

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

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STATE OF ALASKA
FIRST DISTRICT
JUNEAU
2019 SEP 27 AM 10:07

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

CLERK TRIAL COURTS
BY MJD
DEPUTY CLERK

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.

Case No. 1JU-19-00753CI

COALITION FOR EDUCATION EQUITY,
INC.

Intervenor.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff the Alaska Legislative Council ("Council") on behalf of the Alaska State Legislature ("Legislature"), by and through counsel, pursuant to Alaska Rule of Civil Procedure 56, hereby opposes Defendant's Motion for Summary Judgment for the reasons set forth below.

I. INTRODUCTION

Governor Dunleavy asks this Court to invalidate public education funding after unsuccessfully trying to persuade the Legislature to reduce that funding. The Governor does so by miscasting this lawsuit as one concerning the efforts of one legislature to dictate the spending decisions for a future legislature and governor, while also attempting to distance himself from the central issue in the case – preserving a system of public education. However, the Legislature did not bind a future legislature through passage of HB 287¹ to forward fund education. To the contrary, the Legislature has filed this suit in fierce support of its prior action.

The Alaska Constitution does not prohibit the Legislature from exercising its power of appropriation to forward fund public education by one year. The only constitutional limits on the legislative power of appropriation are that appropriations be made (1) in a bill "confined to appropriations;"² (2) "for a public purpose";³ and (3) within the constitutional appropriation limit.⁴ Governor Dunleavy does not and cannot challenge the validity of HB 287 on any of these grounds. Instead, the Governor asks this Court to *create* restrictions on the Legislature's appropriation power that do not

¹ Ch. 6, SLA 2018 ("HB 287"), *available at* Exhibit A, Plaintiff's Memorandum in Support of its Motion for Summary Judgment.

² Alaska Const. art. II, § 13.

³ Alaska Const. art. IX, § 6.

⁴ Alaska Const. art. IX, § 16.

1 otherwise exist. The appropriations made in HB 287 are presumed constitutional and
2 Governor Dunleavy bears the burden of demonstrating a constitutional violation,
3 which he has failed to do.⁵ Accordingly, Plaintiff respectfully requests this Court to
4 deny Defendant's Motion for Summary Judgment and instead order Defendants to
5 immediately execute the appropriations made in HB 287.

6 II. ARGUMENT

7 A. The Legislature Properly Exercised its Appropriation Power to 8 Fund Public Education As Required By the Education Clause of the Alaska Constitution.

9 The Legislature is constitutionally required to fund certain programs. Education
10 is one such program.⁶ Therefore, Governor Dunleavy's position that the purpose of the
11 appropriations at issue is irrelevant is wrong as a matter of law.⁷ Indeed, the only
12 reason this matter is before the Court on an expedited basis is because funding for
13 public education for the entire state hangs in the balance and the parties (including
14 Governor Dunleavy), along with the Court, recognize the constitutional significance

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16 ⁵ See *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

17 ⁶ Alaska Const. art. VII, § 1 ("The legislature shall by general law establish and maintain a
18 system of public schools open to all children of the State, and may provide for other public
19 educational institutions. Schools and institutions so established shall be free from sectarian
20 control. No money shall be paid from public funds for the direct benefit of any religious or
21 other private educational institution."). The Legislature is also constitutionally required to
22 "provide for the promotion and protection of public health" and to "provide for public
welfare." Alaska Const. art. VII, §§ 4 and 5.

⁷ See Defendant's Motion for Summary Judgment at p. 21. Plaintiff has specifically alleged
that Defendants' failure to distribute the amounts appropriated in HB 287 "infringes on the
ability of the Legislature to maintain a system of public schools in accordance with article VII,
section 1, Constitution of the State of Alaska." Complaint at ¶¶ 12, 20, 26, 32.

1 of the issue. Despite Governor Dunleavy's assertions, this case centers on the nature
2 of the appropriations at issue – funding to maintain a system of public education as
3 required by art. VII, sec. 1 of the Alaska Constitution.

4 As noted by Intervenor Coalition for Education Equity, Inc. ("CEE") in its
5 Motion for Summary Judgment,⁸ the Alaska Supreme Court has in simple terms
6 observed that:

7 **The legislature shall by general law establish and maintain a**
8 **system of public schools open to all children of the State.** This
9 constitutional mandate for pervasive state authority in the field of
10 education could not be more clear. First, the language is mandatory, not
11 permissive. Second, the section not only requires that the legislature
12 “establish” a school system, but also gives to that body the continuing
13 obligation to “maintain” the system. Finally, **the provision is**
14 **unqualified; no other unit of government shares responsibility or**
15 **authority.**⁹

12 Furthermore, the Alaska Supreme Court more recently explained that

13 In allocating power and responsibility under the Alaska Constitution, the
14 delegates sought to provide the State with room to grow and to adapt.
15 They designed the constitution to be flexible so that the legislature could
16 fill in the exact details later. Though the delegates sought to limit certain
17 powers and to avoid certain pitfalls, they did not intend to compel the
18 State to unravel existing programs nor did they intend to prevent the State
19 from experimenting and adapting to changing circumstances.¹⁰

18 _____
19 ⁸ See Memorandum in Support of Coalition for Education Equity, Inc.'s Motion for Summary
20 Judgment at pp. 4-8.

20 ⁹ *Macaulay v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (emphasis added).

21 ¹⁰ *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 94-95 (Alaska 2016) (internal quotations
22 omitted).

1 The need for flexibility in providing public education has been recognized by both the
2 Alaska Supreme Court and the United States Supreme Court, each holding that given
3 the "complexity of the problems of financing and managing a statewide public school
4 system . . . within the limits of rationality, the legislature's efforts to tackle problems
5 should be *entitled* to respect."¹¹

6 Acts of the Legislature are also entitled to a presumption of constitutionality.
7 Here, the Legislature passed HB 287 to stabilize public education funding and to put
8 an end to the cycle of year-end pink slips and teacher shortages.¹² As Governor
9 Dunleavy explains to this Court, the Legislature has been forward funding public
10 education through a variety of mechanisms for at least the last 15 years.¹³ The
11 Legislature's decision to forward fund public education for fiscal year 2020 in HB 287
12 was a rational approach to the funding crisis public schools were facing at the time.

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15 ¹¹ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803–04 (Alaska 1975) (emphasis
added) (internal quotations omitted) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411
U.S. 1, 42 (1973)).

16 ¹² See Plaintiff's Memorandum in Support of Motion for Summary Judgment at pp. 6 – 10;
17 see also Letter from Deena M. Bishop, Superintendent Anchorage School District, to Rep.
Paul Seaton, House Finance Committee (Jan. 25, 2018), *available at* Exhibit D, p. 42,
18 Plaintiff's Memorandum in Support of Motion for Summary Judgment; Letter from Deanna
Beck, ACSA President, and Lisa Skiles Parady, ACSA Executive Director, to Chairman Paul
Seaton, House Finance Committee (Jan. 23, 2018), *available at* Exhibit D, p. 27, Plaintiff's
19 Memorandum in Support of Motion for Summary Judgment; Letter from Tim Parker,
President NEA-Alaska, to Honorable Paul Seaton and Neal Foster, House Finance Committee
20 (Jan. 29, 2018), *available at* Exhibit D, pp. 31, 38, Plaintiff's Memorandum in Support of
Motion for Summary Judgment.

