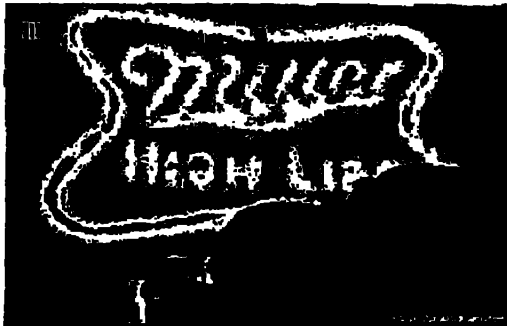
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Politics

Alaska Senate race: Miller orders one more round

Jill Burke | Nov 19, 2010



U.S. Senate candidate Joe Miller does not appear to be willing to let Lisa Murkowski's claim to victory go unchecked. Miller notified a federal judge Thursday that he plans to request a recount in the race, which has already dragged on more than two weeks past Election Day. It's the latest twist in what has been an acrimonious battle over whom Alaska voters will send to Washington, D.C., to represent them in what is arguably one of the most powerful jobs in the nation. And it's got Miller critics shaking their heads.

"At some point he has got to accept responsibility. He lost," said Murkowski campaign manager Kevin Sweeney.

In an affidavit submitted Thursday afternoon in U.S. District Court in Anchorage, Miller states, "given the close vote count in the race for U.S. Senate, I presently intend to request a recount."

Miller attorney Thomas Van Flein filed a motion (.pdf) Thursday asking the court to prevent the state of Alaska from certifying the U.S. Senate election, arguing the process by which write-in ballots were evaluated was deeply and unconstitutionally flawed. Miller's affidavit accompanied the filing, in which Van Flein's main concern appears to be a decision by the state to allow for misspellings of Murkowski's name. That discretion, Van Flein argues, is beyond the framework established by the legislature for determining valid votes.

"Indeed, the risks of adopting such a broad standard are especially acute in a case such as this, where the official making the subjective determinations regarding write-in ballots knows exactly which candidate each decision will benefit, and how many votes each candidate needs to prevail. Without clear, specific criteria cabining the (Alaska Division of Elections) director's discretion, she effectively is permitted to act as a 'supervoter,' likely determining the outcome of the election," Van Flein wrote.

To bolster his point, in addition to the affidavit from Miller, Van Flein included an affidavit from former Alaska Lt. Gov. Loren Leman, who served under then-Gov. Frank Murkowski, father of Sen. Lisa Murkowski. In his statement, Leman said he would not have allowed for less-than-perfect write-in votes to be validated, and further suggested that a determination on whether to allow imperfect votes was a matter for the courts, not election staff.

It is Miller's position that imperfect ballots, including those with misspellings, should be tossed out.

Either way, under the Division of Elections' current count, Murkowski has won. She is more than 10,000 votes ahead of Miller. Even if his challenge over disputes is successful, she will still be nearly 2,000 votes ahead of him. And therein lies what appears to be Miller's newest complaint — that the disputed vote count is actually off. On Wednesday, Murkowski declared victory before some 200 of her supporters in Anchorage. "We fought hard. We fought fair. We fought right, right up to the end," Murkowski said. "What a wild, wild two months this has been."

But in his affidavit, Miller claims that because the hand count of the write-in votes took place earlier

"As a result, an indeterminate number of ballots with candidates' names misspelled were counted without being challenged during the first several days of counting," he wrote.

Sweeney isn't buying it.

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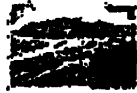
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Political Animal

Election staff 'changed the rules,' Miller now argues

Jill Burke | Nov 19, 2010

Just hours after U.S. District Court Judge Ralph Beistline ruled Friday that Joe Miller's objections to the ballot-count methodology used by Alaska election staff was a matter for the state court to handle, Miller made another attempt to keep the feds in the game.

In a series of new filings, submitted late Friday afternoon, he argues that the state of Alaska improperly changed the rules after votes were cast to allow for a system where election staff could determine at "whim," against state statute, whether a misspelled write-in vote was valid. In the new motion, which seeks to block certification of the election, Miller argues the vote count process in Alaska's U.S. Senate race violates a number of laws including the Elections and Equal Protections Clauses of the U.S. Constitution, the state's own election codes and Alaska's Administrative Procedures Act.

"As the Division counted the write-in ballots, it became clear that it was implementing a discriminatory policy that gave a substantial advantage to write-in candidates," wrote Miller attorney Thomas Van Flein in his latest filing.

The Miller camp takes issue with several aspects of the ballot counting process -- aspects they characterize as blatantly unfair and illegal. They don't like that misspellings of Murkowski's name were allowed. They don't like that the Division of Elections didn't give more notice about its intent to allow for misspellings or the criteria by which it would evaluate which misspellings would and wouldn't be allowed. They don't like that ballots at first rejected by automated vote counting machines because of improperly filled in ovals were later given a second chance for validation during the hand count of write-in ballots.

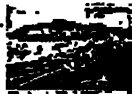
Miller argues it's an unfair double standard, and believes that he deserves a chance to have any machine-rejected ballots that may have been cast for him reconsidered and determine whether "the markings are sufficiently clear to allow the ballot to be counted" using the "same criteria that were applied in determining the validity of the write-in ballots."

"Defendants' policy of counting write-in votes that had been rejected by automated tally machines if the voter's intent was clear -- but not doing the same for other votes -- gave a substantial, unfair, and illegal advantage to write-in candidates such as Lisa Murkowski, and unconstitutionally discriminated against both candidates whose names were pre-printed on the ballot, such as Plaintiff Miller, and voters who unsuccessfully attempted to cast ballots for them," Van Flein wrote.

Contact Jill Burke at jill@alaskadispatch.com.



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Political Animal

Murkowski tells KTVA: 'Miller has looked to blame others'

Alaska Dispatch | Nov 19, 2010

In an interview, KTVA's Matt Felling asks Sen. Lisa Murkowski about Joe Miller's election challenges, the "Don't Ask, Don't Tell" vote, and whether she will serve as a moderate. Here are excerpts, compiled by Felling, from his interview:

Murkowski on Joe Miller's recent challenges:

Throughout so much of this process, Miller has looked to blame others for the fact that the numbers are not going his way. He's made allegations of the Director of the Division of Elections. He's called out the lieutenant governor as an appointment of my father, when in fact he was appointed by Sarah Palin who had supported Joe Miller.

Murkowski on the "Don't Ask, Don't Tell" vote:

I have said that I would work to make sure that as long as it is supported by the troops, as long as it doesn't hurt the performance or the morale, or the recruitment — these are all things we have to take into consideration — I think we will see that play out in this report. If in fact don't ask don't tell is included in the Defense Authorization Act and we get to the point where we can move that bill through — I would not oppose the defense authorization act because the Don't Ask Don't Tell repeal of it is included in it.

Murkowski on following through with her moderate campaign:

I've never been one that aligns myself strictly with Republicans to pass bill and initiatives...I've been working on a childhood nutrition bill with Tom Harkin of Iowa for years now. He was so excited when he saw me on the floor the other day, he said "Good, we can continue this great work we've been working on."

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Joe Miller

Alaska's Joe Miller: Burned at the ballot box?

Peter Dunlap-Shohl | Nov 19, 2010



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Cartoonist Peter Dunlap-Shohl on Joe Miller's post-election fight for U.S. Senate.

Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 20 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at Frozen97th.blogspot.com.

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Alaska Natives bristle at state fishing restrictions: 'Stay out of my life'



Are Alaska State Troopers becoming a wilderness taxi service?



'Duty to produce' Alaska's natural gas? Just shoot me already.

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Political Animal Miller to ask for recount

Jill Burke | Nov 18, 2010

U.S. Senate candidate Joe Miller does not appear to be willing to let Lisa Murkowski's claim to victory go unchecked. In an affidavit submitted Thursday afternoon in U.S. District Court in Anchorage, Miller states "given the close vote count in the race for U.S. Senate, I presently intend to request a recount."

Miller attorney Thomas Van Flein also filed a motion (PDF) Thursday asking the court to prevent the state of Alaska from certifying the U.S. Senate election, arguing the process by which write-in ballots were evaluated was deeply and unconstitutionally flawed. The main concern appears to be a decision by the state to allow for misspellings of Murkowski's name. That discretion, Van Flein argues, is beyond the framework established by the legislature for determining valid votes.

"Indeed, the risks of adopting such a broad standard are especially acute in a case such as this, where the official making the subjective determinations regarding write-in ballots knows exactly which candidate each decision will benefit, and how many votes each candidate needs to prevail. Without clear, specific criteria curbing the (Alaska Division of Elections) director's discretion, she effectively is permitted to act as a 'supervoter,' likely determining the outcome of the election," Van Flein wrote.

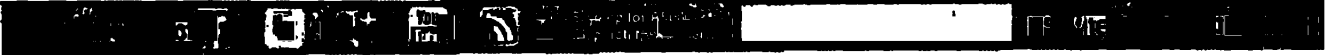
To bolster his point, in addition to the affidavit from Miller, Van Flein included an affidavit from former Alaska Lt. Governor Loren Leman, who served under then-Gov. Frank Murkowski, father of Sen. Lisa Murkowski. In his statement, Leman said he would not have allowed for less-than-perfect write-in votes to be validated, and further suggested that a determination on whether to allow imperfect votes was a matter for the courts, not election staff.

It is Miller's position that imperfect ballots, including those with misspellings, should be tossed out. Either way, under the Division of Elections' current count, Murkowski has won. She is more than 10,000 votes ahead of Miller. Even if his challenge over disputes is successful, she would still be nearly 2,000 votes ahead of him. And therein lies what appears to be Miller's newest complaint -- that the disputed vote count is actually off. On Wednesday, Murkowski declared victory before some 200 of her supporters in Anchorage. "We fought hard. We fought fair. We fought right, right up to the end," Murkowski said. "What a wild, wild two months this has been."

But in his affidavit, Miller claims that because the hand count of the write-in votes took place earlier than initially scheduled, his campaign was unable to adequately train, recruit and mobilize observers. "As a result, an indeterminate number of ballots with candidates' names misspelled were counted without being challenged during the first several days of counting," he wrote.

In addition to ongoing concerns about not being granted access to records from the Diebold voting machines, Miller is also now raising questions about whether the division promptly sent ballots out to uniformed and overseas voters when ballots were requested. "I believe that the validity of all ballots should be determined according to a single, uniform standard, regardless of whether the voter cast the ballot for a candidate whose name was pre-printed on the ballot, or for a write-in candidate," Miller concluded.

When Miller intends to formally request a recount remains unclear. A timeline isn't specified in his court filing, and in an e-mail late Thursday afternoon, Division of Elections Director Gail Fanuniai



the election is due to be certified. "A recount cannot be applied for until after the election has been certified," she wrote.

And with the Miller campaign working to block the election's certification pending its legal challenges over which votes should count, Miller's desired recount could be pushed back even further.

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Steve Amstrup: Not too late to save polar bears, and ourselves



Lawyers clean up in Unalaska's EPA wastewater fight



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Joe Miller

Miller to Fox News: 'It's never over until the count is done.'

Alaska Dispatch | Nov 17, 2010

In an interview Tuesday with Fox News Channel's Neil Cavuto on "Your World," Republican Senate candidate Joe Miller addressed news that Sen. Lisa Murkowski has won re-election in a write-in campaign. The following are excerpts from Fox News' transcript of the interview.

Miller on whether he wants a recount:

"Well, we may.. We may ask for a hand count of our ballots as well. That was the benefit she got. We'll wait and see when these numbers finally sort out here at the end of the week."

"The voters in the state of Alaska expect there to be integrity in the process; we are going to pursue that."

On whether the race is over:

"It's never over until the count is done. I would encourage people to recognize that 255,000 votes were cast in the US Senate race and right now what we have is about a 2,000 vote difference. Less than one percent."

"Obviously, I am less cautiously optimistic than I was before. We owe it to the voters of the state of Alaska to continue the count to make sure it's done properly to ensure there is integrity as part of the process."

On the argument that he would not win even allowing for the 1,000 ballots that have not been counted:

"The process that has gone down so far has been a hand count of the write in ballots. There's not been any hand count of the other ballots. The other ballots have all gone through a machine count process. The machine count historically has had inaccuracies involved in it. We want to make sure we do what we said we were going to do last week, and that is wait for those military ballots to come in, we'll evaluate at that time. We want to make sure going forward that the state of Alaska imposes the statutory standard. That we don't end up having the same sort of thing this race, with an unelected bureaucrat making the call."

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Alaska governor John in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



Boy Scouts 'perversion class': Alaska abuse cases part of larger problem

Political Animal

Miller still not giving up

Joshua Saul | Nov 17, 2010

In a press release sent out Wednesday afternoon, Joe Miller, who currently trails U.S. Sen. Lisa Murkowski by over 10,000 votes, said, "Less than 1 percent of the vote now separates my and Lisa Murkowski's total. If there is a recount and a consistent standard is applied to all the ballots, who knows what the difference would be."

The Associated Press has called the race for Murkowski, who is expected to declare victory Wednesday night at the Laborer's Hall in Anchorage.

Here's the press release:

Miller: Integrity of the Vote is Vital

Anchorage, Alaska, November 17, 2010 -- Joe Miller, U.S. Senate candidate, anticipates the end of the vote counting in Alaska today with the tallying of the overseas ballots. With over 255,000 votes cast, less than one percent of the vote total now separates Miller and Murkowski.

In order to ensure the integrity of the election results, the Miller campaign has requested, and the Division of Elections has now granted, the opportunity to review some precinct logs from throughout the state. Miller campaign spokesman Randy DeSoto said, "Our campaign has sworn affidavits identifying unsecured ballot boxes, other precincts where numerous ballots appear to be in the same handwriting, others where there is 100% voter turnout and still other precincts where the ballots were sent to the Division of Elections presorted by U.S. Senate candidate. These and other irregularities give our campaign pause. Alaskans must be able to trust the results of its elections."

One important step in reviewing the results of the election is ensuring that the number of voters signed in the precinct logs on Election Day matches the number of votes being recorded from that precincts and that there is no evidence of voter fraud. Further verification of these totals will have to come from the tapes that the voting machines produce with a tally of the number of voters and the break down between candidates. So far the Division of Elections has failed to respond to the Miller request for these tapes.

The Miller campaign will be conducting its review of selected precinct logs tomorrow and possibly Saturday, and will want the voting machine tapes as part of its review. The Division of Elections has also begun its required audit of random precincts from all 40 districts throughout the state.

Additionally, the Murkowski write-in ballots have undergone a hand count review where spoiled ballots are being counted for her, whereas the Miller ballots have all been counted by machine with many valid ballots not being included.

Joe Miller said, "After all the absentee ballots are in and we've further reviewed the procedures and the results, we may ask for a recount. Less than 1% of the vote now separates my and Lisa Murkowski's total. If there is a recount and a consistent standard is applied to all the ballots, who knows what the difference would be. We need to uphold the integrity of the vote and we need a consistent standard."

Contact Joshua Saul at jsaul@alaskadispatch.com.

Joe Miller

Alaska GOP: Time for Joe Miller to end his campaign

Tony Hopfinger, Joshua Saut | Nov 17, 2010

As U.S. Sen. Lisa Murkowski arrived back in Anchorage on Wednesday for her presumed victory declaration at 6 p.m., the Alaska Republican Party was already declaring her the winner in Alaska's U.S. Senate race. "At this point we are comfortable calling this race," Alaska Republican Party Chairman Røndy Ruedrich said in a press release. "Lisa has won. We congratulate Lisa on her victory." The Murkowski campaign will be making an "exciting announcement" at the Laborers Hall in Anchorage's Mountain View neighborhood at 6 p.m. Wednesday. The announcement is widely believed to be a declaration of victory. Joe Miller currently trails Murkowski by more than 10,000 votes. "We call on Joe Miller to respect the will of the voters and to end his campaign in a dignified manner," Ruedrich said in his statement. "We have every expectation that Joe will do the right thing."

But Miller wasn't ready to concede yet. In a statement Wednesday, Miller said, "Less than 1 percent of the vote now separates my and Lisa Murkowski's total. If there is a recount and a consistent standard is applied to all the ballots, who knows what the difference would be." He also told Fox News that his campaign may ask the Alaska Division of Elections for a hand count of ballots. "We'll wait and see when these numbers finally sort out here at the end of the week," he said. "The voters in the state of Alaska expect there to be integrity in the process; we are going to pursue that." But in a phone interview Wednesday, Ruedrich said the vote-counting process is "very precise" and that recounts rarely end up with a different result.

