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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

**APPLICATION FOR A PRELIMINARY INJUNCTION and
OTHER RELIEF**

Plaintiff, Eric Forrer ("Forrer"), on behalf of the public, through counsel, makes application for a Preliminary Injunction and any other necessary relief in the above-reference case. Forrer seeks equitable relief necessary to protect the Alaska Constitution and the public interest as supported in the accompanying memorandum and affidavit and exhibits.

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2 Given the potential for harm to the public and the degree to which the
3 Alaska Legislature and Alaska Governor have failed to adhere to express terms
4 of the Alaska Constitution and are now apparently poised to also deviate from
5 language in the allocation criteria previously authored by the administration and
6 “ratified” in HB 331 but not appropriated by the Alaska Legislature pertaining to
7 the distribution of federal COVID-19 relief funding appropriated by the
8 Congress of the United States of America to the State of Alaska, Forrer requests
9 the court preliminarily enjoin further distribution of the CARES Act funds
10 received by the State of Alaska designated for distribution for business relief, or,
11 in the alternative, that any expenditures of business relief funds take place
12 according to the standards for spending the business relief funds adopted in HB
13 331.
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17 Given the obvious harm that follows from allowing the executive branch
18 to distribute public funds that have not been appropriated or otherwise allocated
19 in accord with the Alaska Constitution and given the likely prospect the
20 executive branch of Alaska’s government will commence distributing public
21 funds without valid constitutional or other legal authority, Forrer also requests
22 the court schedule a hearing on an expedited basis on the issue of whether relief
23 should be afforded to Forrer and the public for the reasons outlined in the
24 accompany motion.
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1
2 This application is accompanied by a *Memorandum in Support of a*
3 *Preliminary Injunction*, the Affidavit of Eric Forrer, *Exhibit A & B*, and a
4 *proposed Preliminary Injunction*.

5
6 **DATED** this 22nd day of June, 2020 at Juneau, Alaska.


7
8 **LAW OFFICE OF**
9 **JOSEPH W. GELDHOF**

10 


11
12 Joseph W. Geldhof
13 Alaska Bar # 8111097

14
15
16 **Certification**

17 I certify that a copy of this Application,
18 a memorandum in support,
19 Exhibits A & B, and a proposed
20 Preliminary Injunction were hand
21 delivered to: Alaska Attorney General Clarkson,
22 counsel for the State of Alaska and Commissioners
23 Lucinda Mahoney and Julie Anderson.

+ AFFIDAVIT OF ERIC FORRER


24
25 **DATED:** June 22, 2020

26
27 **By:** 
28 Joseph W. Geldhof

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CLERK TRIAL COURTS

**SUPERIOR COURT FOR THE STATE OF ALASKA
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STATE OF ALASKA
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Commissioner of the Alaska
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Defendants.

1JU-20-00644 Civil

MEMORANDUM IN SUPPORT OF A PRELIMINARY INJUNCTION

Introduction

Eric Forrer ("Forrer"), asks this court conduct a hearing at the court's earliest convenience in order to prevent irreparable harm to the public based the executive branches intention to ignore express standards contained in HB 331, legislation¹ that purported to "ratify" the allocation by the Legislative Budget & Audit Committee pertaining to COVID-19 funding the State of Alaska had

1 received through the federal CARES Act. [*Affidavit of Eric Forrer*, paragraphs 5,
2 6, 8 & 9, attached].

