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 Subject: ACLU, et al. v. Dunleavy and SOA - Case No. 3AN-19-08349 CI
 Date: 4/10/2020 10:53:28 AM

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IN THE 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 STATE OF ALASKA,)

Defendants.)

FILED in the TRIAL COURTS
 STATE OF ALASKA, THIRD DISTRICT

APR 10 2020

Clerk of the Trial Courts

By _____ Deputy

Case No. 3AN-19-08349 CI

**NOTICE OF ORDER FROM SUPREME COURT OF ALASKA
 RE: SUPPLEMENTAL BRIEFING**

On April 2, 2020, in *State of Alaska, Division of Elections and Director Gail Fenumitai v. Recall Dunleavy*, S-17706, the Alaska Supreme Court ordered the parties to submit supplemental briefs addressing issues that are directly relevant to the claims at issue here. At least some of the questions that the Supreme Court has asked the parties to brief in that case—and that the court apparently intends to decide—go to the very heart of issues this Court has been asked to decide. The Supreme Court’s decision would be controlling. A copy of that order accompanies this notice.

In the interest of judicial economy, the State asks this Court to postpone issuing a decision in this case, pending a decision from the Alaska Supreme Court on the issues raised in the Supreme Court’s order. The briefing in that case is expected to be complete by April 20, 2020.

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DATED: April 10, 2020.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: s/ Jessica Leeah
Jessica Leeah
Assistant Attorney General
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s/ Lael Harrison
Lael Harrison
Assistant Attorney General
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ACLU, et al. v. Michael J. Dunleavy and SOA
Notice of Order from Supreme Court of Alaska
Re: Supplemental Briefing

Court Case No. 3AN-19-08349 CI

Page 2 of 2

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In the Supreme Court of the State of Alaska

State of Alaska, Division of Elections
and Director Gail Fenumiai,

Appellants,

v.

Recall Dunleavy,

Appellee.

Supreme Court No. S-17706

Order

File Supplemental Briefs

Date of Order: 4/2/2020

Trial Court Case No. 3AN-19-10903CI

Before: Winfree, Stowers, Maassen, and Carney, Justices, and Eastaugh, Senior Justice.* [Bolger, Chief Justice, not participating.]

Having considered the parties' briefing and oral arguments, the court requests supplemental briefing regarding the third ground set out in the recall petition: that "Governor Dunleavy violated separation-of-powers by improperly using the line-item veto to attack the judiciary and the rule of law." Supplemental briefs shall address the following issues:

1. The historical basis of state constitutional provisions, and particularly the Alaska Constitution, Article II, section 15, regarding a governor's discretionary authority to veto items in appropriation bills and the related requirement that the governor provide a statement of objections to the vetoed items;
2. The constitutional limits, if any, that exist on a governor's exercise of the authority to veto items in appropriation bills; and,

* Sitting by assignment made under Article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

3. In light of the foregoing, the legal framework this court should use for determining whether the third ground for recall is “legally sufficient” as required by our case law. How should the governor’s statement of his objections inform the analysis? Can the statement of objections itself demonstrate an “improper” use of the governor’s veto authority sufficient to support recall? Is an “improper” use of the governor’s veto authority a violation of the separation of powers doctrine? As used in the recall petition, is “separation of powers” a law — which the governor either violated or did not violate — or is it shorthand for something else? How should voters interpret the phrases “separation of powers” and “the rule of law”?

Simultaneous briefs of no more than 20 pages shall be filed no later than April 13, 2020. Simultaneous responses of no more than 10 pages shall be filed no later than April 20, 2020.

Entered at the direction of the court.

Clerk of the Appellate Courts

/s/ M. Montgomery

Meredith Montgomery

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Clerk of the Trial Courts

By _____ Deputy

Case No. 3AN-19-08349 CI

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2020, true and correct copies of the STATE OF ALASKA'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGEMENT, NOTICE OF ORDER FROM SUPREME COURT OF ALASKA RE- SUPPLEMENTAL BRIEFING, ORDER - FILE SUPPLEMENTAL BRIEFS and this CERTIFICATE OF SERVICE were served on the following parties via E-Mail.

