

SEP 13 2019

By AS Deputy

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA LEGISLATIVE
COUNCIL, on behalf of THE ALASKA
STATE LEGISLATURE,

Plaintiff,

v.

HONORABLE MICHAEL J.
DUNLEAVY, in his official capacity as
Governor for the State of Alaska, KELLY
TSHIBAKA, in her official capacity as
Commissioner of Administration for the
State of Alaska, and MICHAEL
JOHNSON, in his official capacity as
Commissioner of Education and Early
Development for the State of Alaska,

Defendants.

BRIEF OF AMICI CURIAE

Superior Court No.: 1JU-19-00753CI

I. INTRODUCTION

As Justice Burke said almost 40 years ago, “[t]he case at bar is one of great constitutional moment. It pits the political branches of our state government in a

fundamental separation of powers confrontation.”¹ We are once again at such a crossroads. Seeking to expand the executive veto power, the Governor has challenged the legislature’s power to appropriate monies to fund Alaska’s educational system for fiscal year 2020 (“FY20”) at the same time as fiscal year 2019 (“FY19”), arguing that the constitution prohibits such “forward funding” of education. There is no such limitation on the legislature’s appropriation power in the Alaska Constitution. The Governor cannot meet his burden of showing a violation of the constitution, and “doubtful cases should be resolved in favor of constitutionality.”²

II. INTERESTS OF AMICI

Rep. Matt Claman, Rep. Tiffany Zulkosky, Rep. Harriet Drummond, Rep. Jonathan Kreiss-Tomkins, Rep. Daniel Ortiz, Rep. Adam Wool, Rep. Bart Lebon, Rep. Grier Hopkins, Rep. Gary Knopp, Rep. Chris Tuck, Rep. Gabrielle LeDoux, Rep. Ivy Spohnholz, Rep. Zach Fields, Rep. Andy Josephson, Rep. Andi Story, Rep. Sara Hannan, Rep. Geran Tarr, Rep. Louise Stutes, Rep. Steve Thompson, and Rep. John Lincoln file this brief in their individual capacities as legislators, greatly concerned with preserving the legislature’s power of appropriation. While the legislature’s interests as an organization are capably represented, this issue is of such import that additional briefing from individual legislators, who will live with this court’s decision for years to come, is warranted.

¹ *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977).

² *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 379 (Alaska 2001).

III. BACKGROUND

In 2018, the legislature passed HB 287 and the prior governor signed it, making it law. Section 5 of ch. 6 SLA 2018, the appropriation funding education for both FY19 and FY20 provides:

Sec. 5. FUND CAPITALIZATION. (a) The amount necessary to fund the total amount for the fiscal year ending June 30, 2019, of state aid calculated under the public school funding formula under AS 14.17.410(b), estimated to be \$1,189,677,400, is appropriated from the general fund to the public education fund (AS14.17.300).

(b) The amount necessary, estimated to be \$78,184,600, to fund transportation of students under AS 14.09.010 for the fiscal year ending June 30, 2019, is appropriated from the general fund to the public education fund (AS 14.17.300).

(c) The amount necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid calculated under the public school funding formula under AS 14.17.410(b) is appropriated from the general fund to the public education fund (AS 14.17.300).

(d) The amount necessary to fund transportation of students under AS 14.09.101 for the fiscal year ending June 30, 2020, is appropriated from the general fund to the public education fund (AS 14.17.300).

The appropriation directed the transfer of general fund monies to the Public Education Fund for school districts to use in both FY19 and FY20, and further provided that the appropriations made in Section 5 do not lapse: “The appropriations made in sec. 5 of this Act are for the capitalization of a fund and do not lapse.”³

³ ch. 6, SLA 2018, sec. 5.

The legislature created the Public Education Fund in AS 14.17.300; it also expressly provides that appropriations to this fund do not lapse:

(a) The public education fund is established. The fund consists of appropriations for

(1) distribution to school districts, to the state boarding school, and for centralized correspondence study under this chapter; and

(2) transportation of pupils under AS 14.09.010.

(b) Money appropriated to the fund may be expended without further appropriation. Money appropriated to the fund does not lapse. The money in the fund may be expended only in aid of public schools and for centralized correspondence study programs under this chapter and for transportation of pupils under AS 14.09.010. Interest earned on money held in the fund before expenditure may be appropriated to the fund by the legislature.

In addition, the legislature appropriated monies in Sec. 4 of ch. 6 SLA 2018, to fund grants in FY20 that did not go into the Public Education Fund:

Sec. 4. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT. The sum of \$30,000,000 is appropriated from the general fund to the Department of Education and Early Development to be distributed as grants to school districts according to the average daily membership for each district adjusted under AS 14.17.410(b)(1)(A) - (D) for the fiscal year ending June 30, 2020.

The bill specifically provided that the effective date of the FY19 appropriations was July 1, 2018, and the effective date of the FY20 appropriations was July 1, 2019.⁴

While education funding is at issue in this particular challenge, the Governor's argument is not limited to education funding. The Governor argues that the legislature lacks the power under the constitution to appropriate monies for any use in future years.

⁴ Ch. 6, SLA 2018, sec. 8 and 9.

The Governor may seek to tie the hands of the legislature to fund any “special fund” where funds are to be spent for a particular purpose—and there are many such funds in state government, or capital projects that span more than one year or public corporations in such a manner that the public corporation could use the funds in future years. It appears that the Governor seeks to fundamentally change how our state government currently works.