3
4 The basis for seeking expedited equitable relief are outlined in the *Motion*
5 *for Expedited Consideration* that will be filed with the clerk of the court on the
6 morning of June 23, 2020.
7

8 **Procedural & Factual Background**

9 Forrer filed a *Complaint for Declaratory Relief and Potential Equitable*
10 *Relief* in this dispute on May 13, 2020. Due to limitations as a result of the
11 COVID-19 pandemic, the lawsuit initiated by Forrer was assigned a judicial
12 reference number and accepted for filing by the Clerk of the Court on May 14,
13 2020.
14

15
16 Essentially, the complaint filed by the Forrer in this action was advanced in
17 order to convince the Alaska Legislature to convene and allocate the CARES Act
18 federal funds in accord with the Alaska Constitution. [*Affidavit of Eric Forrer*,
19 paragraph 10, attached]. Forrer brought the instant lawsuit on Wednesday, May
20 13, 2020 because a fraction of the Alaska Legislature adopted an allocation plan
21 for the CARES Act funds on Monday, May 11, 2020. This fractional slice of the
22 Alaska Legislature is constitutionally sanctioned by the Alaska Constitution and
23 referred to as the “legislative council.”² Pursuant to statutory law,³ the legislative
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27 ¹ Attached as **EXHIBIT “A”**.

28 ² See, Article II, Section 11. (establishing legislative council and interim committees).

1 council operates through a political entity designated as the Legislative Budget
2 and Audit Committee (“LB&A”), an interim committee consisting of a small
3 number of members designated by the Alaska Senate and the Alaska House. The
4 LB&A essentially serves to address financial matters and other monitoring topics
5 when the legislature is not in session.
6
7

8 On May 13, 2020, while the Alaska Legislature was in recess but still in
9 session, the LB&A adopted an allocation plan for the CARES Act funds in a vote
10 that was somewhat contentious. Essentially, a faction of the fractional legislative
11 body adopted a spending plan for the CARES Act funds submitted by the
12 administrative branch of government. The spending plan adopted by the LB&A
13 purported to appropriate approximately \$1.5 billion in CARES Act federal
14 funding using the Revised Program Legislative Request process (“RPL”). [See
15 generally, *Affidavit of Eric Forrer*, paragraphs 11, 12, 13 & 14, attached].
16
17

18 These RPS allocations adopted by the LB&A are summarized into
19 categories,⁴ as follows:
20

21 CATEGORY I

22 The sum of **\$506 million** for programs for which authorization or
23 appropriations previously made by the Alaska Legislature likely existed.
24 The sum in this category was allocated by the LB&A on May 11, 2020, in
25 the following manner:
26

27 ³ AS 24.20 et seq.; see, e.g., AS 24.20.060 (powers of the legislative council).

28 ⁴ [*Affidavit of Eric Forrer*, paragraph 11, attached].

1
2 A. **\$381 million** in Health and Social Services costs, including about
3 \$50 million targeted for nonprofits. This allocation was apparently
4 believed by LB&A to be authorized via “open ended” receipt authority to
5 expend federal funds already adopted by the legislature.

6 B. **\$125 million** pertaining to allocations for education, public safety,
7 transportation and the University of Alaska activities that the LB&A
8 believed could be expended according to the RPL process.

9 10 **CATEGORY II**

11 The LB&A appears to have believed other allocations of the CARES Act
12 Fund could be spent via the RPL process. As a result, the LB&A acted on
13 May 11, 2020, allocating the following CARES Act funds:

14 C. **\$52 million** for the Alaska Department of Transportation & Public
15 Facilities focused on airport support and work related to the Whittier
16 Tunnel.

17 D. **\$10 million** for homeless support via the Alaska Housing Finance
18 Corporation or some other agency of the State of Alaska.

19 **CATEGORY III**

20 The LB&A allocated the sum of **\$958 million** on May 11, 2020 in
21 CARES Act funding to programs for which authorization or
22 appropriations by the Alaska Legislature did not exist. The allocation in
23 this category of funding for which no authorization or federal receipt
24 authority existed was made by the LB&A in the following manner:

25 E. **\$100 million** to assist the commercial, charter and subsistence
26 fishing industry through a process to be administered by the Alaska
27 Department of Commerce and Community & Economic
28

Development.⁵

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

G. **\$568 million** in municipal assistance, allocated in two separate streams of funding as follows:

1. **\$257 million** according to a single RPL that would divert CARES Act funds through as a super-sized payment using the existing Community Assistance (revenue sharing) program and seemingly based largely on a per-capita formula.