Steve Koteff
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Case No. 3AN-19-08349 CI

STATE OF ALASKA'S REPLY IN SUPPORT OF
CROSS-MOTION FOR SUMMARY JUDGMENT

I. Introduction

This case presents important questions about the scope of the courts' power to second-guess the governor's exercise of a constitutional power expressly given to him by the Alaska Constitution. The plaintiffs argue that this Court should ignore controlling Alaska Supreme Court precedent regarding the governor's veto power and regarding separation of powers. The Constitution places no limitation on the reason for which a governor might object and exercise a line item veto. The check that the Constitution places on a governor's line item veto is the legislature's power to override the veto. And, Alaska Supreme Court precedent dissuades courts from evaluating the reasons expressed in a veto statement of objections as plaintiffs urge this court to do.

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Further, plaintiffs urge this court to disregard other Alaska Supreme Court precedent defining the test for separation of powers claims. The plaintiffs press this Court to adopt a new vague standard which would empower courts to review veto statements on a case-by-case basis and usurp the executive and legislative branches' constitutional authority over the budget, whenever the court disapproves of the governor's reasons for exercising his veto power. It is the plaintiffs' request, if granted by this court, that would violate separation of powers by exercising *the legislature's* power to override vetoes.

II. Argument

The Alaska Constitution expressly leaves it to the legislative and executive branches to set budget priorities and to decide how much funding the court system, along with other state entities, requires. Here, both the Legislature and the Governor balanced competing State budgetary needs and provided adequate funding for the Judiciary to carry out its constitutional responsibilities. The Governor exercised his constitutionally granted line-item veto power, and although Plaintiffs disagree with its message, the content of the governor's statement of objections passes the limited judicial review to which such statements are subject. This Court should reject the plaintiffs' attempts to create a new constitutional rule for the governor's exercise of a power expressly granted under Alaska's constitution.

A. The Governor's veto power applies to the Judiciary's budget.

There is no dispute that under the Alaska Constitution, the governor has substantial influence and control over all aspects of the State's budget.¹ The governor proposes a budget.² The judiciary participates in this process by proposing its own budget which the governor then includes in the budget he presents to the legislature.³ In addition to proposing a budget, the governor also has explicit authority to veto all or portions of any item of a general appropriation bill ultimately enacted by the legislature.⁴ Unlike some state constitutions, which exempt the court system's budget from the governor's line-item veto power,⁵ in Alaska, the governor's line item veto power includes the power to reduce the court system's budget.⁶ The only condition on the governor's line-item veto power is the requirement that he return "any vetoed bill,

¹ Alaska Const. art. II § 15 and art. IX § 12; *see also Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371-72 (Alaska 2001).

² Alaska Const. art. II § 15.

³ Letter from Chief Justice Bolger to Governor Dunleavy, dated December 13, 2019 (available online at http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58504)

⁴ Alaska Const. art. IX § 12; Alaska Const. art. II § 15; *see also Knowles*, 21 P.3d at 371-72; *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977).

⁵ *See*, Hawaii Const. art. 3 § 16; *see also State ex rel. Brotherton v. Blankenship*, 207 S.E.2d 421 (W. Va. 1973) (interpreting article 6, § 51 of West Virginia Constitution, containing specific and distinct provisions regarding the judiciary's budgetary process).