21 ¹³ Defendant's Motion for Summary Judgment at pp. 3-4.

1 The use of a delayed effective date for forward funding in this State is not new,¹⁴ and
2 Governor Dunleavy has simply failed to make a showing that the Legislature's forward
3 funding of public education by *one* fiscal year, not fifty, in HB 287 was
4 unconstitutional or otherwise irrational.¹⁵

5 **B. The Alaska Constitution Neither Mandates Annual Appropriations**
6 **Nor Prohibits Forward Funding.**

7 Governor Dunleavy has made novel arguments in an attempt to get this Court
8 to expand the reach of the Governor's duty to prepare a budget for the next fiscal year
9 and to belatedly invalidate appropriations for public education that he disputes on
10 policy grounds. Governor Dunleavy cannot use the courts to do what he was unable
11 to persuade the legislature to do and ask the Court to repeal appropriations that our
12 schools and students are relying on, instead of faithfully executing the appropriations

13 ¹⁴ In 2005, the Legislature appropriated \$25,088,607 *from the general fund* to the major
14 maintenance grant fund for payment by the Department of Education and Early Development
15 as grants to a number of school districts. The appropriations had a delayed effective date and
16 took effect the following fiscal year. Sections 60 and 65(d), ch. 3, FSSLA 2005, relevant
17 portions *available at* Exhibit E, Plaintiff's Memorandum in Support of Motion for Summary
18 Judgment. Similarly, in 2006, the Legislature appropriated \$89,699,036 *from the general fund*
19 to the school construction grant fund for capital school projects. Those appropriations also
20 had a delayed effective date and took effect the following fiscal year. Sections 13 and 68(c),
21 ch. 82, SLA 2006, relevant portions *available at* Exhibit F, Plaintiff's Memorandum in
22 Support of its Motion for Summary Judgment.

¹⁵ The "50 year" scenario for forward funding education would be irrational. A legislature in
the year would have no idea of the needs for public education in 2070. But the Legislature
knows with great certainty the needs and the requirements for public education one school
year in advance. Under AS 14.17.500, each school district must prepare and submit by
November 5 an estimate of its average daily membership and student count data "for the
succeeding fiscal year upon which computations can be made to estimate the amount of state
aid" for the district in the succeeding fiscal year.

1 under art. III, sec. 16 of the Alaska Constitution. Despite Governor Dunleavy's
2 arguments, the Alaska Constitution does not prohibit forward funding appropriations
3 or provide time limits on the Legislature's power of appropriation.

4 Governor Dunleavy's reliance on the theory that an annual appropriation model
5 is embedded in the Alaska Constitution is misplaced: only *the Governor* is required to
6 submit a budget for the next fiscal year "at a time fixed by law."¹⁶ No constitutional
7 time constraint exists to limit *the Legislature's* power of appropriation.

8 The Governor's budgetary mandate under art. IX, sec. 12 of the Alaska
9 Constitution provides:

10 **Section 12. Budget.** The governor shall submit to the legislature,
11 at a time fixed by law, a budget for the next fiscal year setting forth all
12 proposed expenditures and anticipated income of all departments,
13 offices, and agencies of the State. The governor, at the same time, shall
14 submit a general appropriation bill to authorize the proposed
15 expenditures, and a bill or bills covering recommendations in the budget
16 for new or additional revenues.

17 The term "annual" is not used in the Alaska Constitution to describe the budgetary
18 duties of the Governor (or the Legislature).¹⁷ The Governor's duties in no way bind the
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¹⁶ AS 37.07.020(a) requires the budget to become public information on December 15 and
that the appropriation bills, identical in content, be delivered to the Legislature before the
fourth legislative day of the next regular session.

¹⁷ This Court is "not vested with the authority to add missing terms or hypothesize differently
worded provisions . . . to reach a particular result." *Wielechowski v. State*, 403 P.3d 1141,
1146 (Alaska 2017).

1 Legislature or require the Legislature to enact appropriations consistent with the
2 Governor's request.

3 Moreover, the concept of forward funding by the Legislature does not run afoul
4 of art. IX, sec. 12 of the Alaska Constitution. Nothing prevents a Governor from
5 seeking to amend or repeal an appropriation previously enacted as part of an annual
6 budget proposal. Not only is this a regular occurrence in the State budgeting process,¹⁸
7 it is exactly what happened in this case. In fact, Governor Dunleavy admits that "[b]oth
8 the outgoing Governor Walker's proposed budget and the two budget submissions
9 made by the Dunleavy administration included a proposed appropriation for FY20
10 education spending. However, neither house of the legislature included these
11 appropriations in the version of the operating budget that each passed."¹⁹

12 The Legislature's policy decision to forward fund public education for fiscal
13 year 2020 in HB 287 clearly did not impair the Governor's power or duty to submit a
14 budget proposal for fiscal year 2020 to the Legislature. While Governor Dunleavy
15 may have preferred that the Legislature adopt the substantial reductions to public
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19 ¹⁸ Appropriations previously enacted into law are regularly amended or repealed by the
20 Legislature in both the operating and capital budgets. *See e.g.* sec. 22(a), ch. 17, SLA 2018;
21 secs. 12, 16(c), 18(a) and (b), 20, and 46, ch. 1, SSSLA 2017; secs. 12(e) and 36, ch. 3, 4SSLA
22 2016; secs. 15 and 16, ch. 1, SSSLA 2015; sec. 30, ch. 38, SLA 2015; sec. 30, ch. 18, SLA
2014.

¹⁹ Defendant's Motion for Summary Judgment at p. 6.

1 education funding for fiscal year 2020 that he proposed,²⁰ the Legislature, in properly
2 exercising its appropriation power, chose not to do so after consideration and debate.²¹

3 Governor Dunleavy also argues that several other constitutional provisions
4 demonstrate the implied intent for a strict annual appropriation model. However, no
5 provision of the Alaska Constitution expressly prohibits forward funding or use of a
6 delayed effective date as a mechanism for forward funding. The provisions that
7 Governor Dunleavy cites to in no way restrict the Legislature's power of appropriation.
8 More specifically, Governor Dunleavy argues that the interim borrowing provision in
9 art. IX, sec. 10 of the Alaska Constitution "implies" that the Legislature will be
10 appropriating money for a single year, but that is simply not the case or consistent with
11 past practice. Nothing in art. IX, sec. 10 would prevent the State from borrowing
12 money in anticipation of collecting revenues to cover appropriations enacted in
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15 ²⁰ See secs. 22(k) and (l) and 28, SSHB 39, *available* at Exhibit I, Plaintiff's Memorandum in
Support of Motion for Summary Judgment.

