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

SEP 13 AM 11:47  
CLERK OF THE DISTRICT COURT  
DEPUTY CLERK

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, )

Case No. 3AN-19-08349 CI

Defendants. )

**STATE OF ALASKA'S OPPOSITION TO MOTION FOR SUMMARY  
JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM IN SUPPORT**

**I. Introduction**

This case raises important questions about the scope of the courts' power to second-guess the governor's exercise of discretionary authority expressly given to him by the Alaska Constitution. The plaintiffs, American Civil Liberties Union of Alaska, Bonnie L. Jack, and John D. Kauffman, invite this court to intrude into areas of government—budgeting and appropriations—unequivocally granted to the two other branches of government by the constitution, ironically under the guise of correcting an alleged violation of the separation of powers. This court should decline this invitation to judicial overreach.

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1 The plaintiffs are suing Governor Michael J. Dunleavy and the State of Alaska  
2 because they claim that the Governor violated the Alaska Constitution when he used his  
3 line item veto authority to reduce the budget of Alaska's appellate courts. The plaintiffs  
4 seek declaratory judgment that the Governor's line item veto breached the separation of  
5 powers doctrine and violated article II section 15 of the Alaska Constitution. They also  
6 seek an injunction ordering the Governor to "refrain from any further intrusion or  
7 interference with the judiciary branch" and to return \$334,700 to the appellate courts'  
8 budget for fiscal year 2020.

9  
10 But the Court should, instead, grant summary judgment in favor of the  
11 defendants. The Governor's veto was a valid exercise of his express power under article  
12 II section 15 of the Alaska Constitution; the Alaska Supreme Court has established that  
13 veto messages are subject to judicial review only for a "minimum of coherence" which  
14 the Governor's message met; the veto did not violate of separation of powers; and this  
15 Court should not accept the plaintiffs' invitation to read a new rule into the Alaska  
16 Constitution. Finally, this case does not present exigent circumstances which would  
17 justify this Court invoking its inherent authority to adjust the court system's budget at a  
18 micro-level and override the Governor's veto after the legislature failed to do so.

## 21 II. Legal Standard for a Motion for Summary Judgment

22 Summary judgment is appropriate where there are no genuine issues of material  
23 fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> The parties agree  
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25 <sup>1</sup> Alaska R. Civ. P. 56(c); *Joseph M. Jackovich Revocable Trust v. State, Dep't of*  
26 *ACLU, et al., v. Dunleavy and SOA* Case No. 3AN-19-08349 CI  
Motion and Memorandum in Support of  
Cross-Motion for Summary Judgment

1 that this case presents legal issues and can be decided on the briefing. The State opposes  
2 Plaintiffs' motion for summary judgment and cross-moves for summary judgment.

### 3 **III. Factual Background**

#### 4 **A. A brief history of the budget of the Alaska Court System.**

5 The budget of the Alaska Court System over the past ten years has fluctuated  
6 significantly. The budget increased steadily between fiscal year 2010 and 2014,  
7 plateaued between 2014 and 2016, and then dropped significantly in fiscal years 2017  
8 and 2018. In fiscal years 2019 and 2020 it has rebounded somewhat although it has not  
9 yet returned to 2016 levels.  
10

11 The budget of the Alaska Court System for fiscal year 2010 was \$90,403,700.<sup>2</sup>  
12 Between 2010 and 2014 it increased steadily to \$114,569,800.<sup>3</sup> In fiscal year 2015 it  
13 increased only marginally to \$115,702,400.<sup>4</sup> In 2016 it decreased marginally to  
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16 *Trans.*, 54 P.3d 294, 297 (Alaska 2002).

17 <sup>2</sup> \$90,368,200 was originally passed by the legislature and a supplemental \$35,500  
18 was added during the following session. Alaska Office of Management and Budget  
19 "Department Summary—Operating Budget" June 3, 2010 (available online at  
20 [https://omb.alaska.gov/ombfiles/11\\_budget/11enacted\\_6-3-10\\_deptsummary.pdf](https://omb.alaska.gov/ombfiles/11_budget/11enacted_6-3-10_deptsummary.pdf)).

21 <sup>3</sup> The court system's operating budget for fiscal year 2011 was \$98,883,800 and  
22 \$105,388,900 for 2012. Alaska Office of Management and Budget "Department  
23 Summary—Operating Budget" June 11, 2011 (available online at  
24 [https://omb.alaska.gov/ombfiles/12\\_budget/12enacted\\_6-29-11\\_deptsummary.pdf](https://omb.alaska.gov/ombfiles/12_budget/12enacted_6-29-11_deptsummary.pdf)). The  
25 court system's operating budget for fiscal year 2013 was \$110,791,000 originally  
26 passed by the legislature and a supplemental \$526,900 was added during the following  
session. Alaska Office of Management and Budget "Department Summary—Operating  
Budget" May 21, 2013 (available online at  
[https://omb.alaska.gov/ombfiles/14\\_budget/14enacted\\_5-21-13\\_deptsummary.pdf](https://omb.alaska.gov/ombfiles/14_budget/14enacted_5-21-13_deptsummary.pdf)).

<sup>4</sup> Alaska Office of Management and Budget "Department Summary—Operating  
Budget" June 30, 2015 (available online at

1 \$114,353,500.<sup>5</sup> In fiscal year 2017 it dropped significantly to \$111,626,500 based on  
2 then-Chief Justice Stowers' decision to close courts on Friday afternoons as a cost-  
3 saving measure.<sup>6</sup> Further fiscal austerity measures reduced the budget to \$108,788,300  
4 for fiscal year 2018.<sup>7</sup> The budget rebounded slightly in fiscal year 2019 to \$109,144,600  
5 and more significantly in fiscal year 2020 to \$112,111,900.<sup>8</sup> Thus, the Alaska Court  
6 System's fiscal year 2020 budget was about three million dollars more than its fiscal  
7 year 2019 budget, although it still remains lower than the pre-austerity budgets of fiscal  
8 years 2014-2016.  
9

10 **B. The Alaska Court System's budget for fiscal year 2020.**

11 On December 14, 2018, newly-elected Governor Dunleavy submitted a proposed  
12 budget to the Alaska Legislature proposing \$109,538,400 be appropriated for the Alaska  
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14 [https://omb.alaska.gov/ombfiles/16\\_budget/16enacted\\_deptsummary\\_6-30-15.pdf](https://omb.alaska.gov/ombfiles/16_budget/16enacted_deptsummary_6-30-15.pdf)).

