

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

American Civil Liberties Union of
Alaska, Bonnie L. Jack, and
John D. Kauffman,

Plaintiffs,

v.

MICHAEL J. DUNLEAVY, in his
official capacity as Governor of Alaska;
and the STATE OF ALASKA,

Defendants.

) FILED in the TRIAL COURTS
) State of Alaska Third District

) JAN 29 2021

) Clerk of the Trial Courts
) By _____ Deputy

) Case No. 3AN-19-08349CI

) Affidavit of Lloyd Miller

STATE OF ALASKA)

) ss.

THIRD JUDICIAL DISTRICT)

1. I am a partner at Sonosky, Chambers, Sachse, Miller, &
Monkman, LLP, and have practiced law in Alaska since 1978.
Throughout my career, I have litigated numerous matters in state and
federal court in Alaska.

2. I have litigated multiple cases before the Alaska Supreme Court
and the Alaska Superior Court.

3. My standard rate is \$600 per hour and I am familiar with what
attorneys in the Alaska marketplace charge for hourly rates:

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experienced litigation attorneys in Anchorage with more than 10 years of experience routinely charge between \$375 to \$600 per hour and litigation attorneys with one to 10 years of experience typically charge between \$200 to \$400 per hour. (My standard hourly rates are subject to reduction when working for not-for-profit or tribal government entities with limited resources.)

4. To support this affidavit, I have reviewed this case's docket and parties' respective summary judgment filings. This is a lawsuit, as the court noted on page 10 of its summary judgment decision, for which "there is no legal precedent or authority that addresses a situation quite like this one." It involved novel constitutional issues that required careful thought and attention.

5. I have litigated similar cases to summary judgment. Based on my review of this case's records and my familiarity with other firms' fee applications in similar cases, a total of 180 to 200 hours is well below, and fees of \$110,000 to \$125,000 would be well within, a normal range for a case like this.

6. Stephen Koteff's and Joshua Decker's requested rates of \$600 per hour are reasonable for the Alaska market. These are consistent with the rates that other Anchorage attorneys with similar levels of

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experience charge for work involving similar complexity and which requires similar levels of expertise and skill. In my opinion, the plaintiffs' total fee of \$111,000 for 185 hours of work is reasonable for the Alaska market. This is particularly so in light of the results obtained in this case, the superior performance of counsel, and the novelty and complexity of the case.

In accordance with AS 09.63.020, I certify under penalty of perjury that the foregoing is true, and that a notary public or other official empowered to administer oaths is unavailable.

Executed on January 27, 2021

Lloyd B. Miller
Lloyd B. Miller

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

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) JAN 29 2021
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) Clerk of the Trial Courts
) By _____ Deputy
)

) Case No. 3AN-19-08349CI
)

) Affidavit of Heather
) Kendall Miller
)
)
)

STATE OF ALASKA)

) ss.
)

THIRD JUDICIAL DISTRICT)

1. I have practiced law in Alaska since 1992. Until recently, I was a staff attorney with the Native American Rights Fund, a position I held for 24 years. Throughout my career, I have litigated numerous matters in state and federal court in Alaska.

2. I have litigated multiple constitutional cases before the Alaska Supreme Court and the Alaska Superior Court.

3. I am familiar with what attorneys in the Alaska marketplace charge for hourly rates: experienced litigation attorneys in Anchorage

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with more than 10 years of experience routinely charge between \$375 to \$600 per hour and litigation attorneys with one to 10 years of experience typically charge between \$200 to \$400 per hour.

4. To support this affidavit, I have reviewed this case's docket and parties' respective summary judgment filings. This is a lawsuit, as the court noted on page 10 of its summary judgment decision, for which "there is no legal precedent or authority that addresses a situation quite like this one." It involved novel constitutional issues that required careful thought and attention.

5. I have litigated similar constitutional cases to summary judgment. Based on my review of this case's records and my familiarity with other firms' fee applications in similar cases, a total of 180 to 200 hours is well below, and fees of \$110,000 to \$125,000 would be well within, a normal range for a case like this.

6. Stephen Koteff's and Joshua Decker's requested rates of \$600 per hour are reasonable for the Alaska market. These are consistent with the rates that other Anchorage attorneys with similar levels of experience charge for work involving similar complexity and which requires similar levels of expertise and skill. In my opinion, the plaintiffs' total fee of \$111,000 for 185 hours of work is reasonable for

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the Alaska market. This is particularly so in light of the results obtained in this case, the superior performance of counsel, and the novelty and complexity of the case.