16 ²¹ The Court may take judicial notice of the fact that public education funding was a widely
17 discussed issue during the fiscal year 2020 budget process. Indeed, amendments were offered
18 to repeal the forward funding appropriated in HB 287. *See e.g.*, 2019 Senate Journal 983-84;
2019 House Finance Amendment LS #13 (*available at*
19 http://www.akleg.gov/basis/get_documents.asp?session=31&docid=24363); *see also*
20 Debate on CSSHB 39(FIN) (April 11, 2019) (noting that fiscal year 2020 public education
is fully funded through the appropriations made in HB 287, along with \$30 million in grants
to be distributed to school districts in fiscal year 2020) (*available at*
21 <https://www.360north.org/gavel/video/?clientID=2147483647&eventID=2019041134>); Nat
Hertz, *Dunleavy says money set aside for Alaska schools is subject to veto. Lawmakers*
22 *disagree*, KTOO Alaska's Energy Desk (April 11, 2019) (*available at*
<https://www.ktoo.org/2019/04/11/dunleavy-says-money-set-aside-for-alaska-schools-is-subject-to-veto-lawmakers-disagree/>).

1 previous fiscal years, so long as the debt was repaid before the end of the next fiscal
2 year after which it was borrowed.

3 Governor Dunleavy also makes the novel argument that the dedicated funds
4 clause under art IX, sec. 7 of the Alaska Constitution prohibits an appropriation of any
5 future revenue. Here, Governor Dunleavy again seems to confuse the concepts of
6 dedication of revenue and legislative appropriations. In fact, the Alaska Supreme
7 Court, has defined the term "item" in appropriation bills under art. II, sec. 15 of the
8 Alaska Constitution as "a sum of money *dedicated* to a particular purpose."²² No
9 Alaska court has ever held that an appropriation improperly dedicated revenues; nor
10 should this Court.²³

11 Finally, Governor Dunleavy asserts that the constitutional budget reserve fund
12 repayment provision in art. IX, sec. 17(d) of the Alaska Constitution also supports a
13 system of annual budgeting, but this provision does not restrict the Legislature's power
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15 ²² *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001) (emphasis added).

16 ²³ As the Alaska Attorney General previously opined:

17 A strong argument can be made that money once appropriated, regardless of
18 the mechanism utilized, loses its character as revenue for the purpose of the
19 dedicated funds prohibition because the purpose of the prohibition, i.e., that
the legislature retain control over state revenues, has been satisfied.

20 1982 Inf. Op. Att'y Gen. (Nov. 30; J66-785-81 and J66-649-80); see Plaintiff's Memorandum
21 in Support of Motion for Summary Judgment pp. 26-27. See also discussion *infra* at pp. 19-
22 21.

1 of appropriation. Instead, this provision requires that certain funds be swept back into
2 the constitutional budget reserve fund until the amounts appropriated have been repaid.

3 Even if this Court accepts the novel argument that the framers expected the State
4 to operate exclusively under an annual budgeting model, this does not foreclose the
5 option of forward funding certain programs. The Governor can, and has, included
6 changes to previously enacted appropriations in the annual budget proposal, and the
7 Legislature may amend, repeal, or reappropriate prior appropriations as part of its
8 annual budget with a simple majority vote.²⁴

9 **C. HB 287 Did Not Violate an "Annual Appropriation Model."**

10 Even absent an express prohibition against forward funding or the use of a
11 delayed effective date as a mechanism for forward funding in the Alaska Constitution,
12 the appropriations made in HB 287 competed alongside all other general fund
13 appropriations made for fiscal year 2020. Therefore, the forward funded
14 appropriations made in HB 287 were consistent with an "annual appropriation model."

15 The Legislature provided for and intended education funding to continue to be
16 part of the Legislature's annual budget process. With passage of HB 287, the Thirtieth
17 Alaska Legislature funded public education for fiscal year 2019, and forward funded
18 public education for fiscal year 2020 through use of a delayed effective date.²⁵ Having

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20 ²⁴ See *supra* n. 18.

21 ²⁵ Ch. 6, SLA 2018, *available at* Exhibit A, Plaintiff's Memorandum in Support of Motion for
22 Summary Judgment.

1 already funded public education for fiscal year 2020, the Thirty-First Alaska
2 Legislature sought to forward fund public education for fiscal year 2021.²⁶ The 2021
3 appropriations were vetoed by Governor Dunleavy and the Legislature did not
4 successfully override the vetoes. Despite Governor Dunleavy's suggestion that
5 forward funding is contrary to the "annual" budget model, even after passage of
6 HB 287, public education funding continued to be part of the Legislature's annual
7 budget.²⁷

8 This year, the Thirty-First Alaska State Legislature remained gridlocked over
9 budget issues over the fiscal year 2020 budget into August.²⁸ The Legislature first
10 passed an operating budget on June 10, 2019, during the First Special Session.²⁹
11 Following numerous vetoes to the operating budget by Governor Dunleavy, the
12 Legislature convened in a Second Special Session to consider items previously vetoed
13 by the governor, the permanent fund dividend appropriation, capital budget
14 appropriations, and passage of a "reverse sweep" appropriation from the constitutional
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17 ²⁶ See secs. 33(i) and (j), ch. 1, FSSLA 2019; secs. 11(b) and (c), ch. 2, SSSLA 2019.
18 Governor Walker also sought to forward fund public education for fiscal year 2021 in his final
19 budget proposal. See secs. 22(i) and (j), HB 39, *available at* Exhibit H, Plaintiff's
20 Memorandum in Support of Motion for Summary Judgment.

21 ²⁷ *Id.*

22 ²⁸ The Second Special Session adjourned on August 6, 2019, under art. II, sec. 9 of the Alaska
Constitution. 2019 House Journal 1361; 2019 Senate Journal 1441.

²⁹ Ch. 1, FSSLA 2019.

1 budget reserve fund.³⁰ During the Second Special Session, the Legislature passed both
2 a second operating budget³¹ and capital budget.³² Based on the appropriations passed
3 in the various operating and capital budgets, there will not be sufficient revenue to
4 cover all general fund appropriations for fiscal year 2020.³³ Accordingly, like in recent
5 years and as a final budget compromise, the Legislature voted to fund fiscal year 2020
6 general fund appropriation shortfalls – including those made in HB 287 – from savings
7 in the constitutional budget reserve fund under art. IX, sec. 17(c) of the Alaska
8 Constitution.³⁴ Specifically, the Legislature passed the following appropriation:

9 (b) If the unrestricted state revenue available for appropriation in
10 fiscal year 2020 is insufficient to cover the general fund appropriations
11 that take effect in fiscal year 2020 that are made in this Act . . . and *the*
12 *general fund appropriations made in ch. 6, SLA 2018, as passed by the*
13 *Thirtieth Alaska State Legislature* in the Second Regular Session and
14 enacted into law, that take effect in fiscal year 2020, the amount
necessary to balance revenue and general fund appropriations that take
effect in fiscal year 2020 that are made in this Act . . . and *the general*
fund appropriations made in ch. 6, SLA 2018, as passed by the Thirtieth
Alaska State Legislature in the Second Regular Session and enacted into

15 ³⁰ See James Brooks, *Deadlock continues as Alaska House minority Republicans oppose*
16 *capital budget fix and 'reverse sweep'*, Anchorage Daily News (July 22, 2019) (available at
<https://www.adn.com/politics/alaska-legislature/2019/07/22/alaska-house-republicans-nix-fix-for-broken-capital-budget-and-reverse-sweep/>).