⁶ Memorandum from Susan Burke to Arthur Snowden, dated October 13, 1975, attached to Letter from Chief Justice Bolger to Governor Dunleavy, dated December 13, 2019 (available online at http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58504).

with a statement of his objections, to the house of origin.”⁷ The constitution then grants the legislature the opportunity to override that veto.⁸

That is precisely the constitutional process that was followed here. It is no secret that these are challenging economic times for the State, and the Governor took office with a highly publicized budget-cutting agenda. Common sense dictates that when resources are limited, money appropriated for one purpose leaves less money available to appropriate for other purposes. Accordingly, the governor (along with the legislature) went through the painstaking, tedious process of evaluating state needs and setting spending priorities (including priorities for constitutionally mandated expenses). Once the legislature passed its appropriation bill, the governor exercised his line-item veto authority and cut spending where possible. He explained his cuts in his statements of objections. The legislature then had the opportunity to override the vetoes.

Plaintiffs acknowledge that the governor has the authority to issue line-item vetoes.⁹ But they challenge the governor’s stated reason for the veto of \$334,700 from the appellate courts, an amount representing less than one-half of one percent of the court system’s total budget. Accordingly, no matter how they phrase it, the plaintiffs’

⁷ Alaska Const. art. II § 15.

⁸ Alaska Const. art. II § 16.

⁹ Memorandum in Support of Motion for Summary Judgment at 24. *See also*, Memorandum from Susan Burke to Arthur Snowden, dated October 13, 1975, attached to Letter from Chief Justice Bolger to Governor Dunleavy, dated December 13, 2019 (available online at http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58504).

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claim that the veto violated the Alaska Constitution is fundamentally a challenge to the *content* of the governor's statement of objections.

B. Alaska Courts review gubernatorial veto messages only for “minimum of coherence;” the message here passes that minimal review.

There is no dispute that the governor has the authority to veto line items from the court system's budget. The only condition on the governor's exercise of the line-item veto power is that any veto must be accompanied by a statement of objections.¹⁰ Plaintiffs do not dispute that the Governor provided a statement of objections with the veto at issue here. Nor do they challenge the adequacy of the governor's statement.¹¹ They instead, challenge the reasoning or purpose conveyed by the governor's veto message, asking this Court to assume some subjective, speculative “effects and impacts the veto has had and will continue to have.”¹² But because it is undisputed that the governor has the constitutional authority to cut the court system's budget—at least so long as such cuts do not prevent the courts from serving their basic constitutional role—the plaintiffs' argument that their claim is not governed by the “minimum of coherence test” must fail. And, it should be axiomatic that a governor is entitled to publicly express disagreement with, or even to severely criticize, any court decision. The Alaska Constitution does not insulate the judiciary from public criticism, and the Alaska

¹⁰ Alaska Const. art. II § 15 (“He shall return any vetoed bill, with a statement of his objections, to the house of origin”).

¹¹ Plaintiffs' Reply at 7.

¹² Plaintiffs' Reply at 8.

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Supreme Court has already declared that the governor’s criticism will not cause the courts to flinch from performing their constitutional functions.¹³

Semantics aside, this is clearly a challenge to the *content* of the governor’s veto

message—the plaintiffs are challenging the governor’s reasoning. And under Alaska Supreme Court precedent, courts review the content of a veto message only to determine if it meets a “minimum of coherence” standard.¹⁴ Courts simply “look to see whether the [governor’s statement of objections] makes comprehensible reference to the provision being vetoed, and *do not attempt to evaluate the reasoning underlying the objection.*”¹⁵

In adopting the minimum of coherence standard, the Supreme Court concluded, “the purposes underlying the statement-of-objections requirement [i.e. for interpretation and action by the legislature and the electorate] do not demand case-by-case judicial review.”¹⁶ The legislature “is no less able than the judiciary to compare the governor’s words and the struck language to decide for itself whether the governor was motivated by ‘conscientious convictions.’”¹⁷ Ultimately, it is up to the legislature and the electorate at the next general election to judge whether the governor’s reasoning is

¹³ Supreme Court of the State of Alaska, “Alaska Supreme Court Statement Regarding Recent Budget Cuts,” July 3, 2019 (available online at <https://public.courts.alaska.gov/web/media/docs/budget-cuts.pdf>).