IV. STANDARD OF REVIEW

This case presents constitutional issues of law which this court decides using its independent judgment.⁵ Considering “precedent, reason, and policy,” this court must “adopt ‘a reasonable and practical interpretation in accordance with common sense’ based upon ‘the plain meaning and purpose of the provision and intent of the framers.’”⁶

The court must assume “that an act of the legislature is constitutional. The burden on showing unconstitutionality is on the party challenging the enactment; doubtful cases should be resolved in favor of constitutionality.”⁷

⁵ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 370 (Alaska 2001) (“*Knowles I*”).

⁶ *Id.*

⁷ *Id.* at 379.

V. ARGUMENT

A. The Power of Appropriation Belongs to the Legislature.

The Alaska Constitution “gives the legislature the power to legislate and appropriate.”⁸ The legislature’s power is set forth in Article II of the Constitution, and section 13 of that article addresses the legislature’s appropriation power.

The Alaska Supreme Court has repeatedly defined an “appropriation” in Article II as “the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.”⁹ The Court has also defined it as “a sum of money dedicated to a particular purpose.”¹⁰ To make an appropriation the legislature need only sufficiently describe a monetary asset transfer to allow identification of the monies involved.¹¹

Despite the Governor’s characterization of the appropriation power as a shared power due to his duty to propose a budget and his veto power, the Governor’s powers are limited.¹² He has the power to propose a budget and general appropriation bill, and he

⁸ *Id.* at 371; *State v. Fairbanks N. Star Borough*, 736 P.2d 1140, 1142-43 (Alaska 1987) (recognizing appropriation power resides in legislature and cannot be delegated to the executive).

⁹ *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891, 898 (Alaska 2004) (“*Knowles I*”), quoting *Rosen*, 569 P.2d at 796. “Appropriation” is more broadly defined in Article XI of the Constitution, which limits the people’s power to enact legislation through the initiative process. *Id.* at 894. The key reason for this difference in the meaning of “appropriation” is to “ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs.” *Id.*, quoting *McAlpine v. Univ. Of Alaska*, 762 P.2d 81, 88 (Alaska 1988).

¹⁰ *Id.*, quoting *Knowles I*, 21 P.3d at 373.

¹¹ *Id.* at 898 n.39.

¹² *Knowles I*, 21 P.3d at 371 (“However, the item veto power is characterized, we conclude that it was intended only to limit the legislature’s appropriation power, not to grant the executive a quasi-legislative appropriation power...”); *Rosen*, 569 P.2d at 796 (noting “the item veto power of the governor checks legislative appropriations”). For example, it does not apply to general obligation bond authorizations

has the power to line item veto the appropriations made by the legislature—subject to the legislature’s ability to override his vetoes. “But this control gives the governor no appropriation power.”¹³ He has a defined and limited role, one that provides a check on the legislature’s appropriation power only.¹⁴ And to maintain the separation of powers, the court must strictly construe the Governor’s check on the legislative power of appropriation.¹⁵

The Governor’s veto power is found in article II, section 15 of the Alaska Constitution. The first sentence gives the Governor the power to veto a bill. The second sentence gives him the power, “by veto, [to] strike or reduce items in the appropriation bills.”¹⁶ This power is limited. The Governor has no power to strike descriptive language, he may only strike or reduce sums of money.¹⁷ “Item” means a sum of money dedicated to a particular purpose.¹⁸ Moreover, the Supreme Court has confirmed that the Governor’s

because no check is needed there, since such authorizations go to voters for approval. *Knowles I*, 21 P.3d at 371.

¹³ *Knowles I*, 21 P. 3d at 372.

¹⁴ *Id.*

¹⁵ *Bradner v. Hammond*, 553 P.2d 1, 6-7 (Alaska 1976) (“The lack of ambiguity in Section 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution’s express grant to the legislative branch of checks on the governor’s power to appoint subordinate executive officers.”).

¹⁶ “The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.” Alaska Const., art II, sect. 15.

¹⁷ *Knowles I*, 21 P.3d at 371.

¹⁸ *Id.*

line item veto is limited to striking appropriations of money and does not apply to the legislature's transfer or appropriation of other state assets.¹⁹

While the court must construe the Governor's checks on the appropriation power narrowly, it must broadly construe the legislature's powers of appropriation. The Alaska Supreme Court has said it is not "inclined to pass judgment on the means selected by the legislature to accomplish legitimate purposes unless they are clearly in violation of the constitution."²⁰ Given that "[t]he legislature chooses the means to effect a public purpose in the exercise of a broad discretion,"²¹ this court should not interfere with the exercise of the legislature's discretion absent a clear showing of a violation of the constitution.²²

B. There Are Only Three Constitutional Limits to the Legislature's Appropriation Power.

The Governor argues that the constitution constrains the ability of the legislature to appropriate sums of money for a public purpose in a way that allows that appropriation to be spent in future years. According to the Governor, all appropriations must be spent in the fiscal year of the appropriation or they lapse or expire. While lapsed appropriations occur from time to time in the usual course of state government, there is no temporal limitation in the Alaska Constitution. There are only three limits on the legislature's power of appropriation, all of which are expressly found in our constitution: (1) the

¹⁹ *Knowles II*, 86 P.3d at 894 (holding that line item veto power does not apply to legislature's transfer of land to the University for public purpose, thus legislature could override veto with two thirds vote, not the three quarters required for monetary appropriations).

²⁰ *Dearmond v. Alaska State Development Corp.*, 376 P.2d 717, 724-25 (Alaska 1962) (upholding power of legislature to create state public corporation and appropriate state funds to it).

²¹ *Suber v. Alaska State Bond Committee*, 414 P.2d 546, 551-52 (Alaska 1966).

