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SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

REP. DAVID CLARK EASTMAN Plaintiff,	)	
vs.	)	1JU-24 - 00922 Civil
MICHAEL J. DUNLEAVY, In his official capacity as an official of the State of Alaska, and the **STATE OF ALASKA**. Defendants.	)	

VERIFIED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

David Clark Eastman ("Eastman") seeks summary judgment against Michael J. Dunleavy and the State of Alaska in the form of a declaratory relief holding that the legislation that is the subject of this litigation was adopted in a manner inconsistent with procedural standards embedded in the Alaska Constitution.

More specifically, Eastman seeks a judicial determination that Senate Bill 189, enacted by the 33rd Alaska Legislature, is unconstitutional according to Art. II, Sec. 13 of the Alaska Constitution.

FACTUAL BACKGROUND

The Alaska Legislature adopted HCS SB 189 (RLS) am House during the second session of the 33rd Legislature. This legislation was enacted by the Alaska Legislature at 11:40 p.m., on May 15, 2024, the 121st and final day the legislature was in session, when the Alaska Senate concurred in HCS SB 189 (RLS) am House, (hereafter "SB 189"), the much-modified version of a legislative bill previously sent by the Alaska Senate to the Alaska House of Representatives for consideration. SB 189 was the final measure adopted by the Alaska Senate prior to the adjournment of the 33rd Legislature.[1]

Facing a looming constitutional deadline, legislators in the Alaska House of Representatives bundled together six different bills on various subjects[2] and adopted the amalgamated measure as a single bill on May 15, 2024. The new legislation containing the various disparate measures was then sent over to the Alaska Senate, which concurred in the combination of bills shortly before midnight on the final day the legislature was in session.

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[1] Subsequent to the adoption of SB 189, the Alaska House of Representatives attempted to adopt additional pieces of legislation after midnight on May 15, 2024. All five bills purportedly adopted on May 16, 2024 were eventually vetoed by the governor for having been passed after the constitutional deadline embedded in Art. II, Sec. 8 of the Alaska Constitution. The legislature made no attempt to override these vetoes and none of the five vetoed bills became law.

[2] SB 182, SB 189, SB 228, SB 234, HB 89, and HB 396.

The title of SB 189 illustrates the disparate subjects the legislation sought to embrace:

> "An Act extending the termination date of the Big Game Commercial Services Board; extending the termination date of the Board of Massage Therapists; establishing a big game guide concession area permit program on land in the state; relating to the duties of the Big Game Commercial Services Board, the Board of Game, the Department of Fish and Game, and the Department of Natural Resources; relating to education tax credits for certain payments and contributions for child care and child care facilities; relating to the insurance tax education credit, the income tax education credit, the oil or gas producer education credit, the property tax education credit, the mining business education credit, the fisheries business education credit, and the fisheries resource landing tax education credit; extending the termination date of the Alaska Commission on Aging; extending the termination date of the Marijuana Control Boad; renaming the day care assistance program the child care assistance program; relating to the child care assistance program and the child care grant program; requiring the Board of Game to establish an initial big game guide concession area; providing for an effective date by amending the effective date of secs. 1, 2, and 21, ch. 61, SLA 2014: and providing for an effective date." [3]

Eastman filed a ***Complaint for Declaratory Relief and Potential Equitable Relief*** in this litigation on November 20, 2024. The Alaska Attorney General's

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[3] A copy of SB 189's text and content, as enacted, can be found at: https://www.akleg.gov/basis/Bill/Detail/33?Root=sb189. A copy in PDF format is attached as **EXHIBIT A**.

Office, on behalf of Governor Dunleavy and the State of Alaska, filed an ***Answer*** to Eastman's Complaint on January 10, 2025.

Eastman now seeks summary judgment on the constitutional issue in this dispute.

ARGUMENT

A. Review Standards

1. Summary Judgment

The party seeking summary judgment has the burden of showing both that the case presents no material issue of fact requiring the taking of testimony and that the applicable law requires judgment in its favor, which burden must be met by the submission of material admissible as evidence.[4] Summary judgment is granted if the pleadings and admissible evidence "show that there is no genuine issue of material fact and that the party is entitled to judgment as a matter of law." *Greywolf v. Carroll*, 151 P.3d 1234, 1240 (Alaska 2007).[5] If a *prima facie* case is established by the moving party, then the nonmoving party must set forth specific facts showing that admissible evidence could be produced that reasonably tends to dispute or

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[4] *Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P. 2d 447, 450 (Alaska 1974).

[5] *Citing* Alaska R. Civ. P. 56(c), at note 7.

contradict the moving party's evidence in order to demonstrate the existence of a dispute of material fact and prevent entry of summary judgment.[6]

2. Constitutional Review Standards

The interpretation of the Alaska Constitution and application of Alaska's most important foundational document is what is at issue in this case and is squarely within the purview of the judiciary.