Ruedrich's comments come as the state GOP Party faces having to heal wounds resulting from two Republican candidates running against one another in a general election. During the Murkowski-Miller battle, Ruedrich found himself caught in the middle at times, having supported Murkowski over the years. Murkowski lost to Miller in the GOP primary, and Ruedrich stayed loyal to his party, supporting Miller as Murkowski launched a write-in campaign to hold on to her Senate seat. On top of that, Ruedrich hasn't always gotten along with Miller, who just two years ago was trying to oust the party chairman from the state GOP. *(Read Joe Miller's paranoid attempt to overthrow the Alaska Republican Party.)*



Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honey buckets are getting retired



Boy Scouts 'perversion files': Another abuse case part of larger problem

Political Animal

Tuesday night vote count points to Murkowski victory

Joshua Saul | Nov 16, 2010

Even without the ballots challenged by the Joe Miller campaign, U.S. Sen. Lisa Murkowski has more votes than Miller, according to Division of Elections figures released Tuesday night. As of the end of the day Tuesday, the only votes left to count were 460 to 700 special advance ballots. Murkowski has more than 92,000 unchallenged votes, which gives her a lead of over 2,200 votes over the man who beat her in the GOP primary back in August.

With the challenged ballots the Division of Elections has counted for Murkowski, she beats Miller by over 10,600 votes. Here are the vote totals, as released by the division Tuesday night, with 100 percent of precincts counted. (For comparison, Miller currently has 90,488 votes.)

- 92,715 (89.52 percent) counted, unchallenged, for Murkowski.
- 8,153 (7.87 percent) counted for Murkowski but challenged by Miller.
- 2,010 (1.94 percent) not counted for Murkowski but challenged by her camp.
- 612 (0.59 percent) cast for candidates other than Murkowski.

Joe Miller also received 20 write-in votes.

Tuesday afternoon Kevin Sweeney said by that night anyone with basic arithmetic skills would be able to draw some conclusions and that by Wednesday night the campaign would be ready to make a declaration.

"We're not going to be declaring victory today, but we will probably be making some type of announcement tomorrow," Sweeney said.

It seems a safe bet that the announcement the campaign is planning will be a declaration of victory. If Murkowski gets on a plane to come back from D.C. Wednesday, bet the house on it.

According to Sweeney, special advance ballots (up to 700 of them, though likely far fewer) can still be received through Wednesday, as well as a smaller handful of votes from rural precincts that were late arriving.

Miller spokesman Randy DeSoto did not respond to an e-mail or phone message Tuesday afternoon asking if Joe Miller would concede in the case unchallenged Murkowski ballots outnumbered his own votes.

Contact Joshua Saul at jsaul@alaskadispatch.com.



Lance Armstrong doesn't have a doping problem. He has a money problem.



Millions of seabirds offer clues to health of remote Hall Island



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Political Animal

Pundit: 'Joe Miller for president'

Alaska Dispatch | Nov 15, 2010

Bernie Quigley argues in The Hill's "pundits blog" that Joe Miller's increasingly likely defeat at the hands of incumbent, write-in Republican Sen. Lisa Murkowski will prove a boon to him and to the ultra-small-government, states' rights ideologies currently on the rise among some American conservatives. Quigley argues that all the negative press that has dogged Miller this election cycle mirrors the media storm that followed Sarah Palin's selection as Sen. John McCain's 2008 running mate. He argues that attention helped catapult Palin to a national prominence which shows no signs of lessening, and it could do the same for Miller, as well as give a boost to the version of loosely Libertarian, free-market populism currently en vogue. Quigley writes:

This new movement has gone beyond Beck's rants and Mall rallies. Thoughtful and committed people are interested. But it takes responsible new people to lead the way to new thinking and visualization. [Texas Gov. Rick] Perry, Judge Napolitano and Palin form a context, and with Miller as action man, a quaternity: a trail leading to the future.

And concludes:

Sarah Palin is Mama Grizzly of this new movement and Rick Perry is Papa Bear. But there is not now a potentially more effective leader and advocate for the new directions than Joe Miller, and not a better Petri dish for this new experiment in self-reliance and self-determination than Alaska.

Read much more, [here](#).

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Politics

Alaska Senate race: Murkowski gets boost from Miller meltdown

Patti Epler | Nov 13, 2010

Part III: The distinctive blue wristbands have become a badge of honor. No one seems to be taking them off, at least not until Lisa Murkowski has finally been declared the winner of the U.S. Senate race.

The half-inch rubber bands' gold lettering mirrored what has turned out to be the most important message of the campaign: "Fill it in, Write it in." A gold oval precedes Murkowski's name.

With the vote count continuing to trend her way, Murkowski is tantalizingly close to pulling off the biggest upset ever in Alaska politics and one with an even more historic twist. No one has ever won a statewide write-in campaign in Alaska, and it's only been done once in U.S. Senate history — 56 years ago in South Carolina.

Murkowski's unconventional campaign was really two simultaneous efforts. One was to convince people why she was the best choice for the Senate, and the other was to educate people about how to vote for her. The why and the how were linked whenever possible. TV spots on issues always always ended with the "write it in, fill it in" tag, the logo showing Murkowski's name handwritten on the ballot and the oval blacked in next to it.

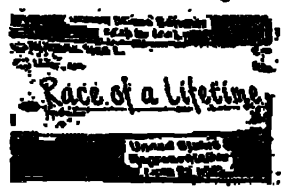
Campaign manager Kevin Sweeney points to the number of write-in ballots that were filled out close to perfectly.

"Fewer than 1 percent of the write in votes didn't fill in the oval," he says.

Heart, intuition and guts

So far, that has added up to more than 90,000 votes. Murkowski strategists aren't surprised — they figured voters would quickly get it — but the notion of writing in someone's name on a ballot had flummoxed pollsters in the weeks leading up to the election. The political professionals had heavily discounted the voters who told them they definitely planned to write in Murkowski. So polls showing Murkowski either close to or ahead of GOP candidate Joe Miller were considered unreliable.

There were no experts to turn to for advice on how to do a write-in campaign, no political science textbooks to read. "A lot of what we went on was just heart and intuition and guts," says Steve Wackowski, Murkowski's campaign spokesman through the general election. "I mean sheer guts for her."



THREE-PART SERIES: How Lisa Murkowski turned the political tables on Joe Miller

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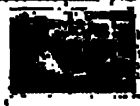
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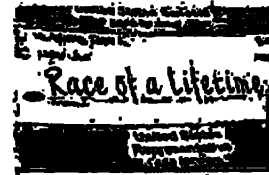
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The simple slogan "write it in, fill it in" was one of the first things Sweeney thought of when he took over as campaign manager in mid-September. Verne Martell, Murkowski's husband, came up with the idea for wristbands after seeing people wearing similar commemorative bands at the funeral for Terry Smith, the pilot who was killed in the Aug. 9 crash that took the lives of Murkowski's good friend and mentor, former U.S. Sen. Ted Stevens and four others.

By Nov. 2, the campaign had produced 18 TV spots and 24 radio ads. Virtually all of them featured



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Photo gallery: Scenes from Election Day.

spell Murkowski.

In the 46 days between Murkowski's announcement at Anchorage's Denaina Center and Election Day, staff sent eight direct mailers to thousands of homes and volunteers made more than half a million phone calls. Over and over again, the campaign drove home the admonition to write it in and fill it in.



At the same time, Murkowski and her crew were working hard to set straight her record as a senator and control the political damage Miller had wreaked during the bruising primary. Her stands on health care, particularly the Democrat-passed sweeping reform bill, and abortion had been especially distorted by Miller, she contended. She emphasized her successes in bringing federal dollars to Alaska, her support of veterans and -- always -- her years of experience and seniority.

But the political death blow to Joe Miller will likely be seen as the Native vote. The rural areas were a prime target, electoral ground that Murkowski needed to win, especially since Miller had done well in some small villages in the primary.

Going after the rural vote

It fell to rural coordinator Paulette Schuerch, an Inupiat Eskimo from Noorvik, to garner support for Murkowski in the villages. Schuerch used Facebook, e-mail, cell phones and landlines to reach people. She made more than 1,000 phone calls. Political care packages stuffed with wristbands, practice ballots and other campaign materials were sent directly to key supporters strewn across the state's vast but sparsely populated regions.



AP Photo/Chris Wedel

A U.S. Supreme Court ruling earlier this year in the Citizens United case allowing unlimited expenditures by corporations and unions turned out to be a huge boost for Murkowski. A new coalition of Alaska Native corporations -- Alaskans Standing Together -- was formed. The group spent nearly \$1 million independently from the Murkowski campaign. It was so active that it often was out ahead of what Murkowski's own team was planning. Murkowski strategist Cathy Allen says more than once her staff had to scrap ads or mailers because they'd turn on the TV and see an AST ad was already up on the same subject.

The Alaska Federation of Natives gave Murkowski unprecedented support. Not only did the group endorse her -- it was only the second time AFN has endorsed a candidate -- but a debate that would have allowed Miller and McAdams to share the stage with her during the mid-October convention in Fairbanks was abruptly cancelled. AFN Chairman Albert Kookesh was unapologetic, telling reporters that it was totally a political decision. Once the group decided to back Murkowski, it made no sense to give the others a platform, he said.

The write-in vote dominated the ballot in all five election districts that spread like a lopsided horseshoe across the vast northern reaches of Alaska and down the coast into the Southeast and the Aleutian chain. The Railbelt and Southcentral are what's left in the middle.

In some rural districts more than 70 percent chose "write in," well above the 40 percent average statewide.

The ease of Internet access into the rural areas surely helped Schuerch solidify the Bush in Murkowski's camp. Alaska has one of the highest rates of personal computer use in the country, and back in Anchorage a team of supporters set up shop in the back room of the campaign's Midtown headquarters. They took the race into cyberspace.

"The Nerdery," as it came to be called, was a collection of young, Internet savvy volunteers who

A horizontal bar containing social media icons for Facebook, Blogger, and RSS, along with a search bar and a close button (X).

They used the Web not only to further the campaign through social networking but to stay on top of the political winds that were blowing fast and furious through the state and, at many times, through the entire nation.

Carol Sturgulewski, Murkowski's sister who spent afternoons at the 36th Avenue headquarters, describes it as a form of high-tech polling because the crew paid particular attention to comments on news stories and blogs, kind of an early warning system for possible trouble spots. They blasted out more than 250,000 e-mails in 46 days.

By early fall, there was plenty of material for The Nerdery to monitor. Media outlets, caught off guard by the Miller GOP primary victory, had begun researching him with zeal. The Democratic challenger, Scott McAdams, was also a political unknown and the press ramped up coverage of him as well. Bloggers from all political spectrums flooded the Internet with tidbits and tales of all three major candidates and the battle for the U.S. Senate in Alaska.

Miller meltdown

Miller was soon being grilled about a range of issues. Farm subsidies. Low income hunting and fishing licenses. A state agricultural loan for farmland he never farmed. His tardiness in filing a mandatory Senate financial disclosure statement. A mysterious hideaway he owns near Willow.

In early October, serious questions emerged about trouble Miller had gotten into when he was a part-time attorney with the Fairbanks North Star Borough. Former borough mayor Jim Whitaker publicly revealed Miller had been disciplined for using borough computers to conduct political business, specifically an attempted overthrow of the state Republican Party chairman, Randy Ruedrich.

Alaska Dispatch filed a public records lawsuit to break free Miller's personnel file from the borough. The Fairbanks Daily News-Miner sued as well, and other media outlets joined in.

Miller's response was to clam up. He told reporters after a debate in Anchorage that he would no longer answer questions about his background. A few days later, Alaska Dispatch's editor was handcuffed and "arrested" by Miller's private security team when he tried to ask the candidate a question after a public town hall.

The Murkowski team reveled in Miller's missteps. Press releases, mailers and TV spots were cranked out underscoring Miller's questionable behavior. When his personnel file was finally released, revelations about the disciplinary action against him were nearly overshadowed by his admission in the file that he'd repeatedly lied about inappropriate use of the borough computers.

The news stories were like political manna from heaven for the Murkowski campaign. Local Alaska news reports were immediately sent on to national press contacts. The Nerdery made sure they went viral.

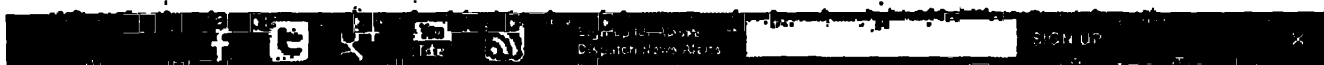
"We made him wear anything bad that came out about him," Wackowski says. "We made sure people knew about it."

"Whitaker coming out was huge," he says. "We sometimes called Joe our sixth man. His campaign was going 60 miles an hour and the wheels just started falling off."

The final two weeks of the campaign were dominated by Miller's borough troubles. The Murkowski camp let him "self destruct," and changed its own advertising message for Murkowski to a soft and hopeful one, tagged simply as, "I believe."

"It was not hard to portray Lisa as a reasonable person," Wackowski says.

The political damage Miller was sustaining seemed irreversible. Nine days before the election, Wackowski accompanied Murkowski to an editorial board meeting at The Frontiersman, the Matanuska-Susitna Valley newspaper, did some sign-waving and went to a hockey game in Palmer. Valley voters had gone strongly for Miller in the primary and it was still considered hostile territory.



Alaska musician Hobo Jim was performing. "Hobo Jim stops playing and says, 'Hey guys, it's Lisa Murkowski.' Everybody just started clapping, and high-fiving and taking pictures."

"That's when I knew there was hope in the Valley," Wackowski says. "I started to think, holy cow, if it feels this way in the Valley, then we must be holding our own here."

Not always toeing the party line

The two-pronged approach seems to have paid off. The voting trend that began with the first data dump on election night has not faltered in the week since the election, when absentees and write-ins have begun to be counted. Those numbers are right in line with what Sweeney had hoped to see. It was also what he'd predicted.



"We felt like we had a goal of reaching 40 percent and banking on a 10,000 vote lead," he says. "Then we would feel confident through the rest of the count and through any legal challenges."

Before the hand count began three days ago, "write-in" held a lead of more than 13,000 votes or about 41 percent. By end of day Saturday, more than 98,000 write-in votes had been cast and 83,113 counted. About 98 percent of those have been awarded to Murkowski — although some 6,500 have been challenged by Miller — compared to about

87,500 votes cast for Miller on Election Day and 57,700 for Democrat Scott McAdams.

Sweeney sees that as evidence of the obvious — that Democrats abandoned their own party to vote for the Republican Murkowski and independents chose her over either Scott McAdams or Joe Miller. He's not surprised because organizations that would traditionally support Democrats — labor unions, for instance — had worked hard for Murkowski.

Murkowski's predicted fracturing of the Republican Party proved to be true, and the broken chips seemed to fall her way. The distance between the party and her campaign allowed her to run a course through the middle, picking up the "anybody but Joe Miller" faction. Her own Alaska Republican Party also splintered publicly once Miller's troubles became known, with longtime party officials disavowing the Fairbanks attorney and backing Murkowski.

"Lisa Murkowski ran as herself," Sweeney says simply. "She was criticized in the primary for not always being in line" with the conservative Republican vote. "That was an advantage to us in the general," he says, "because it proved that Lisa Murkowski was willing to work to get things done for Alaska and not always toe the party line."

'She wanted to do it'

Election night found Murkowski and her supporters gathered at the Denaina Center, on the third floor, where as Wackowski says "it all began." Hundreds of people watched with her as the returns started coming in, chanting the battle cry of the campaign: "Let's make history!"

The early returns were in her favor and have never changed. It was a marked turnaround from primary night, when the first returns put Miller on top. He stayed there through absentee and questioned ballot counts.

"Some people said this would be hard," Murkowski told her crowd on Election Night. "But this was not hard because all of you surrounded me and together we built this campaign."

She talked about the "love and excitement," the "support and hugs," the campaign that was really "all about Alaska."

Losing the primary had been rough and it was nearly the end of her eight-year Senate career. But, with the historic write-in victory within sight, there's some argument to be made that the heart-

Murkowski's cousin, Anne Gore, is one who thinks so. "I think this has been better for her, it's been better for Alaska, it's been better for the Alaska voters," she says.

Sturgulewski can't help smiling when she remembers how her younger sister was transformed by the decision to go for the write in. "She never lost the passion for what she was doing," Sturgulewski says. "She just took off. That spirit in her voice was still there.

"She was doing it because she wanted to do it."

The last week has been a bittersweet one for the cadre of people who had devoted the last few months of their lives to Lisa Murkowski. The rush and crush of the once-in-a-lifetime campaign is behind them and people are starting to drift off, back to what had once been their normal lives.

Steve Wackowski, an Air Force reserve officer, has already gone off the campaign payroll. He says he likely will go back to Washington, D.C., and back on active duty for awhile. "It hasn't set in yet," he says. "Being a part of something like this is special. I don't see this ever happening again in our lifetime in this country."

Cathy Allen is in Jordan, where she has been on and off over the past few months working on another historic election — this one to put a record number of women in Parliament. That appeared to be a successful effort earlier this week, and she will head to Kosovo soon for a similar job before coming back to Alaska in time for Murkowski to be officially named the winner.