²² *Id.*

legislature can appropriate public funds only for a public purpose; (2) any appropriation bill must be confined to appropriations, and cannot enact substantive legislation even if related to the appropriation; and (3) the legislature cannot appropriate more than \$2.5 billion annually, adjusted annually for inflation, subject to certain exceptions. This brief discusses the actual limitations on the legislature's appropriation power for context before discussing the Governor's argument for a newly-created temporal limitation found nowhere in the constitution and never before asserted as a limitation in Alaska's 60-year history.

1. Public purpose

The first limit on the legislature's power of appropriation is found in article IX, section 6 of the Alaska Constitution: "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose." The Alaska Supreme Court has confirmed that the courts should defer to the legislature on its findings of public purpose. "[W]here the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, this court will not set aside the finding of the legislature unless it clearly appears that such a finding is arbitrary and without any reasonable basis in fact."²³

While the Governor has not directly challenged the legislature's appropriation as lacking a public purpose, it is noteworthy that the legislature based their decision to

²³ *Dearmond*, 376 P.2d at 724-25.

forward fund education on good public policy. As found by the legislature, the school year calendar and the state's fiscal calendar do not coincide. As a result, every year, Alaska's school districts faced uncertainty in funding that prohibited good planning for our education system. Rep. Paul Seaton, the sponsor, gave this reason for introducing the legislation:

The bill is intended to pass separately from the regular operating budget and early in the session to enable school districts to avoid mandatory teacher layoff notices. Many lawmakers agree that education funding cannot withstand further cuts without negatively affecting Alaskan children. An early, separate appropriation for education that has existing funding identified would prevent these problems and will allow school districts to finalize their budgets on time.

Even after the budget has passed the legislature, line item veto or veto reductions can be made by the Governor. In 2015, the Legislature needed to come back in special session to pass a second operating budget that included education funding. In 2016, the state operating budget was passed by the legislature on May 31. Last session, the state operating budget did not pass the Legislature until June 22 and signed by the Governor on July 1. All this uncertainty for the funding amount forces school districts to draft multiple budgets. The Anchorage School District is required to submit their budget to the Municipality by the first Monday in March. Anticipating low amounts requires districts to give termination notices (pink slips) to tenured teachers by May 15 and non-tenured teachers by the last day of school.

Education is one of the highest priority programs for the state, and educators are shaping future generations. HB 287 reflects the importance of education to our state.²⁴

²⁴ Rep. Paul Seaton, Sponsor Statement HB 287 (emphasis added) (available at: http://www.akleg.gov/basis/get_documents.asp?session=30&docid=54508).

Moreover, funding education is a constitutional duty mandated by article VII, section 1 of the Alaska Constitution, and forward funding education is consistent with the legislature's constitutional duty.²⁵ The Alaska Supreme Court has repeatedly addressed the constitutional duty to establish and maintain a public school system, and there is no question that funding schools is a core public purpose.²⁶

2. Confinement clause

The second constitutional limitation on the legislature's appropriation power is the confinement clause. Our constitution provides that "[b]ills for appropriations shall be confined to appropriations."²⁷ Because appropriation bills are not limited to a single subject like other legislation, the confinement clause "prevents a legislator seeking to advance unpopular legislation from burying it in a popular appropriation measure."²⁸ The legislature can include language germane and related to the money appropriated in the appropriation bill so long as that language is equivalent to conditions that could be written as purposes allowed.²⁹ There is no confinement clause issue in this case.

²⁵ "The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." Alaska Const. art. VII, sec. 1.

²⁶ See *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (Alaska 2016) (describing the creation of school districts to satisfy this constitutional duty, and holding that the mechanism for school funding did not violate the dedicated funds clause in the Alaska Constitution); *Hootch v. Alaska State-Operated School System*, 536 P.2d 793 (1975) (holding that the constitution required legislature to "establish a system of education designed to serve children of all racial backgrounds").

²⁷ *Knowles I*, 21 P.3d at 376, quoting Alaska Const. art. II, section 13; see also AS 24.08.030 ("Bills for appropriation shall be confined to appropriations and shall include the amount involved and the purpose, method, manner, and other related conditions of payment.").

²⁸ *Id.* at 377, adopting five-part test set forth in *Alaska State Legislature v. Hammond*, No. 1JU-80-1163 CI (Alaska Super., May 25, 1983).

²⁹ *Id.* at 379.

3. Amount

The third and last constitutional limitation is found in art IX, section 16 of the Alaska Constitution. Our constitution was amended by the people in 1991 to add a dollar amount limitation of \$2.5 billion, adjusted for inflation, that the legislature can appropriate annually.³⁰ The Alaska Supreme Court has held that the limitation does not apply to non-monetary appropriations, such as land transfers.³¹ There is no issue in this case that the appropriation at issue caused the legislature to appropriate more monies than allowed under this provision of the constitution.

³⁰ Article IX, section 16 provides in whole part:

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

³¹ *Knowles II*, 86 P.3d at 897.

C. There is No Temporal Limitation in the Constitution.

The Governor argues that the constitution imposes a temporal limitation on an appropriation. There is no such limitation in the Alaska Constitution. The language the Governor relies on in the constitution is the language requiring him to submit an annual budget to the legislature for consideration:

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriations bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.³²

The “ ‘reasonable and practical interpretation [of this section] in accordance with common sense,’ ”³³ is that the Governor has a duty to propose expenditures to the legislature every year. There is no prohibition in this language, or in any other language in the constitution, that the legislature cannot appropriate in one year certain funds that would be spent on government services in a subsequent year.

The annual budget requirements do not mean that the legislature cannot fund programs or other priorities in the future. While annual appropriations expire at the end of the fiscal year, with funds lapsing back in to the general fund,³⁴ there are many instances where the legislature appropriated money to a fund such as the Public Education Fund and provided that the monies do not lapse back into the general fund at the end of the

³² Alaska Const., art. IX, sec. 12.