17 ³¹ Ch. 2, SSSLA 2019.

18 ³² Ch. 1, SSSLA 2019.

19 ³³ See Affidavit of Robert Carpenter, *available at* Exhibit 1.

20 ³⁴ Sec. 17(b), ch. 1, SSSLA 2019. Please note that the phrase "or a similar bill" was vetoed
21 by the Governor. Passage of this deficit-filling appropriation from the constitutional budget
22 reserve fund required a three-fourths vote of the members of each house of the Legislature.
Alaska Const. art. IX, § 17(c).

1 law, that take effect in fiscal year 2020 is appropriated to the general
2 fund from the budget reserve fund (art. IX, sec. 17, Constitution of the
State of Alaska).³⁵

3 In short, the Legislature appropriated constitutional budget reserve funds to fill the gap
4 between revenue and general fund appropriations, including the general fund
5 appropriations made in HB 287 for fiscal year 2020. What this also means is that the
6 Legislature *specifically* accounted for the forward funding appropriations made in
7 HB 287 when balancing revenues and general fund appropriations during *this year's*
8 annual budget process. Because the Legislature specifically accounted for and
9 included HB 287 in this year's annual budget process, the appropriations also fit in an
10 annual appropriation model.

11 **D. HB 287 Did Not Subvert the Governor's Veto Authority or the**
12 **Legislature's Appropriation Power.**

13 Governor Dunleavy's assertion that if the appropriations made in HB 287 are
14 upheld the legislature could appropriate funding for education, or even entire budgets,
15 for the next fifty years is a far-fetched fact scenario that is not before this Court and is
16 not grounded in any sense of rationality. Not only is this assertion wildly speculative,
17 but there are political and procedural controls that would prevent such long-term
18 appropriating. Considering that the appropriations at issue were made only one fiscal
19 year in advance, Plaintiff perceives these arguments to be scare tactics that are being
20 used in the absence of any express constitutional prohibition against the Legislature's

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22 ³⁵ *Id.* (emphasis added).

1 ability to rationally fund public education.

2 Governor Dunleavy's arguments might be more compelling if the Legislature
3 lacked a history of amending, repealing, or reappropriating money previously
4 appropriated, but that is not the case. Not only are amendments, repeals, and
5 reappropriations a regular part of the Legislature's annual budget process, but
6 appropriations for public education have never been "off limits" to the Legislature for
7 political or other reasons. Indeed, as previously outlined for the Court, in 2015, by a
8 simple majority vote, the Legislature made a substantial reduction to the prior year's
9 appropriation to capitalize the public education fund, which had the effect of
10 eliminating the forward funding for the next fiscal year.³⁶ That same year, the
11 Legislature also repealed one-time funding that was to be distributed to public schools
12 in fiscal years 2016 and 2017.³⁷ Most recently, the current Legislature repealed
13 \$19,500,000 in public education funding that was appropriated to the curriculum
14 improvement and best practices fund in 2018.³⁸

15 There are also constitutional and political controls that would prevent far
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17 ³⁶ Specifically, in sec. 31, ch. 23, SLA 2015, the Legislature reduced the appropriation made
in sec. 28(c), ch. 16, SLA 2014, from \$1,202,568,100 to \$77,008,600.

18 ³⁷ Sec. 42(b), ch. 38, SLA 2015 (repealing secs. 32(c) and (d), ch. 18, SLA 2014), relevant
19 portions *available at* Exhibits B and C, Plaintiff's Memorandum in Support of Motion for
Summary Judgment.

20 ³⁸ Sec. 39, ch. 1, FSSLA 2019 (repealing sec. 27(c), ch. 19, SLA 2018), relevant portions
21 *available at* Exhibit 2. The curriculum improvement and best practices fund is established
22 under AS 14.07.182. Money can be expended from the fund without further appropriation, as
provided under AS 14.07.180, which created an incentivized curricula pilot program.

1 reaching appropriations. More specifically, the governor has the authority under art. II,
2 sec. 15 of the Alaska Constitution to "veto, strike or reduce items in appropriation
3 bills." All forward funding appropriations are subject to veto by the governor within
4 a 15 to 20 day period after passage.³⁹ Governor Dunleavy himself exercised this option
5 – not once, but twice – in vetoing the forward funding appropriations for fiscal year
6 2021 passed this year by the Thirty-First Alaska State Legislature.⁴⁰

7 The threshold for overriding a governor's veto of an appropriation item (three-
8 fourths of the membership of the legislature under art. II, sec. 16 of the Alaska
9 Constitution) is substantially greater than the threshold for amendment, repeal, or
10 reappropriation of an existing appropriation, which only requires a majority vote.
11 Accordingly, even if a forward funding appropriation was not vetoed, or a veto was
12 overridden, it would be subject to amendment or repeal with a simple majority vote of
13 the Legislature in a subsequent appropriations bill. If a subsequent Legislature chose
14 not to, or was unable to, amend or repeal a prior appropriation, that decision would be
15 at the will of the majority of the sitting Legislature. Finally, the Legislature is no
16 stranger to budget gridlock, as demonstrated both recently and historically.
17 Consequently, the notion that the Legislature would suddenly start passing long-
18 reaching appropriations is highly unlikely and speculative at best.

19 In fact, Governor Dunleavy does not appear to have any fundamental issue with
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21 ³⁹ Alaska Const. art. II, § 17.

22 ⁴⁰ Secs. 33(i) and (j), ch. 1, FSSLA 2019; secs. 11(b) and (c), ch. 2, SSSLA 2019.

1 the concept of forward funding, only the mechanism used by the Legislature through
2 passage of HB 287. The Governor's distinction between current revenue and future
3 revenue is misplaced.⁴¹ The process for amending or repealing an appropriation that
4 sets aside funds received during a current fiscal year for use in a subsequent fiscal year
5 is no different than the process for amending or repealing an appropriation with a
6 delayed effective date – both require a simple majority vote of a subsequent
7 Legislature. No matter the mechanism utilized to forward fund public education, every
8 future Legislature will retain the control and authority to prioritize spending for the
9 upcoming fiscal year – as was demonstrated this year and in years past.