¹⁴ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 376 (Alaska 2001).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*

¹⁷ *Id.*

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appropriate.¹⁸ Accordingly, so long as the governor's objections are comprehensible, the Alaska Supreme Court has held that the governor's reasons for exercising his veto power are irrelevant for determining whether a veto passes constitutional muster—whether the governor's reasoning is appropriate is an issue reserved to the legislature and the voters.

In sum, Plaintiffs disagree with the Governor's reasoning for the veto and ask this Court to assume adverse "impacts and effects"—"impacts and effects" that the Chief Justice has assured the public do not exist.¹⁹ But the governor's statement of objections meets the constitutional standard adopted by the Supreme Court for exercising his line-item veto power. And plaintiffs offer no alternative legal analysis or standard for analyzing their claims. A judicial override of the Governor's veto of the court system's own funding—when the Governor exercised a power that the constitution expressly grants to him, and when the veto met the constitutional requirements—would jettison the "minimum of coherence" standard adopted in *Alaska Legislative Council v. Knowles*²⁰ and set a precedent for case-by-case judicial review of all veto messages simply because they are politically motivated²¹ or because they voice

¹⁸ *Id.*

¹⁹ Supreme Court of the State of Alaska, "Alaska Supreme Court Statement Regarding Recent Budget Cuts," July 3, 2019 (available online at <https://public.courts.alaska.gov/web/media/docs/budget-cuts.pdf>).

²⁰ 21 P.3d at 376.

²¹ It should be obvious that every act of the two political branches of government, the legislature and the executive are, to one degree or another, politically motivated.

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criticism of the judiciary.²² This Court should not depart from the Alaska Supreme Court's clear and binding precedent.

C. The Governor's veto does not violate separation of powers.²³

Ironically under the guise of correcting an alleged violation of the separation of powers, the plaintiffs ask this Court to take the extraordinary step of overriding the Governor's veto after the legislature failed to do so based solely on disapproval of the content of the veto message. As discussed above, the Court should decide this case under the "minimum of coherence" standard, and thus, the Court need not consider Plaintiffs' other arguments.²⁴ However, even if the Court were to evaluate the Governor's statement of objections in contravention of clear Alaska Supreme Court precedent, the plaintiffs' arguments fail for several reasons.

First, the plaintiffs concede that their claim does not meet the requirements set by the Alaska Supreme Court to establish a separation of powers violation. As stated in the State's cross-motion, the Alaska Supreme Court examines the following four factors when deciding whether an action violates separation of powers: the nature of the power at issue; which branch of government is assigned this power in the constitution; whether

²² See, *State, Dep't of Nat. Res. v. Tongass Conservation Soc'y*, 931 P.2d 1016, 1020 (Alaska 1997) ("In general, judicial inquiries into the motives of those enacting or rejecting proposed legislation are to be avoided.") (quotations omitted).

²³ Plaintiffs' argument here would require this Court to evaluate the reasoning of the Governor's veto message and decide this case based on the content of the message, in contravention of the "minimum of coherence" test for veto messages found in *Alaska Legislative Council*, 21 P.3d at 371. For the reasons discussed, the Court should decide this case under the "minimum of coherence" standard.

²⁴ *Alaska Legislative Council*, 21 P.3d at 371.

the constitution suggests that the power is to be shared by two branches; and whether the limits of any express grant have been exceeded or present an encroachment on another branch.²⁵ Because their claims do not meet the requirements of this test, the plaintiffs ask this Court to disregard it. But in doing so, the plaintiffs have tacitly acknowledged that the governor's veto does not violate separation of powers.

