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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU**

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.)

COALITION FOR EDUCATION)
EQUITY,)
Intervenor)

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

SEP 19 2019

By Deputy

Case No. 1JU-19-00753 CI

**DEFENDANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF IN SUPPORT OF LEGISLATURE'S MOTION FOR SUMMARY
JUDGMENT**

This lawsuit was brought by the Alaska Legislative Council on behalf of the Alaska State Legislature. The Council is represented by the Legislature's Director of Legal Services. The defendants, in consultation with the Legislature's attorney, agreed to an expedited briefing schedule in this matter, pursuant to which each side would file an opening motion for summary judgment on September 13, 2019, and a reply on September 27, 2019. Oral argument has been scheduled for October 4, 2019.

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Now, a group of legislators, apparently unsatisfied with either their lawyers or the civil rules governing the briefing of motions, seek to file an additional brief in support of their position in this litigation under the guise of participating as amicus curiae. The defendants oppose the motion for leave to file an amicus brief on behalf of these legislators because they are a party to this lawsuit and have already filed a brief in support of their motion for summary judgment.

The Alaska Supreme Court does not appear to have analyzed the appropriate criteria for a court to grant amicus curiae status; and the defendants are not arguing that leave should not be liberally granted to genuine amici. But an amicus brief is not an opportunity for parties to file multiple briefs. The Seventh Circuit has held that

[a]n amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.¹

Here, the legislators barely even attempt to offer a reason for this Court to consider their brief: "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." [Mtn at 2] Notably, they do not claim that they are not already a party to this lawsuit, nor could they. Eighteen of the twenty legislators seeking amici status voted to authorize the Legislative Council to bring

¹ *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d 1062, 1063 (7th Cir. 1997).

this lawsuit—the other two were excused from the House that day.² And although the lawsuit was brought by the Legislative Council on behalf of the Legislature, the “amici” legislators include two members of the Legislative Council,³ so they cannot even credibly assert that they lack control or input into the litigation of this matter. Instead, they assert in a conclusory fashion that because the issue is important, they should have the opportunity to file multiple briefs. Under such a standard, presumably the State of Alaska could file an amicus brief in this matter as well.

Judge Posner of the Seventh Circuit has observed that “[t]he vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus briefs should not be allowed. They are an abuse. The term “amicus curiae” means friend of the court, not friend of a party.”⁴ And here, this additional brief is not being offered even by an ally of a party, but by a party itself, attempting to bolster its own arguments by presenting them in slightly different cloth.

Although the Court has broad discretion as to whether to permit the filing of amicus briefs, it should not permit such a transparent abuse of the procedure. Because the legislators seeking leave to file an amicus brief are not amici, but parties who have already

² 2019 House Journal 1129.


³ Representative Stutes is Vice Chair of the Legislative Council; and Representative Thompson is also a member. *See* <http://www.akleg.gov/basis/Committee/Details/31?code=HLEC>

⁴ *Id.*

filed a motion for summary judgment, the defendants respectfully ask the Court to deny their motion.

DATED September 19, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Defendant's Opposition to Motion for Leave to File Amicus Curiae Brief in Support of Legislature's Motion for Summary Judgment** and this **Certificate of Service** were provided to the following via electronic and U.S. mail:

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