10 While Governor Dunleavy contends that the Thirtieth Alaska State Legislature
11 and Governor Walker essentially decided how the Thirty-First Alaska State Legislature
12 would spend revenue available to them in fiscal year 2020, this is simply not how the
13 process unfolded. Instead, following his election, Governor Dunleavy introduced an
14 amended budget seeking to drastically reduce the amount of state aid to be appropriated
15 to public schools in fiscal year 2020, through amendment and repeal of the
16 appropriations made in HB 287.⁴² It was not until after Governor Dunleavy's proposals
17 were rejected by the Legislature that Governor Dunleavy made any formal challenge

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20 ⁴¹ When HB 287 was passed, the State had approximately \$19,070,300,000 in budget reserves.
See Affidavit of Robert Carpenter, *available at* Exhibit 1.

21 ⁴² Secs. 22(k) and (l) and 28, SSHB 39, relevant portions *available at* Exhibit I, Plaintiff's
22 Memorandum in Support of Motion for Summary Judgment.

1 to the validity of the forward funding appropriations made in HB 287.⁴³

2 In his brief, Governor Dunleavy admits that the Legislature considered, but
3 rejected, his proposals during this year's usual budget process; instead the Legislature
4 purposefully chose to support the prior appropriations.⁴⁴ This is not one Legislature
5 making policy for another. Instead, the process demonstrates that a majority of the
6 members of the Thirty-First Alaska State Legislature made a policy decision regarding
7 the spending for *this* fiscal year by rejecting Governor Dunleavy's proposal and
8 expressly refusing to amend or repeal the appropriations made in HB 287. The
9 Legislature cemented this decision by voting to initiate this lawsuit in support of its
10 position.⁴⁵

11 Moreover, as outlined above, the Legislature specifically accounted for the
12 forward funding appropriations made in HB 287 when balancing revenues and fiscal
13 year 2020 general fund appropriations during *this year's* budget process through
14 passage of deficit-filling appropriations from the constitutional budget reserve fund.⁴⁶
15 Therefore, this Court must find the appropriations made in HB 287 to be valid. To do
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17 ⁴³ CSSSHB 39(FIN) passed the House of Representatives on April 11, 2019. 2019 House
18 Journal 0590. SCS CSSSHB 39(FIN) passed the Senate on May 1, 2019. 2019 Senate Journal
19 0988. Attorney General Kevin Clarkson did not issue a formal opinion until May 8, 2019.
20 2019 Op. Alaska Att'y Gen. (May 8).

21 ⁴⁴ See Defendant's Motion for Summary Judgment at pp. 6-7.

22 ⁴⁵ Complaint at ¶ 2.

⁴⁶ See discussion *supra* at pp. 11-14.

1 so otherwise would be contrary to the appropriations and intent of the *current*
2 Legislature.

3 Finally, Governor Dunleavy contends that *his* veto power was thwarted through
4 passage of HB 287.⁴⁷ However, HB 287, like all appropriation bills, was subject to *the*
5 *governor's* veto power. HB 287 was subject to Governor's Walker's veto, which he did
6 not exercise. The veto power is not personal to the governor, it does not reside with
7 the governor in office at the time the legislation is passed. The lack of veto authority
8 by Governor Dunleavy in this case does not present a new or unique challenge, as other
9 incoming governors have faced similar circumstances. Indeed, governors are regularly
10 required to enforce and execute laws they did not sign into law. If anything, Governor
11 Dunleavy's failure to execute the appropriations enacted into law in HB 287 is a form
12 of reach-behind veto that is not permitted under the Alaska Constitution.

13 **E. Forward Funding Appropriations Do Not "Eviscerate" the**
14 **Dedicated Funds Prohibition.**

15 The Governor's reliance on precedent from the Alaska Supreme Court on the
16 prohibition against dedicating funds without an appropriation is also misplaced.⁴⁸
17 Each of the cases cited by Governor Dunleavy is easily distinguishable from the facts
18 in this case since the cases in which the Court found a dedicated funds violation
19

20 ⁴⁷ Defendant's Motion for Summary Judgment at p. 18.

21 ⁴⁸ Defendant's Motion for Summary Judgment at pp. 19-21 (citing *Sonneman v. Hickel*, 836
22 P.2d 936 (Alaska 1992) and *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162
(Alaska 2009)).

1 involved substantive legislation and not an appropriation. Forward funding public
2 education by a single year in an appropriation bill is not at all like passing substantive
3 legislation that reaches revenues far into the future by dedicating all income from the
4 sale of state lands, at any point in time, for a specified purpose or that restricts an
5 executive branch agency's future ability to request an appropriation from a state fund,
6 both of which the Alaska Supreme Court found to offend art. IX, sec. 7 of the Alaska
7 Constitution. Instead, forward funding education for one year is more analogous to,
8 but even less far reaching than, the lump sum appropriation of future proceeds from a
9 tobacco settlement, which the Alaska Supreme Court upheld.⁴⁹ The forward funding
10 appropriation in HB 287 is not substantive law or a continuing appropriation that will
11 extend into the unknown.⁵⁰

12 Governor Dunleavy also unpersuasively attempts to use the recent permanent
13 fund dividend challenge litigated in *Wielechowski v. State* to illustrate the relationship
14 between the dedicated funds clause and the annual appropriation model.⁵¹ Governor
15 Dunleavy describes how former Governor Walker would have been left "powerless"
16 to reduce a forward funded dividend amount had the Legislature instead chosen to

17
18 ⁴⁹ *Myers v. Alaska Hous. Fin. Corp.*, 68 P.3d 386, 387 (Alaska 2003).

19 ⁵⁰ This case is also easily distinguishable from the continuing appropriations enacted by the
20 Legislature in 1984 that was struck down by the superior court in *Trustees for Alaska v. State*,
3AN-84-12053 CIV (Aug. 30, 1985). The continuing appropriations at issue were substantive
21 law enacted by the legislature that would have extended into the unforeseeable future, which
22 is simply not the case here.

⁵¹ Defendant's Motion for Summary Judgement at pp. 20 - 21.

1 forward fund the permanent fund dividend. In the hypothetical used by the Governor,
2 if a legislature were to forward fund the permanent fund dividend (which, while not an
3 issue before this court, was proposed by Governor Dunleavy this session⁵²), Plaintiff
4 agrees that the governor would not be able to reduce a previously enacted dividend
5 appropriation – *but* the Legislature would be able to amend or repeal the prior dividend
6 appropriation and the governor could then further reduce the appropriation. Those
7 checks and balances are how the constitutional framework operates.

8 III. CONCLUSION

9 For the reasons stated, Defendant's Motion for Summary Judgment should be
10 denied. Instead, the Court should grant Plaintiff's Motion for Summary Judgment and
11 order Defendants to execute the appropriations and immediately implement the
12 statutory procedure for distributing the public education funds for the current fiscal
13 year.