In accordance with AS 09.63.020, I certify under penalty of perjury that the foregoing is true, and that a notary public or other official empowered to administer oaths is unavailable.

Executed on January 26, 2021

/s/ Heather Kendall Miller
Heather Kendall Miller

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

American Civil Liberties Union of
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Defendants.

Case No. 3AN-19-08349CI

FILED in the TRIAL COURTS
State of Alaska Third District

JAN 29 2021

Clerk of the Trial Courts
By _____ Deputy

Affidavit of Walter
Featherly

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STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

1. I am the general counsel for Calista Corporation, an Alaska Native Regional Corporation with over 33,000 shareholders. I have practiced law in Alaska since 1981. Until last year, when I took my current position at Calista Corporation, I practiced civil law at private law firms of varying size, ranging from my own 4-5 lawyer firm to Holland & Knight, which had more than 1,100 attorneys while I was a partner there. Throughout my career, I have litigated numerous matters in state and federal court in Alaska.

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2. I have litigated multiple constitutional cases before the Alaska Supreme Court, the Alaska Superior Court, the Federal District Court for the District of Alaska, and the Ninth Circuit Court of Appeals.

3. I am familiar with what attorneys in the Alaska marketplace charge for hourly rates: experienced litigation attorneys in Anchorage with more than 10 years of experience routinely charge between \$375 to \$600 per hour, and litigation attorneys with one to 10 years of experience typically charge between \$200 to \$400 per hour.

4. To support this affidavit, I have reviewed this case's docket and parties' respective summary judgment filings. This is a lawsuit, as the court noted on page 10 of its summary judgment decision, for which "there is no legal precedent or authority that addresses a situation quite like this one." It involved novel constitutional issues that required careful thought and attention.

5. I have litigated similar constitutional cases to summary judgment. Based on my review of this case's records and my familiarity with other firms' fee applications in similar cases in Alaska, a total of 180 to 200 hours is well below, and fees of \$110,000 to \$125,000 would be well within, a normal range for a case like this.

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6. Stephen Koteff's and Joshua Decker's requested rates of \$600 per hour are reasonable for the Alaska market. These are consistent with the rates that other Anchorage attorneys with similar levels of experience charge for work involving similar complexity and which requires similar levels of expertise and skill. To provide context, my standard billing rate at Holland & Knight in 2020, at the time I moved from Holland & Knight to my current position at Calista Corporation, was \$940 per hour, a rate that was regularly charged to and collected from clients in Alaska.

7. In my opinion, the plaintiffs' total fee of \$111,000 for 185 hours of work is reasonable for the Alaska market. This is particularly so in light of the results obtained in this case, the superior performance of counsel, and the novelty and complexity of the case.

In accordance with AS 09.63.020, I certify under penalty of perjury that the foregoing is true, and that a notary public or other official empowered to administer oaths is unavailable.

Executed on January 28, 2021

/s/ Walter Thomas Featherly
Walter Thomas Featherly
Alaska Bar #8101001

Stephen Koteff, No. 9407070
Joshua A. Decker, No. 1201001
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By _____ Deputy

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

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Case No. 3AN-19-08349CI

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Michael J. Dunleavy, in his official
capacity as Governor of Alaska;
and the State of Alaska,

Affidavit of Joshua A.
Decker

Defendants.

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Subject to the penalties for perjury, I, Joshua A. Decker, state:

1. I have personal knowledge of all facts in this affidavit.
2. I am licensed to practice law in Alaska and represent the

Plaintiffs as one of their attorneys in this case. I am also the executive director of the ACLU of Alaska Foundation, the law firm that represented the Plaintiffs.

3. The ACLU of Alaska Foundation never charges clients for our

ACLU of Alaska v. Dunleavy
AFFIDAVIT OF JOSHUA A. DECKER
Case No. 3AN-19-08349CI

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legal representation. We did not charge any of the Plaintiffs for the time our attorneys spent working on their case or for the costs we incurred on their behalf. Based on my ten years of practicing law in Alaska, because the Plaintiffs sought only declaratory and injunctive relief (and did not seek any damages), and because their case both had political valence and required their attorneys to deeply analyze foundational and unprecedented questions of Alaska's constitutional governance, I believe that only public interest lawyers like the ACLU of Alaska Foundation would represent them in this lawsuit; I do not know of any private-bar attorneys who would have agreed to take their case.

