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

ERIC FORRER)
Plaintiff,)

vs.)

STATE OF ALASKA)
and LUCINDA MAHONEY,)
Commissioner of the Alaska)
Department of Revenue and)
JULIE ANDERSON,)
Commissioner of the Alaska)
of Commerce, both)
in their capacity as officials of)
the State of Alaska.)
Defendants.)

1JU-20-00644 Civil

AFFIDAVIT OF ERIC FORRER

State of Alaska)
First Judicial District) ss.

Eric Forrer, being first duly sworn and on my oath, states as follows:

1. I reside in the City & Borough of Juneau, Alaska.
2. The facts and matters I am providing testimony about in this affidavit are based on my personal observations, experience, review of available public information and true to the best of my knowledge.

Affidavit of Eric Forrer
June 21, 2020
Forrer v. State of Alaska, et al
1JU-29-00644 Civil

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- 3 3. I am the plaintiff in the above-captioned lawsuit.
- 4 4. My intention in bringing the above-captioned lawsuit was to require the
- 5 Alaska Legislature and the executive branch of the State of Alaska to
- 6 allocate public funds in conformity with the Alaska Constitution.
- 7 5. The specific funds that I believe are at issue in this case are federal funds
- 8 received by the State of Alaska for relief associated with the COVID-19
- 9 pandemic.
- 10 6. Congress enacted the COVID-19 pandemic relief funds in legislation
- 11 referred to as the CARES Act, and Alaska has received significant funding
- 12 from that Act.
- 13 7. I also understand from various media accounts that the Congress is
- 14 working on and may well enact additional COVID-19 relief funding,
- 15 which, if the measures pass and funding becomes available for Alaska
- 16 makes it critical that we determine the legal requirements for distributing
- 17 any additional funds the federal government sends to alleviate the impact
- 18 of the pandemic. The CARES Act funding by Congress to date was
- 19 enormous and apparently reflects the scale of harm the COVID-19
- 20 pandemic is inflicting on the citizens of our nation.
- 21 8. The harm the CARES Act funding seeks to ameliorate is multiple,
- 22 including the direct harm to the health of individuals and the substantial
- 23 reduction in jobs, diminished wages, and other factors that are all rolled up
- 24 in the general category of what could be characterized as devastation to the
- 25 economy.
- 26 9. As a result of CARES Act funding, Alaska has received in excess of a
- 27 billion dollars
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10. The CARES Act has a number of aspects but the focus of my concern and the reason I filed the lawsuit in the above-captioned case centers on a portion of the federal funds transmitted to the State of Alaska in the amount of \$958 million.
 11. The executive branch of Alaska's state government proposed to allocate, and then spend, the \$958 million on various programs according to the so-called RPL (Revised Program Legislative Package) procedures, instead of seeking a valid appropriation to spend the funds as is required by the Alaska Constitution.
 12. The RPL allocation process is an arcane administrative procedure that is not specifically mentioned in the Alaska Constitution.
 13. The RPL process was created and has evolved over time to allow a subcommittee of the Alaska Legislature to make minor adjustments to previously authorized appropriations or to allow for expenditures of funds in limited circumstances where the legislature has made authorization to spend funds.
 14. It is my belief that the desire on the part of the executive branch of Alaska's government to spend CARES Act funding is not consistent with a constitutionally required appropriation, or prior authorization, that would allow for the constitutional expenditures of the CARES Act funds currently in the Alaska treasury.
 15. Based on my review of the CARES Act funds there are obvious categories of funds Alaska received from the federal government that are problematic in terms of spending without an act by our legislature to appropriate the funds.

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2 16. Set out below are the categories of CARES Act funds that the executive
3 branch seeks to spend for which there are no valid appropriations enacted
4 by the Alaska Legislature:

5 A. **\$100 million** to assist the commercial, charter and
6 subsistence fishing industries through a process to be
7 administered by the Alaska Department of Commerce and
8 Community & Economic Development.¹

9 B. **\$290 million** for small business relief in a lightly described
10 program to be administered by Alaska Department of
11 Commerce and Community & Economic Development.

12 C. **\$568 million** in municipal assistance.

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14 17. It is my belief that the legislature has not adopted the constitutionally
15 required appropriations that would allow expenditures for categories A, B
16 & C in paragraph 17, above, and consequently I am challenging the
17 expenditure of all of these funds.

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19 18. While I harbor serious reservations about the lack of appropriation
20 authority to spend any of the funding allocations that are sketched out in
21 paragraph 17, above, I am choosing to focus on the funds in category B, in
22 paragraph 17 for two reasons. First, there is no legitimate appropriation
23 for expending the money. Secondly, the putative authorization to spend the
24 category B allocation was an authorization that was ginned up, invented,

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26 ¹ There is some speculation that the federal government may reduce a portion of this
27 funding.