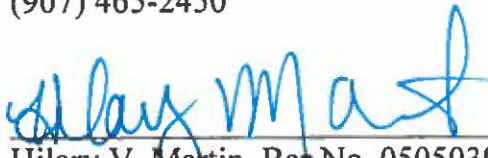
15 ⁵² Indeed, Governor Dunleavy objects to forward funding through use of a delayed effective
16 date, but currently has legislation pending before the Legislature that would do exactly that.
17 See HB 46, Thirty-First Alaska State Legislature, *available at* Exhibit 3. More specifically,
18 Governor Dunleavy introduced HB 46, seeking to forward fund supplemental permanent fund
19 dividends over a three-year period, using a series of three delayed effective dates extending
20 through 2022 as the mechanism for funding permanent fund dividend payments. *Id.* While
21 Governor Dunleavy might argue that his proposal in HB 46 seeks to use revenue the State
22 already has on hand, that contention is based merely on *assumptions* that the earnings reserve
account will maintain that same balance as those appropriations take effect. In a climate where
the Legislature is making large withdrawals from the fund and discussing whether to utilize
the fund to cover general fund appropriation shortfalls, that is a risky assumption to make.
See e.g., sec. 19(j), ch. 1, FSSLA 2019 (appropriating \$4,000,000,000 from the earnings
reserve account to the principal of the Alaska permanent fund). Nevertheless, the mechanism
for forward funding proposed by the Governor in HB 46 is constitutionally permissible; just
as the mechanism used in HB 287.

1 Respectfully submitted this 27th day of September, 2019.

2 

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22 ATTORNEYS FOR THE ALASKA
LEGISLATIVE COUNCIL

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU 2019 SEP 27 AM 10:07

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.)

Case No. 1JU-19-00753CI

COALITION FOR EDUCATION EQUITY,)
INC.)

Intervenor.)

AFFIDAVIT OF ROBERT CARPENTER

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

I, Robert Carpenter, being first duly sworn, states as follows:


1. I am a Fiscal Analyst for the Alaska Division of Legislative Finance, and I
have personal knowledge of the matters stated in this affidavit.

AFFIDAVIT OF ROBERT CARPENTER
Legislative Council v. Dunleavy, Case No. 1JU-19-00753CI

1 2. In May 2018, the Legislative Finance Division was projecting fiscal year
2 2018 State budget reserves of approximately \$19,070,300,000, with an estimated
3 balance of \$2,445,400,000 in the constitutional budget reserve fund (art. IX, sec. 17,
4 Constitution of the State of Alaska), an estimated balance of \$16,442,500,000 in the
5 earnings reserve account (AS 37.13.145), and an estimated balance of \$172,400,000 in
6 the budget reserve fund (AS 37.05.540).

7 3. Based on the appropriations taking effect for fiscal year 2020, there is not
8 expected to be sufficient revenue to cover all general fund appropriations for fiscal year
9 2020. A \$156,700,000 deficit is projected for fiscal year 2020 before fund transfer
10 appropriations.

11 4. The appropriation made in sec. 17(b), ch. 1, SSSLA 2019, authorizes use
12 of the constitutional budget reserve fund (art. IX, sec. 17, Constitution of the State of
13 Alaska), to cover any shortfall between unrestricted state revenue and the general fund
14 appropriations made in ch. 6, SLA 2018, for fiscal year 2020.

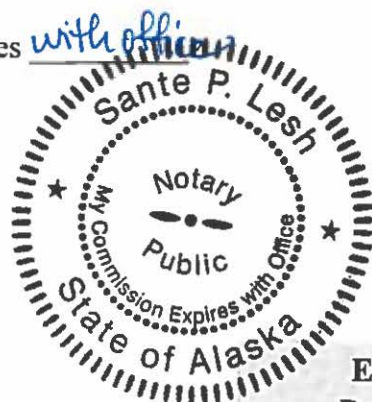
15
16 Signed: 
17 Robert Carpenter
18 Fiscal Analyst

19 Sworn to and subscribed before me this date: Sept. 27, 2019

20 
21 Notary Public

My Commission expires with office

22 AFFIDAVIT OF ROBERT CARPENTER
Legislative Council v. Dunleavy, Case No. 1JU-19-00753CI





LAWS OF ALASKA

2019

FIRST SPECIAL SESSION

Source
CCS SSHB 39

Chapter No.
1

AN ACT

Making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; making supplemental appropriations and reappropriations; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved with Item Veto: June 28, 2019

Actual Effective Date: Sections 4 - 6, 8, 9, 10(b), 11 - 13, 15, and 42 take effect June 29, 2019; sections 4 - 6, 8, 9, 10(b), 11 - 13 and 15 are retroactive to May 1, 2019; sections 10(a), 14, 39, 40, and 43 take effect June 30, 2019; remainder of Act takes effect July 1, 2019

1 AS 43.52.230(b), the appropriation made in (c) of this section shall be reduced in proportion
2 to the amount of the shortfall.

3 * Sec. 38. RATIFICATION OF SMALL AMOUNTS IN STATE ACCOUNTING
4 SYSTEM. The appropriation to each department under this Act for the fiscal year ending
5 June 30, 2020, is reduced to reverse negative account balances in amounts of \$1,000 or less
6 for the department in the state accounting system for each prior fiscal year in which a negative
7 account balance of \$1,000 or less exists.

8 * Sec. 39. Section 27(c), ch. 19, SLA 2018, is repealed.

9 * Sec. 40. LAPSE EXTENSIONS. (a) The appropriation made in sec. 2, ch. 17, SLA 2018,
10 page 42, lines 23 - 27 (HB 214 Bree's Law; dating violence programs, Department of
11 Education and Early Development, education support and admin services, student and school
12 achievement - \$263,300) lapses June 30, 2020.

13 (b) The appropriation made in sec. 2, ch. 17, SLA 2018, page 44, lines 20 - 24 (HB
14 331 Tax Credit Cert. Bond Corp; Royalties, debt service, oil and gas tax credits financing -
15 \$27,000,000) lapses June 30, 2020.

16 * Sec. 41. LAPSE OF APPROPRIATIONS. The appropriations made in secs. 14, 19(b), (d)
17 - (g), (i), and (j), 20(c) and (d), 31(c) and (d), 33, 34, and 35(a) - (d) of this Act are for the
18 capitalization of funds and do not lapse.

19 * Sec. 42. RETROACTIVITY. (a) The appropriations made in sec. 1 of this Act that
20 appropriate either the unexpended and unobligated balance of specific fiscal year 2019
21 program receipts or the unexpended and unobligated balance on June 30, 2019, of a specified
22 account are retroactive to June 30, 2019, solely for the purpose of carrying forward a prior
23 fiscal year balance.

24 (b) If secs. 10(a), 14, 39, 40, and 43 of this Act take effect after June 30, 2019, secs.
25 10(a), 14, 39, 40, and 43 of this Act are retroactive to June 30, 2019.

26 (c) If secs. 4 - 6, 8, 9, 10(b), 11 - 13, and 15 of this Act take effect after May 1, 2019,
27 secs. 4 - 6, 8, 9, 10(b), 11 - 13, and 15 of this Act are retroactive to May 1, 2019.

28 * Sec. 43. CONTINGENCY. If the amount of the appropriation made in sec. 29(c), ch. 17,
29 SLA 2018, is insufficient to cover the appropriation from the general fund made in sec. 14 of
30 this Act, the appropriation made in sec. 14 of this Act is reduced by the amount of the
31 shortfall.

