

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 THE ALASKA LEGISLATIVE COUNCIL,)
4 on behalf of THE ALASKA STATE)
LEGISLATURE,)

5 Plaintiff,)

6 v.)

7 HONORABLE MICHAEL J. DUNLEAVY,)
8 in his official capacity as Governor)
for the State of Alaska.)

9 Defendant.)

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

DEC 23 2020

By DP Deputy

Case No. 1JU-20- 958 CI

10 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

11 For its claims for relief, and without waiving any rights, privileges or immunities of
12 Legislative Council, the Legislature, or any member of the Legislature, Plaintiff alleges
13 as follows:

14 **PARTIES**

15 1. Plaintiff Alaska Legislative Council (hereinafter "Council") is a permanent
16 interim committee of the Alaska State Legislature (hereinafter "Legislature") and
17 consists of 14 legislators.

18 2. On December 12, 2020, under the power conferred under AS 24.20.060(4)(F),
19 the Council authorized the filing this complaint by a vote of 11 yeas and 1 nay. Council
20 has the power to file this complaint.

21 3. Defendant Michael J. Dunleavy is the Governor of the State of Alaska.

22 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
Legislative Council v. Dunleavy, Case No. 1JU-20-_____CI

1 **JURISDICTION**

2 4. This court has subject matter jurisdiction to hear this complaint under AS
3 22.10.020 and article IV, sections 1 and 3, Constitution of the State of Alaska.

4 5. This court has personal jurisdiction to hear this complaint under AS
5 09.05.015.

6 6. Venue is proper in the First Judicial District.

7 **FACTUAL ALLEGATIONS**

8 7. Under article II, Constitution of the State of Alaska, the lawmaking power
9 rests exclusively with the Legislature.

10 8. Under article III, section 16, Constitution of the State of Alaska, the Governor
11 "shall be responsible for the faithful execution of the laws."

12 9. Under article III, section 25, Constitution of the State of Alaska, principal
13 department heads "shall be appointed by the governor, subject to confirmation by a
14 majority of the members of the legislature in joint session."

15 10. Under article III, section 26, Constitution of the State of Alaska, "[w]hen a
16 board or commission is at the head of a principal department or a regulatory or quasi-
17 judicial agency, its members shall be appointed by the governor, subject to confirmation
18 by a majority of the members of the legislature in joint session, and may be removed as
19 provided by law."

20 11. Under article III, section 27, Constitution of the State of Alaska, "[t]he
21 governor may make appointments to fill vacancies occurring during a recess of the

1 legislature, in offices requiring confirmation by the legislature. The duration of such
2 appointments shall be prescribed by law."

3 12. During the Second Regular Session of the Thirty-First Alaska State
4 Legislature, the Governor made various appointments under article III, sections 25 and
5 26, Constitution of the State of Alaska, and presented those names to the Legislature for
6 confirmation in accordance with the procedure set forth under AS 39.05.080.

7 13. Due to the public health emergency and the novel coronavirus disease
8 (COVID-19) outbreak, before meeting in joint session to act on the Governor's
9 appointments, the Legislature went on an extended recess, March 29, 2020, through
10 May 17, 2020. The Thirty-First Alaska State Legislature has not reconvened since.

11 14. Before going on an extended recess, on March 24, 2020, the Alaska State
12 House of Representatives passed HB 309 am, relating to the procedure for confirmation
13 of the Governor's appointments. On March 25, 2020, the Alaska State Senate passed
14 SCS HB 309(RLS). On March 26, 2020, the Alaska State House of Representatives
15 passed SCS HB 309(RLS) by concurring in the Senate amendments. On March 31,
16 2020, SCS HB 309(RLS) was transmitted to the Governor. On April 6, 2020, the
17 Governor signed SCS HB 309(RLS) into law, which became chapter 9, SLA 2020.

18 15. Chapter 9, SLA 2020, which took effect April 7, 2020, extended the time for
19 the Legislature to act to confirm or decline to confirm an appointment presented to the
20 Legislature by the Governor during the Second Regular Session of the Thirty-First
21 Alaska State Legislature.

1 16. Chapter 9, SLA 2020 specifically provided that:

2 (b) The failure of the legislature to act to confirm or decline to
3 confirm an appointment presented by the governor during the Second
4 Regular Session of the Thirty-First Alaska State Legislature will be
5 tantamount to a declination of confirmation on the earlier of

6 (1) January 18, 2021; or

7 (2) 30 days after

8 (A) expiration of the declaration of a public
9 health disaster emergency issued by the governor on
10 March 11, 2020; or

11 (B) issuance of a proclamation that the public
12 health disaster emergency identified in the declaration
13 issued by the governor on March 11, 2020, no longer exists.
14

15 17. Under chapter 10, SLA 2020, the declaration of a public health disaster
16 emergency issued by the Governor on March 11, 2020, expired on November 15, 2020.