15 <sup>5</sup> *Id.*

16 <sup>6</sup> For fiscal year 2017, \$110,439,200 was originally passed by the legislature and a  
17 supplemental \$1,187,300 was added during the following session. Alaska Office of  
18 Management and Budget "Department Summary—Operating Budget" June 30, 2017  
19 (available online at

20 [https://omb.alaska.gov/ombfiles/18\\_budget/FY18Enacted\\_dept\\_summary\\_all\\_funds\\_06-30-17.pdf](https://omb.alaska.gov/ombfiles/18_budget/FY18Enacted_dept_summary_all_funds_06-30-17.pdf)). Information regarding the contemporaneous closure of courts on Friday  
21 afternoons can be found at [https://public.courts.alaska.gov/web/media/docs/closure-  
22 status.pdf](https://public.courts.alaska.gov/web/media/docs/closure-status.pdf) ("Beginning July 1 [2016] Court Will Close Every Friday Afternoon").

23 <sup>7</sup> Alaska Office of Management and Budget "Department Summary—Operating  
24 Budget" June 30, 2017 (available online at  
25 [https://omb.alaska.gov/ombfiles/18\\_budget/FY18Enacted\\_dept\\_summary\\_all\\_funds\\_06-30-17.pdf](https://omb.alaska.gov/ombfiles/18_budget/FY18Enacted_dept_summary_all_funds_06-30-17.pdf)).

26 <sup>8</sup> Alaska Office of Management and Budget "Department Summary—Operating  
27 Budget" September 4, 2019 (available online at  
28 [https://omb.alaska.gov/ombfiles/20\\_budget/FY20Enacted\\_dept\\_summary\\_all\\_funds\\_9-4-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/FY20Enacted_dept_summary_all_funds_9-4-19.pdf)).

1 Court System.<sup>9</sup> That budget was largely prepared by the outgoing prior administration.  
2 A few months later the governor amended his budget proposal, increasing his proposal  
3 for the Alaska Court System to \$112,636,400.<sup>10</sup>  
4

5 On June 13, 2019, the Alaska Legislature transmitted an operating budget to  
6 Governor Dunleavy approving \$112,570,600 for the Alaska Court System.<sup>11</sup> On June  
7 28, Governor Dunleavy vetoed \$2,168,400 leaving a remaining court system budget of  
8 \$110,402,200.<sup>12</sup> Among the Governor's line item vetoes was a reduction of \$334,700 to  
9 the appellate courts' budget.<sup>13</sup> The statement of objections accompanying the veto  
10 stated: "The Legislative and Executive Branch (sic) are opposed to State funded elective  
11 abortions; the only branch of government that insists on State funded elective abortions  
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16 <sup>9</sup> Alaska Office of Management and Budget "Department Totals—Operating  
17 Budget, Judiciary" December 14, 2018 (available online at  
18 [https://omb.alaska.gov/ombfiles/20\\_budget/ACS/Proposed/20depttotals\\_acs.pdf](https://omb.alaska.gov/ombfiles/20_budget/ACS/Proposed/20depttotals_acs.pdf)).

19 <sup>10</sup> Alaska Office of Management and Budget "Department Summary" February 3,  
20 2019 (available online at  
21 [https://omb.alaska.gov/ombfiles/20\\_budget/FY20GovAmd\\_dept\\_summary\\_all\\_funds\\_02-13-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/FY20GovAmd_dept_summary_all_funds_02-13-19.pdf)).

22 <sup>11</sup> The legislature passed \$111,372,100 with an additional \$1,198,500 associated  
23 with a crime reform bill. Alaska Office of Management and Budget "Department  
24 Summary" June 28, 2019 (available online at  
25 [https://omb.alaska.gov/ombfiles/20\\_budget/FY20Enacted\\_dept\\_summary\\_all\\_funds\\_6-28-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/FY20Enacted_dept_summary_all_funds_6-28-19.pdf)).

26 <sup>12</sup> *Id.*

<sup>13</sup> Alaska Office of Management and Budget "Change Record Detail" June 28,  
2019 at page 122 (available online at  
[https://omb.alaska.gov/ombfiles/20\\_budget/FY20Enacted\\_cr\\_detail\\_6-28-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/FY20Enacted_cr_detail_6-28-19.pdf)).

1 is the Supreme Court. The annual cost of elective abortions is reflected by this  
2 reduction.”<sup>14</sup>

3 A few days later on July 3, 2019, the Alaska Supreme Court issued a statement in  
4 response to the Governor’s veto:<sup>15</sup>

5  
6 Alaska, like the country as a whole, has a system of government with  
7 three co-equal branches. At its most basic, this means that the legislature  
8 makes the law, the governor enforces the law, and the supreme court,  
9 when faced with a constitutional challenge to a law, is required to decide  
10 it. Legislators, governors, and all other Alaskans certainly have the right  
11 to their own opinions about the constitutionality of government action, but  
12 ultimately it is the courts that are required to decide what the constitution  
13 mandates. In a democracy based on majority rule, it is important that laws  
14 be interpreted fairly and consistently. We assure all Alaskans that the  
15 Alaska Court System will continue to render independent court decisions  
16 based on the rule of law, without regard to the politics of the day.<sup>16</sup>

17 The legislature convened a special session on July 8, 2019, but failed to override  
18 the veto.<sup>17</sup> In a later special session, the legislature passed legislation restoring all  
19 vetoed funds to the court system’s budget.<sup>18</sup>

20 Governor Dunleavy once again exercised his veto power, this time on only two  
21 court system line items, cutting \$458,700 from the court system’s budget.<sup>19</sup> Again, the

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22 <sup>14</sup> *Id.*

23 <sup>15</sup> Supreme Court of the State of Alaska, “Alaska Supreme Court Statement  
24 Regarding Recent Budget Cuts” July 3, 2019 (available online at  
25 <https://public.courts.alaska.gov/web/media/docs/budget-cuts.pdf>).

26 <sup>16</sup> *Id.*

<sup>17</sup> *See* Complaint, page 8, ¶ 26, and Answer page 3, ¶ 26.

<sup>18</sup> A copy of the legislation, with markup showing the governor’s second round of  
vetoed, is available online from the Alaska Office of Management and Budget at  
[https://omb.alaska.gov/ombfiles/20\\_budget/PDFs/HB2001\\_Markup\\_8-19-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/PDFs/HB2001_Markup_8-19-19.pdf). The  
Judiciary’s budget provisions are found on page 8.