Guidance on how to analyze, interpret and apply the Alaska Constitution is settled law and was recapitulated in *Wielechowski v. State*, 403 P.3d 1141, 1146 - (Alaska 2017), in the following summation:

> We provided a framework for interpreting the Alaska Constitution in *Hickel v. Cowper*.[7] "Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. We are not vested with the authority to add missing terms or hypothesize differently worded provisions … to reach a particular result." [8] We instead "look to the plain ordinary meaning and purpose of the provision and the intent of the framers." [9] "Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning." [10] "Constitutional provisions should be given a reasonable and practical interpretation in accordance with

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6 *Greywolf* at 1241, *citing Preblich v. Zorea*, 996 P. 2d, 730, 733 (Alaska 2000).
7 874 P.2d 922, 926-28 (Alaska 1994).
8 *Id.* at 927-28
9 *Id.* at 926 (quoting *ARCO Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992).
10 *Id.*

> common sense." [11] [A]bsent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision,"[12] without add[ing] 'missing terms' to the Constitution or … interpret[ing]existing constitutional language more broadly than intended by … the voters.[13] Legislative history and the historical context, including events preceding ratification, help define the constitution.[14]

B. The Basis for Concluding HB 189 Violates the Single Subject Rule

The issue before the court is one of law. The evidence necessary to make a judicial interpretation about the constitutionality of SB 189 is contained in the language of the legislation.

The task for the court in this dispute is to determine whether the language of the measure enacted by the Alaksa Legislature comports with Alaska Constitution, Art. II, Sec. 13, a provision requiring:

> **Form of Bills** – Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the

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11 *Id.* quoting *ARCO Alaska, Inc. v. State*, 824 P.2d at 710).

12 *Id.*

13 *Id.* at 927.

14 *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016) (citing *State v. Alex*, 646 P.2d 203, 208 (Alaska 1982; *Hootch v. Alaska State-Operated Sch. Sys.,* 536 P.2d 793, 800, 804 (Alaska 1975).

> title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Eastman maintains the enactment of SB 189 was unconstitutional, as passed by the Alaska Legislature, because the legislation failed to adhere to the language expressed in Art. II, Sec. 13 of the Alaska Constitution. Eastman's challenge to the measure is facial and fatal according to the required constitutional analytical standards.

A facial challenge to a law's constitutionality alleges that the law is unconstitutional as enacted and "that there is no set of circumstances under which the statue can be applied consistent with the requirements of the constitution." *Ass'n of Vill. Council Presidents v. Mael*, 507 P.3d 963, 982 (Alaska 2023).[15]

Art. II, Sec. 13 of the Alaska Constitution requires that "[e]very bill shall be confined to one subject unless it is an appropriation bill or one codifying , revising, or rearranging existing laws." This constitutional mandate was interpreted in *Croft v. Parnell*, where the Alaska Supreme Court required that an:

> Act (of the legislature) should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other,

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[15] Citing *State v. ACLU of Alaska,* 204 P.3d 364, 372 (Alaska 2009); *see also*, *Sagoonick v. State*, 503 p.3d 777, (Alaska 2022)(differentiating "facial" constitutional challenge from "as-applied" constitutional challenge.).

> either logically or in popular understanding, as to be parts of, or germane to one general subject.[16]

The court went on to explain in *Croft* that one of the primary motivations for adoption of the single subject constitutional requirement was to prevent "log-rolling," an insidious political practice to gain support for legislation by "appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure." [17]

The standard by which the judiciary must evaluate legislation that arguably contains disparate subjects is one where *all* the topics contained in the measure "fall under some one general idea," and are "connected with or related to each other" by logic "or in popular understanding, as to be parts of, or germane to, one general subject." *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982).

The various topics packed into SB 189 cannot be connected or shown to relate to each other by logic or popular understanding. Simply put, the smorgasbord of issues and topics set out in SB 189 are not part of one general subject germane to all the matters contained in the legislation. As a result, SB 189, as passed by the Alaska

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16 236 P.3d 369, 373 (Alaska 2010).

17 *Id.*, at 374.

Legislature is unconstitutional, invalid and incapable of being given effect by the executive branch of Alaska's government.

Furthermore, maintaining Alaska's constitutional prohibition against combining disparate measures in one piece of legislation should not be read, evaluated and applied in isolation. Other constitutional provisions in the Alaska Constitution are implicated by the requirement that legislation be confined to a single measure.

