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FILED in the TRIAL COURTS  
STATE OF ALASKA, THIRD DISTRICT

NOV 30 2020

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 3AN-19-08349CI

**Reply in Support of  
Plaintiffs' Motion for Entry  
of Judgment**

Defendants oppose Plaintiffs' Motion for Entry of Judgment, arguing that "Plaintiffs' proposed 30-day time limit for processing the appropriation is inconsistent with the Court's statement" referencing its expectation that Defendants will move forward in good faith.

Defendants also assert that setting a deadline for compliance would result in micro-managing the governor's execution of the law.

But Defendants fail to acknowledge that, because the Court declared the governor's FY 2021 veto to be void, the appellate courts should have had the \$344,700 in operating funds available since July 1, 2020. It has now been five months since the funds were illegally withheld. As Plaintiffs have previously pointed out, this is not a de minimis amount. To the contrary, it represents "a big hit for the court of appeals." *See* Plaintiffs' Memorandum in Support of Motion for Summary Judgment at 5 (quoting 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](http://www.akleg.gov/basis/Meeting/Detail?Meeting=HJSC%202020-02-07%2012:00:00#tab2_4), at 14:45-15:20. In particular, the court system had to reduce its use of pro-tem judges, resulting in delays at both the appellate and trial courts. *Id.*

Defendants would have this Court allow impacts like these to continue with no reasonable end in sight without a deadline for compliance with its order. Furthermore, Defendants offer no justifiable reason for the Court not to set a deadline. Defendants indicate that "the Office of Management and Budget (OMB) can 'restore' the vetoed funds by transferring the funds to the court system pursuant to the appropriation legislation—just like any other appropriation." There is

no reason why this transfer cannot occur immediately after the Court enters final judgment, much less within thirty days of that order.

And, if the Defendants appeal, an order from this Court that requires them to repay the \$344,700 within thirty days still allows them to move for a stay pending appeal and for this Court and the Supreme Court to consider that motion, its equities, and likelihood of ultimate appellate success on the merits under Civil Rule 62 and Appellate Rule 205. But just as the return of FY 2020's vetoed funds became moot in this Court, if this Court does not order the Defendants to comply by a date-certain, the Defendants will be able to escape judicial scrutiny of a motion for appellate stay by not returning the \$344,700 during the pendency of their appeal and again arguing mootness if they succeed in running out the remaining seven months of FY 2021. This case's relief and fundamental constitutional questions should be decided on their merits, not dodged by the Defendants through strategic inaction.

As Plaintiffs state in their Motion, a deadline for compliance with the Court's order will ensure that the mandated relief occurs in a timely manner that allows for the appropriate use of the funds. The appellate courts should not have to continue to wait for the governor to

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indefinitely delay the restoration of funds that were illegally vetoed in the first place. Since Defendants have not indicated—neither during this case’s merits nor by the summary judgment order’s October 30 deadline—that they will be unable to comply with such an order, compliance should occur without further delay.

Dated November 30, 2020.

/s/ Stephen Koteff

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*Counsel for Plaintiffs ACLU of Alaska,  
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## CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2020, the foregoing Reply in Support Motion for Entry of Judgment was served on the following via electronic mail:

Jessica Leeah ([jessica.leeah@alaska.gov](mailto:jessica.leeah@alaska.gov))  
Lael Harrison ([lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov))

/s/ Stephen Koteff

Stephen Koteff

## Holly Carson



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**From:** Stephen Koteff <skoteff@acluak.org>  
**Sent:** Monday, November 30, 2020 3:50 PM  
**To:** ANC Civil  
**Cc:** Jessica L (LAW; Lael (LAW; Joshua Decker; Christopher Frost; Jahna Lindemuth  
**Subject:** 3AN-19-08349CI Reply in Support of Plaintiffs' Motion for Entry of Judgment  
**Attachments:** 2020.11.30.Reply in Support of Plaintiffs' Motion for Entry of Judgment.pdf

Attached for filing and service in 3AN-19-08349CI is 1 document totaling 4 pages:

Reply in Support of Plaintiffs' Motion for Entry of Judgment.

**Stephen Koteff**  
Pronouns: he, him, his

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Alaska

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