1 Governor's vetoes included a \$334,700 cut to the appellate courts' budget and repeated  
2 the prior statement of objections.<sup>20</sup> And again, the legislature did not override the veto.

3 Thus the Alaska Court System's final fiscal year 2020 budget was \$112,111,900,  
4 for an increase of about three million dollars from fiscal year 2019. The vetoed funds  
5 were not reallocated to any other program or department. The funds remain available for  
6 appropriation by the legislature for other purposes in the next budgeting cycle.  
7

#### 8 **IV. Argument**

9 There is no dispute that the Alaska Constitution establishes a tripartite system of  
10 government with three separate and co-equal branches. The State agrees that the Alaska  
11 Constitution requires that the judiciary be funded to carry out its constitutional  
12 responsibilities. The Constitution, however, specifically leaves it to the legislative and  
13 executive branches to decide how much funding the court system, along with other state  
14 entities, requires. Here, both the Legislature and the Governor provided adequate  
15 funding for the Judiciary to carry out its constitutional responsibilities. And the  
16 governor's veto message passes the limited judicial review to which such statements are  
17 subject.  
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23 <sup>19</sup> Alaska Office of Management and Budget "Change Record Detail with  
24 Description" August 19, 2019 at pages 47-48 (available online at  
[https://omb.alaska.gov/ombfiles/20\\_budget/PDFs/FY20\\_HB2001\\_Post\\_Veto\\_CR\\_Detail\\_8-19-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/PDFs/FY20_HB2001_Post_Veto_CR_Detail_8-19-19.pdf)).

25 <sup>20</sup> *Id.* at page 47.

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

2           Under the Alaska Constitution, the governor has substantial influence and control  
3 over the state's budget.<sup>21</sup> The first step in the constitutional budgeting process is for the  
4 governor to submit a proposed budget and general appropriation bill to the legislature.<sup>22</sup>  
5 The Constitution tasks the legislature with the power and responsibility to legislate and  
6 appropriate money.<sup>23</sup> At the close of the legislative process, article II, section 15 of the  
7 Alaska Constitution grants the governor explicit authority to veto all or portions of any  
8 item of a general appropriation bill ultimately enacted by the legislature.<sup>24</sup> The  
9 constitution then grants the legislature the opportunity to override that veto.<sup>25</sup>  
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11           Unlike some state constitutions, the Alaska Constitution does not exempt or limit  
12 the court system's budget from the Governor's line item veto power.<sup>26</sup> Instead,  
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15 <sup>21</sup> Alaska Const. art. II § 15 and art. IX § 12; *see also Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001).

16 <sup>22</sup> Alaska Const. art. IX § 12; *see also Knowles*, 21 P.3d at 371.

17 <sup>23</sup> Alaska Const. art. II §§ 1, 13; *see also Knowles*, 21 P.3d at 371.

18 <sup>24</sup> Alaska Const. art. II § 15 ("The governor may veto bills passed by the  
19 legislature. He may, by veto, strike or reduce items in appropriation bills. He shall  
20 return any vetoed bill, with a statement of his objections, to the house of origin."); *see also Knowles*, 21 P.3d at 371-72; *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977).

21 <sup>25</sup> Alaska Const. art. II § 16.

22 <sup>26</sup> Alaska Const. art. II § 15. *Compare* Hawaii Const. art. 3 § 16 ("Every bill which  
23 shall have passed the legislature shall be certified by the presiding officers and clerks of  
24 both houses and shall thereupon be presented to the governor. If the governor approves  
25 it, the governor shall sign it and it shall become law. If the governor does not approve  
such bill, the governor may return it, with the governor's objections to the legislature.  
*Except for items appropriated to be expended by the judicial and legislative branches,*  
the governor may veto any specific item or items in any bill which appropriates money  
for specific purposes by striking out or reducing the same; but the governor shall veto



1 consistent with the constitutional delegates' desire "to create a strong executive branch  
2 with 'a strong control on the purse strings' of the state,"<sup>27</sup> article II, section 15 allows  
3 the governor to exercise a measure of fiscal control over all aspects of the State's  
4 budget.<sup>28</sup> The only condition on the governor's line item veto power is the requirement  
5 that he or she return "any vetoed bill, with a statement of his [or her] objections, to the  
6 house of origin."<sup>29</sup>

8 Plaintiffs acknowledge that "there is no question that the governor has the  
9 authority to issue line vetoes."<sup>30</sup> Nor do they challenge the governor's veto of the  
10 remaining \$124,000 of the total \$458,700 vetoed from the court system's final budget  
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12 other bills, if at all, only as a whole.") (Emphasis added). *See also State ex rel.*  
13 *Brotherton v. Blankenship*, 207 S.E.2d 421 (W. Va. 1973) (interpreting article 6, § 51 of  
14 West Virginia Constitution, containing specific and distinct provisions regarding the  
15 judiciary's budgetary process, as insulating judiciary's budget from governor's line item  
16 veto authority).

17 <sup>27</sup> *Rosen*, 569 P.2d at 795 (quoting 3 Proceedings of the Alaska Constitutional  
18 Convention (PACC) 1740 (January 11, 1956)); *see also Knowles*, 21 P.3d at 372.

19 <sup>28</sup> *Knowles*, 21 P.3d at 372 (concluding that the item veto permits the governor to  
20 tighten or close the state's purse strings).

21 <sup>29</sup> Alaska Const. art. II § 15.

22 <sup>30</sup> Memorandum in Support of Motion for Summary Judgment at 24. *See also*  
23 Memorandum from Susan Burke to Arthur Snowden, dated October 13, 1975, attached  
24 to Letter from Chief Justice Bolger to Governor Dunleavy, dated December 13, 2019  
25 (available online at  
26 [http://www.akleg.gov/basis/get\\_documents.asp?session=31&docid=58504](http://www.akleg.gov/basis/get_documents.asp?session=31&docid=58504)) ("The  
Governor does have explicit authority to veto all or portions of the general appropriation  
bill enacted by the legislature. This is the one area in which the constitution by explicit  
language permits the executive branch to exercise fiscal control over the other two  
branches of government. Though an expressed exception to pure separation of powers,  
even this authority must be exercised within the limitations of that doctrine and cannot  
be exercised in a way that will impair the constitutional functioning of the legislature or  
the judiciary.")