These constitutional provisions include the authority of the governor to be able to veto each individual piece of legislation,[18] the constitutional requirement that the "yeas and nays" shall be entered in the journal upon final passage of each individual bill,[19] and the constitutional requirement that the single subject of each bill shall be expressed in the title.[20]

If each bill the governor could conceivably veto is combined with a bill he does not intend to veto, without respect to the subject matter of either bill, his constitutional authority to veto each bill may be frustrated.

Likewise, if the legislature may combine bills without respect to their subject matter, what would prevent a future legislature, for its own convenience, from

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18 Alaska Constitution, Art. II, Sec. 15.
19 Alaska Constitution, Art. II, Sec. 14.
20 Alaska Constitution, Art. II, Sec. 13.

combining every bill it intends to pass into a single bill each legislative session, thereby making meaningless the constitutional requirement that each legislator's vote on each bill is to be publicly recorded?

The practice of combining widely disparate subjects into a single measure clearly implicates various constitutional requirements for public transparency included in Article II, Sections 12, 13, 14, and 15, including the requirement in Section 12 that each house of the legislature "shall keep a journal of its proceedings," and the requirement in Section 13 that "[t]he subject of each bill shall be expressed in the title."

The requirement that each bill be confined to one subject wisely reinforces other provisions of the constitution including the power of the governor to properly evaluate and review legislation before it beomes law, and the ability of the public to be able to communicate with their legislative representatives concerning votes on specific measures, not some large, amorphous legislative stew.

The idea that legislators may pass legislation in whatever form or manner they choose is wholly foreign to our constitutional form of government. Our form of government is one that grants limited authority from the citizens of our state to each branch of government.

Within the confines of the Alaska Constitution, the legislature is tasked with establishing "the procedure for enactment of bills into law." [21] However, this grant of authority cannot trump other constitutional provisions, including the requirement that legislation be confined to a single subject found in Art. II, Sec. 13.

Under our current constitutional framework, a single branch of government, in this case the legislative branch, is not empowered to cast off constitutional prohibitions because they happen to find them inconvenient.

The Alaska Supreme Court has observed that the judiciary "does not interpret constitutional provisions in a vacuum – the document is meant to be read as a whole with each section in harmony with the others." *State v. Alaska Legislative Council*, 515 P.3d 117, 123 -24 (Alaska 2022). Thus, reading Art. II, Sec. 13 in harmony with Sections 14 & 15 in Article II supports the contention that legislation (other than appropriation bills or statutory revisions), must be confined to a single subject and that this single subject must be expressed in the title of the measure.

This singleness of purpose and expression required in the Alaska Constitution pursuant to the enactment of legislation upholds the legislature's constitutional role as a deliberative body, promotes accountability, reduces confusion in the legislative

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[21] Alaska Constitution, Art. II, Sec. 14.

process, and protects the public from the nasty tendency for logrolling in the legislative branch of government. Applying the pronouncements of the Alaska Supreme Court to the language of the legislation supports Eastman's contention that SB 189 is facially and fatally flawed according to settled constitutional analysis in Alaska.

C. Summary Judgment Is Warranted

Summary judgment should be awarded against Governor Dunleavy and the State. The disparate provisions amalgamated in SB 189 were improperly enacted by the legislature, do not have the force of law and cannot be enforced or administered.

No serious or genuine disputes about material facts requiring the court to conduct an evidentiary hearing or a trial exist in this case.[22] Additionally, even a dispute about "(t)he precise nature and extent" of a duty "is a question of law which can be decided at the summary judgment stage." [23]

CONCLUSION

This case centers on the apparent mistaken belief that the Alaska Legislature could bundle widely disparate measures addressing topics about which no common

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[22] *See generally*, *Arctic Tug and Barge, Inc. v. Raleigh, Schwartz & Powell*, 956 P. 2nd 1199, 1204 (Alaska 1998).

[23] *Smith v. State*, 921 P. 2nd 632, 634 (Alaska 1996).

thread can be ascertained, and pass these different legislative measures as one piece of legislation, a practice expressly prohibited by the Alaska Constitution.

Accordingly, the judiciary is required to uphold the Alaska Constitution and strike down this impermissible enactment of SB 189 due to the failure of the Alaska Legislature to conform to the constitutional mandate contained in Art. II, Sec. 13.

VERIFICATION OF FACTS

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

On my Oath, having read and reviewed this document, I swear the facts contained in the *Factual Background* portion of this memorandum, *supra*, as well as any other assertions of fact made in this document are based on direct knowledge I obtained while serving in the 33rd Legislature and that these facts are true to the best of my knowledge.

DATED this 12th day of March, 2025 at Wasilla, Alaska.

David Clark Eastman

David Clark Eastman,
Plaintiff

[Additional Signature Follow on Subsequent Page]

DATED this 12th day of March, 2025 at Juneau, Alaska.

LAW OFFICES OF
JOSEPH W. GELDHOF
Attorney for Plaintiff

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