Second, the separation of powers doctrine—which is meant to ensure that the coordinate branches of government do not exceed the powers granted to them under the constitution—is reserved for cases where one branch appropriates or encroaches on the powers constitutionally granted to another.²⁶ The plaintiffs agree that “[b]y vetoing the Appellate Courts’ budget, the governor has not assumed the powers or functions of the judiciary.” “Instead,” the plaintiffs tell us, “he has attempted to bend the court to his will by exacting a price for a decision he does not like.”²⁷ But “[t]he purpose [of separation of powers] was not to avoid friction but, by means of the inevitable friction incident to the distribution of the government powers among three departments, to save the people

²⁵ *Alaska Pub. Interest Research Gp. v. State*, 167 P.3d 27, 35 (Alaska 2007); *Bradner v. Hammond*, 553 P.2d 1, 6-8 (Alaska 1976).

²⁶ *Alaska Pub. Interest Research Gp.*, 167 P.3d at 34-35 (recognizing that the purpose the separation of powers doctrine is to distribute power among the three branches of government, thus limiting the authority of each branch to interfere in the powers that have been delegated to the other branches); *Bradner*, 553 P.2d at 5-6.

²⁷ Again, this Court should not consider this argument because doing so would require this Court to interpret the meaning of the Governor's veto message and decide this case based on the content of the message, in contravention of the “minimum of coherence” test for veto messages found in *Alaska Legislative Council*, 21 P.3d at 371.

from autocracy.”²⁸ Political friction and controversy are an essential and necessary aspect of our tripartite system of government, and not constitutional violations.

An extreme example is the case of *Ninetieth Minnesota State Senate v. Dayton*,²⁹

in which the governor of Minnesota vetoed all funding for the legislative branch with a veto message demanding the legislature reconvene to address his desired legislation.

The Minnesota Supreme Court held that veto was within the governor’s constitutional line-item veto power and that the judiciary did not have the power to compel the appropriation.³⁰ The court stated:

Whether it was wise for the people of Minnesota in 1876 to provide for a veto power over items of appropriations, in language that does not expressly exclude the appropriations for a coordinate branch of government, is not for us to judge. We must follow the plain language of Article IV, Section 23.³¹

Noting that the legislature still had carry-over funding available to allow it to maintain basic operations until the beginning of the next legislative session,³² the court declined to decide whether the veto violated separation of powers and left it to the political branches to resolve their dispute.³³

²⁸ *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987) (quoting *Myers v. United States*, 272 U.S. 52, 293 (1926))

²⁹ 903 N.W. 609 (Minnesota 2017).

³⁰ *Id.* at 618.

³¹ *Id.*

³² Similarly, the Governor’s veto here did not impair the ability of the court system to perform its constitutional functions.

³³ *Ninetieth Minnesota State Senate*, 903 N.W. at 620-23.

In another extreme example, the court did not interfere with the executive's veto of its own funding as a ploy to exert pressure on the legislature. In *Thirteenth Guam Legislature v. Bordallo*, the district court upheld the governor's veto of all funding for the offices of governor and lieutenant governor.³⁴ The governor's veto was intended to force the legislature to reconsider (and, of course, increase) the appropriation.³⁵ The court found no constitutional violation.³⁶ Thus, the exertion of pressure by one branch against another has not been found to violate separation powers, even in much more dramatic fact patterns than the one presented here.

Finally, as discussed in the State's cross-motion, the veto here does not encroach on or interfere with the judiciary's ability to perform its constitutional duties.³⁷ Unlike the cases cited by Plaintiffs—which involved judges' salaries—the veto here presents no such economic pressure.³⁸ Indeed, neither the governor nor the legislature can assert

³⁴ 430 F.Supp. 405 (D. Guam 1977).

³⁵ *Id.*, at 406-7.

³⁶ *Id.*, at 416-17.

³⁷ *Alaska Pub. Interest Research Gp.*, 167 P.3d at 34-35; *Bradner*, 553 P.2d at 5-6.