1 for other reasons.<sup>31</sup> Thus, their claim that the veto of \$334,700 from the appellate  
2 courts' budget violated the Alaska Constitution is fundamentally a challenge to the  
3 content of the governor's veto message.

4 **B. Alaska Courts review gubernatorial veto messages only for**  
5 **"minimum of coherence;" this message passes that minimal review.**

6 The only condition on the governor's exercise of the line item veto power is that  
7 any veto must be accompanied by a statement of objections.<sup>32</sup> Plaintiffs do not dispute  
8 that the Governor provided a statement of objections with the veto at issue here. They  
9 base their claims on the content of the message.  
10

11 But under Alaska Supreme Court precedent, courts review the content of a veto  
12 message only to determine if it meets a "minimum of coherence" standard.<sup>33</sup> Under that  
13 test, courts simply "look to see whether the [governor's statement of objections] makes  
14 comprehensible reference to the provision being vetoed, and do not attempt to evaluate  
15 the reasoning underlying the objection."<sup>34</sup> In *Alaska Legislative Council v. Knowles*, the  
16 Alaska Supreme Court explained:  
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19 <sup>31</sup> The governor's statement of objections for the \$124,000 veto stated: "Eliminate  
20 funding added by Legislature to Therapeutic Courts without justification. The State's  
21 fiscal reality dictates a reduction in expenditures across all agencies." Alaska Office of  
22 Management and Budget "Change Record Detail with Description" August 19, 2019 at  
page 48 (available online at  
[https://omb.alaska.gov/ombfiles/20\\_budget/PDFs/FY20\\_HB2001\\_Post\\_Veto\\_CR\\_Detail\\_8-19-19.pdf](https://omb.alaska.gov/ombfiles/20_budget/PDFs/FY20_HB2001_Post_Veto_CR_Detail_8-19-19.pdf)).

23 <sup>32</sup> Alaska Const. art. II § 15 ("He shall return any vetoed bill, with a statement of  
24 his objections, to the house of origin").

25 <sup>33</sup> *Knowles*, 21 P.3d at 376.

26 <sup>34</sup> *Id.*

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Subjecting the substantive adequacy of each objection to judicial scrutiny would be unavoidably time-consuming. Judicial involvement would be unlikely to generate bright-line distinctions that would provide guidance useful in avoiding future disputes and litigation.

The Court considered the fact that gubernatorial vetoes involve the state's budget, which is expressly committed by the constitution to the political branches of government, saying:

[U]ltimately such disputes are inherently political because they implicate the appropriations and budgetary powers of the legislature and the executive, and the political relationship between those branches of government. The judiciary has no special competence to settle these types of inherently political disputes.

The Court also considered the purpose of the veto message, which is for interpretation and action by the legislature and the electorate, not the judiciary:

We also think the purposes underlying the statement-of-objections requirement do not demand case-by-case judicial review. The legislature, through knowledge accumulated in dealing with the governor, is capable of interpreting the sufficiency of an objection, and is thus able to decide whether to enact an amended appropriation or to seek a veto override. It 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." And the ultimate arbiter of that question is the electorate.<sup>35</sup>

In effect, the Alaska Supreme Court has expressly directed that the courts should not attempt to evaluate the appropriateness of the governor's reasons so long as they are comprehensible—that is an issue reserved to the legislature and the voters.

Other courts that have reviewed challenges to gubernatorial veto messages have similarly held that the content of those messages are intended to inform the legislature

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<sup>35</sup> *Id.*

1 and voters of the reason for the veto, not to subject the veto to judicial review. For  
 2 example, in *Romer v. Colorado General Assembly*,<sup>36</sup> the Colorado Supreme Court found  
 3 veto messages stating “disapproved and vetoed” insufficient to meet the Colorado  
 4 constitutional statement of objections requirement. The court reasoned that although the  
 5 governor may veto a bill for any reason he chooses, the veto statement of objections  
 6 must “give the General Assembly, and the people of Colorado, more information than  
 7 the act of returning the bill itself.”<sup>37</sup> In reaching its conclusion, the court called  
 8 substantive review of statements of objections “a mistake” and reiterated that the court  
 9 would not inquire into the governor’s justifications for a veto: “We prefer the approach  
 10 of the framers of the United States Constitution who rejected judicial participation in the  
 11 veto of bills, and who were acutely aware of the separation of powers issues raised by  
 12 vetoes.”<sup>38</sup>

13  
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 15 In *Arnett v. Meredith*,<sup>39</sup> the Court of Appeals of Kentucky similarly held that a  
 16 veto statement that failed to state any reasons for the veto was invalid.<sup>40</sup> The court  
 17 reasoned:

18  
 19 [I]t was the purpose of the constitutional convention, and the people  
 20 adopting the Constitution to force the Governor to state reasons and  
 21 objections for his opposing the enactment, so that both the Legislature and  
 the people might know whether or not he was motivated by conscientious

22 <sup>36</sup> 840 P.2d 1081 (Colo. 1992).

23 <sup>37</sup> *Id.* at 1083-84.

24 <sup>38</sup> *Id.* at 1084 and n. 6.

25 <sup>39</sup> 121 S.W.2d 36 (Ky. 1938).

<sup>40</sup> *Id.* at 40.

1 convictions in recording his disapproval. . . . The public . . . and . . .  
2 members of the Legislature, have the right to know the reason or reasons  
3 why a particular act was disapproved by the Governor so that they may  
4 exercise their rights and powers as voters and lawmakers to overcome  
such objections in the future, if the act is a meritorious one and approved  
by them.<sup>41</sup>

5 In *Cascade Telephone Co. v. Tax Commission of Washington*,<sup>42</sup> the Washington  
6 Supreme Court similarly held: "...we see nothing in the wording of our constitutional  
7 provision which places any duty upon the Governor to logically demonstrate his  
8 position or which makes the veto good or bad as the Governor's reasons may be sound  
9 or otherwise. The giving of a reason by the Governor is for the information of the  
10 Legislature..."<sup>43</sup>

12 Here the Governor's statement of objections makes unmistakable reference to the  
13 provision being vetoed, and it provides sufficient information for both the legislature  
14 and the voters to evaluate whether and how to respond. Indeed, there can be no dispute  
15 that his statement of objections provided sufficient information for the legislature to  
16 take action in response to the veto. After the first round of vetoes, the legislature  
17 convened a special session to override them. Despite failing to override, it then enacted  
18 legislation to restore the vetoed funds (and, in fact, the bulk of the vetoes to the court  
19 system were not repeated and the funding remained restored for fiscal year 2020). And  
20 in this current 2020 regular legislative session, the legislature is considering House Joint  
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23 \_\_\_\_\_  
24 <sup>41</sup> *Id.*

25 <sup>42</sup> 30 P.2d 976 (Wash. 1934).