1 * Sec. 44. Section 42 of this Act takes effect immediately under AS 01.10.070(c).

2 * Sec. 45. Sections 4 - 6, 8, 9, 10(b), 11 - 13, and 15 of this Act take effect May 1, 2019.

3 * Sec. 46. Sections 10(a), 14, 39, 40, and 43 of this Act take effect June 30, 2019.

4 * Sec. 47. Sections 33(i) and (j) of this Act take effect July 1, 2020.

5 * Sec. 48. Except as provided in secs. 44 - 47 of this Act, this Act takes effect July 1, 2019.

- 1 (4) United Academic - Adjuncts - American Association of University
- 2 Professors, American Federation of Teachers;
- 3 (5) United Academics - American Association of University Professors,
- 4 American Federation of Teachers.
- 5 (c) If a collective bargaining agreement listed in (a) of this section is not ratified by
- 6 the membership of the respective collective bargaining unit, the appropriations made in this
- 7 Act applicable to the collective bargaining unit's agreement are adjusted proportionately by
- 8 the amount for that collective bargaining agreement, and the corresponding funding source
- 9 amounts are adjusted accordingly.
- 10 (d) If a collective bargaining agreement listed in (b) of this section is not ratified by
- 11 the membership of the respective collective bargaining unit and approved by the Board of
- 12 Regents of the University of Alaska, the appropriations made in this Act applicable to the
- 13 collective bargaining unit's agreement are adjusted proportionately by the amount for that
- 14 collective bargaining agreement, and the corresponding funding source amounts are adjusted
- 15 accordingly.
- 16 (e) Appropriations made in sec. 1 of this Act for salary and benefit adjustments as
- 17 described in (a) and (b) of this section are for the benefit of the state's integrated
- 18 comprehensive mental health program only and do not necessarily affect every group of
- 19 noncovered employees or every collective bargaining unit listed in (a) and (b) of this section.
- 20 * Sec. 10. This Act takes effect July 1, 2018.



LAWS OF ALASKA

2018

Source
HCS CSSB 142(FIN).am.H

Chapter No.
19

AN ACT

Making appropriations, including capital appropriations, supplemental appropriations, reappropriations, and other appropriations; amending appropriations; making appropriations to capitalize funds; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved with Item Veto: June 13, 2018
Actual Effective Date: Sections 4 - 16 and 37 take effect June 14, 2018; sections 20, 21(a), 22, 26(a), (b), (c), (h), and (i), 27(a), and 32 - 34 take effect June 30, 2018; section 27(c) takes effect July 1, 2019; remainder of Act takes effect July 1, 2018; sections 4 - 16 are retroactive to May 16, 2018

1 line 26, as amended by sec. 20(k), ch. 30, SLA 2007, and secs. 14(b)(1), 21(d)(1), and 21(e),
2 ch. 1, TSSLA 2017 (Department of Transportation and Public Facilities, enhancement of
3 transportation and infrastructure in the greater Lynn Canal area);

4 (2) sec. 1, ch. 16, SLA 2013, page 80, line 13, as amended by secs. 14(b)(2),
5 21(d)(2), and 21(e), ch. 1, TSSLA 2017 (Department of Transportation and Public Facilities,
6 enhancement of transportation and infrastructure in the greater Lynn Canal area);

7 (3) sec. 32(b), ch. 16, SLA 2013, as amended by secs. 14(b)(3), 21(d)(3), and
8 21(e), ch. 1, TSSLA 2017 (Department of Transportation and Public Facilities, enhancement
9 of transportation and infrastructure in the greater Lynn Canal area); and

10 (4) sec. 1, ch. 18, SLA 2014, page 63, line 4, and allocated on page 63, line
11 11, as amended by secs. 14(b)(4), 21(d)(4), and 21(e), ch. 1, TSSLA 2017 (Department of
12 Transportation and Public Facilities, enhancement of transportation and infrastructure in the
13 greater Lynn Canal area).

14 ~~(j) The sum of \$2,500,000 is appropriated from the general fund to the Department~~
15 ~~of Transportation and Public Facilities for the Knik Arm Crossing project.~~

16 * Sec. 27. FUND CAPITALIZATION. (a) The unexpended and unobligated balance,
17 estimated to be \$1,968,897, of the appropriation made in sec. 4(c), ch. 82, SLA 2006, page
18 117, lines 21 - 22, as amended by secs. 23(c) and (d), ch. 11, SLA 2008, and sec. 18(b), ch. 2,
19 4SSLA 2016 (Alaska Energy Authority, Kake-Petersburg intertie) is reappropriated to the
20 harbor facility grant fund (AS 29.60.800).

21 (b) The sum of \$4,000,000 is appropriated from the general fund to the community
22 assistance fund (AS 29.60.850) to be added to the amount to be distributed under
23 AS 29.60.850(c), before the distribution under AS 29.60.855, for a total distribution of
24 \$34,000,000 for the fiscal year ending June 30, 2019.

25 (c) The sum of \$19,500,000 is appropriated from the general fund to the curriculum
26 improvement and best practices fund (AS 14.07.182).

27 * Sec. 28. FUND TRANSFER. The balance of the large passenger vessel gaming and
28 gambling tax account (AS 43.35.220) on June 30, 2019, estimated to be \$8,700,000, is
29 appropriated to the Alaska marine highway system fund (AS 19.65.060).

30 * Sec. 29. HOUSE DISTRICTS 1 - 40. The amount of the fees collected under
31 AS 28.10.421(d) during the fiscal year ending June 30, 2018, estimated to be \$6,000, for the

1 issuance of National Rifle Association license plates, less the cost of issuing the license
2 plates, is appropriated from the general fund to the Department of Commerce, Community,
3 and Economic Development for payment as a grant under AS 37.05.316 to the Alaska SCTP,
4 non profit corporation, for statewide youth shotgun sports programs.

5 * Sec. 30. HOUSE DISTRICTS 1 - 2. The sum of \$15,000 is appropriated from the general
6 fund to the Department of Commerce, Community, and Economic Development for payment
7 as a grant under AS 37.05.316 to Volunteers in Policing for purchase of gas cards, decals,
8 radios, and safety equipment.

9 * Sec. 31. HOUSE DISTRICTS 13 - 28. The sum of \$100,000 is appropriated from the
10 general fund to the Department of Commerce, Community, and Economic Development for
11 payment as a grant under AS 37.05.316 to the Anchorage Coalition of Community Patrols,
12 Inc., for purchase of gas cards, decals, radios, and safety equipment for community patrols.

13 * Sec. 32. HOUSE DISTRICT 29. The unexpended and unobligated balance, estimated to
14 be \$1,073,441, of the appropriation made in sec. 1, ch. 17, SLA 2012, page 85, lines 3 - 4, as
15 amended by sec. 27(f), ch. 2, 4SSLA 2016 (Friends of the Jesse Lee Home) is reappropriated
16 to the Department of Commerce, Community, and Economic Development for payment as a
17 grant under AS 37.05.315 to the City of Seward for hazardous material removal and site
18 remediation at the Jesse Lee Home for the fiscal years ending June 30, 2019, June 30, 2020,
19 and June 30, 2021.