³³ *Knowles I*, 21 P.3d at 370.

³⁴ AS 37.25.010 (“The unexpended balance of a one-year appropriation authorized in an appropriation bill lapses on June 30 of the fiscal year for which appropriated.”).

year, but stay in the fund for the public purpose of the fund.³⁵ Both the appropriation at issue in this case and the statute creating the Public Education Fund confirm that appropriations to the Fund do not lapse.

While a temporal challenge was not directly at issue in *Hickel v. Cowper*, the Supreme Court confirmed that appropriations to the oil and hazardous substance release response fund, a restricted fund in the general fund, were valid appropriations allowing the Department of Environmental Conservation to spend monies in response to an emergency without a further annual appropriation.³⁶ The Supreme Court also has upheld

³⁵ See e.g., Community Assistance Fund, AS 29.60.850 ("The fund consists of appropriations....Money in the fund does not lapse."); Dividend Fund, AS 43.23.045 ("Unless specified otherwise in an appropriation act, the unexpended and unobligated balance of an appropriation to implement this chapter lapses into the dividend fund on June 30 of the fiscal year for which the appropriation is made..."); Crime Victim Compensation Fund, AS 18.67.162 ("The fund consists of money appropriated to it by the legislature... Appropriations to the fund do not lapse."); Alaska Public Building Fund, AS 37.05.570 ("Appropriations to the Alaska public building fund are not one-year appropriations and do not lapse under AS 37.25.010."); University of Alaska Building Fund, AS 37.05.555 ("Appropriations to the University of Alaska building fund are not one-year appropriations and do not lapse under AS 37.25.010."); Unincorporated Community Capital Project Matching Grant Program, AS 37.06.020 ("Appropriations to the fund do not lapse except as provided in (h) of this section... Money from an allocation to an unincorporated community's individual grant account that has not been drawn out by the designated entity within five years after the effective date of the appropriation from which the allocation is funded lapses into the general fund."); Municipal Capital Project Matching Grant Program, AS 37.06.010 ("Appropriations to the fund do not lapse except as provided in (f) of this section," with provision that funds lapsed if not used within five years of the appropriation); Exxon Valdez Oil Spill Unincorporated Rural Community Grant Fund, AS 44.33.115 ("Appropriations to the fund do not lapse unless otherwise provided by the legislature in the bill making the appropriation to the fund."); Fire Prevention and Public Safety Fund, AS 18.74.210 ("Money appropriated to the fund may be spent for the purposes of the fund without further appropriation. Money appropriated to the fund does not lapse."); State Land Reforestation Fund, AS 41.17.310 ("Money appropriated to or paid into the state land reforestation fund does not lapse."); Harbor Facility Grant Fund, AS 29.60.800 ("Money in the fund does not lapse and remains available for expenditure in successive fiscal years."); Alaska Marine Highway System Vessel Replacement Fund, AS 37.05.550 ("The fund consists of money appropriated to it by the legislature. Money appropriated to the fund does not lapse."); Alaska Gasline Inducement Act Reimbursement Fund, AS 43.90.400 ("Appropriations to the fund do not lapse under AS 37.25.010, but remain in the fund for future disbursements. Nothing in this subsection creates a dedicated fund.").

³⁶ *Hickel v. Cowper*, 874 P.2d 922, 933 (Alaska 1994).

appropriation of monies from the general fund to a state public corporation that did not expire at the end of the fiscal year. For example, in *Dearmond*, the Supreme Court rejected a challenge to an appropriation to a public corporation for initial operations and as a loan until the corporation could finance itself.³⁷ There is no constitutional violation by the legislature appropriating monies to the Public Education Fund in one year to be spent in a future year.

The Governor may be arguing that the violation lies in the legislature providing a later effective date for the FY20 appropriations than the FY19 appropriations, calling this an appropriation of “future revenues.” But this legislative action does not create a constitutional violation. Just as the legislature can appropriate monies effective one year that can be spent in later years, the legislature can delay the start of when those monies can be spent and has discretion over the effective date of the appropriation. In *Knowles II*, the Alaska Supreme Court addressed the legislature’s discretion in setting the effective dates of appropriation bills allowed under the Manual of Legislative Drafting in the context of the confinement clause prohibition on providing substantive provisions in appropriation bills:

That manual states:

These limitations have two basic effects on drafting. One effect is that when a requestor wants to establish a new agency or program, there usually must be two bills drafted. One bill sets up the agency or program, the other bill appropriates money for the agency or

³⁷ *Dearmond*, 376 P.2d at 724-25 (“The act specifically provides that the appropriation is a loan to be reimbursed to the general fund when corporate surplus permits.”).

program. The effective date of the appropriation bill would be tied to the effective date of the related substantive bill.³⁸

The whole purpose of the legislature's appropriation in HB 287 was to create certainty for the school districts by addressing the differences in the state and school district funding years by confirming the amounts they will receive the following year, in this case in FY 20, a year early to allow for sound planning by the school districts. Once the first forward-funding appropriation made it past the then-governor's veto authority and became law, future education appropriations would be for a single year beginning the following year. Thus, in the FY 20 budget, the legislature would appropriate funds for the following year and the FY 21 budget would appropriate education funding for FY 22.

It is not unusual for the legislature to authorize the expenditure of state funds in the future, even if not through a present appropriation into a fund for a particular purpose. For example, appropriations for capital projects do not lapse and are "valid for the life of the project" so long as the project has begun within five years of the date of the appropriation.³⁹ All of the funds for that particular project likely do not exist in the year of the appropriation, especially as there often is federal funding tied to capital projects that involve highways. In effect, the appropriation is authorization by the legislature to spend public funds under the specific directions indicated by the legislature far into the

³⁸ *Knowles I*, 21 P.3d at 380 n.92, *quoting* Manual of Legislative Drafting, 35 (1999) (emphasis added).