26 <sup>43</sup> *Id.* at 978.

1 Resolution 15, which seeks a constitutional amendment to decrease the threshold  
2 needed to override a veto from three-quarters to two-thirds of the legislature.<sup>44</sup> And the  
3 veto message is clear and available to the electorate in order for them to exercise their  
4 rights and powers as voters.

5  
6 In short, although the plaintiffs disagree with the Governor's reasoning for the  
7 veto, his statement of objections meets the constitutional standard for exercising his line  
8 item veto power. A judicial override of the Governor's veto of the court system's own  
9 funding—when the Governor exercised a power that the constitution expressly grants to  
10 him, and when the veto met the constitutional requirements—would jettison the  
11 “minimum of coherence” standard adopted in *Alaska Legislative Council v. Knowles*<sup>45</sup>  
12 and set a precedent for case-by-case judicial review of all veto messages simply because  
13 they are politically motivated or because they voice an unpopular or divisive opinion.<sup>46</sup>  
14 This Court should not depart from this clear and binding precedent in order to effect a  
15 marginal increase in the court system's own funding.  
16

17  
18 **C. The Governor's veto does not violate separation of powers.**

19 The Alaska Supreme Court has long recognized that the separation of powers and  
20 its complementary doctrine of checks and balances are part of the constitutional  
21

22 <sup>44</sup> The full text of the resolution may be found on the Alaska State Legislature's  
website at <http://www.akleg.gov/basis/Bill/Text/31?Hsid=HJR015A>.

23 <sup>45</sup> 21 P.3d at 376.

24 <sup>46</sup> 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  
25 rejecting proposed legislation are to be avoided.”) (quotations omitted).

1 framework of this state.<sup>47</sup> The doctrines stem from the distribution of power among the  
2 three branches of government, limiting the authority of each branch to interfere in the  
3 powers that have been delegated to the other branches.<sup>48</sup> However, a complete  
4 separation of government branches is not only unattainable but also undesirable:  
5  
6 “While the Constitution diffuses power the better to secure liberty, it also contemplates  
7 that practice will integrate the dispersed powers into a workable government. It enjoins  
8 upon its branches separateness but interdependence, autonomy but reciprocity.”<sup>49</sup>

9  
10 When determining whether an action by one branch violates the separation of  
11 powers, Alaska courts examine the following four factors: the nature of the power at  
12 issue; which branch of government is assigned this power in the constitution; whether  
13 the constitution suggests that the power is to be shared by two branches; and whether  
14 the limits of any express grant have been exceeded or present an encroachment on  
15 another branch.<sup>50</sup> When evaluated under this traditional test, the governor’s veto in this  
16 case does not violate separation of powers.

17  
18 The nature of the power at issue in this case is fiscal, and more narrowly, it is  
19 about the governor’s power to veto funds from the judiciary’s budget. The constitution  
20  
21

22 <sup>47</sup> *Alaska Pub. Interest Research Gp. v. State*, 167 P.3d 27, 34-35 (Alaska 2007).

23 <sup>48</sup> *Id.*

24 <sup>49</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J.,  
concurring).

25 <sup>50</sup> *Alaska Pub. Interest Research Gp.*, 167 P.3d at 35.

1 assigns primary responsibility for the state's finances to the legislative branch.<sup>51</sup> The  
2 legislature has both the power and responsibility to pass appropriations bills.<sup>52</sup>  
3 However, the Constitution also mandates that this power is partially shared with the  
4 executive.<sup>53</sup> The governor has the power to submit proposed budgets and appropriation  
5 bills to the legislature.<sup>54</sup> Although the governor may not add to or divert for other  
6 purposes the appropriations enacted by the legislature, it is beyond question that the  
7 governor has broad power to veto, strike, or reduce items in appropriations bills, "with a  
8

9  
10 <sup>51</sup> See *State v. Dupere*, 709 P.2d 493, 496-97 (Alaska 1985) ("The Department of  
11 Administration, like the judiciary, cannot intrude upon the legislature's power to  
12 appropriate funds.").

13 <sup>52</sup> Alaska Const. art. II §§ 1, 13; art. IX § 13 ("No money shall be withdrawn from  
14 the treasury except in accordance with appropriations made by law."); art. XI § 7  
15 (prohibiting the use of an initiative to make or repeal an appropriation). *Simpson v.*  
16 *Murkowski*, 129 P.3d 435, 446 (Alaska 2006); *Knowles*, 21 P.3d at 371; *University of*  
17 *Alaska Classified Employees Ass'n v. Univ. of Alaska*, 988 P.2d 105, 107 (Alaska 1999)  
18 ("The reason for prohibiting appropriations by initiative is to ensure that the legislature,  
19 and *only* the legislature, retains control over the allocation of state assets among  
20 competing needs"); *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988); *City of*  
21 *Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska  
22 1991) ("The purpose of the prohibition on repeal of appropriations by initiative is to  
23 ensure that the legislative body remains in control of and responsible for the budget").

24 <sup>53</sup> *Thomas*, 569 P.2d at 795 ("the item veto power of the governor checks  
25 legislative appropriations"); *Simpson*, 129 P.3d at 447 ("As the superior court  
26 concluded, under the Alaska Constitution 'it is the joint responsibility of the governor  
and the legislature to determine the State's spending priorities on an annual basis.'");  
*see also Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d  
891, 895 (Alaska 2004) ("[A]rticle II, sections 15 and 16 of the Alaska Constitution  
govern the balance of power between the legislative and executive branches of Alaska's  
government.").

<sup>54</sup> Alaska Const. art. IX § 12 ("The governor shall submit to the legislature . . . a  
budget . . . setting forth all proposed expenditures and anticipated income of all  
departments, offices, and agencies of the State."); *see also Simpson*, 129 P.3d at 446;  
*Knowles*, 21 P.3d at 371.



