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Attorneys for Plaintiff Alaska Legislative
Council

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

ALASKA LEGISLATIVE COUNCIL, on
behalf of the ALASKA STATE
LEGISLATURE,

Plaintiff,

v.

GOVERNOR MICHAEL J. DUNLEAVY,
in his official capacity,

Defendant.

Case No.: 1JU-25- 00855 CI

COMPLAINT

On behalf of the Alaska State Legislature, Plaintiff Alaska Legislative Council
("Legislative Council") hereby files this complaint against Governor Michael J. Dunleavy,
in his official capacity ("Governor"), by stating and alleging the following:

COMPLAINT

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I. INTRODUCTION

1. The Legislative Council brings this lawsuit on behalf of the Alaska State Legislature regarding the Governor's stated intent to effectuate Executive Order 137 ("EO 137"), an executive order that was never considered by the Legislature but which purports to make changes in the organization of the executive branch and in the assignment of functions among its units. The Governor's conduct violates state law and the Alaska Constitution.

2. Under article III, section 23 of the Alaska Constitution, the Governor may generally use executive orders to make changes in the organization of the executive branch or in the assignment of functions among its units that have the force of law. However, the Legislature "shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders."

3. Article III, section 23 ensures that when the Governor issues executive orders that "require the force of law," the Legislature will be given a fair opportunity to assess the order before deciding whether or not to disapprove it. If the Legislature disapproves an order by resolution concurred in by a majority of the legislators in joint session, then the order has no effect. This is sometimes called a "legislative veto." Otherwise, the order "becomes effective at a date thereafter to be designated by the Governor." Article III, section 23.

4. Prior to the transmission of EO 137, no Governor had submitted an executive order to the Legislature during a special session. This case, therefore, involves an unprecedented attempt to shoehorn consideration of over forty changes to the Alaska Statutes as part of an executive-branch reorganization into a special session constitutionally

limited to 30 days, depriving the Legislature of its constitutionally prescribed time for evaluating such consequential issues.

5. On July 2, 2025, the Governor issued a proclamation calling the Thirty-Fourth Legislature into a 30-day special session beginning August 2, 2025.

6. On August 1, 2025, the Governor transmitted EO 137 to the House and to the Senate.

7. On August 2, 2025, the Legislature convened its First Special Session. On that same date, the Senate and the House of Representatives each read a letter of response to the Governor. The two letters—which were identical and jointly signed by the Senate President and the Speaker of the House—returned EO 137 to the Governor due to certain legal defects, including the failure to comply with article III, section 23 of the Alaska Constitution.

8. After the Legislature returned EO 137 to the Governor due to its legal defects, the Governor announced that he would consider EO 137 “to have become law at the close of the special session and proceed accordingly.”

9. By improperly transmitting EO 137 and attempting to require the Legislature to consider (and potentially disapprove of) EO 137 in a 30-day special session, the Governor violated state law and the Alaska Constitution.

10. The Governor asserts that he provided the Legislature “sixty days of a regular session, or a full session if of shorter duration” to disapprove of EO 137 because the Legislature had the “full” 30-day special session to evaluate the order.

11. This lawsuit seeks declaratory relief to remedy the Governor's violation of state law and the Alaska Constitution.

II. PARTIES

12. Plaintiff Legislative Council is a permanent interim committee of the Alaska State Legislature. It ensures that the Legislature is provided with full-time technical assistance in accomplishing the research, reporting, bill drafting, examination and revision of statutes, and general administrative services essential to the development of sound legislation in the public interest. Pursuant to AS 24.20.060(4)(F), the Legislative Council is authorized to sue in the name of the Legislature during the interim between sessions if authorized by majority vote of the full membership of the committee. A majority of the full membership authorized this suit on September 10, 2025.

13. Defendant Governor Michael J. Dunleavy is the chief executive for the State of Alaska. He is being sued in his official capacity.

III. JURISDICTION AND VENUE

14. This court has jurisdiction over this dispute, as well as the ability to enter a declaratory judgment, under AS 22.10.020.

15. Venue is proper in the First Judicial District as the Governor maintains an office and may be served within Juneau, Alaska, and the claims arise from actions that will have impacts, in part, within the First Judicial District.

IV. FACTUAL ALLEGATIONS

A. The Legislature Already Disapproved an Executive Order Seeking to Establish a Department of Agriculture During Its First Regular Session.

16. On January 21, 2025, the Governor transmitted Executive Order No. 136 (“EO 136”) to the House and the Senate. In EO 136, the Governor stated that it was “in the best interests of efficient administration to establish the Department of Agriculture and transfer the functions of the Department of Natural Resources relating to agriculture to the Department of Agriculture.”