³⁹ AS 37.25.020 ("An appropriation made for a capital project is valid for the life of the project, and the unexpended balance shall be carried forward to subsequent fiscal years if substantial, ongoing work on the project has begun within five years after the effective date of the appropriation.").

future. There is no restriction in the constitution prohibiting the legislature from authorizing the future expenditure of “future revenues.”

The Governor himself introduced legislation this past session that would have appropriated monies from the earnings reserve account to the dividend fund for “repayment” of past dividends in FY20, FY21 and FY22, and directed the payment of those dividends by the Commissioner of Revenue in those years. See SB 23 and 24, attached as Exhibit A.⁴⁰ Not only would an appropriation in FY20 for the “repayment” of \$3,678 more in dividends to each eligible Alaskan for fiscal years 2020 to 2022 likely exceed the funds presently available in the earnings reserve account, the Governor’s proposed appropriation used the same mechanism of providing for a later effective date to cause a later transfer of funds between funds that he argues is unconstitutional here:

Sec. 3. Section 1(b) and (e) of this Act take effect July 1, 2020.

Sec. 4. Section 1(c) and (f) of this Act take effect July 1, 2021.

Sec. 5. Section 1(g) of this Act takes effect July 1, 2022.

Sec. 6. Except as provided in secs. 3 -5 of this Act, this Act takes effect immediately under AS 01.10.070(c).⁴¹

This mechanism is allowed, and is not a violation of the constitution.

D. There is No Violation of the Dedicated Funds Clause.

Recognizing that the language in the constitution does not help him, the Governor falls back on the argument that if the legislature’s forward funding of education is allowed

⁴⁰ The Governor’s proposed bills, SB 23 and 24, are still pending and have not yet passed.

⁴¹ Exhibit A at 2, SB 23 sec. 3 -6, introduced at the request of the Governor January 16, 2019.

to stand, it would be an unconstitutional dedication under article IX, section 7 of the Alaska Constitution. That section provides in relevant part that “[T]he proceeds of any state tax or license shall not be dedicated to any special purpose...”⁴² The Governor’s argument fundamentally misunderstands the dedicated funds clause in our constitution. The Public Education Fund is not a constitutionally-prohibited dedicated fund, and there is no other violation of that clause by the appropriation at issue in this case, even if it is one of “future revenues.”

The key case on dedicated funds is *State v. Alex*.⁴³ In *Alex*, the Supreme Court examined the constitutional convention history of this section, including the change from the all-inclusive prohibition against the dedication of “all revenues” to the less inclusive prohibition against dedicating “the proceeds of any state tax or license”:

Under the original, all-inclusive prohibition of the dedication of “all revenues,” there is no doubt that it was intended to prohibit any and all dedications. The committee intended it to prohibit not only the dedication of taxes, but also such revenue as the proceeds from the sale of state lands. The committee’s spokesman stated that the purpose of the proposed amendment was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that single fund. Thus, the change did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund.⁴⁴

⁴² The entire section reads: “The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.” Alaska Const., art IX, sec. 7.

⁴³ 646 P.2d 203, 208 (Alaska 1982) (holding that mandatory language in statute requiring fish tax assessments to be placed in a fund under the ownership and control of aquaculture associations created unconstitutional dedicated fund).

⁴⁴ *Id.* (internal citations omitted) (emphasis added).

Contrary to Governor's argument, the legislature is free to create special funds and place monies into them,⁴⁵ so long as they are available for the next legislature to change its mind through further appropriation.⁴⁶ But when it creates a special fund, the legislature is prohibited from permanently dedicating "the proceeds of any state tax or license" to fund it without further appropriation by the legislature.⁴⁷

In *Hickel v. Cowper*, the Alaska Supreme Court once again confirmed more directly that a special fund dedicated to a particular purpose is not an impermissible dedicated fund so long as "the executive branch [can request] that these funds be reassigned to different purposes or the legislative branch [can allocate] these funds differently."⁴⁸ So long as there is not a particular source of revenue permanently dedicated, the legislature remains free to dedicate funds from the general fund for a particular purpose.⁴⁹

The Governor contends that he has no right to veto these education funds because the appropriation passed under a prior governor. But there is no dedicated fund violation so long as he can request a change and the legislature can consider it. In other words, the legislature may bind future governors to an appropriation so long as future governors are

⁴⁵ The Alaska Supreme Court has long recognized that "public revenue" includes monies both in the general fund and in special funds - both from which the legislature can appropriate monies. *Rosen*, 569 P.2d at 796.

⁴⁶ The Alaska Supreme Court has confirmed the legislature can amend a prior appropriation in an appropriation bill. *Knowles I*, 21 P.3d at 378.

⁴⁷ *Alex*, 646 P.2d at 208.

⁴⁸ *Hickel*, 874 P.2d at 927 n.8.

⁴⁹ *Id.*

allowed to request a change and future legislatures are free to make a change. This point was brought home in *Sonneman*,⁵⁰ where the Alaska Supreme Court considered a statute requiring the deposit of revenue from the ferry system operations into the Alaska Marine Highway System Fund. The Supreme Court found this dedication of revenue constitutional as it could not be spent without further appropriation and future legislatures remained free to appropriate for a different purpose, but the statute was unconstitutional to the extent it restricted executive authority to seek appropriations from the fund.⁵¹

Here, there is no unconstitutional dedication of a tax or license as the legislature appropriated monies in 2018 from the general fund for FY20 education costs, and the legislature remained free to change its mind during the 2019 session. In 2019, the legislature could have changed the 2018 appropriation by adding to it, subtracting from it, or undoing it completely and starting over. Indeed, during the 2019 session, there was a proposal to undo the decision to forward fund education and make it part of the FY20 budget, but that motion failed.⁵²

Others may argue that there is no dedicated fund violation because education funding existed pre-statehood and falls within the constitutional exception for such dedications.⁵³ While the Alaska Supreme Court relied on that exception for the local

⁵⁰ *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).