1 statement of his objections.”<sup>55</sup> The legislature may override a line item veto with an  
2 affirmative vote of three-fourths of its membership.<sup>56</sup>

3 The final prong of the traditional separation-of-powers test is whether the limits  
4 of any express grant have been exceeded or present an encroachment on another  
5 branch.<sup>57</sup> The constitution states no limits on the governor’s power to veto line item  
6 appropriations.<sup>58</sup> Nor does the constitution exempt the judiciary’s budget from the  
7 legislative budget process or the governor’s line item veto power.<sup>59</sup> The veto here was  
8 entirely within the Governor’s express powers. And the decision about whether or not to  
9 override that veto was wholly within the legislature’s express power.  
10

11 Finally, the veto does not encroach on or interfere with the judiciary’s ability to  
12 perform its constitutional duties. Significantly, the Court System’s final 2020 fiscal year  
13 budget was about three million dollars higher than its 2019 fiscal year budget.<sup>60</sup> The  
14

15  
16 <sup>55</sup> Alaska Const. art. II § 15; *see also*, *Simpson*, 129 P.3d at 447; *Knowles*, 21 P.3d  
17 at 371; *Thomas*, 569 P.2d at 795 (concluding that the constitutional history underlying  
18 the governor’s veto authority provision indicates a desire by the delegates to create a  
19 strong executive branch).

20 <sup>56</sup> Alaska Const. art. II § 16 (“Bills to raise revenue and appropriation bills or items,  
21 although vetoed, become law by affirmative vote of three-fourths of the membership of  
22 the legislature”); *see also Simpson*, 129 P.3d at 446. Alaska is unique in this high veto  
23 override threshold; other states require only a two-thirds or three-fifths override vote.  
24 *See* Richard Briffault, *The Item Veto in State Courts*, 66 Temp. L.Rev. 1171, 1176 n. 18  
25 (1993).

26 <sup>57</sup> *Alaska Pub. Interest Research Gp.*, 167 P.3d at 35.

<sup>58</sup> Alaska Const. art. II § 15.

<sup>59</sup> Alaska Const. art. II § 15. *Compare* Hawaii Const. art. 3 § 16; *State ex rel.*  
*Brotherton v. Blankenship*, 207 S.E.2d 421 (W. Va. 1973).

<sup>60</sup> State of Alaska, Office of Management and Budget, Alaska Court System,

1 \$334,700 veto amounted to less than one-half of one percent of the budget passed by the  
2 legislature.<sup>61</sup> Although the court system—like every other government agency—has had  
3 to adjust to fiscal realities, the veto did not significantly impact the court system’s  
4 operations.<sup>62</sup> Moreover, the Alaska Supreme Court has assured all Alaskans that “the  
5 Alaska Court System will continue to render independent court decisions based on the  
6 rule of law, without regard to the politics of the day.”<sup>63</sup>

8 “There is no more difficult and controversial aspect of relations between our  
9 branches of government than the Governor’s use of the veto.”<sup>64</sup> The Constitution  
10 delicately balances the powers of the executive and legislative branches in this regard,  
11 and here the Governor and the Legislature considered and made policy decisions as they

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13 “Component Summary—All Funds, Judiciary” September 4, 2019 (available online at  
14 [https://omb.alaska.gov/ombfiles/20\\_budget/ACS/Enacted/20compsummary\\_acs.pdf](https://omb.alaska.gov/ombfiles/20_budget/ACS/Enacted/20compsummary_acs.pdf)).

15 <sup>61</sup> Alaska Office of Management and Budget, “Department Totals—Operating  
16 Budget, Judiciary,” September 4, 2019 (available online at  
17 [https://omb.alaska.gov/ombfiles/20\\_budget/ACS/Enacted/20depttotals\\_acs.pdf](https://omb.alaska.gov/ombfiles/20_budget/ACS/Enacted/20depttotals_acs.pdf)).

18 <sup>62</sup> See Senate Judiciary Finance Subcommittee Meeting, February 20, 2020. Alaska  
19 Court System Deputy Administrative Director Doug Wooliver testified to committee  
20 members that veto resulted in reductions to the court system’s budget for salaries for  
21 temporary judges: “With reducing the temporary judges that we can hire. Temporary  
22 judges are used... at the trial court to speed trials along... also at the court of appeals  
23 level when one of the judges has a conflict we bring in a retired judge... sometimes we  
24 bring in a fourth judge on the court of appeals to help move cases more quickly.”  
(Audio and video recording available online at  
25 <http://www.akleg.gov/basis/Meeting/Detail?Meeting=SJSC%202020-02-20%2017:00:00>, quoted testimony begins at 5:12pm)

26 <sup>63</sup> 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>).

<sup>64</sup> *Washington State Legislature v. Lowry*, 931 P.2d 885, 888 (Wash. 1997).

1 were constitutionally tasked to do. The Constitution does not immunize the judiciary's  
2 budget from the political process for determining spending priorities. Nor does the  
3 Constitution create a role for the judiciary to evaluate the merit of veto messages. The  
4 plaintiffs are asking this Court to take the extraordinary step of overriding the  
5 Governor's veto after the legislature failed to do so based solely on disapproval of the  
6 content of the veto message. To do so would upend the delicate executive-legislative  
7 balance and insert the judiciary into this process in a way not contemplated by the  
8 framers of the Alaska constitution or the Alaska Supreme Court.

10 **D. There is no reason to invent a new constitutional standard for this**  
11 **case.**

12 The plaintiffs' hyperbolic predictions about threats to the judiciary's  
13 independence ignore the many safeguards embedded in the Alaska constitution and the  
14 common law to protect an independent judiciary. The constitutional framers carefully  
15 considered how to protect an independent judiciary and the many structures they created  
16 specifically for this purpose remain intact. Those protections weigh heavily against this  
17 Court inventing new constitutional standards and injecting itself unnecessarily into the  
18 political budgeting process.

20 For example, the framers created a judicial selection and retention process that  
21 insulates judges from political pressures.<sup>65</sup> They rejected a system in which judges  
22 competitively campaign for election, "fearing that financial and psychological debts  
23

24 <sup>65</sup> Alaska Const. art. IV §§ 4, 6, 8; see also *Buckalew v. Holloway*, 604 P.2d 240,  
25 245-46 (Alaska 1979) (discussing the importance of the constitutional judicial selection  
26 process to the framer's concept of an independent judiciary).

