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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 for the
State of Alaska, and STATE OF
ALASKA,

Defendants.

Superior Court No.: 3AN-19-08349CI

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE
BRIEF OF AMICUS CURIAE

Legal Voice's Motion for Leave to participate as amicus curiae should be granted. In deciding the legal issues in this case, this Court must fully understand the harm that the Governor's veto, if allowed to stand, will cause. The State in its opposition to Plaintiff's motion for summary judgment seeks to minimize the harm and reduce this case to a dispute between two branches of government about money. The perspective that Legal Voice offers undermines that strategy, thus the State seeks to exclude Legal Voice's brief. To

justify doing so, the State misstates the law and ignores the well-established principle that amicus briefs are especially helpful and welcome in cases involving issues of great public interest, where there are “broader legal or policy implications” at stake. In so doing, the State attempts to further marginalize the interests of those Alaskans most greatly impacted and affected by the Governor’s unconstitutional act. The irony should not be lost on this Court, and the motion for leave to be heard should be granted.

Legal Voice offers to the Court a critical perspective that the record otherwise does not reflect – that of the people who will be most impacted if the Court allows the Governor’s abuse of his veto power to stand. The ACLU’s Memorandum in Support of its Motion for Summary Judgment establishes that the Governor’s veto violates the separation of powers doctrine. The brief that Legal Voice proposes to submit adds to the discussion of why that matters—and contrary to the arguments of the State, shows that the harm is real. This case is not simply about the power of one branch of government vis-a-vis another. It is about the right of the people to seek and be confident that they can obtain fair adjudication of their claims in court.

The purpose of the separation of powers in this context is not to protect the courts for the sake of the courts. As the ACLU explains, it is to protect the courts as guardians “against the oppression of the rights of the minority by a tyrannous majority.”¹ Standing alongside the courts in this case with even more to lose are all Alaskans, but especially women with low incomes who were the real target of the Governor’s veto.

¹ *ACLU Memorandum in Support of Motion for Summary Judgment*, at 10.

Amicus Curiae play an essential role in alerting courts to the ramifications that their decisions have on people beyond the parties. The State seeks to silence those voices to maintain the illusion that this is just an academic dispute about “the governor’s power to veto funds from the judiciary’s budget.”² By narrowly framing the issue, the State minimizes the damage that flows from Governor’s actions and the exigency of the need to undo that damage. Only when the Governor’s veto is placed in the context of the effect that it has on real people, however, is it clear what an egregious abuse of power this was, how important this case is for real Alaskans, and how important it is that the Court act now to address the harm.

It is important for the Court to hear and for the public record to reflect the perspective of the people who are most impacted by this case. Even if the brief that Legal Voice proposes to submit does not change the outcome of this case, it may inform the opinion of the Court, and consequently how the public understands what is truly at stake in this case.

The Superior Court Should Exercise its Discretion to Allow Legal Voice to Participate as Amicus Curiae.

The Court should grant leave to Legal Voice to participate as amicus curiae as its brief explains the potential ramifications of this case beyond the parties directly involved, and adds to the record the essential voice of those with the most to lose if Court allows the Governor’s abusive use of his veto power to stand.

² State of Alaska’s Opposition to Motion for Summary Judgment and Memorandum in Support, p. 15.

There is no dispute that it is within the discretion of the court to grant leave to participate as amicus curiae and Alaska courts have done so in a variety of circumstances. The Alaska Supreme Court has not imposed any limitations on when courts may grant leave to participate as amicus curiae. If anything, the Supreme Court has shown great deference to decisions by the Superior Court to grant leave to participate as amicus curiae. For example, in *Alaskans for a Common Language v. Kritz*, 3 P.3d 906 (Alaska 2000), the Alaska Supreme Court reviewed a decision by the superior court to allow two organizations to participate as amicus curiae, but not as intervenors, in a lawsuit challenging the constitutionality of a ballot initiative. The Court concluded that one of the two organizations should have been permitted to intervene as that organization was one of the sponsors of the initiative. The Court, however, did not question the decision to allow either organization to participate as amicus curiae, despite that the second organization did not have any ties to the sponsors of the initiative and had “not established that its interest is any greater than a generalized interest of a political nature.” *Id.* at 916.

As discussed in the motion, amicus briefs are especially warranted in cases involving issues of great public interest, such as this one, where there are “broader legal or policy implications” that should be considered.³ Courts “frequently welcome amicus briefs from non-parties,” particularly where “the issues in the case have potential ramifications

³ *Giammalvo v. Sunshine Min. Co.*, 644 A.2d 407, 409 (Del. 1994) (internal citations omitted); *Empire State Assoc. of Assisted Living, Inc. v. Daines*, 887 NYS.2d 452, 455-56 (N.Y. Sup. 2009) (“Where a case involves ‘questions of important public interest leave is generally granted to file a brief as amicus curie.’ ”); 3B C.J.S. Amicus Curiae § 3 (“Where matter of public concern are involved, the court exercise great liberality in granting leave to appear.”).

beyond the parties directly involved” and the amicus can provide a unique perspective on those issues. *Nat'l Petrochemical & Refiners Ass'n v. Goldstene*, 2010 U.S. Dist. LEXIS 61394, at 5 (E.D. Cal. 2010) (granting leave in a case challenging the California Low Fuel Carbon Standard to Oregon Petroleum to file an amicus brief challenging the assertions of the State of Oregon in its amicus brief), *citing Sonoma Falls Developers, L.L.C. v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quotations omitted).⁴

Similarly, courts may grant leave to participate as amicus curiae where the movant offers “an essential voice of the affected interest groups.” *Animal Prot. Inst. v. Martin*, 2007 U.S. Dist. LEXIS 13378, at 7 (D. Me. 2007) (granting leave to participate as amicus curiae to nonprofit hunting group in a suit brought by the Animal Protection Institute alleging that the state violated the Endangered Species Act by allowing trapping).