⁵¹ *Id.*

⁵² See Debate on Operating Budget, HB 39, 31st Legislature, 1st Sess., April 10, 2019.

⁵³ Article VII, sec. 7 exempts dedications existing before the ratification of the Constitution: "This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."

contribution portion of education funding in *State v. Ketchikan Gateway Borough*,⁵⁴ there is no need to rely on that narrow exception in this case – especially as there is so much more at stake than the ability of the legislature to forward-fund education. There was no dedicated funds challenge to the state’s portion of funding in *Ketchikan*; the challenge was to the local contribution portion because state law required boroughs to pay those monies directly to school districts and the monies did not go through the state coffers with a corresponding legislative appropriation. In other words, the Alaska Supreme Court analyzed that case under the pre-statehood exception because there was a source of revenue dedicated to fund education that was outside the legislature’s appropriation process—a dedication that otherwise would be prohibited by the constitution. This Court need not rely on that narrow exception because the legislature clearly has the ability to appropriate monies dedicated to a certain public purpose – even where those monies are appropriated for future years. But assuming, *arguendo*, that there was a dedicated fund issue here, the pre-statehood exception would apply under *Ketchikan*.

E. The Governor’s Attempt to Limit Legislative Power Violates the Doctrine of Separation of Powers.

The Governor’s challenge is aimed at expanding the executive power at the expense of legislative power. If the legislature is constrained to only appropriate money annually and cannot enact multi-year appropriations or appropriate to restricted special funds that can be used in the future, the Governor will effectively undo not only the “forward funding” of education the year before he took office, but many other similarly-

⁵⁴ *State v. Ketchikan Gateway Borough*, 366 P.3d 86 (2016).

situated appropriations to restricted funds made in prior years.⁵⁵ The Governor will then have more appropriations that he can veto over his next three years in office. The court must reject such an executive power grab as a violation of the doctrine of separation of powers.

The Alaska Supreme Court has often confirmed that those who wrote our constitution followed the traditional framework of American government by dividing governmental authority between the three branches of government - the executive, the legislative and the judicial.⁵⁶ The Court has repeatedly confirmed that the framework of government set forth in our constitution is the source of the separation of powers doctrine.⁵⁷

As Justice Brandeis said, the doctrine was adopted “not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the government powers a one three departments, to save the people from autocracy.”⁵⁸

⁵⁵ While not directly at issue in this case, in July the Governor through the OMB Director, and upon the advice of the Attorney General, greatly expanded the list of funds that can be “swept” under Article IX, §17(d) of our constitution and used to repay withdrawals from the Constitutional Budget Reserve Fund (“CBR”). The newly revised list is attached as Exhibit B. For example, the Power Cost Equalization (“PCE”) Endowment Fund established by the legislature in AS 42.45.070 with past appropriations of approximately \$1 billion has never before been identified as a fund subject to the sweep – an act that could undo many years of valid appropriations to that restricted fund. This case is the first of many disputes brewing regarding the Governor’s desire to erode the legislature’s power to appropriate.

⁵⁶ See e.g., *Bradner v. Hammond*, 553 P.2d 1, 5 (Alaska 1976).

⁵⁷ *Id.*

⁵⁸ *Fairbanks N. Star Borough*, 736 P.2d at 1142, quoting *Myers v. United States*, 272 U.S. 52, 293 (1926).

The Alaska Supreme Court applied this doctrine in *State v. Fairbanks N. Star Borough*.⁵⁹ In that case, a statute that gave the Governor broad authority – to reduce the amount the state spent on governmental services to less than that appropriated by the legislature based on the amount of actual revenues to the state – was challenged as unconstitutional. The Court held that a statute allowing the Governor “the exercise of sweeping power over the entire budget with no guidance or limitation” by the legislature was an unconstitutional delegation of legislative power,⁶⁰ and amounted to a “legislative abdication” of its power of appropriation.⁶¹

There are a number of key lessons in this case. First and foremost, the power of appropriation lies with the legislature, and the legislature alone. The legislature has broad discretion in appropriating for a public purpose, but even that discretion has limits when it amounts to an “abdication” of its power.

As discussed above, the Governor has a role in how appropriations are enacted into law, and the doctrine of separation of powers does not preclude the doctrine of checks and balances.⁶² While the legislature has broad discretion in the exercise of its appropriation power,⁶³ the executive’s check on that power is strictly limited by the constitution in order to avoid separation of powers issues.⁶⁴

⁵⁹ *Id.*

⁶⁰ *Id.* at 1142-43.

⁶¹ *Id.* at 1144.

⁶² *Bradner*, 553 P.2d at 5.

⁶³ *Suber*, 414 P.2d at 551-52.

⁶⁴ *Bradner*, 553 P.2d at 6 -7.

The Alaska Supreme Court addressed a reverse situation to this one in *Bradner*,⁶⁵ where the legislature tried to impinge on the Governor's powers of appointment. In that case, the Supreme Court held that the legislature was constrained in its confirmation powers to only those strictly provided for in the constitution because the power of appointment was an executive power, not a shared power between the two branches:

The lack of ambiguity in Section 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision. To hold otherwise would be to emasculate the restraints engendered by the doctrine of separation of powers and result in potentially serious encroachments upon the executive by the legislative branch, because there would be no logical termination point to the legislature's confirmation of executive appointments.⁶⁶

The same principle holds true here. The Governor cannot expand what is meant to be a limited check—his veto power—without directly violating the separation of powers doctrine.