Kevin Sweeney isn't sure what he will do. He jokes about whether Murkowski will even offer him his old job back as her state director in her Senate office. He says he's not really ready to look back at the campaign yet because he's still right in the middle of the fight. Sweeney has spent the past few days in Juneau, looking over the shoulders of ballot counters and arguing against the numerous challenges being made by Miller's legal team.

But they aren't the only ones who will look back on fall 2010 as one of the greatest times in their lives. Plenty of people including more than 500 volunteers will be remembering, perhaps a little wistfully, that they helped Lisa Murkowski write this chapter in political history.

"It was stressful, it was exciting, it was all consuming -- and it was worth every minute," says Sturgulewski. "You walk away from this with a sense of really having done battle, having done it the hard way, but done it right. And no regrets."

Part I: The untold story of Lisa Murkowski's write-in decision

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Alaska governor joins in Homer conversation about sexual violence
 Grudgingly slow, rural Alaska's honeybuckets are getting retired
 Boy Scouts' perversion files' Alaska abuse cases part of larger problem

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Joe Miller

Miller sues to get election records

Jill Burke | Nov 12, 2010

As promised, attorneys for Joe Miller filed a demand late Friday afternoon for access to election records from nearly three dozen communities around the state.

In the complaint — filed in state court in Juneau — Miller attorney Thomas Van Flein states the Miller campaign's desire to inspect the records is twofold: "...to count the number of signatures they contain, as well as to inspect the signatures themselves to ensure there was no possible fraud, mistake, irregularity, or inconsistency that could adversely impact the 2010 general election for U.S. Senator."

The campaign believes the Division of Elections' failure to make the records immediately accessible violates Miller's rights and jeopardizes a fair election. "Substantial harm to the public interest will occur if an incorrect election certification occurs," Van Flein wrote in his motion. "There is an imminent public interest and urgency in making sure the electoral process is managed fairly and consistently with the law. Inspection of these records is fundamental to ensuring it is done so."

The election is scheduled to be certified Nov. 29, and Miller wants access to the voter records within the next couple of days, either by inspecting the original records or by getting certified copies. Van Flein indicated that the Miller campaign has been trying to get the records since Nov. 5 and that they have been advised that the Division of Elections is too understaffed to both undertake the current hand counts that are taking place and accommodate Miller's request to inspect precinct registers.

Many of the 34 election registers Miller wants access to are from rural precincts — including villages on Alaska's north and western coasts — although the request also seeks information on voter registries from Anchorage, Wasilla, Homer, Girdwood and Sitka and some Interior communities.

Contact Jill Burke at jill@alaskadispatch.com.



Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



Boy Scouts' past critics file Alaska abuse cases part of larger problem

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Politics

Alaska Senate Race: 'We had to prove this could be done'

Patricia Epler | Nov 12, 2010

The write-in campaign took off with an intensity that fed off Lisa Murkowski's renewed commitment. She never again wavered. Her supporters are certain of that.

She'd come so close to giving up. The day before the incumbent U.S. senator finally announced she was running as a write-in, she was still waffling. She'd even started writing a statement — her family says "she was preparing for a wake." Even with support pouring in from all corners of the state, even the country, and from strangers as well as friends, still she hesitated.

The Republican Party was not going for it. National GOP leaders had closed ranks behind Joe Miller, her chief opponent, soon after he won the Aug. 24 primary. They vowed to help him with cash and sent top advisers to Alaska. Prominent Republican senators from throughout the country issued endorsements.

In Alaska, the party also stepped away from Murkowski, who had been a loyal member since she was 18. Even state party chairman Randy Ruudich, who Miller had tried to oust in 2008, stood with the tea party-backed candidate and against Murkowski.

"We couldn't get pollsters or consultants in the Lower 48," says Steve Wackowski, Murkowski's main press spokesman through the primary and general elections. "They couldn't take us on because of the party. We knew that going ahead if we do this we would have no friends. We were going to be alone."

Murkowski had already resigned her post as vice chairwoman of the Senate Republican Conference, a leadership group. And she knew she risked losing one of her strongest political calling cards — her seat as ranking member on the Senate Energy and Natural Resources committee.

Still, she couldn't get over the hundreds of Alaskans urging her to run anyway. Staff and family passed on dozens of e-mails every day, and not just short notes but messages that came from the heart pleading with her to the right thing for all Alaskans.

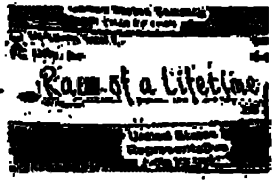
Murkowski decided to listen to the people instead of the party. A long talk with her husband, Veme Martell, cemented the decision. Letting her Senate seat go because the party wanted her to didn't make sense. "This feels wrong," she and Martell agreed.

They never looked back.

'The gloves are off'

It was early Friday morning, Sept. 17. She called family and a couple of key staff members. Then she hopped a plane for home.

Her surprised and delighted staffers picked themselves up and braced for more of the same attacks from the Joe Miller camp and



THREE-PART SERIES: How Lisa Murkowski turned the political tables on Joe Miller

- Part I: The untold story of Lisa Murkowski's write-in decision
- Part II: 'We had to prove this could be done'
- Part III: Joe Miller implodes and Murkowski's two-pronged strategy pays off.

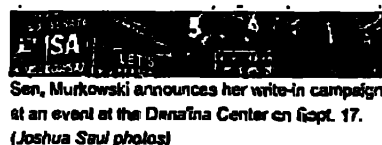


Photo gallery: Scenes from Election Day.



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against Murkowski in the last week of the primary. Former Alaska Gov. Sarah Palin would be weighing in, too, digging at Murkowski on Facebook and Twitter.



Within hours, the staff at Bradley Reid, the venerable Anchorage advertising and media firm, had put together a major announcement event at the Denaina Center in downtown Anchorage. Campaign staffers started dialing phones to get people there and word spread via Internet and phone banks.

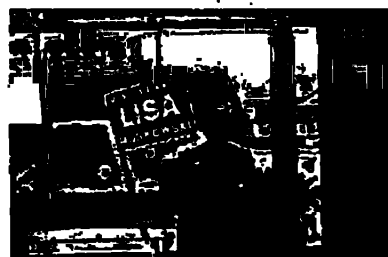
"That particular day was crazy," says Carol Sturgulewski, Murkowski's older sister. "Everybody was on the phone or the Internet."

By 5 p.m., the third floor of the Denaina Center was decked out with signs and balloons. Volunteers manned tables signing up more volunteers and handing out buttons and bumper stickers. A cash bar helped fuel the excitement of the crowd, and just after 6 p.m. Murkowski worked her way through the throng of supporters, stopping frequently to hug people, shake hands and smile a wide smile that came easily and quickly throughout the evening.

"The gloves are off," she vowed that night. Some people cried.

She wrote the speech herself, a call to arms that was full of heart as well as heat.

"When she saw those people cheering for her and she realized the hope that she inspired in them, that is when I saw a charge to Lisa Murkowski," says Wackowski.



A Murkowski supporter holds a campaign sign at the Denaina Center on Friday, Sept. 17.

Finding a cause

At 8 a.m. Saturday morning, staff showed up at campaign headquarters and found people already waiting outside the locked doors. They wanted yard signs, buttons, posters, bumper stickers, anything.

"It's as if people had found a cause," Sturgulewski says.

But the fact was there were hardly any signs or stickers or anything. The campaign had been shutting down since the primary weeks earlier. More than 200 people came by that first Saturday and the staff passed out the last 150 yard signs.

A huge scramble began. More campaign materials were immediately ordered up, and 15,000 pieces eventually went out the door in the six weeks between the announcement and the Nov. 2 vote.

At 11 p.m. that night, Wackowski called his boss. You're on the Candy Crowley show, a CNN political must-do, in four hours, he said. "I know your schedule's free at 3 a.m.," he joked.

But the effort to get national press was serious. The story of her write-in attempt was already captivating the country, not only the media who sent their national political writers to Alaska but pundits and bloggers who saw her run as a direct assault on the tea party craze that Palin and others were fueling in other states. Murkowski had to be the moderate, the reasonable voice, standing up to the tea party.

The time difference between Alaska and East Coast media proved brutal, especially when it had to be squeezed in at the beginning — or end — of already very long days. "We drove her into the ground," Wackowski says.

Kevin Sweeney, who had been Murkowski's state director, took over as campaign manager from John Bitney, who'd acknowledged she needed new blood at the top if for no other reason than to send a signal that this was a whole new effort. Bitney ended up running the campaign's "ground game" in the Mat-Su Valley — Palin's home turf and a region that had trended heavily to Miller in the primary. He brought it back to even in the general.

Sweeney led a new team that included Cathy Allen, who generally works for Democrats, as chief

works for campaigns all over the world. In this case, her passion to make sure women are fully represented in elected office trumped the social and political agenda of a Republican. Allen says she didn't want to lose a decent female U.S. senator.

"She called and I immediately said I'll be right up," Allen says. "She announced on Friday, on Sunday she called me and I was in Anchorage on Tuesday."

Hoping to make history

The campaign also picked up a number of former top staffers that had worked for Ted Stevens, who had died just weeks earlier in a plane crash. Wackowski, Stevens' former press secretary who stepped into that role for Murkowski in the primary, says Stevens' people never forgot how Murkowski stood by their boss when he was facing criminal prosecution in 2008 and later lost his bid for re-election, ending his four decades as Alaska's senior senator.



Supporters hold signs encouraging Murkowski's write-in campaign at the Denaina Center on September 17.

"It's my belief that Ted was a big part of this campaign," Wackowski says now. "The sadness of losing Ted was still in the air when we defensed."

The mission was daunting, the goal of achieving what the experts said was unachievable humbling.

"Going into this we knew we were trying to make history," says Sweeney. "We were trying to do something different that had not been done since 1954 and had never been done in Alaska. So we knew we had an uphill battle."

From the start, the outpouring of support was overwhelming, he says. A thousand people called the campaign in the first week. People who

had never worked on a campaign before began putting in 50 to 60 hours a week.

"I started to think not only is this the right thing to do, but we can actually win this," Sweeney says.

The sheer numbers of people who were calling and coming in gave him confidence that he had a volunteer base capable of running a successful grassroots campaign. And they were highly motivated.

Since the primary, Miller had managed to anger Murkowski supporters and raise eyebrows across the country. A few days after she announced her write-in bid, stories of Miller taking firm subsidies broke, and Murkowski supporters blasted him for the hypocrisy of decrying federal handouts while taking them himself. More revelations about Miller's background and previous problems would soon dominate the campaign. Particularly annoying were what Wackowski refers to as "the asinine tweets." In September, Miller took a trip to Washington, D.C., where he met with party leaders and fundraisers. Somebody with Miller's campaign posted a number of messages on his Twitter feed that bordered on bragging, suggesting he ought to look for a house and office furniture while he was back there.

Murkowski's supporters doubled their efforts, and more volunteers streamed in.

Alaskans 'love an unconventional fight'

Five new field offices opened by the end of September — in Wasilla, Kenai, Juneau, Ketchikan and Kodiak. All were staffed by volunteers itching to lend a hand if the campaign would give them a place to work out of. That allowed what Sweeney calls "a concerted ground game" and a race for the revitalized campaign in a number of different geographic areas.

Allen landed in Anchorage to find no campaign plan of any kind. She was delighted to discover, however, there was plenty of money in the bank. "For a Democrat, that was hog heaven, to start this thing off with money."

In six days, she crafted a budget of about \$1.7 million and created an organizational chart that covered about 20 people.

be done," she says. "We had to convince our own team."

Immediate visibility was critical. Two thousand yard signs went up in seven days. A Democratic phone bank team was put to work and the calls started going out.

The message: It's honorable to challenge the system. More importantly, it's part of being an Alaskan to challenge the system. Murkowski was not breaking the rules, she was off on an adventure that people were clamoring to be part of.

"The ability to come out swinging" also was important, Allen says. "Every time anybody wanted to take a hit at her we had to be able to respond immediately."

A big campaign boost turned out to be "Joe Miller stepping in it every place he went," Allen says.

The communications staff's job soon became one of sending out press releases emphasizing the "stupid things" Miller was doing, she says. "We needed to keep the pressure on him so Alaskans would realize he wasn't a competent alternative, that this guy was not worthy to be part of the team" that had once included Ted Stevens.

Her Democrat opponent, Sitka Mayor Scott McAdams, presented a different strategical challenge. He was a likeable nice guy, but he just wasn't ready to be a U.S. senator, the Murkowski camp argued.

"My job in this campaign was to see to it we didn't say anything negative about Scott," Allen says. "He never did catch fire. He never really moved beyond 16 percent."

The message boiled down to a simple statement about each of the contenders: Joe is not competent to be U.S. senator. Scott is a nice guy but he just can't win. And Lisa can deliver the financial boost from Washington, D.C., that Alaska needs.

Allen sees Alaska as a place where people value hard work and innovative thinking, a place where people love to buck the system. It's what gave rise to Sarah Palin, the tea party and Joe Miller.

"We had to take from Joe the capacity to buck the system," Allen says. "She became a cause. Coupled with the missteps of the Miller campaign, it gave people a reason to want to rally behind her."

"The story about this campaign will be that Alaskans don't just love politics," she says, "they love an unconventional fight."

Part I: The untold story of Lisa Murkowski's write-in decision

Part II: We had to prove this could be done'

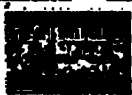
Part III: Joe Miller repackages and Murkowski's two-pronged strategy pays off

Contact Patti Epler at [patti\(a\)alaskadispatch.com](mailto:patti(a)alaskadispatch.com).

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With 'Deadliest Catch' cameras onboard, crabbers head to Bristol Bay



Alaska Federation of Natives: Emphasis on politics with an eye on elections



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Political Animal

Day one of write-in count wrapping up in Juneau

Joshua Saul | Nov 19, 2010

Updated 5:30 p.m.: Election workers counted 19,203 write-in ballots Wednesday in Juneau, with 89.2 percent (17,134) going to Sen. Lisa Murkowski, the write-in candidate trying to fend off GOP candidate Joe Miller in Alaska's historic Senate election. About 8.5 percent of the write-in ballots were challenged by Miller observers.

Murkowski counted and unchallenged: 17,134

Murkowski counted but challenged: 1,629

Murkowski not counted but challenged: 276

{em_slideshow 91}

Updated 4:50 p.m.: The Division of Elections is closing up shop for today; most of the tables are already empty. There are a few workers still counting ballots. They'll work until they finish the precinct they're on, then go home for the night. Elections director Gail Fenumiai expected the day's count to be available sometime after 5 p.m.

Juneau resident Jodie Pessolano, a Miller supporter, will be back tomorrow; she's signed on to observe every afternoon until the counting's done.

"I'm happy to be done," Pessolano said. "It's kind of an adrenaline thing because you don't want to cheat your guy."

Updated 4:15 p.m.: Wednesday afternoon, Lt. Gov. Craig Campbell dropped by to thank the election workers. When Campbell stopped at one table to shake hands, Brett Freyder, a Miller observer in a moustache and a Mariners cap, looked up at him.

"Who are you?" Freyder asked. Campbell introduced himself as the lieutenant governor, to which Freyder replied, "You're the guy making up all the rules." Campbell laughed, shook Freyder's hand, and moved on to the next table.

Updated 3:45 p.m.: One change that took place sometime midday: Miller observers are no longer challenging ballots marked "Murkowski, Lisa." In the morning, those ballots had made up a good percentage of the Miller team's challenges. An attorney for the Miller campaign, John Tiemessen, said once they noticed the candidates had their names on the ballot in that format ("Miller, Joe," for example) it didn't seem worthwhile to continue challenging those ballots.

"It wasn't a big strategic shift," Tiemessen said, adding that he went to Boy Scout camp as a youth with Lance Roberts, one of the 153 write-in candidates who has yet to receive a vote. "It was just an observation we made as time went on."

Overall, the Miller observers seem focused and determined, though they are not pumped about the numbers. "I'd like to see a lot more misspellings, a lot more disqualifications," said Dirk Moffatt, a Miller staffer and observer.

Updated 3:29 p.m.: After election workers at a table have sorted the write in ballots from those cast for Joe Miller or Scott McAdams, and after the Miller observers have made clear which ballots they plan on challenging, one of the workers raises a hand for elections director Gail Fenumiai. Every



Fenumiai's hands. On the inside of her left wrist is a simple tattoo that reads "Faith, hope, love."

After being called to a table, Fenumiai takes a stack of challenged ballots and examines each one. For the ballots she thinks should count for Murkowski, which are the vast majority, she says, "Murkowski." When the Miller observer disagrees with her, which occurs on almost every ballot, they say, "Challenge." Fenumiai then drops the piece of paper into a segregated pile of ballots that are "CC," or "challenged counted."

"I'm holding up OK," Fenumiai said, although she admitted her feet were tired. "I'm like the Energizer Bunny." As she stood counting above a table, an election worker at the adjacent table raised a hand. "I'll be right there," Fenumiai said as she picked up another stack of ballots.