17. EO 136 contemplated amending, adding, or repealing more than forty laws as part of creating this new department.

18. The Governor stated that he issued EO 136 under the authority of article III, section 23 of the Alaska Constitution, and in accordance with AS 24.08.210.

19. Article III, section 23, of the Alaska Constitution provides:

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

20. AS 24.08.210 provides:

An executive order proposing a change in the executive branch and requiring the force of law under art. III, sec. 23, Constitution of the State of Alaska shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter

to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law.

21. Consistent with both of these authorities, the Governor submitted EO 136 to the Legislature on the day each house organized, which was the first day of the first regular session for the Thirty-Fourth Legislature (January 21, 2025).

22. The Legislature introduced a special concurrent resolution to disapprove EO 136.

23. Legislators received substantial feedback from their constituents about different aspects of EO 136. Legislators investigated and debated the merits of EO 136 during multiple committee hearings, including at meetings of the Senate Resources Committee,¹ the Senate Finance Committee,² and the House Finance Committee.³

24. After using nearly the entire 60-day period contemplated by the Constitution of the State of Alaska, the Legislature met in joint session and disapproved EO 136 on March 19, 2025.⁴

B. The Legislature Introduced—and Is Still Considering—Legislation to Create a Department of Agriculture.

25. Unlike bills, executive orders cannot be amended by the Legislature; they are enacted into law on an all-or-nothing basis.

¹ February 19, 2025.

² March 3, 2025.

³ March 11, 2025.

⁴ Special Senate Concurrent Resolution 1 (SSCR 1).

26. Because of this all-or-nothing characteristic, legislators wanting to have any substantive input on a newly created Department of Agriculture would need to introduce a bill. Unlike an executive order, bills can be amended, refined, and debated as part of the usual legislative process, permitting greater constituent and stakeholder involvement.

27. In mid-March 2025, the House Labor and Commerce Committee and the Senate Rules Committee both introduced bills to create a Department of Agriculture (House Bill 140 and Senate Bill 128, respectively).

28. Both HB 140 and SB 128 remain under consideration. Each bill is currently in the possession of the Resources Committee of its respective body. When the Legislature convenes its Second Regular Session in January 2026, these bills may be heard, debated, and amended at committee hearings and brought to the floor of either or both houses for a vote on passage.

C. After the Legislature Disapproved EO 136 and Introduced Legislation to Create a Department of Agriculture, the Governor Called the Legislature Into Special Session and Transmitted a New Executive Order That Is Nearly Identical to EO 136.

29. On July 2, 2025, the Governor issued a proclamation calling the Legislature into a special session. According to the Governor's proclamation, the special session was set to begin on August 2, 2025, and would entail two subjects for consideration: education reform and the creation of a Department of Agriculture.

30. On the same day that he issued that proclamation, on information and belief, the Governor requested that more than a dozen legislators not appear for the first five days of the special session.

31. On information and belief, the Governor scheduled the special session at a time when he knew that at least one legislator was expected to be unavailable due to an excused absence. One legislator who had previously voted to disapprove EO 136, Senator Dunbar, was deployed to Poland on active duty with the Air National Guard and was thus expected to miss the newly scheduled special session.

32. The Governor vetoed certain funding for the special session.

33. The day before the special session began, the Governor submitted EO 137 to the presiding officers of the Legislature. Just as he did in EO 136 (which the Legislature had recently disapproved), the Governor stated in section 1 of EO 137 that it was “in the best interests of efficient administration to establish the Department of Agriculture and transfer the functions of the Department of Natural Resources relating to agriculture to the Department of Agriculture.”

34. Just as with Executive Order 136, EO 137 contemplated amending, adding, or repealing more than forty laws as part of creating the new Department of Agriculture. In fact, EO 137 was almost identical to EO 136.

35. There is no meaningful difference between EO 136 and EO 137.

D. The Constitution of the State of Alaska Does Not Allow a Governor to Submit an Executive Order to the Legislature During a Special Session, and the Legislature Properly Returned EO 137.

36. Just as he did with EO 136, the Governor stated that he issued EO 137 under the authority of article III, section 23, of the Alaska Constitution, and in accordance with AS 24.08.210.

37. On August 2, 2025, the Presiding Officers of the Legislature promptly notified the Governor that the Legislature would not accept transmittal of EO 137 for consideration during the special session due to certain legal defects, including the failure to comply with article III, section 23 of the Alaska Constitution.⁵

38. No Governor of the State of Alaska has previously sought to submit an executive order to the Legislature for consideration during a special session.