⁶⁵ *Id.* at 5.

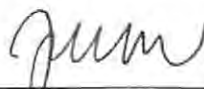
⁶⁶ *Id.* at 7-8 (emphasis added).

V. CONCLUSION

The Governor is violating his constitutional duties to execute the legislature's valid and constitutional appropriations for education for FY20. The court should so declare, and order him to fund education pursuant to the legislature's appropriations.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 13 day of September 2019.

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CERTIFICATE OF SERVICE

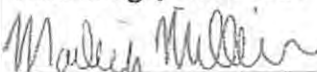
I hereby certify that on this 13th day
of September 2019, a true and correct
copy of the foregoing was served via
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SENATE BILL NO. 23
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-FIRST LEGISLATURE - FIRST SESSION
BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR
Introduced: 1/16/19
Referred: State Affairs, Finance

A BILL
FOR AN ACT ENTITLED

1 **"An Act making special appropriations from the earnings reserve account for the**
2 **payment of permanent fund dividends; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. ALASKA PERMANENT FUND CORPORATION** (a) The amount necessary
5 for payment of \$1,061 to eligible individuals who received a 2016 permanent fund dividend
6 and who are eligible to receive a 2019 permanent fund dividend, is appropriated from the
7 earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the fiscal
8 year ending June 30, 2020.

9 (b) The amount necessary for payment of \$1,289 to eligible individuals who received
10 a 2017 permanent fund dividend and who are eligible to receive a 2020 permanent fund
11 dividend, is appropriated from the earnings reserve account (AS 37.13.145) to the dividend
12 fund (AS 43.23.045(a)) for the fiscal year ending June 30, 2021.

13 (c) The amount necessary for payment of \$1,328 to eligible individuals who received
14 a 2018 permanent fund dividend and who are eligible to receive a 2021 permanent fund

1 dividend, is appropriated from the earnings reserve account (AS 37.13.145) to the dividend
2 fund (AS 43.23.045(a)) for the fiscal year ending June 30, 2022.

3 (d) The amount authorized under AS 37.13.145(b) for transfer by the Alaska
4 Permanent Fund Corporation in the fiscal year ending June 30, 2020, is appropriated from the
5 earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the
6 payment of permanent fund dividends for the fiscal year ending June 30, 2020.

7 (e) The amount authorized under AS 37.13.145(b) for transfer by the Alaska
8 Permanent Fund Corporation in the fiscal year ending June 30, 2021, is appropriated from the
9 earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the
10 payment of permanent fund dividends for the fiscal year ending June 30, 2021.

11 (f) The amount authorized under AS 37.13.145(b) for transfer by the Alaska
12 Permanent Fund Corporation in the fiscal year ending June 30, 2022, is appropriated from the
13 earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the
14 payment of permanent fund dividends for the fiscal year ending June 30, 2022.

15 (g) The amount authorized under AS 37.13.145(b) for transfer by the Alaska
16 Permanent Fund Corporation in the fiscal year ending June 30, 2023, is appropriated from the
17 earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the
18 payment of permanent fund dividends for the fiscal year ending June 30, 2023.

19 * **Sec. 2. CONTINGENCY.** The appropriations made in sec. 1(a) - (c) of this Act are
20 contingent on passage by the Thirty-First Alaska State Legislature and enactment into law of
21 a bill directing the commissioner of revenue to include certain payments for the 2016, 2017,
22 and 2018 permanent fund dividends to be made to eligible individuals with 2019, 2020, and
23 2021 permanent fund dividend payments.

24 * **Sec. 3.** Section 1(b) and (e) of this Act take effect July 1, 2020.

25 * **Sec. 4.** Section 1(c) and (f) of this Act take effect July 1, 2021.

26 * **Sec. 5.** Section 1(g) of this Act takes effect July 1, 2022.

27 * **Sec. 6.** Except as provided in secs. 3 - 5 of this Act, this Act takes effect immediately
28 under AS 01.10.070(c).

SENATE BILL NO. 24

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/16/19

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act directing the Department of Revenue to pay dividends to certain eligible**
2 **individuals; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
5 to read:

6 **PERMANENT FUND DIVIDENDS.** (a) Notwithstanding AS 43.23.005, when
7 determining permanent fund dividend payments under AS 43.23.025 in 2019, 2020, and 2021,
8 the commissioner of revenue shall include a payment of \$1,061 in 2019, \$1,289 in 2020, and
9 \$1,328 in 2021, respectively, in the permanent fund dividend to each eligible individual as
10 provided in (b) - (d) this section.

11 (b) In this section, "eligible individual" for a permanent fund dividend during
12 calendar year 2019 means an individual

13 (1) who received a 2016 permanent fund dividend; and

14 (2) eligible for a 2019 permanent fund dividend.

1 (c) In this section, "eligible individual" for a permanent fund dividend during calendar
2 year 2020 means an individual

3 (1) who received a 2017 permanent fund dividend; and

4 (2) eligible for a 2020 permanent fund dividend.

5 (d) In this section, "eligible individual" for a permanent fund dividend during
6 calendar year 2021 means an individual

7 (1) who received a 2018 permanent fund dividend; and

8 (2) eligible for a 2021 permanent fund dividend.

9 (e) The amount appropriated from the earnings reserve account (AS 37.13.145) to the
10 dividend fund (AS 43.23.045(a)) for payments under (a) of this section to eligible individuals
11 during calendar years 2019, 2020, and 2021 may not contribute to the calculation for the
12 2019, 2020, or 2021 dividends under AS 43.23.025.