³⁸ *See, Kelch v. Town Bd. of Town of Davenport*, 36 A.D.3d 1110, 1112 (New York 2007) (holding that where the governmental branch that holds the purse strings evaluates the performance of judges and “dole[s] out pay based on those evaluations” interferes with judicial independence because it sends the message that judges “must cater to the ideological whims of the legislature or personally suffer the financial consequences for rendering legally correct but unpopular decisions.”); *Stilp v. Commonwealth of Pennsylvania*, 905 A.2d 918, 948 (Pennsylvania 2006) (holding that repeal of salary increase violated constitutional provision prohibiting a diminishment of judicial salaries during judges' terms of office). *Cf. Alaska Const. art. IV § 13; Hudson v. Johnstone*, 660 P.2d 1180, 1184-85 (Alaska 1983) (holding that statute requiring salary deduction for contribution to judicial retirement system can only apply to judges appointed after change in the law).

pressure or influence a judge's decisions by exercising power over his or her livelihood.³⁹ As for plaintiffs' claim of threatened financial harm on the judiciary as a whole, the Court System's final 2020 fiscal year budget was about three million dollars higher than its 2019 fiscal year budget.⁴⁰ And the \$334,700 veto amounted to less than one-half of one percent of the budget passed by the legislature for the judiciary.⁴¹ If the \$334,700 were essential to the Alaska judiciary's ability to function and the co-equal branches of government were unable to resolve the problem through the appropriation process, it is a generally accepted rule of law that the judicial branch of government has the inherent authority to fund its own operations as necessary to fulfill its basic constitutional duties.⁴² Although the court system—like every other government agency—would undoubtedly prefer more money in its budget, the veto did not have any significant effects or impacts on the court system's operations. The Governor has taken no action that appropriates, encroaches, or otherwise interferes with powers reserved to

³⁹ Alaska Const. art. IV § 13; *Hudson*, 660 P.2d at 1185.

⁴⁰ State of Alaska, Office of Management and Budget, Alaska Court System, "Component Summary—All Funds, Judiciary" September 4, 2019 (available online at https://omb.alaska.gov/ombfiles/20_budget/ACS/Enacted/20compsummary_acs.pdf).

⁴¹ Alaska Office of Management and Budget, "Department Totals—Operating Budget, Judiciary," September 4, 2019 (available online at https://omb.alaska.gov/ombfiles/20_budget/ACS/Enacted/20depttotals_acs.pdf).

⁴² See, *Matter of Alamance County Court Facilities*, 405 S.E.2d 125, 132-34 (N.C. 1991); ~~*State ex rel Metropolitan Pub. Defender Servs., Inc. v. Courtney*~~, 64 P.3d 1138, 1139 (Or. 2003); *In re Clerk of Court's Compensation for Lyon County v. Lyon County Comm'rs*, 241 N.W.2d 781, 784-86 (Minn. 1976) (citing Carrigan, *Inherent Powers of the Courts* (published by National College of the Judiciary)); Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R.3d 569, and cases cited.

the judiciary.⁴³ Indeed, the court system continues to operate efficiently, issuing independent decisions, consistent with the assurances from the Alaska Supreme Court.⁴⁴ And, the Alaska Supreme Court did not deem it necessary to exercise its inherent power to fund the judicial branch.

Accordingly, the Court should reject the plaintiffs' invitation to upend the delicate executive-legislative balance and insert the judiciary into the state budget process in a way not contemplated by the framers of the Alaska constitution or the Alaska Supreme Court.

D. By disregarding Alaska precedent, Plaintiffs are asking this Court to invent a new constitutional standard for this case—the Court should reject that invitation.

Rather than cite to any applicable, binding precedent, Plaintiffs base their entire case on dire predictions about threats to the judiciary's independence. In essence, they disregard relevant Alaska Supreme Court precedent and ignore the many safeguards embedded in the Alaska constitution and the common law to protect an independent judiciary. Because current law provides the proper framework for both evaluating the plaintiffs' claims and protecting the judiciary's independence, this Court should reject the plaintiffs' attempt to re-write Alaska constitutional law.