Updated 2:06 p.m.: With 7,638 write in ballots counted, 97.96 percent are being counted for Sen. Lisa Murkowski. That's as of 1:30 p.m., with 7.3 percent of precincts counted. Just under 9 percent of the votes cast for Murkowski have been challenged by Miller observers, and without those challenged ballots, Murkowski's lead could disappear.

Here are the vote totals as of 1:30 p.m.:

Murkowski counted and unchallenged: 8,804

Murkowski counted but challenged: 678

Murkowski not counted but challenged: 89

There have been 56 votes recorded for write-in candidates other than Murkowski, but no more than five for any given candidate. I did see one vote for "Bugs Bunny," but it was written into the race for U.S. House of Representatives.

Murkowski's team say they like the numbers. "It's looking really good," said Scott Kendall, a Murkowski attorney and observer. "The numbers speak for themselves."

Updated 1 p.m.: Miller's observers are on the offensive, challenging a wide range of ballots that have some variation of "Lisa Murkowski" written on them. Dirk Moffatt, a Miller staffer serving as an observer, challenged multiple write-in ballots filed out to read "Murkowski, Lisa", a ballot where "Lisa Murkoski" was written on the line with "Murkowski" written below the line, and a ballot that read "Liz Murkowski." For each of the above examples Fenumiai counted the ballot for Murkowski, though because of Moffatt's challenge the ballot will be segregated. "They're challenging everything," said Ben Ginsberg, a Murkowski campaign attorney who also represented George W. Bush in the Florida presidential recount in 2000.

"They've got a pretty high hurdle. They're trying to toss one in nine ballots," said John Tracy, spokesman for the Murkowski campaign. "They're doing their best."

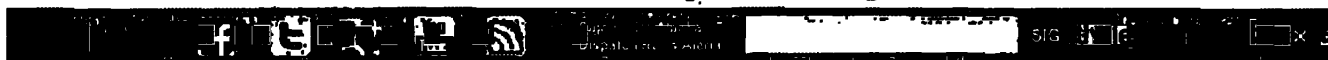
But while Murkowski observers and staff were unhappy about the Miller team's incessant challenges, the Miller campaign was frustrated with what they saw as a lack of communication and preparation from the Division of Elections. A few Miller staff were surprised, as were some reporters, that all the ballots were being sorted today, not just the write-ins. "It's frustrating that the Division of Elections doesn't seem to have it together," said one Miller staffer.

Meanwhile, Lt. Gov. Craig Campbell held a press conference midday addressing Miller's suit to stop the state from counting misspelled write-in ballots.

"The state will continue its efforts to count write-in ballots, unless we hear otherwise from the courts," Campbell said.

Updated noon: Inside an echoing print shop a mile south of downtown Juneau, 30 election workers sat sorting the ballots Wednesday morning that would determine the result of U.S. Sen. Lisa Murkowski's historic write-in campaign. Observers from the Murkowski and Joe Miller campaigns examined each ballot with watchful eyes.

The election workers sorted the ballots into five categories, including one for write-in votes on which



times by assistant attorney general Sarah Felix, walked to the table to sort imperfect ballots into three main piles: one pile of ballots that didn't count for Murkowski, one that would count for Murkowski, and one that would count for Murkowski but was challenged by the Miller observer. The last category will be segregated in case a judge decides against the current process the division is following.

At one table, Fenumiai, flanked by observers from the campaigns, peered closely at a write-in ballot. "I'm going to count this one for Murkowski," Fenumiai said.

"Challenge," said the Miller observer, and the ballot went into the "Challenged Counted for Murkowski" pile.

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Steve Amstrup Not too late to save polar bears, and ourselves



Lawyers clean up in Unalaska's EPA wastewater fight



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Joe Miller

Judge denies Miller's request to stop write-in count

Jill Burke | Nov 10, 2010

Going against Joe Miller's wishes, a federal judge will not stop the hand count of write-in ballots in Alaska's U.S. Senate race. U.S. District Court Judge Ralph Beistline denied Miller's request, filed yesterday, to have the count put on hold while questions are answered about the counting process and whether misspellings of candidates' names will be allowed.

In his decision, Beistline called Miller's request that the court deal immediately with Miller's 37-page motion "patently unfair," and he further ruled that there's no reason to stop the count since election staff is already in the process of separating perfect ballots from those with spelling errors. "Given that the questionable ballots will remain segregated and subject to subsequent review, with the results recorded separately, the Court finds no good reason to enjoin counting the ballots while the underlying Complaint is addressed in due course," Beistline wrote.

However, in the event determining a winner comes down to a need to tally ballots that are less than perfect, it appears the court battle will cause a delay in proceeding until late next week. Beistline has asked both sides to file briefs by Nov. 17 and 18, and he won't decide whether a hearing is even necessary until after the briefs come in.

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).

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Politics

Battle over who will be Alaska's next U.S. senator heats up

Joshua Saut | Nov 10, 2010

JUNEAU -- At the end of a day that saw vote counters for the Alaska Division of Elections studying handwritten votes for "Murkowski, Lisa," "Lisa Murkoski," "Bugs Bunny," and others, incumbent GOP Sen. Lisa Murkowski (the correct spelling) was still optimistic that she will be on her way to an unprecedented victory in an Alaskan election. But then again, challenger Joe Miller was also optimistic.

Of the first batch of write-ins to be counted, the elections agency ruled 97.7 percent were cast for Murkowski. But while the Murkowski staff in Juneau couldn't keep from smiling, given the heady figure of near 98 percent of the election leading votes described so far as only "write-in" -- Senate challenger Joe Miller and his supporters were taking issue with a bunch of the votes approved as Murkowski's.

Of the first 19,203, the Miller campaign challenged 1,629. The Miller camp wants the state to toss all ballots but those that spell Murkowski perfectly.

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If each of the ballots the Miller observers challenged Wednesday was, indeed, thrown out and the early rate of unacceptable ballots, as judged by the Miller campaign, were to continue, Miller would be close to having enough votes to win a Senate seat. Miller won about 35 percent of the votes in the Nov. 2 general election. "Write-in," most of which are believed to be for Murkowski, collected over 40 percent. The rest went to jovial Democrat Scott McAdams from the small town of Sitka, who has already conceded the election.

Miller, meanwhile, has done anything but.

He filed suit in federal court Tuesday to try to get an order tossing all write-ins that didn't spell Murkowski correctly, but a federal judge said the suit could wait until the count was done. (That case is stirring up its own dust.) A possibility remains that there could be more write-in ballots with Murkowski spelled correctly than there are Miller votes, which would render moot any arguments over spelling.

Miller's supporters, however, are getting for Spillingbegets. They have accused Lt. Gov. Craig Campbell, the man who oversees elections, with conspiring to throw the vote to Murkowski by accepting less than perfect spellings. (Here's what Campbell has to say.)

"This will be where the battle is," said Miller campaign spokesman Randy DeSoto, referring to the challenged ballots.

Election workers put in an eight-hour day Wednesday sorting and counting ballots at a print shop a mile outside downtown Juneau, the rainy capital city of Alaska. By day's end, 30 election workers had completed 84 of the 438 precincts, about 70 percent of what Division of Alaska Elections director Gail Fenumiai had planned to complete Wednesday. The counters worked under the watchful eyes of representatives for the candidates and the political parties.

While Fenumiai noted the pace for the count seemed to increase by about 100 percent after lunch, as the election workers got used to the procedure, she still expects the count to take five full days. That means it wouldn't be over until Sunday.



Or at least the count will be over. The lawsuits could then get started.

As of Wednesday evening, the number of "write-in" ballots was still leading the Miller vote by a 10,799. An extrapolation of the trend in challenges seen Wednesday shows that if every vote contested by the Miller camp was tossed, the vote totals for Miller and Murkowski would be extremely close.

Here's the math: Of 19,023 ballots counted Wednesday, 17,134 will definitely go to Murkowski. Of the remaining 2,069, there are 1,629 challenged ballots that could be tossed out in court and 440 votes everyone agrees can be dismissed as irrelevant. They are for candidates like Bugs Bunny ("Lizard People" has yet to appear) or other write-in candidates who don't have a chance, or they suffer some other deficiency.

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Political Animal

Judge in write-in suit recused himself due to 'negative opinion' of Miller

Jill Burke | Nov 10, 2010

Here's the story behind U.S. District Court Judge John Sedwick's decision to have nothing to do with Joe Miller's efforts to block less-than-perfect votes cast for Lisa Murkowski.

Joe Miller's lawsuit to stop misspellings of Murkowski's name from counting as valid write-in votes was originally assigned to Sedwick, but Sedwick quickly removed himself from the case. It turns out Sedwick was the chief judge under whom Miller once worked as a part-time U.S. magistrate judge in Fairbanks, and Miller's sudden departure from the post to instead seek political office left Sedwick with a less than stellar opinion of the man. In fact, Sedwick openly admits he formed a "negative opinion of Mr. Miller," as explained in Sedwick's recusal of himself:

Plaintiff Joe Miller was once employed by this court as a part-time magistrate judge in Fairbanks. Subsequent to Mr. Miller's appointment to that position, I became chief judge of the district. As a result, I also became Mr. Miller's direct supervisor.




Mr. Miller's service came to an abrupt end when he called me to say that he planned to run for elective office and so would have to resign. Mr. Miller called at about 4:20 PM on the day of his resignation. The process for filling a part-time magistrate judge position is lengthy, a fact well known to Mr. Miller because he had gone through that process. Mr. Miller's failure to give reasonable notice of his resignation left the court with no judicial officer resident in Fairbanks, and no ability to fill the vacancy for many months. This incident caused me to form a negative opinion of Mr. Miller.

As a federal judicial officer, it is my duty to discourage political activity by my family members, and I do so. Nevertheless, members of my family have civil rights which they are entitled to exercise. Following the primary election, my spouse contributed to the write-in campaign of Senator Murkowski.

A reasonable person with knowledge of the above facts would conclude that my impartiality might reasonably be questioned. I recuse. The Clerk of Court will please re-assign this case to another judge.

Contact Jill Burke at jill@alaskadispatch.com.

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Political Animal

Campbell: 'The state will continue its efforts to count write-in ballots'

Alaska Dispatch | Nov 10, 2010

Lt. Gov. Craig Campbell, who oversees the Division of Elections, issued the following press release around lunchtime Wednesday:

(November 10, 2010) - Lt. Governor Craig E. Campbell held a press conference today in Juneau regarding the recent lawsuit filed by U.S. Senate candidate Joe Miller, the write-in ballot count and allegations of bias.

Miller filed suit in Federal Court Tuesday in an effort to stop the write-in count from proceeding alleging voter intent is addressed in Alaska state statute.

"From the beginning, it has been our position that slight misspelling of a write-in candidate's name would count. I have not wavered from this stance. The state will continue its efforts to count write-in ballots, unless we hear otherwise from the courts," Campbell said.

Absentee ballots were counted in Division of Elections regional offices yesterday with a total of 27,270 ballots tallied. As of last evening, the ballot counts were 92,528 for write-in candidates and 81,193 for Joe Miller.

Campbell also addressed the issue of voter intent and allegations of bias. "As Alaska's Lieutenant Governor, I believe it is my duty to ensure voters are not disenfranchised," said Campbell. Time and again the Alaska courts have erred on the side of enfranchising voters and I would be shocked if that changed."

He continued, "We have a process in place which is unbiased, fair and respectful of the electorate and state law. It is our intention to ensure that all valid votes are counted and that voters are not disenfranchised."

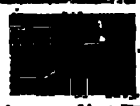
The write-in ballot counting is expected to continue through the end of the week.

Follow the write-in count at AlaskaDispatch.com.

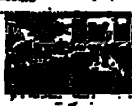
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In Alaska, whose hunting and fishing rights matter most?



Arctic: Sea ice no barrier to bowhead whale mating, study suggests



GCI expands broadband to Northwest Alaska

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Joe Miller

Joe Miller jets to Juneau

Joshua Saul | Nov 09, 2010



Joshua Saul photos

Joe Miller gets ready to depart after a flight from Anchorage to Juneau on Tuesday morning.

The 8:05 a.m. flight from Anchorage to Juneau carried the big names in Alaska's ever-evolving Senate race. Lt. Gov. Craig Campbell and Sen. Lisa Murkowski's campaign manager Kevin Swannoney both sat in first class, while Joe Miller, assistant attorney general Margaret Paton-Walsh, and an NBC News team sat in coach.

Frank Murkowski sat two rows directly behind Miller, but the former Alaska governor and U.S. Senator was just heading down to Wrangell to button up his boat, not to the Division of Elections in Juneau. Before the flight boarded, Miller shook hands and exchanged a few words with Lt. Gov. Campbell, though last week

Miller's campaign criticized Campbell for being biased in favor of Murkowski. Miller declined to answer questions from a Dispatch reporter in the Anchorage terminal, but in the air he woke up from a quick nap to stage a conversation with fellow passengers for the NBC cameraman.

The Division of Elections is counting the bulk of the absentee ballots today and will begin counting the write-in ballots Wednesday. Currently, write-in ballots enjoy a 13,439-vote lead, but that gap will fluctuate as the absentees are counted and the write-in ballots are examined more closely.

Alaska Dispatch will be covering this historic race closely; check back for updates throughout the day.

Contact Joshua Saul at jsaul@alaskadispatch.com.



Former Alaska governor Frank Murkowski prepares to get on the 8:05am flight to Juneau. His final destination was Wrangell. Behind him, in the tan sportcoat stands Joe Miller, his daughter's opponent for U.S. Senate.

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Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting retired



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Joa Miller

Miller sues over misspelled Murkowski ballots in Alaska Senate race

Joshua Saul, Craig Madred | Nov 09, 2010



Joshua Saul photo
Lt. Gov. Craig Campbell and Senate candidate Joe Miller chat briefly at Anchorage's international airport Monday before the two flew to Juneau. Later Monday, Miller filed suit against Campbell and the Alaska Division of Elections.

JUNEAU — As the bulk of the absentee ballots were counted Tuesday in Alaska's still unsettled U.S. Senate race and election officials prepared for Wednesday's determination of whose name is on the race-leading stack of write-in ballots, GOP candidate Joe Miller sued the Alaska Division of Elections in an attempt to stop it "from counting or otherwise accepting as valid any write-in ballots in which the name of the candidate is spelt incorrectly."

The Miller campaign said in the lawsuit ([download here](#)) that it objects to what Miller is calling an "eleventh hour decision to change the rules governing the election." But Lt. Gov. Craig Campbell, the man charged with overseeing Alaska elections, and elections director Gail Fenumiai have been clear from the start of the process that they plan to count "minor misspellings" of the name Lisa Murkowski, former Gov. Sarah Palin hand-picked Campbell to be in line for Alaska's lieutenant governor.

Murkowski, a Republican and the Senate incumbent, staged a massive write-in effort after losing in the Aug. 24 primary to Miller, a Yale-educated attorney from Kansas by way of Fairbanks. (Read the Alaska Dispatch pre-election coverage [here](#).) Ballots classified only as "write-ins" led those cast by Miller by 11,333 votes after 27,270 absentees were counted. Slightly more than 12,000 absentees remain to be counted, plus 12,279 questioned ballots — only some of which are expected to be ruled valid.

Miller's attorney is now arguing that the last name "Murkowski" must be spelled perfectly on all write-in ballots for any of them to count as votes for Alaska's senior senator.

Campbell said Tuesday afternoon he has been advised by state Attorney General Dan Sullivan that such an interpretation is too narrow. "It's a policy decision that minor misspellings will count," Campbell said.

John McKay, an attorney for Alaska Dispatch familiar with past election rulings in Alaska courts, said judges have been sticklers about coloring in the ovals on ballots, but if the ovals are properly filled, the jurists have been lenient in regards to the spellings of the names of write-in candidates. As a general rule, McKay said, Alaska judges seem to be of the opinion that if a voter went to the trouble of following the rules closely enough to color the oval, he or she wanted the vote to count, and election officials should thus do everything possible to discern who the voter was trying to pick as their candidate. Campbell said last week, however, that he expects spelling to be an issue.

The election could hinge on what variations of "Murkowski" election officials, or the courts, decide are acceptable. Dan Fagan, an Anchorage radio talk show host, went on the air prior to the vote to repeatedly tell people to spell the candidate's last name "Mur-COW-ski", which could open the door for the state to argue that voters who spelled it that way were just doing as they had been told. The winners have been further muddled by efforts made by Miller supporters in other forums to encourage misspellings of the Murkowski name.

Write-in ballots will be sorted into five categories Wednesday, according to the Division of Elections. Murkowski ballots will go in one pile. Ballots that have variations on misspellings of Murkowski will be

who will be sitting at the tables with election workers.