39. Nowhere in the Alaska Constitutional Convention Proceedings did any of the delegates indicate that article III, section 23 of the Alaska Constitution would permit a governor to introduce executive orders during a special session.

40. The Governor disagreed with the Legislature’s position and stated that unless the Legislature convened in joint session to disapprove EO 137 by the end of the special session, he would “consider it to have become law at the close of the special session and proceed accordingly.”

41. The Governor takes the view that article III, section 23, of the Alaska Constitution simply requires that the Legislature be given a “full session”—including a 30-day, or shorter, special session—to disapprove of such orders.

42. Plaintiff, by contrast, takes the position that the language at issue—“a full session if of shorter duration”—only addresses scenarios in which a full *regular* session is of shorter duration than sixty days.

⁵ House Journal, pages 1406–1408; Senate Journal, pages 1424–1425.

43. When article III, section 23 of the Alaska Constitution was being drafted, the delegates were debating the possibility of shorter regular sessions—as short as 30 days—and recognized the possibility that the Legislature may adjourn a regular session in fewer than 60 days. The Alaska Constitution did not originally include any guidance on the duration of regular sessions. It was only in 1984 that the issue was addressed at all, when voters approved an amendment setting a 120-day deadline.

E. The Dispute Between the Legislative and Executive Branches Will, If Not Resolved, Lead to Confusion Over Whether the Department of Agriculture Exists.

44. The Governor has refused to acknowledge or remedy his violations of Alaska statutory law and the Alaska Constitution, and he asserts that EO 137 will take effect on January 1, 2026.

45. There are no appropriations for a Department of Agriculture in the fiscal year 2026 operating budget passed by the Legislature during the First Regular Session, so there are no appropriations to fund the operations of a Department of Agriculture or the salary and benefits of a Department of Agriculture commissioner on January 1, 2026.

46. In contrast, the Legislature asserts that both the Senate and House of Representatives properly returned EO 137 because it did not comply with the Alaska Constitution, and that a Department of Agriculture will not be created on January 1, 2026.

47. Under AS 24.20.060(4)(B) and AS 24.20.070(b), the Legislative Council has the authority and responsibility to continuously revise and publish the Alaska Statutes.

48. Because EO 137 was not enacted into law in the manner required by the Alaska Constitution, the statutory changes that it purports to make cannot go into effect.

49. The relevant sections of the published Alaska Statutes do not incorporate the changes purportedly made by EO 137. In contrast, the Governor asserts that the Department of Agriculture will be created on January 1, 2026, and on that date he will interpret the Alaska Statutes to incorporate the changes EO 137 purports to make.

50. The Legislative Council is entitled to a declaration that the Governor's issuance of EO 137 during the First Special Session of the Thirty-Fourth Alaska Legislature, and the Governor's insistence that EO 137 will become law because it was not disapproved by the Legislature during the special session, violates state law and the Alaska Constitution.

COUNT I: DECLARATORY JUDGMENT

51. Plaintiff repeats and incorporates the averments in the preceding paragraphs.

52. The Declaratory Judgment Act grants superior courts the power to issue declaratory judgments in cases of actual controversy. *See* AS 22.10.020(g).

53. An actual controversy exists between the parties regarding whether, consistent with the Alaska Constitution, the separation of powers, and AS 24.08.210, the Legislature is entitled to sixty days of a regular session, or a full regular session if of shorter duration, to disapprove of executive orders that change the organization of the executive branch and which require the force of law.

54. The parties require the Court's prompt assistance to resolve this legal dispute before January 1, 2026. Otherwise, there is a risk that the State will move forward with a Department of Agriculture that may have been unconstitutionally created, and thus without legal authority to act.

55. Plaintiff is entitled to a declaration that the Governor's issuance of EO 137 at the outset of the special session violated the Alaska Constitution, AS 24.08.210, and the separation of powers doctrine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

- A. For a declaratory judgment that the Legislature is entitled to sixty days of a regular session, or a full regular session if of shorter duration, to disapprove of an executive order proposing a change in the executive branch and requiring the force of law;
- B. For a declaratory judgment that the Governor's issuance of EO 137 in connection with the special session violated the Alaska Constitution, AS 24.08.210, and the separation of powers doctrine;
- C. For attorney's fees and costs as allowed by law; and
- D. For such further relief as the Court deems just and proper.

DATED: October 3, 2025

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By: /s/ Kevin Cuddy

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