1 would be incurred in the process, and that pre-election decisions in controversial cases  
2 would be molded more by public mood than the dictates of law.”<sup>66</sup> The framers also  
3 rejected a simple gubernatorial appointment system to prevent “executive dominance  
4 over the judiciary.”<sup>67</sup> Supreme court justices and superior court judges may only be  
5 removed through nonpartisan retention elections, by joint action of the Judicial Council  
6 and Supreme Court, or by impeachment.<sup>68</sup> The constitution protects judges’ salaries  
7 from reduction.<sup>69</sup> Thus, neither the governor nor the legislature can assert pressure or  
8 influence a judge’s decisions by exercising power over his or her livelihood.<sup>70</sup> The  
9 framers granted the Supreme Court the authority to administer the judicial branch and  
10 make rules governing court administration and rules governing practice and procedure  
11 in civil and criminal cases.<sup>71</sup>  
12  
13  
14  
15

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16 <sup>66</sup> *Buckalew*, 604 P.2d at 245-46 (citing 1 Proceedings of the Constitutional  
Convention 598).

17 <sup>67</sup> *Id.* at 246 (citing 1 Proceedings of the Constitutional Convention 584-86, 598,  
18 601-02).

19 <sup>68</sup> Alaska Const. art. IV §§ 6, 10, 11, 12. Judges are also constitutionally required to  
retire upon reaching age 70. Alaska Const. art. IV §11.

20 <sup>69</sup> Alaska Const. art. IV § 13; *Hudson v. Johnstone*, 660 P.2d 1180, 1184-85  
21 (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).

22 <sup>70</sup> *Hudson*, 660 P.2d at 1185.

23 <sup>71</sup> Alaska Const. art. IV §§ 1, 15, 16; *see also Hornaday v. Rowland*, 674 P.2d  
24 1333, 1339-40 (Alaska 1983) (holding that there is no legislative power to relocate  
judges); *Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 168  
25 (Alaska 1991) (noting intent of framers to insulate judicial rulemaking power from  
citizen initiatives).

1 Although the judiciary is not immune from budget cuts, as part of its  
2 administrative functions, the judiciary is actively engaged and represented in the  
3 budgeting process. The Alaska Supreme Court appoints an administrative director, who  
4 supervises the court system's administrative operations.<sup>72</sup> The judiciary creates and  
5 presents its own budget proposal.<sup>73</sup> Representatives from the court system's  
6 administrative office attend legislative hearings to advocate for that budget.<sup>74</sup> In other  
7 words, the judiciary has a place at the table to advocate for its budget.

8  
9 In addition to its express powers in the constitution, the judiciary's independence  
10 is also protected by its inherent powers. Although there is no allegation or claim that the  
11 State has failed or refused to comply with the *Planned Parenthood* decision,<sup>75</sup> the court  
12 could compel compliance through its contempt power.<sup>76</sup> Moreover, if the \$334,700 were  
13 essential to the Alaska judiciary's ability to function and the co-equal branches of  
14 government were unable to resolve the problem through the appropriation process, it is  
15 a generally accepted rule of law that the judicial branch of government has the inherent  
16

17  
18 <sup>72</sup> Alaska Const. art. IV § 16.

19 <sup>73</sup> See Letter from Chief Justice Bolger to Governor Dunleavy, December 13, 2019,  
20 at 1.

21 <sup>74</sup> See House Judiciary Finance Subcommittee Meeting, January 27, 2020; House  
22 Judiciary Finance Subcommittee Meeting, February 7, 2020; Senate Judiciary Finance  
23 Subcommittee Meeting, February 20, 2020.

24 <sup>75</sup> *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (Alaska  
25 2019).

26 <sup>76</sup> *State v. Williams*, 356 P.3d 804, 807-08 (Alaska App. 2015) (discussing extent of  
27 judiciary's inherent contempt powers); *Continental Ins. Cos. v. Bayless & Roberts, Inc.*,  
28 548 P.2d 398, 410-11 (Alaska 1976) (holding that legislature cannot limit judiciary's  
29 inherent contempt power through legislation).

1 authority to fund its own operations as necessary to fulfill its basic constitutional  
2 duties.<sup>77</sup> This inherent authority further mitigates the financial significance of the  
3 governor's veto; if the money were essential to performance of the judiciary's  
4 constitutional functions, the judiciary could likely compel it through direct action.

5  
6 "The purpose [of separation of powers] was not to avoid friction, but, by means of  
7 the inevitable friction incident to the distribution of the government powers among three  
8 departments, to save the people from autocracy."<sup>78</sup> The tripartite constitutional system is  
9 built to withstand the pressure of politics and controversy, and there is no need for this  
10 Court to invent new constitutional standards to protect its integrity. An instructive case  
11 study to this effect is the Kansas Supreme Court case of *Solomon v. State*.<sup>79</sup> The  
12 plaintiffs cite this case for its broad statements regarding the inherent powers of the  
13 judiciary,<sup>80</sup> but that case is notable not for what that court did, but rather for what it *did*  
14 *not* do. In that case, the Kansas Supreme Court held that a newly-enacted statutory  
15 provision purporting to transfer the authority to appoint local chief judges from the  
16 Supreme Court to local courts was an unconstitutional violation of separation of powers.  
17  
18

19 <sup>77</sup> See *Matter of Alamance County Court Facilities*, 405 S.E.2d 125, 132-34 (N.C.  
20 1991); *State ex rel. Metropolitan Pub. Defender Servs., Inc. v. Courtney*, 64 P.3d 1138,  
21 1139 (Or. 2003); *In re Clerk of Court's Compensation for Lyon County v. Lyon County*  
22 *Comm'rs*, 241 N.W.2d 781, 784-86 (Minn. 1976) (citing Carrigan, *Inherent Powers of*  
23 *the Courts* (published by National College of the Judiciary)); Gary D. Spivey,  
24 *Annotation, Inherent Power of Court to Compel Appropriation or Expenditure of Funds*  
25 *for Judicial Purposes*, 59 A.L.R.3d 569, and cases cited.

24 <sup>78</sup> *State v. Fairbanks North Star Borough*, 736 P.2d 1140 (Alaska 1987).

24 <sup>79</sup> 364 P.3d 536 (Kan. 2015).

25 <sup>80</sup> Plaintiffs' Motion for Summary Judgment at 15.