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Political Animal

Video stokes Miller's concern over electioneering

Alaska Dispatch | Nov 08, 2010

Editor's note: Early Monday morning, Nov. 8, the Joe Miller for U.S. Senate campaign sent out the following press release, reprinted below verbatim. The release links to the video we've embedded here.

Miller Questions Use of Taxpayers' Dollars to Influence U.S. Senate Race

North Haven Community Housing Federal Government Contractor Linked to Anti-Miller Electioneering; SuperPac 'Alaskans Standing Together' Pours Over a Million Taxpayer Dollars into Race Against Miller

Anchorage, Alaska. November 8, 2010 -- Joe Miller appeared on "Huckabee" (Fox News Channel) over the weekend, and addressed his concerns about electioneering that occurred in the

Alaska U.S. Senate Race.

The show featured a surprising video that was shot the day before last week's election. The video was taken at a federal construction site (North Haven housing development on a Fairbanks military installation) where a supervisor was supposed to give a "safety speech" but it quickly turned into electioneering on behalf of the write-in candidate.

Such electioneering likely violates federal law. The employees were getting paid with taxpayer money to listen and be instructed how to vote. The location was federal property, also making this illegal. See 11 CFR Sec. 115.2. In short, the taxpayers were paying for a political rally on federal property, since the rally attendees were all on the clock.

"This raises still more concerns about the corrupting influence of federal contracting in Alaska and the role federal tax money illegally played in influencing this election," said Joe Miller.

The SuperPac, "Alaskans Standing Together" (AST), funded almost entirely by privileged no-bid federal contracting corporations, poured \$1.2 million to influence voters against Miller. An FEC complaint is pending regarding these questionable expenditures. (See Miller Campaign Press Release "Nine Benefactors of 'Alaskans Standing Together' in Violation of Federal Election Laws", Oct. 20, 2010)

As noted by National Review, there was an obvious quid pro quo between the corporations, whose very profitability depends on federal handouts, and efforts to elect Murkowski who promised more federal largesse. (National Review, "Murkowski's Quid Pro Quo", Oct. 18, 2010).

Joe Miller also said "Alaskans need to know the pervasive and illegitimate sway that federal dollars can have at the local, state and national levels."

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Joe Miller

Joe Miller upset that validation of absentee ballots has started

Alaska Dispatch | Nov 06, 2010

Tea-party-backed Senate candidate Joe Miller claims the Alaska Division of Elections has called the voting process "into question" by failing to notify his campaign that it has started to validate absentee ballots. Here's what he had to say in a press release Saturday:

Division of Elections Fails to Notify Miller Campaign of Absentee Ballot Validation

Anchorage, Alaska. November 6, 2010 – The Joe Miller for U.S. Senate Campaign is concerned that the Absentee Ballot validation process began yesterday at 10 a.m without notification to the campaign. The Miller Campaign was told of the news from a Republican Party member approximately 11am yesterday who was informed of the decision that morning. In an e-mail to the Miller campaign, the Director of the Division of Elections, Gail Fenumalai, stated, "It is not the practice of the division to contact candidates or parties to notify them of the review dates," even though the DOE's "Election Observers' Handbook" [version B14 (Rev 11/07), page 8] provides that the Division must "notify" the campaign

"24 hours in advance the time of ballot review..."

In response to this news, Joe Miller said, "Our goal is to uphold the integrity of the voting process. Every vote that is cast correctly should be counted. All Alaskans deserve a free, open and fair election. Unfortunately, the State Division of Elections has decided to call that process into question with the constant maneuvering of dates and procedures." Since the election Tuesday, the Miller Campaign has vowed to oversee the process to its conclusion, to ensure that the voters of Alaska have their rights protected.

Miller went on to say, "The State of Alaska has a statutorily defined election process, anything or anyone that deviates from that process is unsettling. It is fundamental that the public be informed of the ballot review schedule in advance. Our democratic voting process has at its foundation the Constitution and the statutes of this state, and any manipulation of this process for the purposes of expediency or convenience compromises those principles."

Spokesman Randy DeSoto added that "we don't know how many ballots were reviewed without fair scrutiny."

The absentee validation is occurring across the state in various locations. It is unclear why the Miller Campaign was not notified about the decision to begin validation Friday.

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Political Animal

Miller releases statement Thursday afternoon

Joshua Saul | Nov 04, 2010

Joe Miller is still cautiously optimistic about his chances for victory in the Alaska US Senate race, according to a statement sent out by his campaign.

Here it is:

Joe Miller Vows to Fight for Voters of Alaska

Murkowski "Lawyers Up" With High Priced Election Lawyers

Anchorage, Alaska. November 4, 2010 – Joe Miller is still cautiously optimistic about his chances for victory in the Alaska US Senate race. Meanwhile, Lisa Murkowski speaks as if she has already won the Alaska Senate race, but her declarations are premature. Murkowski proved her concern about the ultimate outcome of the election by her actions—she has parachuted in a phalanx of lawyers, including high profile election law attorney, Benjamin Ginsberg as part of her legal team. Ginsberg played a key role in the "hanging chads" Florida recount of the 2000 election.

"While Senator Murkowski speaks of winning an historic write-in candidacy, she understands (as Joe Miller does), that this race is not over," said Miller campaign spokesman Kandy DeSoto. He continued, "The difference between the "write-in votes" and Joe Miller votes is about 13,000; however there are approximately 31,200 absentee ballots that have gone out and over 26,000 have been returned to date, which are still to be counted. Absentees broke strongly for Joe during the primary election, particularly within the military community. We also still need to know how many of the write-in votes were properly cast for Lisa Murkowski."

If past trends hold, a significant percentage of those 13,000 write-in votes will likely be disqualified and many others will be non-Murkowski votes. During the 1998 gubernatorial race, thousands of the write-in votes for Robin Taylor were disqualified. Miller is also assembling a legal team to oversee the ballot counting in an effort to maintain the integrity of the election process. The count will apparently occur in Juneau.

"We have two goals. To make sure the election is fair and that every valid vote is counted," said DeSoto.

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Alaska Natives bristle at state fishing restrictions: 'Stay out of my life'



Are Alaska State Troopers becoming a wilderness tax service?



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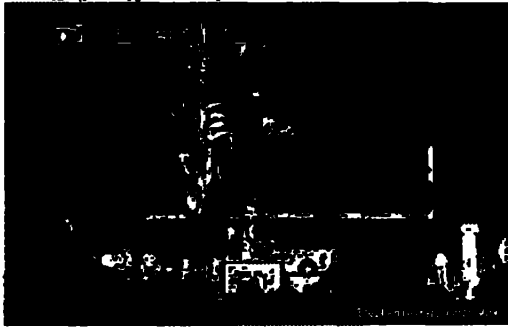
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News

Does a Joe Miller loss in Alaska hurt Sarah Palin's presidential aspirations?

Amanda Coyne | Nov 04, 2010



The mood was at first excited, then tense, and then turned glum at the Snow Goose Restaurant in Anchorage Tuesday night as the election results for the U.S. Senate race came in. This was Republican Senate candidate Joe Miller's place to celebrate, the same venue where a little over two months before at the primary election he told an exuberant Alaska crowd he was heading to Washington, D.C., to fight for them. And it was from this same place where the tweet that Palin sent out that evening – the one that talked about a miracle on ice – got the crowd all

atwitter.

Miller was Palin's pick. They were, in fact, friends, and she spent quite a bit of emotional and political capital on supporting his race against incumbent GOP Sen. Lisa Murkowski.

Palin and her supporters were busy Tuesday night celebrating every winning Palin-endorsed victory as each came in. Among Palin's tweets Tuesday was this one: "As always, proud to be American! Thanks, Compensense Constitutional Conservatives, u didn't sit down & shut up...u 'refudiated' extreme left."

But there was no tweeting from Palin's computer, or whomever's computer does such things for her, about the Senate race in Alaska. Not only was she silent about Miller, her supporters were quiet as well. And, for someone not normally at a loss for words, Miller himself was relatively terse. After it was clear that the write-in votes – the Lisa Murkowski votes – would exceed his own, Miller gave a short speech and then left the Snow Goose.

Breaking with tradition, he didn't make his way down to the Equin Center, or "Election Central" as it's called here, a few blocks away, where all the candidates and their supporters converge at the end of election night. (Murkowski did the same thing on primary night).

This race isn't officially over. Murkowski has about a 13,500-vote lead, a number expected to grow once the 26,308 absentee ballots come in. Miller has said he is amassing a team of lawyers to make sure all votes are interpreted and counted correctly. The counting of the write-in vote will begin Nov.

10, according to The Associated Press. But few priesters and political analysts, apart from Miller himself, believe the Alaska Division of Elections will throw out enough misspelled Murkowski ballots to make Miller Alaska's next U.S. senator.

Apart from Miller and other Senate candidates, Palin and her supporters had reason to celebrate last night. She did particularly well with the governors she endorsed. Six of the eight backed by Palin won, with one still undecided. She was less successful with her U.S. House endorsements – 48 percent of her endorsees won their races. In the Senate, six of her endorsees won, (including Sen. John McCain) and five lost flat out. And then there's Joe Miller, the resident of Palin's Last Frontier who wants to join her on the national stage.

in Alaska. It'll be Palin, one of the most intriguing and arguably powerful politicians in the country, who lost in her own backyard, against Lisa Murkowski, one of her chief political antagonists.

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Political Animal

Joe Miller: Alaska's lt. governor is biased

Jill Burke | Nov 01, 2012



Here's a quick round-up of the latest developments regarding Joe Miller's take on the uncomfortable wait for a decisive winner in the race for Alaska's U.S. Senate seat.

The website PoliticsDaily.com is reporting that Miller, in a conference call with bloggers Thursday morning, is impugning the loyalties of the state's top elections official. It quotes Miller:

"There are a number of fights that are going to have to be undertaken, in part, due to the fact that the division of elections (is) headed up by the lieutenant governor.

"The lieutenant governor is effectively the same (as) what you might see in other states as the secretary of state. His statements are policy. He was appointed by Murkowski ... has connections to the Murkowski family. In fact, when he, last summer, spoke at the time Sean Parnell was sworn in as governor, spent five or 10 minutes praising the Murkowski family. It was a pretty kind of a curious thing given the lack of popularity at the time of Frank Murkowski.

"But in any event, it appears that his bias is playing out in the decisions that he's making, especially those that are directly contrary to the law."

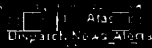
For the record, it was then-Gov. Sarah Palin who, in 2009, tapped Campbell to become the state's lieutenant governor after her decision to quit her job as governor, pushing the existing lieutenant governor — Sean Parnell — into the top spot and leaving a vacancy for second in command. Miller is correct that years earlier, in 2003, Gov. Frank Murkowski (whose job Palin took in 2006 in an historic upset) did make Campbell a state commissioner for the Alaska Department of Military and Veterans Affairs, a post Campbell left when agreeing to, at Palin's offering, fill Parnell's shoes.

Meanwhile, Dan Springer [writes at Foxnews.com](http://www.foxnews.com) that Miller believes he can overcome the lead Murkowski presumably has with the more than 13,000 votes that separate Miller and write-in candidates:

There are still about 30,000 absentee ballots that will be added to the count Tuesday. Miller believes since many of the absentee votes are coming from the military he will cut into the lead. Even if Miller is right and the lead shrinks, he will be facing a steep hill.

Alaska courts have ruled the spelling of a write-in candidate's name need not be perfect to be counted. It's the election worker's job to determine voter intent. In this race that would mean a vote for M-U-R-C-O-W-S-K-Y should count for incumbent Lisa Murkowski.

According to TheHill.com, Sen. Jim DeMint (R-S.C.) is ready to help Miller fight Murkowski during the ballot count. DeMint's Senate Conservatives Fund "is currently exploring exactly how it can assist Miller, the Republican nominee, on the fundraising front in what is expected to be a costly and drawn-out ballot-counting process," reports The Hill, adding that "a source close to DeMint said the senator has no qualms about continuing to help Miller through what will likely be a contentious ballot-counting process, even though he ruffled some GOP feathers throughout the primary season."



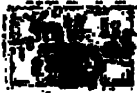
if it will send someone to Alaska to assist on Miller's behalf. When the committee sent a lawyer up for the count after the August primary, at Murkowski's request, Miller cried foul and claimed the organization was meddling in the election. But with Miller decisive win in the primary, the group has since rallied behind him, including spending money on campaign ads which discredited democrat Scott McAdams and positioned Miller as the better choice.

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Alaska Natives bristle at state fishing restrictions: 'Stay out of my life'



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Political Animal

Statement from Miller: 'This campaign is not over!'

Alaska Dispatch | Nov 03, 2010

The following statement regarding the status of Alaska's U.S. Senate race appeared at JoeMiller.us on Wednesday morning, Nov. 3. Read it in its entirety below.

Statement from Joe Miller

The campaign remains optimistic that Joe Miller will be the next U.S. Senator from the state of Alaska.

Previous write-in campaigns in Alaska have demonstrated that as much as 5 to 6 percent of returned ballots have not met the standard to be counted as a valid vote.

As with any write-in campaign, the burden of execution rests with the candidate whose name is not on the ballot. Candidates who mount a write-in campaign opt for an uphill battle. At this point, without a single write-in ballot counted, Lisa Murkowski has no claim on a victory.




To complicate the matter, the Division of Elections has yet to adequately explain how a ballot will be marked in favor of a candidate. The current standards are extraordinarily ambiguous.

We trust that officials will conduct the hand count with propriety and consistency.

In short, this campaign is not over!


For more information and updates from the campaign, continue to watch this website.

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Political Animal

Murkowski spoofs Miller

Joshua Saul | Nov 01, 2010



Photo courtesy Murkowski campaign

U.S. Sen. Lisa Murkowski went trick or treating with a tough little security contingent Sunday night, poking fun at Joe Miller and the incident in which his security team handcuffed Tony Hopfinger, the editor of Alaska Dispatch.

Instead of the active-duty soldiers Miller uses, however, Murkowski's security team consisted of her three young nephews: two four-year olds and a six year-old wearing dark suits and pipe cleaner earpieces, with their candy buckets handcuffed to their wrists.

This isn't the first time an Alaska candidate made fun of Miller's security detail: U.S. House candidate Harry Crawford released a funny video two weeks ago, and in an interview last week Crawford's opponent, U.S. Rep. Don Young said, "I've been in this job 38 years, and the only people I've had do security for me was my wife."

The event Murkowski is making fun of occurred Oct. 17 when Miller's security team handcuffed and detained Hopfinger for asking questions of Miller about his departure from the Fairbanks North Star Borough.

Murkowski took her nephews trick or treating in Goldenview Park, a tiny subdivision in South Anchorage. Murkowski's spokesman Steve Wackowski said the idea of printing up Drop Zone Security badges had been floated, but in the end that plan was dropped in favor of Murkowski campaign stickers.

The details surrounding the Halloween nights of Miller and Democrat Scott McAdams are unclear at this time.

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Craig Medred

Anti-Miller media conspiracy? Show me the story!

Craig Medred | Nov 01, 2010

Here's the strange Joe Miller disconnect: Actions matter little; words matter a lot. Or so the GOP Senate candidate would appear to want Alaskans to believe.

Because he says he is a constitutional conservative opposed to government handouts, it shouldn't matter that he and his family took a bunch of those handouts – subsidized childcare, subsidized health care, farm subsidies, government-backed loans, unemployment. But the latest and possibly strangest Miller take on how actions don't matter but words do, came over the weekend when the Miller campaign launched an attack on one of the more conservative of mainstream news organizations in the state – KTVA-TV news.

Matt Felling, the anchor there, is the former media director for the Center for Media and Public Affairs, a self-proclaimed nonpartisan organization which has regularly been forced to fight off accusations it is a conservative-funded offshoot of the American Enterprise Institute, a conservative think tank. Felling most certainly doesn't look like your standard media lolly.

Here, in the interest of full disclosure, I must add that Felling has occasionally asked me to appear on his newscast as a reporter or commentator. I think the last time might have been to talk about why the Gulf of Mexico oil blowout wasn't the greatest environmental disaster in American history, and how the Exxon Valdez spill might actually have been ecologically worse even though less oil was spilled.

I have no personal knowledge of Felling's political leanings, but he always struck me as leaning more to the right than to the left. We seem to share an opinion that there is a significant sky-is-falling bias in the American media.

So it was pretty strange find out, in the words of a Miller press release over the weekend, that Felling's news staff had gathered to "openly discuss creating, if not fabricating, two stories about Republican nominee for U.S. Senate, Joe Miller." KTVA, of course, denied it.

General manager Jerry Bever said, "The allegations are untrue." But hey, let's be real, the Miller campaign had a tape thanks to the transmission of a newsroom discussion over a cell phone not hung up. And while garbled, the tape did clearly record one woman saying that given the expected crowd at a Miller rally in Anchorage Thursday night there was bound to be a sex offender in it, and another saying that if someone showed up to punch Miller the station needed to "put out a Twitter/Facebook alert." KTVA, of course, contends that its reporters were just talking about how to cover things that could or might happen in a campaign that has been full of strange events.