4. I earned my law degree from the University of Chicago in 2006, earned my license to practice law in Tennessee in 2006 and in New York in 2009, and was reciprocally admitted to the Alaska Bar in January 2012. I've worked at the ACLU of Alaska Foundation since November 2011: first as its staff attorney and, since March 2014, as its executive director. Before moving to Alaska, I worked as a staff attorney for four years at the Legal Aid Society of Middle Tennessee and the Cumberlandands and as an associate in private practice for one year at the New York City office of Clifford Chance US LLP.

5. Throughout my fifteen years of practicing law, I've represented over 200 clients as first-chair in more than 100 civil trials and

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administrative hearings; as the lead attorney in these hundred-plus cases, I was responsible for briefing and arguing motions, to planning and executing discovery, to arguing trials and appeals. At the ACLU of Alaska Foundation, my position as executive director is analogous to a managing partner at a private law firm: I supervise the entire organization, and by managing the ACLU of Alaska Foundation's legal director, I am responsible for the work of all our lawyers.

6. As the executive director, I know that our lawyers (including me) regularly "bill time" in our lawsuits: that is, pursuant to our office policy, we contemporaneously record summaries of our work and time so that we may credibly move for attorney fees when we win. Because we never charge our clients for our legal representation, fee awards are the only way we recoup the monetary value of our lawyers' time and skill, and we are awarded fees only in the cases we win; in the cases we lose, we receive nothing. Recovering these fees is an important part of the ACLU of Alaska Foundation's budget: it's how we have—and can continue to have—the professionals and resources to represent clients like the Plaintiffs at no charge in sophisticated impact litigation.

As allowed by Alaska Stat. 09.63.020, because a notary public is unavailable, I certify under the penalty of perjury that the foregoing is true.

Dated: January 29, 2021 at Pleasanton, California.

/s/ Joshua A. Decker

Joshua A. Decker

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By _____ Deputy

Affidavit of Stephen Koteff

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Subject to the penalties for perjury, I, Stephen Koteff, state:

1. I have personal knowledge of all facts in this affidavit.
2. I am licensed to practice law in Alaska and represent the

Plaintiffs as the lead attorney in this case. I am also the legal director of the ACLU of Alaska Foundation, the law firm that represents the Plaintiffs.

3. I have practiced law for almost 30 years. I earned my law degree from the University of Oregon in 1990. I was admitted to the practice of law in Oregon in 1990. I was thereafter admitted to practice in Utah in 1991 and admitted to practice in Alaska in 1994.

4. In 1991, I became a staff attorney for the Southern Utah

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Wilderness Alliance in Salt Lake City, Utah, a nonprofit citizens advocacy organization. There I participated as first or second chair in numerous cases involving complex federal civil litigation. I moved to Alaska in 1993 and in 1994 I became a staff attorney for Trustees for Alaska, where I represented numerous individual clients in state and federal court, primarily litigating matters under the federal Clean Water Act.

5. In 1997 I became the Human Rights Advocate at the Alaska State Commission for Human Rights, a position I held until 2018, with a break in that service to act as the Commission's Chief of Enforcement between 2002 and 2009. In those roles I either prosecuted, or supervised the prosecution of, hundreds of administrative contested case proceedings to enforce the statutory rights of individuals to be free from discrimination.

6. I have been the legal director at the ACLU of Alaska Foundation since November 2018. In this role I oversee the organization's legal docket and represent individual plaintiffs in state and federal court to vindicate their constitutional rights and preserve their civil liberties. I spend a considerable amount of my time researching and writing about, and collaborating on, state and federal constitutional rights and the interpretation of constitutional principles.

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7. I have been primarily responsible for the work on this case. I have conducted the vast majority of the legal research, drafted almost all of the case filings, appeared before the Court, acted point of contact with the plaintiffs and defendants' counsel, and consulted with Joshua Decker, who acts as co-counsel in the case.