1 The court noted, in passing, that the bill contained a “nonseverability clause,” and that  
2 its decision striking down part of the bill would strike the bill in its entirety.<sup>81</sup> The court  
3 stated: “We note only that our holding appears to have practical adverse consequences  
4 to the judiciary budget, which the legislature may wish to address, even though those  
5 concerns played no part in our analysis.”<sup>82</sup>

7 What goes unstated in the opinion is that the bill in question was the judicial  
8 appropriation bill.<sup>83</sup> Thus, striking the bill in its entirety completely defunded the  
9 judiciary. The legislature had attempted to force the Kansas Supreme Court to accept  
10 the change in the method for appointing chief judges by directly tying it to the  
11 judiciary’s budget.<sup>84</sup> But rather than jumping into a constitutional fight, the Kansas  
12 Supreme Court coolly called the legislature’s bluff. And, indeed, shortly thereafter the  
13 Kansas legislature passed a new appropriations bill to fund the judiciary.<sup>85</sup>

15 The tripartite system of government created in our Constitution is sound and does  
16 not need judicial revision. Thanks to the forethought of the framers of Alaska’s  
17 Constitution, the facts of this case present no genuine threat to the judiciary’s  
18 independence or its ability to perform its constitutional functions. Accordingly, this  
19

20  
21 <sup>81</sup> *Solomon*, 364 P.3d at 550.

22 <sup>82</sup> *Id.*

23 <sup>83</sup> See John Eligon, *Courts Budget Intensifies Kansas Dispute Over Powers*, The  
New York Times, June 6, 2016.

24 <sup>84</sup> See *id.*

25 <sup>85</sup> See Terry Carter, *Kansas legislature backs off in separation-of-powers faceoff  
with state supreme court*, American Bar Association Journal, January 29, 2016.

1 Court should reject Plaintiff's invitation to write a new rule into Alaska's constitution,  
2 and instead, adhere to established precedent that veto messages must only meet the  
3 "minimum of coherence" standard, and allow the political process to operate without  
4 judicial intervention.

5  
6 **E. The law does not support the injunctions that the plaintiffs demand.**

7 The plaintiffs' prayer for relief demands two injunctions, neither of which are  
8 supported by the law. The first is an injunction ordering "Defendant Dunleavy...to  
9 refrain from any further intrusion or interference with the judiciary branch."<sup>86</sup> This lacks  
10 the specificity required to convey to the governor what actions he can take without  
11 risking contempt.<sup>87</sup> Injunctions simply requiring a party to "obey the law" are not  
12 allowable.<sup>88</sup>

13  
14 Second, the plaintiffs ask this Court to "exercise its inherent powers to declare  
15 the veto action unconstitutional and order the governor and the State to refund the  
16 \$334,700 to the appellate courts,"<sup>89</sup> citing to numerous cases regarding the power of the  
17 judiciary to directly compel necessary funds. Though the parties agree that the Court has

18  
19 <sup>86</sup> Complaint, page 11, paragraph 3.

20 <sup>87</sup> *See Cook Inlet Fisherman's Fund v. State, Dep't of Fish & Game*, 357 P.3d 789,  
804 (Alaska 2015).

21 <sup>88</sup> Alaska R. Civ. P. 65(d) ("Every order granting an injunction...shall be specific  
22 in terms; shall describe in reasonable detail...the act or acts sought to be restrained").  
23 To the extent this can be viewed as a request for declaratory judgment, "[d]eclaratory  
24 relief is a nonobligatory remedy," and courts have considerable discretion in deciding  
whether to award it—they have "an opportunity, rather than a duty," to grant  
declaratory relief. *Lowell v. Hayes*, 117 P.3d 745, 756 (Alaska 2005).

25 <sup>89</sup> Plaintiff's Memorandum in Support of Summary Judgment, pages 25, 27. *See*  
*also* Complaint, page 11, paragraph 4.



1 inherent authority to do what it must to fulfill its constitutional duties, this case is about  
2 the constitutionality of the veto not the inherent powers of the judiciary. In all of the  
3 inherent powers funding cases identified, a member of the judiciary is the plaintiff  
4 seeking to compel funds. Private parties cannot sue to force the judiciary to exercise its  
5 inherent powers to compel funding. Only the judiciary has this power—and only under  
6 extraordinary circumstances.

8           Moreover, courts may not use their inherent authority to commandeer a power  
9 that is expressly reserved by the constitution to another branch of government. Instead,  
10 courts must exercise their inherent power with as much concern for its potential to usurp  
11 the powers of another branch as for the alleged usurpation it is intended to correct.<sup>90</sup>  
12 Doing what is reasonably necessary to fulfill their constitutional duties means doing *no*  
13 *more* than is reasonably necessary.<sup>91</sup> Courts' exercise of their inherent power must be  
14 responsible—even cautious—and in the “spirit of mutual cooperation” among the three  
15 branches.<sup>92</sup> Inherent power “is a tool to be utilized only where other means to rectify the  
16 threat to the judicial branch are unavailable or ineffectual, and its wielding must be no  
17 more forceful or invasive than the exigency of the circumstances requires.”<sup>93</sup> Here, there  
18 are no exigent circumstances which would warrant use of this Court’s inherent authority  
19  
20  
21

22 <sup>90</sup> *Matter of Alamance County Court Facilities*, 405 S.E.2d at 133.

23 <sup>91</sup> *O’Coins, Inc. v. Treasurer of County of Worcester*, 287 N.E.2d 608, 615 (Mass.  
24 1972).

24 <sup>92</sup> *O’Coins*, 287 N.E.2d at 615.

25 <sup>93</sup> *Matter of Alamance County Court Facilities*, 405 S.E.2d at 133.

1 to adjust the court system's budget by less than one-half of one percent and override the  
2 Governor's veto after the legislature failed to do so. Thus, this Court should not grant  
3 the plaintiffs the injunctive relief they seek.

4 **F. The Governor's veto did not unconstitutionally "reallocate" funds.**

5 The plaintiffs briefly argue that the Governor's veto was an illegal "reallocation"  
6 of \$334,700 from the appellate courts to Medicaid. Since the Governor did not, and  
7 could not, add \$334,700 to the budget of the Department of Health and Social Services,  
8 this argument must fail. In fact, a line item veto simply means that no funds are spent  
9 for that purpose. It does not divert them to another purpose, or give the executive branch  
10 any power to spend them elsewhere. The funds remain a fungible part of the Alaska's  
11 savings which the legislature may allocate for any purpose in future budgetary cycles.

12 **V. Conclusion**

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

15 DATED: March 13, 2020.

16 KEVIN G. CLARKSON  
17 ATTORNEY GENERAL

18 By:

19 

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