But let's assume for a minute these "lamestream media" types, as former Gov. Sarah Palin called them in one of what has become a tidal wave of Twitter posts, are lying. Let's assume the worst. Let's assume they really plotted to fabricate a story. Let's even assume they put someone up to taking a swing at Miller or found that child molester in the crowd.

So where's the story?

Show me the story!

Find me the Twitter/Facebook alert about this incident!

What we have here is words, not action. What we have here is so much newsroom BS.

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went and covered the Miller rally in Anchorage. [Click here to watch the KTVA report of that gathering.](#) Go watch it and form your own opinion. I won't try to influence you with mine. I'm not going to try to tell you whether the story was favorable to Miller or unfavorable.

What I will say, for those who don't watch the report, is that there is no mention of a child molester in the story anywhere, and no one takes a swing at Miller. The report is pretty much standard political rally coverage with a bone thrown to people outside the event roaming around with signs supporting the two other candidates in the Senate race.

I've looked at the video twice now, and I can't find anything to indicate there is any substance to the claim of Miller sidekick and ex-Alaska Gov. Sarah Palin's Twitter claim that "Corrupt Bastards Club. RT @BigJournalism: CBS Affiliate KTVA Reporters Taped Conspiring Against Joe Miller Campaign."

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Steve Amstrup: Not too late to save polar bears, and ourselves



Lawyers clean up in Unalaska's EPA wastewater fight



Koonal Peninsula landscape radically altered by typhoon-like storms

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Political Animal

FEC complaint filed against Miller over plane use

Alaska Dispatch | Nov 01, 2010

According to a press release sent out Monday evening, registered Republican political activist, Andrée McLeod announced she had filed a complaint ([check it out here](#)) with the Federal Elections Commission against GOP nominee Joe Miller's U.S. Senate campaign.

According to the release, "U.S. Senate candidates flying on private aircraft in connection with campaign activities must pay the equivalent charter rate for the type of airplane used. Miller has been flying on a plane owned by Fairbanks lawyer Tom Wickwire. But, according to Miller's July FEC report, although he flew at least three times on Wickwire's plane, Miller only paid for the fuel and not the full charter price for comparable trips."

McLeod notes, "For an attorney with a law degree from Yale who claims to have mastered the law in less than three years, Joe Miller has shown a consistent pattern of cutting legal corners."

When asked why she filed a complaint now, after this information has been available for so long, McLeod replied, "Just getting the information together, and putting two and two together, it just takes time for me." She added, "I'm not an expert at this stuff."



Alaska governor joins in /
Miller conversation
about sexual violence



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Political Animal

Miller keeps eye on the race

Alaska Dispatch | Oct 31, 2010

Tea party Senate candidate Joe Miller may be losing support from the Republican Party, but that doesn't bother him.




In various reports Sunday, including by The Associated Press, Miller said what matters most is support of his fellow Alaskans. (Indeed, Miller has had his share of ups and downs with the Republicans over the years.)

"It really doesn't matter; it's the Alaskan people who are voting. The outside groups that are coming in trying to influence the race, they aren't going to be able to trump the Alaskan spirit and the Alaskan voters. I'm not worried about it even if it is true," Miller told Politico on Sunday.






ABC News reported Sunday that GOP leaders were now giving up on Miller. That led to denials by some Republicans who said they were still supporting Miller and not his conservative opponent -- incumbent Sen. Lisa Murkowski, who is running as a write-in candidate after Miller defeated her in the Aug. 24 GOP primary.

Meantime, Miller's most famous supporter -- former Gov. Sarah Palin -- was all over the news Sunday calling Alaska media a bunch of "corrupt bastards." Her anger stemmed from the controversy swirling around a message left by KTVA Channel 11 on a Miller spokesman's phone. For more on that story, read here.

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More Faghog fallout?

Politics

Joe Miller's paranoid attempt to overthrow the Alaska Republican Party

Jill Burke | Oct 31, 2010



When U.S. Senate candidate Joe Miller set out in 2008 to overthrow the head of the Alaska Republican Party, the mission, to him, became far more dangerous than anyone might have imagined, according to his former co-workers at the Fairbanks North Star Borough.

Politically speaking, working to overthrow the guy at the top was indeed a gutsy move. But Miller perceived risks greater than to just his reputation. He feared for his own life, his former co-workers said in interviews with Alaska Dispatch.

E-mails and other documents released Tuesday under court order relating to Miller's time as a part-time borough attorney allude to some of the Gulf War veteran's fears, including his belief that someone might hack into the borough's computer system.

It was around this same time -- March 2008 -- that Miller was caught using three of his co-workers' computers to pad a political poll on his personal website. After the incident, Miller, who at first lied about the computer usage, was placed on leave for about two weeks, followed by a three-day suspension without pay and six months probation.

For co-workers who had just days earlier heard Miller going on about personal threats and computer schemes, the timing of Miller's misuse of their computers was unsettling, spawning one more twist in a situation that seemed to grow stranger by the day.

Later that same week in 2008, hundreds of miles south in Anchorage, other people would make similar remarks about Miller's presence at the statewide Republican convention -- the very place where the political aspirant hoped Randy Ruedrich, the party's chairman, would be ousted. According to numerous sources, Miller arrived at the convention with bodyguards similar to those he had on hand at a town hall meeting at Central Middle School on Oct 17, where they handcuffed the editor of the Alaska Dispatch.

But Miller's employee files from the borough and the first-hand accounts by convention goers tell only part of the story of Miller's quest to unseat Ruedrich.

In the shadow of the public power struggle -- the old guard versus the new Palin-led faction in the Alaska Republican Party -- the effort was taking a noticeable toll on Miller, who seemed unusually stressed and genuinely worried about his personal safety.

One of Miller's supervisors, borough attorney Rene Broker, wrote in a memo to Miller following the computer incident, "It has been apparent in the last several months that you are under significant stress and it has affected your judgment, as evidenced by your actions on Mar. 12, 2008."

Exhibit C

In interviews Friday with Alaska Dispatch, Miller's former co-workers in the Fairbanks borough's legal department said the Senate candidate was paranoid, acting strangely in the days leading up to the computer polling incident and the state GOP convention in spring 2008, including telling them about plots against his life, computer hijacking, a bug in his eface, and requesting that the mayor hire a security detail to protect Miller.

Miller's campaign did not respond to a request, which included a brief summary of this story, for comment.

Former co-workers say Miller's fears were 'bizarre'

Although Miller's former co-workers declined to be identified, they collectively offered a look back at the things Miller was saying and doing in spring 2008 – actions they summed up as "bizarre."

Based on their accounts, this political episode in Miller's life appears to derive more from an espionage thriller than a political playbook. What follows is Miller's co-workers' recollection of his strange and embroiled political mission and how it crossed over into their government workplace.

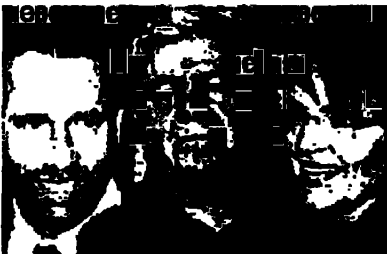
Days before he was caught using the borough computers for the poll, Miller had spoken openly with members of the borough office about a potential threat coming his way. The Alaska Republican Party was out to get him, Miller told them, and he warned them to be careful about what they did on their computers. Miller claimed a public records request was in the works aimed at scrutinizing employees' computer use, adding that, if granted, he feared it might reveal child pornography on his computer. If any inappropriate material was found on his computer, Miller told them, they needed to know it would be the result of a sophisticated setup – someone hacking the Fairbanks North Star Borough's computer system and planting inappropriate material on his computer.

It was just a few days later that his colleagues discovered something was amiss with their computers, which upset and unnerved them given the timing to Miller's earlier warnings. Miller had been on their computers during lunch hour to vote in a political poll hosted on his own personal website. When they confronted Miller about it, he told one of his supervisor's, Jill Dolan, "not to worry about it (and) that he was not on a bad site," according to a written statement Dolan provided during the borough's subsequent internal investigation.

Yet, there is no evidence that the prospect of illicit material existed anywhere but in Miller's fears.

In the hundreds of pages of public records produced by the borough regarding Miller's employment, there is nothing to suggest that the borough ever had concerns about child pornography or other inappropriate material being found on his computer.

Only when he got caught falsely inflating his own political poll did he face sanctions related to computer use. In the ensuing disciplinary letter from his supervisor, Rene Broker, she made it a point to note that the borough believed it was an isolated incident.



Joe Miller, Randy Ruedrich and Sarah Palin

GOP out to get Miller?

But Joe Miller's wariness went far beyond the alleged computer plot. He was also convinced his office was bugged, the borough employees told Alaska Dispatch.

And he believed there was a murder plot under way to kill him and then-Gov. Sarah Palin, who at the time also was trying to persuade her fellow Republicans to drop Randy Ruedrich as the party chairman. Miller feared someone might tamper with his tires, causing

him to have an accident as he drove to Anchorage, the borough employees recalled.

With his worries mounting, Miller wanted Jim Whitaker, then the mayor of the Fairbanks North Star Borough, to provide a security staff for him, his former co-workers said. Miller wanted doors locked and security cameras mounted in the borough's legal offices (The New York Times has reported

that Miller has security cameras at his home). And he wanted an escape route -- a second exit in case the main one was somehow blocked or unsafe.

"He was just very paranoid about the whole thing," one employee said.

Miller believed the people out to get him included Ruedrich and former Gov. Frank Murkowski, the father of Sen. Lisa Murkowski -- one of Miller's opponents in the Senate race -- and the man who appointed her to the job in 2002.

Miller told one of his co-workers that Frank Murkowski and Ruedrich were men who "had the power and money to pull something off," the borough employee said Friday.

At least three of Miller's colleagues believed his fears were genuine, but they had no way to know if they were credible. One borough employee wasn't sure how to react. Should they call the FBI? It was hard to gauge the seriousness of it all, though they felt Miller believed it was serious, and they did take his concerns to the mayor's office.

A failed coup

By Saturday, March 15, 2008, Miller's plot to oust Ruedrich was about to collapse. Although Miller hoped to hijack the party's convention agenda and successfully get the body to take a no-confidence vote on Ruedrich, the seasoned GOP chairman outmaneuvered Miller and Palin and prevented the vote from coming up.

In a commentary in the Anchorage Daily News, Juneau Republican Paulette Simpson described the failed overthrow as an "unsuccessful, banana republic-like coup."

Miller's desire to wrest control from Ruedrich and redefine the Alaska Republican Party as unfailingly loyal to Palin was no secret. In media interviews at the time, Miller spoke openly of his desire to "clean up government" and ensure "the public understands that the Republican Party is a party of ethics."

In an interview with the Anchorage Daily News one week before the failed takeover, Miller was quoted as saying, "The public needs to be assured that this is not the party of corruption and influence but the party of limited government, of Lincoln, of state's rights."

Still, conventioners, including Simpson, couldn't help but note the unusual companions Miller had brought with him to the Hotel Captain Cook in Anchorage, where the meeting was held in 2008. She wrote in the Daily News:

Toward the end of the convention when it was apparent his fireworks had fizzled, in what can only be described as paranoid and bizarre, a security detail -- yes, pretend Secret Service suits with Aviator glasses and earpieces -- showed up to flank and apparently protect the silly, self-important Joe from a bunch of mostly middle-age Republican delegates who had voted against him and were now genuinely embarrassed for him.

Republican Andree McLeod -- a Palin critic -- also noticed Miller's not-so-subtle security detail: three men and a woman, each equipped with walkie talkies and ear pieces. They were friendly enough, she recalls, and although it was obvious they were shadowing Miller, they would only say they were "on a security job."

McLeod doesn't recall the name of the security guard she spoke with at the time, but recalls he was proud of his business, which he identified as Drop Zone -- the card company that handcuffed and detained Alaska Dispatch editor Tony Hopfinger after the Oct. 17 campaign town hall meeting at an Anchorage public school.

When Miller left the convention hall and headed to the hotel's downstairs for a news interview, the guards followed and stood by at the door, McLeod recalled. When Miller went upstairs to another floor in the hotel, they stuck close and buzzed around him.

Kim McEachen photo

At the primary election bash Aug. 24, William Fulton (circled in yellow), owner of Drop Zone, followed Joe Miller around closely. Fulton is the same security guard who handcuffed and detained an Alaska Dispatch journalist Oct. 17 at a Miller town hall meeting at a public school.

A short time later, McLeod noticed them guarding an elevator door, with one guard posted in front of the door and others on either side. When the door opened, out came Miller and the four security guards moved into a diamond formation around him -- one in front, one behind him and one on each side -- and they hustled Miller in a military-style march to a waiting SUV outside the Hotel Captain Cook. Once Miller and his entourage -- which included Palin aide Ivy Fry, according to McLeod, were safely on their way -- the guards cleared out.

"It was the most surreal thing I have ever seen," McLeod said.



Miller quit the Alaska GOP and his regional chairmanship the following Monday -- the same week he was placed on administrative leave pending the outcome of an investigation into his misuse of borough computers.

Ruedrich: 'We don't threaten people'

Flash forward more than two years later and now one of Miller's would-be assassins is his staunch supporter -- Randy Ruedrich, who remains the Alaska GOP's chairman.

On Friday, Ruedrich denounced talk of any alleged threats to Miller in 2008 as so ridiculous that the topic wasn't worthy of discussion.

"We don't threaten people," he said. "We just make sure they have the opportunity to participate."

"This conversation really doesn't need to exist," added Ruedrich, hanging up the phone.

In the weeks and months following the failed political ploy and his ethics lapse at the borough, Miller kept to himself more than usual, his co-workers said. With the intensity of the fight behind him, there was no more talk of death threats or people out to get him.

In the seven years that Miller worked at the Fairbanks North Star Borough, there had been other times when he expressed a heightened level of anxiousness about his personal safety, but the scenarios seemed reasonable, his co-workers said. For example, in one instance the potential threat was a man distraught over a family situation that Miller had become involved in through his private law practice.

Miller's co-workers were also aware that Miller had security cameras at his house, but it was their understanding they were standard-issue for U.S. District Court magistrate judges, and that Miller had retained the equipment after resigning that post to run for local office in 2004.

Despite the odd events leading up to the March 2008 GOP convention, the quality of Miller's legal work for the borough was largely unaffected.

"The job he did here was at a very high level and he did very good work," said Rene Broker, one of Miller's former bosses, in an interview earlier this week.

She also came to his defense regarding speculation that the medical issue for which Miller was seeking treatment in August and September 2008 -- revealed in records released under court order this week -- just as he was resigning from his borough job, had something to do with his mental health. She called the claims -- which she has seen in the comments sections of recent news reports on Miller's time at the borough -- "totally unfair."

"That's wrong. That is not the case," she said. "This concept is unfair that he has some kind of service-related mental issue. People are just making that up."

Contact Jill Burke at [jill\(at\)alaskadispatch.com](mailto:jill(at)alaskadispatch.com).



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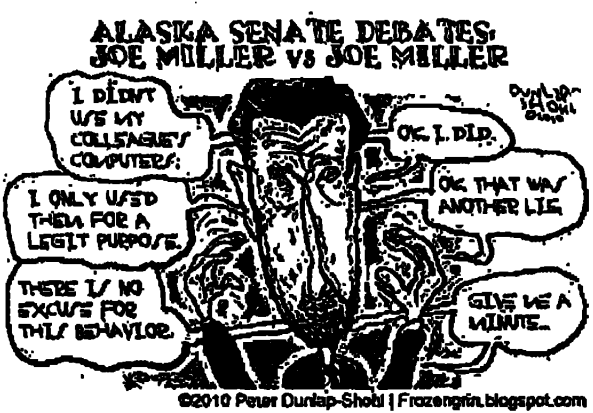
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Cartoons

Joe Miller v. Joe Miller

Peter Dunlap-Shohl | Oct 30, 2010



Peter Dunlap-Shohl worked as a cartoonist for the Anchorage Daily News for over 25 years. He is now freelancing, including contributing to Alaska Dispatch. You can view his latest work at FrozenGrin.blogspot.com.

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Arctic Drilling: Offshore vs. ANWR

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Joe Miller

Murkowski ad: 'Joe Miller's America'

Alaska Dispatch | Oct 29, 2010

We have to admit that we kind of like this Lisa Murkowski campaign ad, which takes aim at opponent Joe Miller. After all, we are journalists, and we don't like being handcuffed for asking questions.

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Alaska governor joins in Homer conversation about sexual violence



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Joe Miller

Palin and friends rally around Senate candidate Miller

Craig Medred | Oct 29, 2010

Joe Miller's "Politicking with the Stars" stormed into Anchorage's Dena'ina Convention Center Thursday night starring former Gov. Sarah Palin, a Hollywood actress and a handful of GOP leaders.