8. Once I began my research into the legal issues implicated by the governor's June 28, 2019, veto, it became clear that there was no legal or factual predicate for what had occurred, and that a scouring of the historical federal and state constitutional jurisprudence in the United States, and the application of principles rooted deep in the U.S. and Alaska Constitutions, was needed to adequately bring and advocate Plaintiffs' claims. I quickly determined that the veto originally at issue in this case represented an existential threat to Alaska's judiciary, requiring further study the importance that both Constitutions' Framers placed on the independence of the judiciary.

9. I have kept contemporaneous records of my time spent on this case and know that Mr. Decker has kept contemporaneous time records as well. All of the time we have recorded for this case has been necessary to prosecute the claims brought in the complaint. We have excluded much time spent on administrative matters, such as copying, mailing, etc., as well as much time spent conferring between us about

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case evaluation and planning. I estimate that I have reduced the number of hours actually spent researching and writing our filings in this matter by about 10-15%. I believe the time shown on our time records is a conservative representation of the time we have spent on this case and that the total number of hours is reasonable.

10. The time records also do not include any of the time I or Mr. Decker spent on drafting an amicus brief submitted to the Alaska Supreme Court in the case of *State of Alaska, Division of Elections, Gail Fenumiai, Director, State of Alaska, Division of Elections, v. Recall Dunleavy*, Case No. S-17706. My time on that brief was a little over 20 hours. Although that brief was filed in a different case, I noted that the Court in this matter referenced a number of cases cited in that brief in its summary judgment decision that were not cited in Plaintiffs' summary judgment briefing.

11. I estimate that of the total amount of time spent researching and briefing plaintiffs' claims in this case, only 5% of that time was spent on the claim that Governor Dunleavy's vetoes violated Article II, section 15 of the Alaska Constitution, the appropriations clause. This estimate is reflected in the amount of treatment given to the issue in Plaintiff's briefing and in the Court's summary judgment decision. The amount of Plaintiffs' claimed attorneys' fees has been reduced by this

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amount.

12. Plaintiffs' attorneys' fees are derived by totaling the number of reasonable hours they have worked on this case, subtracting 5% of that sum from the total, and multiplying that by \$600. The total amount of compensable hours is 184.9 and the total amount of recoverable fees is thus \$110,950.50. Plaintiffs' attorneys' fees are set forth and broken down in the chart attached to this affidavit as Exhibit A.

13. I helped prepare and have reviewed Plaintiffs' cost bill and believe all of the costs were necessary and reasonable. The total cost for Westlaw charges was derived by determining the total amount of Westlaw research time spent on this case in a specific period, dividing that time by the total time spent under the ACLU of Alaska's Westlaw contract for the same period, and using that multiplier to arrive at a pro-rated cost for Westlaw services for the period. The total Westlaw costs incurred for this case were therefore \$3,269.72, as shown in the following chart:

Date Range	ACLU v. Dunleavy	Total Costs/All Cases	ACLU v. Dunleavy / Costs Ratio	Westlaw Charges	ACLU v. Dunleavy/ Total Costs
Jan 1 st 2020 - Jan 27 th 2021	\$ 19,736	\$127,288.83	0.155048954	\$813.32 x 13 =\$10,573	\$1,639.36
December 2019	-	\$2,811.00	0	\$813.32	\$0.00

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November 2019	\$ 290	\$3,968.39	0.073077495	\$813.32	\$59.44
October 2019	\$ 3,772	\$8,835.42	0.426918019	\$813.32	\$347.22
September 2019	\$ 884	\$3,374.00	0.262003557	\$813.32	\$213.09
August 2019	\$ 8,408	\$10,125.00	0.830419753	\$813.32	\$675.40
July 2019	\$ 2,925	\$7,096.73	0.412161658	\$813.32	\$335.22
Totals	\$ 36,015	\$163,499.37			\$3,269.72

14. The above-method was used to derive Plaintiffs' attorneys' Westlaw costs because Westlaw does not bill Plaintiffs' attorneys per client or per case. Plaintiffs' attorneys have contracted with Westlaw for one monthly charge that allows unlimited searches in specified databases, and the above-method best captures the percentage of this charge that can be fairly allocated to the use of its service for the work on this case.

15. As allowed by Alaska Stat. 09.63.020, because a notary public is unavailable, I certify under the penalty of perjury that the foregoing is true.

Dated: January 29, 2021, at Anchorage, Alaska.

/s/ Stephen Koteff
 Stephen Koteff