20 * Sec. 33. HOUSE DISTRICT 32. The unexpended and unobligated balance, estimated to
21 be \$98,782, of the appropriation made in sec. 1, ch. 17, SLA 2012, page 92, lines 13 - 17
22 (Kodiak Maritime Museum and Art Center, Kodiak Maritime Museum feasibility and design -
23 \$200,000) is reappropriated to the Department of Commerce, Community, and Economic
24 Development for payment as a grant under AS 37.05.315 to the City of Kodiak for design and
25 engineering of a new fire hall.

26 * Sec. 34. REAPPROPRIATION OF LEGISLATIVE APPROPRIATIONS. The
27 unexpended and unobligated general fund balances of the following appropriations are
28 reappropriated to the Alaska Legislature, Legislative Council, council and subcommittees, for
29 renovation and repair of, technology improvements to, and other necessary projects related to
30 legislative buildings and facilities:

31 (1) sec. 1, ch. 1, SSSLA 2017, page 38, line 21 (Alaska Legislature, Budget

HOUSE BILL NO. 46

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/20/19

Referred: State Affairs, Judiciary, 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).

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

FILED
STATE OF ALASKA
FIRST DISTRICT
AT JUNEAU

SEP 27 2019 10:07 AM

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.

Case No. 1JU-19-00753CI

COALITION FOR EDUCATION EQUITY,
INC.

Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2019, a true and correct copy
of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, with exhibits,
Plaintiff's Proposed Order Denying Defendant's Motion for Summary Judgment, and
Plaintiff's Statement in Non-Opposition to Coalition for Education Equity, Inc.'s
Motion for Summary Judgment were served by email and mail, postage prepaid, upon

CERTIFICATE OF SERVICE

Legislative Council v. Dunleavy, et. al, Case No. 1JU-19-00753CI

Page 1 of 2

1 the following:

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CERTIFICATE OF SERVICE

Legislative Council v. Dunleavy, et. al, Case No. 1JU-19-00753CI

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.

Case No. 1JU-19-00753CI

COALITION FOR EDUCATION EQUITY,
INC.

Intervenor.

**[PROPOSED] ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Upon consideration of Defendant's Motion for Summary Judgment, and any
opposition thereto, the motion is DENIED.

Ordered this _____ day of _____, 2019.

Daniel Schally
Superior Court Judge

LODGED 9/27/19 BY MSD
DATE INITIAL

D8

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

JUN 27 AM 10:08

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,
INC.

Intervenor.

CLERK TRIAL COURTS

BY MJD
DEPUTY CLERK

Case No. 1JU-19-00753CI

**PLAINTIFF'S STATEMENT IN NON-OPPOSITION TO COALITION FOR
EDUCATION EQUITY, INC.'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff the Alaska Legislative Council ("Council") on behalf of the Alaska
State Legislature ("Legislature"), by and through counsel, pursuant to Alaska Rule of
Civil Procedure 56, hereby provides the following statement in non-opposition to

1 Intervenor Coalition for Education Equity, Inc.'s (CEE) Motion for Summary
2 Judgment.

3 Plaintiff does not oppose CEE's request for summary judgment and agrees that
4 this Court should enter a declaratory judgment that (1) the appropriations made in HB
5 287¹ are valid and constitutional, and (2) the Governor's failure to execute the
6 appropriations and failure to distribute the funds appropriated in HB 287 is a violation
7 of his constitutional obligation to faithfully execute the laws under art. III, sec. 16 of
8 the Alaska Constitution. Plaintiff also specifically concurs with CEE on the following
9 points:

10 1. Public education is a public service that is mandated under art. VII,
11 sec. 1 of the Alaska Constitution. Therefore, the purpose of the appropriations at issue
12 is paramount in evaluating the competing constitutional interests at state in this
13 lawsuit.²

14 2. The Alaska Constitution mandates that the *Legislature* "establish and
15 maintain a system of public schools open to all children of the State" and the Alaska
16 Supreme Court has recognized that "[t]he provision is unqualified; no other unit of
17 government shares responsibility or authority."³

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20 ¹ Ch. 6, SLA 2018.

21 ² See CEE's Motion for Summary Judgment at p. 4.

22 ³ *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971); see also CEE's Motion for
Summary Judgment at pp. 6-7.

1 3. Acts of the Legislature are entitled to a presumption of constitutionality,
2 and the Alaska Supreme Court has held that the education clause provides the
3 Legislature considerable flexibility in establishing and maintaining a system of public
4 education. The Alaska Supreme Court has specifically found that given the
5 "complexity of the problems of financing and managing a statewide public school
6 system . . . within the limits of rationality, the legislature's efforts to tackle problems
7 should be *entitled* to respect."⁴

8 4. CEE describes for this Court how state and local budgeting for public
9 education do not occur contemporaneously.⁵ In fact, school districts complete their
10 initial budgets in early spring, but the Legislature has in recent years passed the State
11 operating budget much later than that.⁶ Consequently, local school districts often have
12 to prepare budgets without knowing the actual amount of state aid the State will
13 contribute.⁷ This problem is compounded by a statutory notice requirement for
14 terminating teachers,⁸ which has forced school districts to issue "pink slips" to teachers
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16

17 ⁴ *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 803-04 (Alaska 1975) (emphasis
18 added) (internal quotations omitted) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411
U.S. 1, 42 (1973)); *see also* CEE's Motion for Summary Judgment at pp. 20-21.

19 ⁵ CEE's Motion for Summary Judgment at pp. 10-11.

20 ⁶ *Id.*

21 ⁷ *Id.*

22 ⁸ AS 14.20.140; 14.20.177.

1 after not knowing with any certainty the amount of state aid the school district might
2 receive for the upcoming school year.⁹

3 5. HB 287 was a rational response to the problems it was specifically passed
4 to address. The appropriations made in HB 287 are presumed to be valid, particularly
5 in light of the Legislature's responsibility to establish and maintain a system of public
6 education.¹⁰ Because the appropriations made in HB 287 were well within the "limits
7 of rationality," this Court must uphold the appropriations made in HB 287, which is
8 also the intent of the *current* Legislature.

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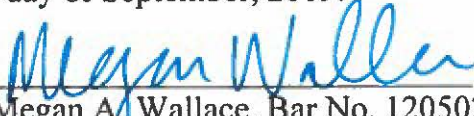
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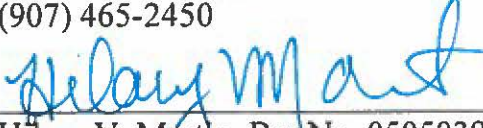
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20 ⁹ CEE's Motion for Summary Judgment at pp. 10-11.

21 ¹⁰ *Id.* at p. 19.

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1 Respectfully submitted this 27th day of September, 2019.

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