"Alaska was born to lead America," Palin told the crowd.

Featured player roles went to state Sen. Fred Dyson, Alaska Republican Party Chairman Randy Ruedrich, former Lt. Gov. Loren Leman and Janine Turner — the actress from the old Alaska TV show "Northern Exposure." The group of GOP and tea party stars who appeared via prerecorded video were 2008 Republican presidential candidate Mike Huckabee, Congresswoman Michele Bachmann of Minnesota, and South Carolina's Sen. Jim DeMint.

"Lady Liberty and Sarah Palin are lit by the same torch," Bachmann said in her recorded speech. Palin told "Entertainment Tonight" Thursday she may run for president in 2012.

(em_slideshow 86)

An estimated 300 to 400 people cheered on Miller and Palin, including many who made the drive down from Wasilla and the Mat-Su Valley, despite the snow Thursday night. Miller, the Alaska Republican Senate candidate locked in a three-for-all race for the seat held by Sen. Lisa Murkowski, was all smiles, even if the crowd was far smaller than the Glen Beck-Sarah Palin 9/11 rally last month in Anchorage.

Miller's rally comes with the once-powerful Alaska Republican Party in disarray. The election cycle began with incumbent Republican Murkowski a seeming shoo-in for re-election. Miller, riding a wave of anti-incumbent anger and lingering Alaska resentments about Murkowski's 2002 appointment to her seat by her father — Gov. Frank Murkowski — nipped her chances in the Aug. 24 primary in the electoral version of a photo finish.

"Too many RINOs. We're going to shake that up," Palin told a crowd that heretofore, had seemed almost subdued.

"She's a good speaker all right," said 22 year-old Palmer resident Pete Lampi. "She's got charisma," he said.

For three weeks, Miller was thought to be a certain winner against virtually unknown Democrat Scott McAdams, the mayor of the tiny town of Sitka, located in the middle of the Alaska panhandle, far from the state's urban centers of Anchorage and Fairbanks.

Then Murkowski hopped back into the race as a write-in candidate. The Republicans started throwing mud at each other, McAdams turned out to be a much better campaigner than anyone thought (in part due to support from Mark Begich, Alaska's Democratic U.S. senator), and all of a sudden chaos reigned.



Will Palin run for president? Perhaps, she says

It only got crazier as details continued to surface about the past behaviors of Miller, a Fairbanks Republican who bills himself as a staunch constitutional conservative.

His actions, as it turned out -- filing for federal farm subsidies for land he owned in Kansas, taking advantage of a federal childcare program, utilizing a federal health insurance program -- didn't look all

Was he fired from his job as part-time attorney in Fairbanks? Had he been in trouble there for sneaking onto the computers of co-workers to vote in an online Republican poll, engaging in an attempted cover-up and then lying about it all?

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Alaska governor joins in
Homer conversation
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Boy Scouts 'perversion
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Joe Miller

Joe Miller's Willow hideaway missing on judicial disclosures, too

Craig Medred | Oct 29, 2010



While a federal magistrate judge in Fairbanks in 2004, Alaska GOP Senate candidate Joe Miller failed to disclose his interest in a 40-acre hideaway and two-story house near Willow, in violation of federal law.

The land title registered in Palmer dates Miller's interest in the property to August 1996. Whether the property in question is owned by Miller or held by a trust in the name of his children, the candidate has refused to say. But federal judges are required to report such things either way.

The Financial Disclosure Report required by the Ethics in Government Act of 1978 instructs judges to report "Investments and Trusts -- Income, value, transactions (Includes those of the spouse and dependent children)." When Miller filed his disclosure report, he listed 1,000 acres of farmland he and his wife, Kathleen, had bought near Delta Junction with the help of a state agricultural loan; property they owned in Tok, where Miller had worked as a state magistrate; and various savings accounts. The Willow property, however, was not reported.

The federal disclosure requires judges to sign and certify that the information in the report is complete and accurate. It warns that a judge who "willfully falsifies or fails to file this report maybe subject to criminal and civil sanctions." Mistakes on financial disclosure forms are what led to the federal trial and conviction of the late Sen. Ted Stevens.

Alaska Dispatch, earlier in the campaign for Senate, requested Miller's judicial disclosures from the Financial Disclosure Office of the United States Courts, but received them only this week -- and then only the reports for the period from January to June 2004. Miller worked as a federal magistrate from 2002 to 2004. Why reports from earlier years were not supplied is not clear.

Miller was not exactly striking it rich as a lawyer in 2004, according to his magistrate's disclosure. Aside from collecting a federal salary for being a glorified legal bookkeeper and fixer of minor issues for the court system, Miller reported making only \$5,000 from his law practice, plus another \$11,693 from a job as a part-time attorney for the Fairbanks North Star Borough. "Gifts" he had reported getting from Yale University in prior years appeared to have ended.

On Alaska Public Offices Commission reports filed when Miller was working in Tok as a state magistrate from 1998 to 2002, the attorney annually reported "gifts" of \$250 or more from Yale University, where Miller went to law school. He has not disclosed whether he was in Yale Law School's Career Options Assistance Program (COAP), and officials of that program have refused to comment, but the APOC documents would appear to indicate that he was.

COAP, a loan repayment assistance program, helps space aspiriring lawyers from the need to find high-paying jobs with fancy law firms after graduation by forgiving portions of their loans if they take relatively low-paying jobs. Yale says the goal of the program "is to make it easier for our students to take the job of their choice. To that end, COAP participants making less than \$60,000 will not be

Anyone taking advantage of COAP (also known as the Loan Repayment Assistance Program) would be required by Alaska law to report loan forgiveness as a "gift." On the state forms, gifts are defined as "cash, a debt that is forgiven, scholarships and discounts not extended to the general public."

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Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's honeybuckets are getting smaller



Boy Scouts 'perversion files': Alaska abuse cases part of larger problem

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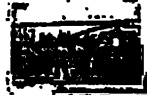
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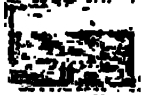
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Sudden spike of HIV cases in Fairbanks area concerns health officials



Iron Dog thriller: Top teams roar into Nome just minutes apart



Take a 'Detour' with Alaska author's new book

Joe Miller

Miller's misdeeds at borough never investigated as a crime

Patricia Epler | Oct 29, 2010



U.S. Senate candidate Joe Miller's use of Fairbanks borough computers for political purposes was never investigated as a crime, the borough attorney says.

Fairbanks North Star Borough Attorney Rene Broker also did not consider filing a complaint with the Alaska Bar Association, she said.

The bar association could still take up the case on its own or if a member of the public filed a complaint, although any action would remain secret until the professional organization got to the point of proceeding with a formal hearing, bar officials said.

In the past few days, since Miller's problems at the Fairbanks North Star Borough have been publicly revealed, questions have been raised about why Miller wasn't prosecuted and whether the state bar association had reviewed the ethical implications of Miller admitting that he broke borough policy and then repeatedly lied to cover it up.

Former Borough Mayor Jim Whitaker has said on several occasions that he believed Miller's political activities involving the surreptitious use of borough equipment to try to oust GOP party chair Randy Friedrich had been under consideration for possible criminal charges, both misdemeanor and felony.

But Borough Attorney Rene Broker said Friday that her office had only considered Miller's actions "a violation of our ethics and computer policy."

Criminal charges were "never a part of our discipline and never considered," Broker said.

Violating the borough ordinance didn't necessarily make it a crime, she said.

Broker also said officials did not consider the violation of the borough's ethics policy something to report to the state bar association. "We did not perceive it that way," she said.

Lawyers are governed by the rules of professional conduct set out by the Alaska Supreme Court and by guidelines that have been created through Alaska ethics opinions.

Bar association officials have said Miller has no record of public discipline with the bar association and no public charges are pending. If there had been complaints filed or action initiated since Miller's borough discipline has come to light, the bar association could not disclose it, assistant bar counsel Louise Driscoll said Friday.

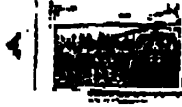
Generally, she said, anyone can file a complaint against an attorney, and the bar association itself can file based on information it receives.

"Sometimes we'll read about conduct in the newspaper that raises questions for us," she said. "But nothing is public."

The bar association follows a detailed and often lengthy process that includes asking the lawyer who is the subject of a complaint for a response, possibly obtaining more information from the person making the complaint and gathering any other information that may be pertinent.

The case becomes public only if the bar association decides to proceed with a petition for formal hearing, she said.

Contact Patti Epler at [patti\(at\)alaskadispatch.com](mailto:patti(at)alaskadispatch.com).



Sudden spike of HIV cases in Fairbanks area concerns health officials



Iron Dog thriller: Top teams roar into Nome just minutes apart



Take a 'Detour' with Alaska author's new book

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Political Animal

New poll: Miller drops, negatives increase

Alaska Dispatch | Oct 28, 2010

According to a new **Hays Research** poll of the Alaska U.S. Senate race among 500 likely voters, released Thursday morning, "a write-in candidate" has claimed first place with 34 percent, Democratic candidate Scott McAdams is in second with 29 percent, and Joe Miller wound up in third place with 23 percent. Thirteen percent were undecided. The poll also found a strong unfavorable rating for Miller, with 68 percent of those polled having such feelings, 60 percent of them feeling strongly unfavorable toward the Republican candidate. The Hays poll's margin of error is 4.4 percent.

It's worth mentioning that Nate Silver, the noted election analyst of **FiveThirtyEight**, has been expressing doubts on **Twitter** this morning about the new poll's predictive value of how Alaskans will vote on Election Day.

Silver tweeted his suspicions shortly after the new poll was released: "Sorry, but I think that new Alaska poll is sketchy on all sorts of levels." And later: "Why does the Hays poll in Alaska contain trendlines that hadn't been released publicly? Is it some sort of internal? If so, who's?"

After saying that his blog wouldn't be using the new Hays poll, that it is irresponsible for journalists to cite a poll without knowing who commissioned it, Silver tweeted: "Heard from Hays. Their #AKSen poll was commissioned by Int'l Brotherhood of Electrical Workers. It's likely voters, not all adults."

So far, Silver hasn't written at length about misgivings he has with the Hays poll, but if he does today, we'll try to update this post.

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Should a governor focus on Homer conversation about sexual violence



Gruntlingly slow, rural Alaska's honeybees are getting retired



Boy Scouts 'glorification' line: Alaska abuse cases part of larger problem

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Joe Miller

States rights vs. civil rights: where does Miller stand?

Amanda Coyne | Oct 28, 2010

In my humble opinion, one of the best questions during the Alaska Public Broadcasting Senate debate last night came from Sen. Murkowski, who was questioning Republican candidate Joe Miller about Sen. Jim DeMint's (R-S.C.) controversial statement on barring gays and unmarried, cohabitating women from being teachers. ([Watch here](#), at about 1:16.)

DeMint made his remarks first in 2004, and reiterated them this year at the Greater Freedom Rally at First Baptist North Spartanburg, S.C. DeMint is the senator whom Miller said he most admired. Judging by DeMint's support of Miller, the admiration is reciprocated. Tonight, DeMint, along with former Arkansas Gov. Mike Huckabee, Minnesota Rep. Michele Bachmann, and Oklahoma Sen. James Inhofe are going to provide video testimony at a rally for Miller. Former Gov. Sarah Palin, and perhaps Todd Palin will join in the flesh. (Tonight? In just a few hours!)

Murkowski used the rally as prelude to her question about if Miller agrees with DeMint on banning gay and sexually active unmarried women from teaching.


In his answer, Miller evoked, you guessed it, states' rights. "It's a state, and not a federal issue," he said. He thinks that about everything, including health care and gay marriage, and even allowing states to ban gay teachers. And sexually active, unmarried women.

Natural follow up questions abound, which naturally weren't asked in the debate: What about sexually active unmarried men? What about people of color? What about Christians or atheists? Given this, what are his views on the civil rights legislation?


Why, if you say gay marriage laws should be left up to the states, do you support a federal ban on gay marriage? Why do you support federal tort reform? Why should the feds dictate a dollar amount I might receive in damages on a lawsuit that I might file?

Instead, Murkowski talked about how DeMint had been bad for the state of Alaska, and particularly Ted Stevens. And the moderators asked... nothing. Not a peep from Democrat challenger Scott McAdams, who really could have gone to town on this. And because Miller won't talk to us anymore, we'll never know. And now, neither will you.


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Alaska governor takes in Homer conversation about sexual violence



Grudgingly slow, usual Alaska's honeybuckets are getting rethred



Key Senate 'conversion' files: Alaska abuse cases part of larger problem

Joe Miller

Miller, Murkowski spar over NRA endorsement

Craig Medred | Oct 28, 2010

Senate candidates Joe Miller and Lisa Murkowski are now fighting over who the National Rifle Association loves most. Miller says Murkowski "lied" when she said the NRA was backing her. Murkowski says Miller lied about her lying. The NRA says it's not backing anyone at the moment. The gun-rights group backed Murkowski in the Republican primary in which she was defeated by Miller. Murkowski has since entered the general election as a write-in candidate running against both Miller and Democrat Scott McAdams. The NRA says it's not backing anyone in this threeforall. You can read all about it in an exhaustive report in the Anchorage Daily News.

Contact Craig Medred at [craig\(at\)alaskadispatch.com](mailto:craig(at)alaskadispatch.com).

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Political Animal

KTVA's Felling interviews Joe Miller

Alaska Dispatch | Oct 20, 2010



KTVA reporter Matt Felling interviewed U.S. Senate candidate Joe Miller on Thursday. Miller tells Felling that there is a "rugged" group of people around the country who are following Alaska politics, which is part of the reason why he's been in such high demand by the national media. In response to a question about his past troubles at the Fairbanks North Star Borough, Miller said, "Made a mistake and learned from it." Miller also clarified that he is not a disabled vet, but he does have a hard time hearing.



Alaska governor joins in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's homepockets are getting retired



Boy Scouts' perversion files' Alaska abuse cases part of larger problem

Joe Miller

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Alaska Dispatch | Oct 28, 2012

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After saying that his blog wouldn't be using the new Hays poll, that it is irresponsible for journalists to cite a poll without knowing who commissioned it, Silver tweeted: "Heard from Hays. Their #AKSen poll was commissioned by Int'l Brotherhood of Electrical Workers. It's likely voters, not all adults."

So far, Silver hasn't written at length about misgivings he has with the Hays poll, but if he does today, we'll try to update this post.



Alaska governor John in Homer conversation about sexual violence



Grudgingly slow, rural Alaska's heavy buckets are getting retired


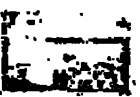



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Alaska Dispatch

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Joe Miller

Stress, lies and politics tainted Joe Miller's borough job, records show

Jill Burke, Patti Epler | Oct 27, 2010

U.S. Senate candidate Joe Miller was at times stressed, paranoid and deceitful during his employment with the Fairbanks North Star Borough, according to records released under court order Tuesday afternoon.

When he got caught doing something wrong - using his colleagues' computers to advance his own political interests -- he lied about it repeatedly and at one point suggested it was his colleagues, not him, who had in fact broken borough policy, the records show.

Miller worked at the borough from 2002 to 2009 as a part-time attorney. Many records show he was a high performer - achieving pay increases and exceptional performance reviews, and earning a master's in economics that the borough helped pay for. He was instrumental in litigation involving valuation of the trans-Alaska pipeline, which carries more than 10 percent of U.S. domestic oil production. He was so good, in fact, that his value to the case spared him the embarrassment of being fired when he broke the borough's ethics code, according to former borough Mayor Jim Whitaker.

But while Miller's public achievements may have been rosy, newly obtained records show a much different scenario was playing out behind the scenes. The story is woven throughout dozens of pages of his borough personnel file and e-mails involving Miller, documents that were released by the borough Tuesday after first Alaska Dispatch and then other news media went to court to force their disclosure.

Miller, who is locked in a tight three-way ([Read "Joe Miller admits to lying but do Alaskans care?"](#)) race for Senate with incumbent Sen. Lisa Murkowski and Democrat challenger Scott McAdams, has been battling release of the records and last week fought their disclosure in a public records case filed by news media.

He did not respond to a request for an interview for this story.

In March 2008, Miller was placed on administrative leave for 15 days and suspended without pay for three days after getting caught using co-workers' computers in an effort to influence Republican Party politics. He was also required to undergo mandatory counselling.

Miller has long been a political crony of former Gov. Sarah Palin, and in March 2008 was assisting in her effort to get Randy Ruedrich booted as the Alaska Republican Party's chairman - a political takeover that ultimately failed.

Palin and Ruedrich had been at odds before, famously in 2003 when Palin, then an Alaska Oil and Gas Conservation Commission commissioner, discovered that Ruedrich, also a commission member while state GOP chair, was conducting Republican business out of his state office. She exposed Ruedrich's ethical lapses - forcing him to resign and resulting in a \$12,000 state ethics fine - and



Miller's personnel records

- E-mails, memos and other records detailing Miller's ethical lapses and punishment.
- List of the documents
- Alaska Dispatch copyright

Who's Joe Miller?