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2 by the executive branch using the RPL process. Under the pressure of this
3 lawsuit and the international crisis atmosphere, the executive spending
4 proposal was then "ratified" by the legislature. "Ratified" and
5 "ratification" are concepts that have no constitutional basis or definition,
6 and unless the governor's office spending proposal is the subject of
7 appropriation legislation by the full legislature, both the spending and the
8 process are unconstitutional.

9 19. It is now apparent that the executive branch of Alaska's government is
10 embarking on a spending plan that not only ignores the provisions that the
11 Alaska Constitution requires, but they also intend to spend the money
12 without conforming to the standards set forth in the ratified RPL spending
13 plan.

14 20. At some point, this kind of inventive fiscal misbehavior, the terms of
15 which change on a nearly daily basis, is more than just bad administrative
16 technique and lousy politics. It is difficult not to come to the conclusion
17 that this is willful avoidance of the law. Not only is it a violation of the
18 Alaska Constitution, but it is a failure to adhere to any standards at all.

19 21. At what point do we start thinking the Alaska Constitution is a
20 meaningless document and that we citizens should just let the executive
21 branch do whatever it desires with any and all public funds sitting in the
22 treasury?

23 22. I view this situation, and the behavior of the Alaska executive and the
24 Alaska legislature as being at a crisis level. This is society fraying badly
25 at the edges. Instead of confronting the world class, double barreled,
26 threats of health and finance with the determination to uphold the rule of
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2 law and the sanctity and formal structure under which we live, leadership
3 seems to be running for the exits, willing to concoct any imaginable
4 process in order to avoid having to do the hard work of governance. Many
5 of these elected officials traveled around the state or around their districts
6 saying "vote for me, I will swear to defend the constitution and do the
7 people's work to be best of my ability," or something along those lines.

8 23. But in reality, the work of the citizens is not being conducted in a timely
9 manner and certainly not according to the constitution. Why do I claim
10 that is so? First it took this lawsuit to get them out of a 50-day recess and
11 back into session, and now, secondly, apparently it will take more work
12 and a prod from the judiciary to get them to do the job they all said they
13 wanted to do.

14 24. I understand that appropriating funds is not easy given how contentious
15 contemporary politics has become, and given the competing demands of
16 various factions who clamor for funding. And let me be crystal clear that
17 I do not harbor any interest in telling the legislature how to divvy up the
18 funds in category B described in paragraph 17, or the other CARES Act
19 funds.

20 25. What I do seek and what I think is absolutely required by the constitution,
21 which Alaskans worked to create and that was adopted by the citizens of
22 the state, is conformity with the requirement that spending take place
23 according to an appropriation.

24 26. If we stop following our most basic and essential civic document, the
25 results will almost certainly be predictable and predictably bad. The
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2 situation we are in now is precisely a consequence of there being no
3 appropriation authority.

4 27. We citizens who believe the Alaska Constitution is a compact protecting
5 our rights and serving as a check on out-of-control government have few
6 avenues of recourse when government goes wrong. Some of the methods
7 citizens get to seek redress are obvious. We can petition our elected
8 officials. Sometimes we vote them out of office. These sorts of options
9 are slow and not genuinely useful in the present crisis. The fix on spending
10 here seems to be in, and there is apparently enormous pressure within
11 government to avoid facing the political music and cooperating sufficiently
12 to get their job done.

13 28. It comes down to this: If the judiciary is not going to enforce the
14 standards in the Alaska Constitution that absolutely require expenditures
15 of public funds be authorized by an appropriation, who is? If the answer
16 is 'nobody,' then we stand on a once-in-a-generation societal precipice
17 from which democracy may ultimately not survive.

18 29. I ask that the court direct the commissioner of revenue to keep the
19 CARES Act funds specified in part B of paragraph 17 in the treasury until
20 the Alaska Legislature fulfills the duties specified in the Alaska
21 Constitution and "appropriates" the money. Simultaneously, the court
22 should inform the commissioner of commerce that the money identified in
23 the three categories set forth in paragraph 17, above, cannot be spent
24 without an appropriation or certainly not in a manner inconsistent with the
25 express terms of the RPL as presented by the executive branch and
26 subsequently "ratified" by the legislature.

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2 30. I believe if the court grants an injunction preventing the identified funds
3 from being sent out and dispersed according to executive whim, that the
4 consequence of the injunction will likely spur legislative action in the
5 public interest and serve to protect the Constitution of Alaska from decay.
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7 *Further the affiant sayeth naught.*
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9 **DATED** this 21st day of June, 2020 at Auke Bay, Alaska.
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14 **Eric Forrer**
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