17 18. Under chapter 9, SLA 2020, as of December 16, 2020, the failure of the
18 Legislature to act to confirm or decline to affirm appointments presented by the
19 Governor to the Legislature during the Second Regular Session of the Thirty-First
20 Alaska State Legislature became tantamount to a declination of confirmation.

21 19. Contrary to chapter 9, SLA 2020, through letters dated December 16, 2020,
22 addressed to Senate President Cathy Giessel and Speaker of the House Bryce Edgmon,
the Governor advised the Legislature that, in his opinion, "Executive Branch
Department heads and Boards and Commissions appointees to Executive Branch
Boards, who have not received a confirmation vote, continue to serve under valid
appointments." The Governor also announced that he was "exercising [his]

1 constitutional authority under Alaska Constitution, Article III, section 27 to continue
2 their appointments."

3 **PLAINTIFF'S CLAIMS**

4 20. The allegations in paragraphs 1-19 of this complaint are realleged and
5 incorporated by reference.

6 21. In section 1(b), chapter 9, SLA 2020, the Legislature provided by law that,
7 "the failure of the Legislature to act to confirm or decline to affirm appointments
8 presented by the Governor to the Legislature during the Second Regular Session of the
9 Thirty-First Alaska State Legislature" would be tantamount to a declination of
10 confirmation 30 days after expiration of the March 11, 2020 proclamation of public
11 health disaster emergency.

12 22. The appointments presented by the Governor to the Legislature during the
13 Second Regular Session of the Thirty-First Alaska State Legislature became tantamount
14 to a declination of confirmation on December 16, 2020, and those appointments are no
15 longer valid.

16 23. The Defendant's attempt to continue the appointments of appointees
17 presented for confirmation to the Legislature during the Second Regular Session of the
18 Thirty-First Alaska State Legislature is a violation of Article III, sections 25 and 26,
19 Constitution of the State of Alaska, chapter 9, SLA 2020, and AS 39.05.080.

20 24. The Defendant's attempt to continue the appointments of appointees
21 presented to the Legislature during the Second Regular Session of the Thirty-First

1 Alaska State Legislature is in violation of article III, section 16, Constitution of the State
2 of Alaska.

3 25. Plaintiff is entitled to declaratory and injunctive relief ordering Defendant to
4 faithfully execute chapter 9, SLA 2020 and prohibiting the Governor from continuing
5 the appointments of "Executive Branch Department heads and Boards and Commissions
6 appointees to Executive Branch Boards," as announced in his December 16, 2020,
7 correspondence to the Legislature.

8 **RELIEF REQUESTED (Chapter 9, SLA 2020; AS 39.05.080)**

9 WHEREFORE, the Alaska Legislative Council, on behalf of the Alaska State
10 Legislature, requests the following relief:

11 1. Declaratory judgment that Defendant has violated Article III, sections 25 and
12 26, Constitution of the State of Alaska; chapter 9, SLA 2020; and AS 39.05.080.

13 2. Declaratory judgment that Defendant has violated the Constitution of the State
14 of Alaska by failing to execute chapter 9, SLA 2020.

15 3. Declaratory judgment that Defendant's attempt to continue the appointments
16 of Executive Branch Department heads and Boards and Commissions appointees to
17 Executive Branch Boards whose appointments were considered tantamount to a
18 declanation as of December 16, 2020, is invalid.

19 4. Injunctive relief prohibiting Defendant from continuing the appointments of
20 Executive Branch Department heads and Boards and Commissions appointees to
21

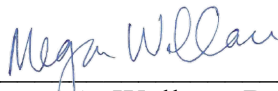
1 Executive Branch Boards whose appointments were considered tantamount to a
2 declanation as of December 16, 2020.

3 5. Injunctive relief prohibiting Defendant from reappointing a person whose
4 appointment was considered tantamount to a declination as of December 16, 2020, to
5 the same position or membership until the First Regular Session of the Thirty-Second
6 Alaska State Legislature convenes.

7 6. Plaintiff's attorney's fees and costs herein.

8 7. Such other relief as the Court may find to be just and equitable.
9

10 Respectfully submitted this 23rd day of December 2020.

11 
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