⁴³ *Alaska Pub. Interest Research Gp.*, 167 P.3d at 34-35; *Bradner*, 553 P.2d at 5-6.

⁴⁴ Supreme Court of the State of Alaska, "Alaska Supreme Court Statement Regarding Recent Budget Cuts," July 3, 2019 (available online at <https://public.courts.alaska.gov/web/media/docs/budget-cuts.pdf>).

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As discussed at length in the State’s cross-motion, thanks to the forethought of the framers of Alaska’s Constitution, the facts of this case present no genuine threat to the judiciary’s independence or its ability to perform its constitutional functions. The constitutional framers carefully considered how to protect an independent judiciary. Those safeguards—which remain intact—undermine the hyperbolic and speculative threats proclaimed by the plaintiffs. Instead, the tripartite system of government created in our Constitution is sound and does not need judicial revision. Accordingly, this Court should not write a new rule into Alaska’s constitution. In particular, the novel “rule” promoted by plaintiffs—that courts may review the content of veto statements on a case-by-case basis to determine if they are an attempt to bend a coordinate branch to the executive’s will—disrupts the balance of power between the three branches. This Court should, instead, adhere to established precedent that veto messages must only meet the “minimum of coherence” standard, and allow the political budget process to operate without judicial intervention.

E. The Governor’s veto did not unconstitutionally “reallocate” funds.

The plaintiffs argue that the Governor’s veto was an illegal “reallocation” of \$334,700 from the appellate courts to Medicaid. But they misread *Alaska Legislative Council v. Knowles*.⁴⁵ Because the Governor did not, and could not, add or “divert” \$334,700 to the budget of the Department of Health and Social Services, and the money

⁴⁵ 21 P.3d 367 (Alaska 2001).

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at issue here was simply cut from the budget—and remained in the State savings accounts—Plaintiffs’ argument is meritless.

A line item veto simply means that no funds are spent for the purpose they were appropriated, or as here, that only a reduced sum is available for that purpose. Unlike the situation in *Knowles*, where the governor struck limiting language in an appropriation but did not strike or reduce the amount of money in that appropriation, the funds here were removed from the budget entirely.⁴⁶ In *Knowles*, the court held that limiting language in an appropriations bill is not an “item” under Article II § 15, and thus, concluded that the governor’s veto in that case was unconstitutional.⁴⁷ The court reasoned that by striking the legislature’s limiting language, the governor actually re-allocated funds for a purpose that was expressly rejected by the legislature—“the result is no longer the item that the legislature enacted.”⁴⁸ Here, by contrast, the governor simply reduced the amount of money appropriated to the court system—and the statewide budget as a whole.⁴⁹ The funds were not re-appropriated, reallocated, or diverted for any other purposes. The executive cannot spend the vetoed funds on anything else, including Medicaid. The funds were, instead, diverted to Alaska’s savings and remain available to the legislature to allocate for any purpose in future budgetary cycles.

⁴⁶ *Knowles*, 21 P.3d at 369, Appendix A.

⁴⁷ *Knowles*, 21 P.3d at 372-74.

⁴⁸ *Knowles*, 21 P.3d at 372-74.

⁴⁹ *Knowles*, 21 P.3d at 373.

Thus, the plaintiffs' reallocation claim must be rejected.

V. Conclusion

This Court should deny the plaintiffs' motion for summary judgment and grant the defendants' cross-motion for summary judgment.

DATED: April 10, 2020.

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Attachments: Certificate of Service.pdf, Notice of Order from Supreme Court of Alaska re- Supplemental

Good Morning!

~~Please find the attached documents to be filed today in the above-referenced matter.~~

* State of Alaska's Reply in Support of Cross-Motion for Summary Judgement, Notice of Order from Supreme Court of Alaska re- Supplemental Briefing, Order - File Supplemental Briefs and Certificate of Service

Thank you,

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FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT

APR 10 2020

Clerk of the Trial Courts

By _____ Deputy

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