Glance through coverage of Joe Miller.

then used her reputation as a corruption fighter to bootstrap her way into the governor's office.

Miller's personnel file includes documentation and a more serious view of the actions Miller has described in recent weeks, including on national TV as "petty" and irrelevant to the issue of who is best suited for office.

Miller: 'I was an ass. I was beyond stupid.'

Just days before the Alaska Republican Party's 2008 convention, Miller was hosting a poll on his personal website, joemiller.us, that was aimed at ousting Ruedrich. On March 12, while other employees were at lunch and Miller was alone in the office, he used three of his co-workers' computers to vote in his own poll. He tried to cover up the deceit by clearing the caches on the computers, the records show.



Miller's scheme was revealed by his own attempts to cover his tracks. When he erased each computer's cache he also erased important passwords and IDs that the other attorneys needed to access legal research websites. Miller's co-workers knew something was wrong when they couldn't log on after lunch.

In the short span of time the employees were trying to get to the bottom of what had happened, Miller lied no less than four times:

- He told them he'd had to use another computer because he couldn't access the website he needed to get to on his.
- He claimed he had to clear the cache or the website might block his access.
- He initially denied being on more than one computer.
- And he claimed he was visiting a professor's website at the University of Alaska Fairbanks.

In a written account of events offered by one of Miller's co-workers – identified in an earlier records release as "employee 3" but now known to be Jill Dolan, Miller's acting supervisor at the time – Dolan states that the office staff felt none of what Miller was saying made any sense and that he was acting bizarre.

Miller had also been talking about threats he had recently received, but wouldn't offer specific details. Dolan also didn't trust his stories about the computer use because he had, some time earlier, been asking a lot of questions about accessing the computer servers and wanting to make sure they were safe from hackers.

He insisted his colleagues were "overreacting" and even attempted to shift the blame to them.

"He maintained the whole time he did not violate the computer use policy and that actually all of us did for not securing our computers," Dolan wrote.

Miller was immediately placed on administrative leave and notified that an investigation would ensue. Unhappy about that prospect, he indicated he would rather resign than undergo that process or face being fired, according to notes in his file made by his supervisor.

Miller eventually came clean:

"I was an ass. I was beyond stupid," he said according to notes in the file. It was a "lapse of judgment" and a "total screw up."

He had "too much on his plate" and was having problems with his wife because he was "too flipping busy," according to the notes.

In a March 17, 2008 e-mail to one of his supervisors, borough attorney Rene Broker, Miller formally admitted to the allegations against him:

"Over the lunch hour this past Wednesday, I got on three computers (not belonging to me) in the office. All of them were on and none of them were locked. I accessed my personal website, for political purposes (participated in a poll), and then cleared the cache on each computer. I did the

same thing on my computer. Jill asked the office what happened. I lied about accessing all of the computers. I then admitted about accessing the computers, but lied about what I was doing. Finally, I admitted what I did."

"I acknowledge that my access to others' computers was wrong, participating in the poll was wrong, and there is absolutely no excuse for any of it," he added.

Nine days later, the borough disciplined Miller for inappropriate conduct and inappropriate use of computer and network resources.

"You accessed three Legal Department employee computers for a non-borough purpose and then you were dishonest both about your conduct and the reasons for your conduct," wrote Broker in a memo outlining Miller's punishment. "It has been apparent in the last several months that you are under significant stress and it has affected your judgment as evidenced by your actions on Mar. 12, 2008."

When asked in early April how he was doing, Miller indicated he had to find a way to be less busy. "I'm fine but need to slow down," he told Broker in an e-mail.

According to then-borough mayer Jim Whitaker, who earlier this month publicly revealed Miller's politicking after Miller refused to discuss it himself, the incident was far from minor.

"It's not petty, particularly if you are an attorney and if you have potentially broken laws in the course of your business. That is not petty," Whitaker said in a recent interview. "I think there is a pattern of deceit."

'My blood is boiling'

About a year and a half after Miller was in trouble for politicking, employees would again report behavior they felt was bizarre and deceitful. It would be the end of the line for Miller, who ended up resigning without notice after disagreements with his boss and others in the office.

"My blood is boiling at his continued misrepresentations," wrote Dolan to Broker in an e-mail Sept. 1, 2009, the same day the borough accepted Miller's resignation.

The reference comes in an e-mail string discussing Miller's planned time off — and his looming departure from the borough.

In late August 2009, Miller wrote a detailed letter to Broker resigning his position effective Sept. 23. He cited a declining office relationship stemming from disputes over cases, outside attorneys, cancelled time off for hunting trips with his sons, and concerns over the way a potential conflict of interest was handled.

Still, he said, he wanted to use leave time during some of his remaining month, for a medical procedure.

Broker appears to have been unsympathetic to Miller's requests for personal time off. She'd already rejected leave to go elk hunting later in September and bear hunting in October. The office needed him to be on-hand, she indicated, and only the medical leave would be approved.

Although he had been approved to take three and a half weeks off for medical leave to undergo an unidentified procedure at the Veterans Administration facility in Anchorage, Miller apparently cancelled the appointment after arriving in Anchorage, yet refused to return to work as directed. Broker later concluded the urgency of Miller's medical issue may have been overblown.

The records don't reveal what medical condition Miller may have been seeking treatment for; medical terms have been redacted in compliance with the judge's order.

On Sept. 1, the borough attorney's office was notified by the VA that Miller had cancelled the medical appointment. When he failed to show up at work that day, supervisors discussed, via e-mail, what to do. His time off would no longer be considered medical leave.

They asked him to be in the office by 2 p.m. He refused and resigned immediately.

Miller called the line drawn by the borough over the technicalities of his time off as a "retaliatory act due to our differences," but Dolan refused to budge.

"You cannot obtain leave on the basis that you need [redacted] immediately and keep the leave when that circumstance changes significantly. Instead you did not show up to work today and when requested to do so you resigned effective immediately. What exactly are I missing here," she wrote in an e-mail to Miller about two hours after accepting his resignation.

By that time, Miller's supervisors were already wary of the part-time attorney who clearly was on his way out. E-mails in his personnel file show colleagues and other outside attorneys had been told not to copy him on documents or correspondence having to do with what was once his biggest case -- the trans-Alaska oil pipeline valuation matter.

When he failed to keep his medical appointment and then refused to come to work, that was it.

"So do we just consider him to have quit without notice today then?" Dolan wrote to Broker.

"That's how I read it," Broker replied.

His personnel file includes the notation that he is not eligible for re-hire for at least three years.



Miller's quest to protect his records

Since June, Miller has been at the center of a public records fight aimed at finding out more about his background, particularly the seven years he spent as a part-time attorney for the Fairbanks North Star Borough. Former state legislator and political blogger Andrew Halcro, who is supporting Murkowski in the Senate race, first suggested on his website that Miller was fired from his borough job or forced to resign.

The borough, citing a local ordinance that keeps personnel files confidential unless the employee agrees to their release, refused to discuss Miller's work there or release any records.

Miller initially showed Alaska Dispatch and other media his resignation letter -- which was heavily redacted -- but refused to let them take a copy. In mid-July, the borough released about 150 pages of documents from Miller's personnel file, including a less-heavily redacted copy of Miller's resignation letter, which showed he quit over a disagreement on a case and because his vacation plans -- he was going to take his sons elk hunting -- had been cancelled by a supervisor.

At the time, Miller insisted he would be happy to release all of his personnel file if the borough would waive attorney-client privilege. He implied it was the borough that was blocking the release of the file.

But on July 15, assistant borough attorney Jill Dolan sent a letter to Miller essentially asking him what he was talking about. The borough didn't think his file was covered by attorney-client privilege and wanted Miller to point to records he thought should be kept secret for that reason. Miller never responded to the borough and continued to assert to the press and on his campaign website that he'd like to make the records public so people could know his background.

Anchorage attorney D. John McKay, who represents the Dispatch in the public records case, said Miller's view that the borough was preventing him from talking to voters about his past was "absolutely false."

"In fact, bar counsel specifically issued a written opinion that he was free to talk about this even if the borough didn't want him to, and the borough confirmed that that was their understanding too," McKay said. "It's unfortunate that he's biding behind that and sort of creating a cloud of confusion in a matter that the public might generally not be really familiar with."

The personnel records standoff continued through the summer and fall, while the media continued to look into Miller's history in other ways. In late August, after Miller who been largely unknown in Alaska politics eeked out a primary victory over the veteran Lisa Murkowski, figuring out who Joe Miller was

became a top priority for reporters.

In September, Alaska Dispatch reported on farm subsidies that Miller had received on land he'd owned in Kansas, this after he'd spent much of the campaign arguing that federal handouts and government entitlement programs were wrong. He also used a state agricultural loan fund intended to promote farming in Alaska to buy 1,000 acres of land near Delta Junction that he's never farmed. The stories about farm subsidies were soon followed by other revelations that seemed to contradict Miller's public policy views. It turned out he'd received state-subsidized health care for his family in the mid-1990s, he'd claimed indigency in order to get a state hunting and fishing license for a much-reduced fee, and his wife had received unemployment benefits after he fired her as his office assistant when he was a part-time magistrate in the rural town of Tok.

He was also months late filing financial disclosure reports required for people running for the U.S. Senate.

Media outlets, with an eye on the fast-approaching Nov. 2 general election, stepped up efforts to pry loose the public records that existed on Joe Miller — his Fairbanks North Star Borough employment file.

Miller: I'm not going to answer

In early October, McKay, working on behalf of Alaska Dispatch, wrote a letter to the borough asking officials to reconsider their refusal to release the personnel file. He argued that it was important for voters to know as much about a candidate as possible, and he produced state Supreme Court rulings that agreed. His letter prompted the borough to write its own letter to Miller, asking him again to allow release of his file and chastising him for continuing to make it seem like it was the borough that was blocking the release.

Meanwhile, people who had worked with Miller at the borough were growing frustrated with what they saw as Miller's obfuscations. They started talking quietly at first, and then some of them publicly, about Miller's troubles at the borough.

The Dispatch published a story Oct. 10 reporting that Miller had apparently used borough computers for political purposes having to do with trying to get Rindrich removed as GOP party chairman.

On Oct. 11, the Dispatch filed a lawsuit seeking to force the release of the personnel file. The Fairbanks Daily-News Miner later filed suit, as well as the Anchorage Daily News and The Associated Press, which join the consolidated cases as intervenors.

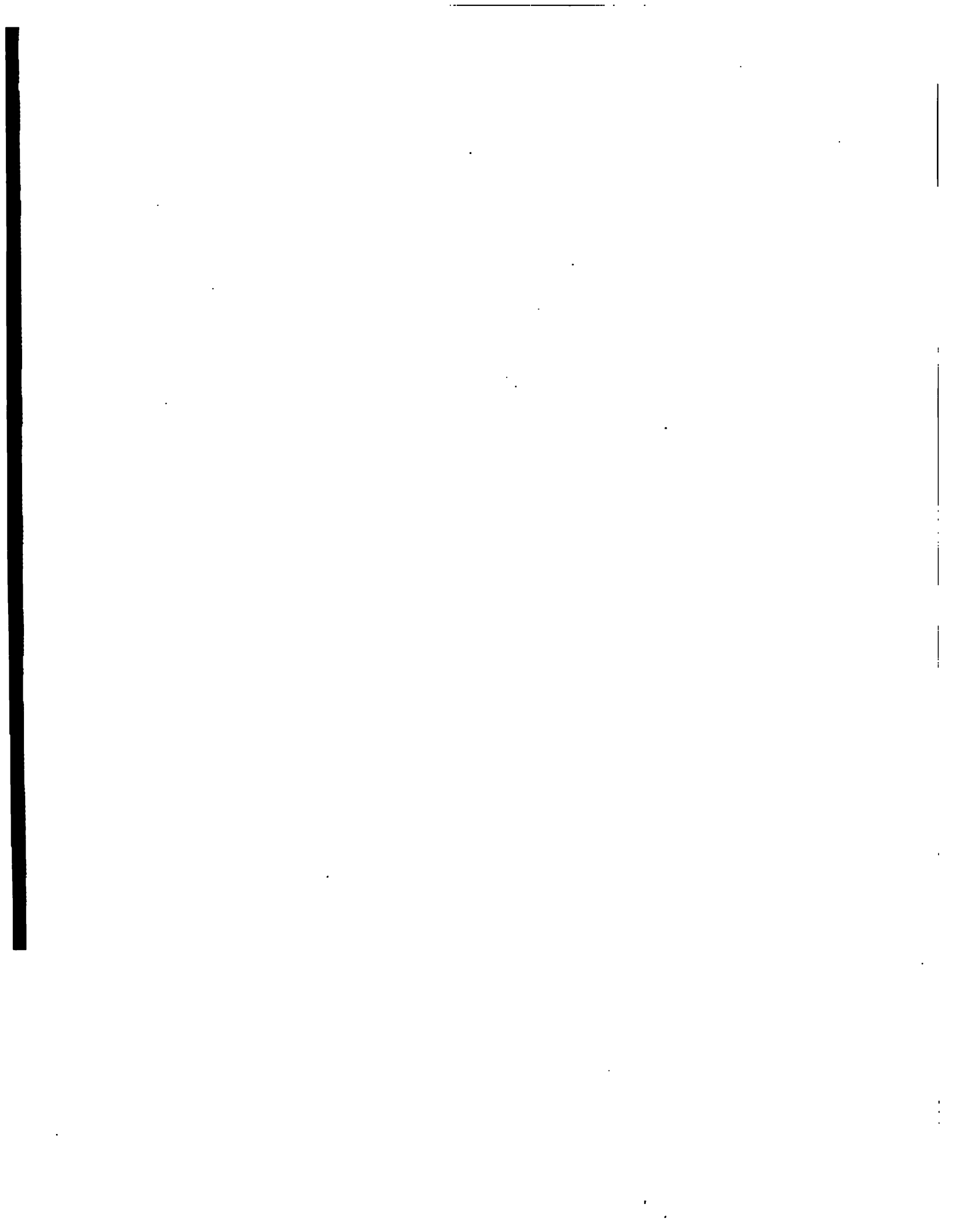
Miller, caught by questions from local and national media about the accusations, changed his political and media strategy. Instead of insisting — as he'd been doing for months — that he wanted the records released and it was the borough that was resisting — he cried foul, saying his family was being attacked and that someone in the borough had illegally leaked his private and personal information to the media.

Still, he decided it was time to ignore the local media, and speak only to national reporters and in particular those working for conservative-leaning media, like FOX News.

"We have drawn a line in the sand," he told Alaska reporters on Oct. 11 at a press briefing following a candidate's debate at the Denaina Center. "You can ask me about background, you can ask me about personal issues, I'm not going to answer. I'm not."

That prompted former borough mayor Whitaker to publicly corroborate the allegations reported by the Dispatch, saying he was coming forward because Miller was refusing to tell the truth about the incident. "It did make me angry," Whitaker said after Miller's pronouncement that he would no longer be answering questions. He said Miller was nearly fired for the misuse of public computers, but that he was needed on the big pipeline tax case.

More recently, Whitaker said he thinks Miller engaged in "a pattern of deceit" while working for the borough.



1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 FAIRBANKS DAILY NEWS MINER)
4 And Alaska Dispatch, LLC,)

5 Plaintiffs,)

6 vs.)

7 FAIRBANKS NORTH STAR)
8 BOROUGH,)

9 Defendant.)

CASE NO. 4FA-10-2886 CI
(consolidated with 4FA-10-2990)

10 vs.)

11 JOSEPH MILLER,)

12 Intervenor,)

13 vs.)

14 JIM WHITAKER,)

15 Third-Party Defendant.)

16 ORDER DENYING ALASKA DISPATCH'S MOTION FOR ATTORNEY FEES
17 AGAINST INTERVENOR JOE MILLER

18 THIS MATTER, having come before the Court upon motion of
19 Alaska Dispatch, the Court having considered any opposition
20 thereto, and being fully apprised in the premises,

21 IT IS HEREBY ORDERED that the Alaska Dispatch's Motion for
22 Attorney Fees against Intervenor Joe Miller is DENIED.

23 ORDER DENYING ALASKA DISPATCH'S MOTION FOR ATTORNEY FEES
24 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
25 et. al.; Case No.: 4FA-10-2886 CI
26 Page 1 of 2

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Fairbanks, AK 99701-4711

1 DATED this ____ day of _____, 2012.

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3
4 Stephanie E. Joannides
Superior Court Judge

5 CERTIFICATE OF SERVICE

6 I certify that a copy of this document
was served upon the following individual(s):

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16 Dated: 10/22/12 By: Cidie Chace

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25 ORDER DENYING ALASKA DISPATCH'S MOTION FOR ATTORNEY FEES
26 Fairbanks Daily News Miner et. al. vs. Fairbanks North Star Borough,
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