13 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

Funds Subject to Sweep

Prepared by the Office of Management and Budget

Fund Code	Name	Reference
1005	General Fund/Program Receipts	AS 37.05.142-.146, AS 37.10.050-.060
1044	AK Debt Retirement Fund	AS 37.15.011
1049	Training and Building Fund	AS 23.20.130
1052	Oil and Hazardous Substance Release Prevention Mitigation Account	AS 46.08.010-.040, AS 43.55.201&.300 AS43.40.005-.007
1054	State Employment & Training Program	AS 23.15.625 AS 37.05.146
1076	Marine Highway System Fund	AS 19.65.060, AS 37.05.550
1082	Vessel Replacement Fund	AS 37.05.550
1109	Test Fisheries Receipts	AS 16.05.050(a)(14)
1139	AHFC Dividend	
1140	AIDEA Dividend	
1141	RCA Receipts	AS 37.05.146(c)(22), AS 42.05.254
1150	ASLC Dividend	
1151	Technical Vocational Education Program Account	AS 23.15.830 AS 37.10.200
1153	State Land Disposal Income Fund	AS 38.04.022(a), AS 37.05.146(b)
1154	Shore Fisheries Development Lease Program	AS 38.05.082 AS 37.05.146(b)
1155	Timber Sale Receipts	AS 38.05.110 AS 37.05.146(b)
1156	Receipt Supported Services	AS 37.05. 142 through 146
1157	Workers Safety and Compensation Administration Account	AS 23.05.067(e) AS 18.60, AS 23.30
1162	Alaska Oil & Gas Conservation Commission Rcpts	AS 31.05.093, AS 37.05.146(c)(23)
1166	Commercial Passenger Vessel Environmental Compliance Fund	AS 46.03.460-.490
1168	Tobacco Use Education and Cessation Fund	AS 37.05.580
1169	PCE Endowment Fund	AS 42.45.070-.085
1172	Building Safety Account	AS 44.31.025 AS 37.05.146(c)(53)
1173	Miscellaneous Earnings	
1180	Alcohol & Other Drug Abuse Treatment & Prevention Fund	AS 43.60.050
1195	Snow Machine Registration Receipts	AS 28.39.010-250
1197	Alaska Capital Income Fund	AS 37.05.565
1200	Vehicle Rental Tax Receipts	AS 43.52.080
1201	Commercial Fisheries Entry Commission Receipts	AS 16.43, AS 16.05.490, AS16.05.530, AS 37.05.146(c)(29)
1203	Workers' Compensation Benefits Guaranty Fund	AS 23.30.082
1211	Cruise Ship Gambling Tax	
1213	Alaska Housing Capital Corporation Receipts	
1214	Whittier Tunnel Toll Receipts	23 USC 129(a)(3)
1218	146(c)code	AS 37.05.146(c)
1221	Civil Legal Services Fund	AS 37.05.590

Funds Subject to Sweep

Fund Code	Name	Reference
1226	Alaska Higher Education Investment Fund	AS 37.14.750 (fund)
		AS 14.43 (program)
1234	License Plates	AS 28.10.421
1237	Vocational Rehabilitation Small Bus. Enterprise Revolving Fd	AS 23.15.130
1243	Statutory Budget Reserve Fund	AS 37.05.540
1246	Recidivism Reduction Fund	AS 43.61.010
1247	Medicaid Monetary Recoveries	37.05.146(c)(59) and AS 09.58 and AS 47.05.210
1248	Alaska Comprehensive Health Insurance Fund	AS 21.55.430(a)
1249	Motor Fuel Tax Receipts	AS 43.40.010(f)(g)(i)
1254	Marijuana Education and Treatment Fund	AS 43.61.010(f)
3200	Statutory Budget Reserve Fund	
3205	Alaska Historical Commission Receipts Account (Partially Sweep)	
3221	Originator Surety Fund	
3222	Trauma Care Fund (Partially Sweep)	
3223	Abandoned Vehicle Fund	
3225	AMHS Capitalization	
3233	Fish and Game Civil Fines & Penalties	
3388	\$.01 Per Barrel of Oil Produced Surcharge	
3389	\$.04 Per Barrel of Oil Produced Surcharge	
N/A	Reappropriations of FY19 Operating Appropriations	

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Attorneys for Amici Certain Named Legislators in their Individual Capacities

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA LEGISLATIVE
COUNCIL, on behalf of THE ALASKA
STATE LEGISLATURE,

Plaintiff,

v.

HONORABLE MICHAEL J.
DUNLEAVY, in his official capacity as
Governor for the State of Alaska,
KELLY TSHIBAKA, in her official
capacity as Commissioner of
Administration for the State of Alaska,
and MICHAEL JOHNSON, in his
official capacity as Commissioner of
Education and Early Development for
the State of Alaska,

Defendants.

Superior Court No.: 1JU-19-00753CI

**ORDER GRANTING MOTION FOR
LEAVE TO FILE BRIEF OF AMICI
CURIAE**

Upon full consideration of Certain Legislators of the Alaska State Legislature
("Amici") Motion for Leave to File Brief of Amici Curiae ("Motion"), and any

opposition thereto, the Motion is hereby GRANTED. The Brief of Amici Curie is accepted as filed.

DATED at Anchorage, Alaska this _____ day of September 2019.

The Honorable Daniel Schally
Superior Court Judge

CERTIFICATE OF SERVICE

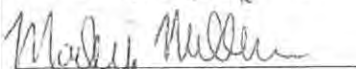
I hereby certify that on this 13th day of September 2019, a true and correct copy of the foregoing was served via U.S. Mail on:

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