In short, “[t]here are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (granting leave to the United States Department of Agriculture to file an amicus brief in a dispute between a poultry dealer and a poultry grower over whether funds being held in trust were subject to the Poultry Producers Financial Protection Act of 1987).

⁴ See also, *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C. 2003) (granting leave to file an amicus brief to an organization representing 250 tribes in a dispute involving individual Indian accounts, where the organization could offer insight into the potential impact that the relief at issue in the litigation might have on American Indian tribes more broadly).

Legal Voice's brief is useful to the Court because it adds context that is critical to understanding the depth of the harm that the Governor's unconstitutional actions cause to all Alaskans, particularly those who already face almost insurmountable barriers to access to justice. Wherever the courts chose (or choose) to allocate that loss, the result is that the entire system had (or will have) fewer resources to manage the needs of the people to have their cases resolved in a fair and timely manner.⁵ As the brief also explains, it is critical that the Court consider the inestimable harm that the Governor's unconstitutional abuse of his veto power, if allowed to stand, will cause to public confidence in the judicial system, particularly among women with low incomes from marginalized communities who already have good reason to be skeptical.

The State dismisses as "hyperbolic predictions" the ACLU's claims that the Governor's actions threaten the independence of the judiciary because, the State asserts, "[t]he veto did not significantly impact the court system's operations," and in any event, "the Alaska Supreme Court has assured all Alaskans that 'the Alaska Court System will continue to render independent court decisions . . .'" No matter how well the court system manages to compensate for the Governor's retaliatory budget cuts, or what assurances the

⁵ The State's Response suggests that the Governor's veto impacted only the appellate courts. The State's Response at 3. According to the Alaska Court System's deputy administrative director before the House Judiciary Finance Subcommittee, however, the veto necessitated a reduction in pro-tem judges in *both* the trial courts and the appellate courts. House Judiciary Finance Subcommittee Proceedings, February 7, 2020 (Testimony of Doug Wooliver); accessed at http://www.akleg.gov/basis/Meeting/Detail?Meeting=HJSC%202020-02-07%2012:00:00#tab2_4 at 14:45-15:20. This means that there were fewer judges to support the 64% of cases in Alaska courts in which there are no lawyers on either side at both the trial and appellate court level.

Supreme Court makes, however, the Supreme Court cannot make any assurance on behalf of the Governor. The damage the Governor's abuse of power has caused and will cause to public confidence in the system will be irreparable if not undone. That the courts remain committed to rendering independent decisions will not matter if people do not bring their claims forward for fear of retaliation by another branch of government. It is that dimension, among other things, that Legal Voice adds to the discussion of what is at stake in this case.

That the Governor's veto will cause irreparable harm to women with low incomes may not change the conclusion of the Court as to whether the Governor violated the Alaska Constitution. Nevertheless, it is important to the integrity of the decision that the Court consider the perspectives of those who are impacted by that decision. The brief Legal Voice offers is not about what policies the Governor should or should not pursue, and it certainly is not a criticism of the Alaska Courts. It is about the consequences that flow from Governor Dunleavy's violation of the separation of powers doctrine, particularly for women with low incomes who already face tremendous barriers to access to justice, and who already have reason to doubt the system. Legal Voice's brief is not duplicative of the briefs submitted by the ACLU. It presents no new evidence, but instead refers only to readily accessible sources of information.

Conclusion

It is important for the Court to hear and for the public record to reflect that this case is not just about the threat the Governor's unconstitutional abuse of power poses to the budget of the courts or even to the independence of the courts in a vacuum. It is about the

ramifications that this Court's decision of the Court in this case will have for real Alaskans in the context of their lived experiences. That is the exigency that warrants the exercise of the power of the judiciary to undo the Governor's veto, which explains why the State would like the Court to exclude the Legal Voice brief.

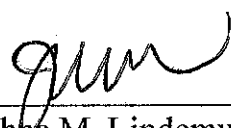
It is especially important that the perspective of those whom the Governor particularly sought to target with this egregious abuse of power be heard. Even if it does not change the outcome of the case, that perspective will enrich the analysis of the Court in its opinion, and help the public to understand the significance of the case. In short, it will add to the integrity of the Court's decision.

For the foregoing reasons, Legal Voice respectfully requests that the Court grant leave for Legal Voice to participate as amicus curiae.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 17 day of March 2020.

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By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day
of March 2020, a true and correct
copy of the foregoing was served via
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