2. **\$311 million** according to 200 separate RPL's, that would allocate CARES Act funds to a plethora of Alaskan cities, boroughs as well as many unincorporated communities. The purported allocation of this unwieldy category of CARES Act funds was supposedly based on various economic impacts alleged to be impacting local government entities, however some analysis suggests the stated economic impacts on local govern were not grounded in genuine metrics or an ascertainable analytical construct.⁶ but the formula is almost entirely based on an estimate of lost tax revenue.

⁵ There is some speculation that the federal government may reduce a portion of this funding.

⁶ In the event, the allocation of CARES Act funds was possibly an exercise in administrative and legislative spit-balling in an attempt to come up with a plausible justification for using restricted CARES Act funding for activities that may or may not be consistent with federal law. A more likely plausible basis for the allocation formula used to divvy up this particular pot of money is based on historic sales tax and other historic revenue data from the various entities slated to receive the CARES Act funding allocated by the LB&A in this category.

Forrer's Position

Forrer believes the substantial funds allocated by the Congress of the United States to Alaska via the CARES Act for mitigation and amelioration of the impact caused by the COVID-19 pandemic need to be allocated as soon as possible for the relief of Alaska's citizens.

While the need to authorize expenditure of the CARES Act funds and provide relief to the citizens of Alaska is obvious and should be given considerable weight, Forrer believes it is essential that the funds must be allocated by the Alaska Legislature according the provisions of Article IX, Section 13 and other provisions in the Alaska Constitution. Forrer believes enactment of HB 331 did not conform to the specific constitutional requirements that call for the legislature to appropriate funds. In the event, at least HB 331 contained some ascertainable standards for the expenditure of public funds.

Forrer previously sought a preliminary injunction in this case but withdrew the request for a preliminary injunction when the Alaska Legislature enacted HB 331, legislation that purported to "ratify" the allocation by the Legislative Budget & Audit Committee pertaining to COVID-19 funding the State of Alaska had received through the federal CARES Act.

When withdrawing his application for a preliminary injunction, Forrer reserved the ability to argue that the enactment of HB 331 seeking to ratify the allocation of CARES Act funding was inconsistent with the Alaska Constitution,

1 including the provisions in the constitution requiring that public funds be
2 “appropriated.” But given the pandemic and the obvious health and economic
3 harm that was taking place in Alaska, Forrer was content to let the CARES Act
4 funding be expended in order to ameliorate the obvious harm to the public as a
5 result of the COVID-19 pandemic. Setting aside the underlying applicability of
6 express provisions in the Alaska Constitution mandating an appropriation, Forrer
7 believed HB 331 contained some ascertainable standards on how the CARES Act
8 funds should be expended.
9

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11
12 After enactment of HB 331 and after Forrer withdrew his application for a
13 preliminary injunction, the executive branch determined that that standards
14 contained in HB 331 would inhibit the expenditure of CARES Act funds in select
15 ways. Instead of seeking new appropriation authority or perhaps an amended RPL
16 that would allow for different or more flexible expenditures, the executive branch
17 decided that it could divine the “intent” of the legislature and concluded that the
18 CARES Act funds allocated for relief of businesses could be expended differently
19 than the standards contained in the legislation. ⁷ [*Affidavit of Eric Forrer*,
20 paragraphs 18, 19 & 20 attached].
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23 This unilateral abandonment by the executive branch of government of
24 standards governing at least a portion of the CARES Act funding related to
25 business assistance relief is why Forrer renews his request for injunctive relief.
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1 [See generally, *Affidavit of Eric Forrer*, paragraphs 21, 22 & 23, attached].

2
3 These funds are outlined in category III, F, *supra*, and the only portion of the
4 CARES Act funds Forrer seeks to enjoin. [*Affidavit of Eric Forrer*, paragraph 18,
5 attached].

6
7 The reason Forrer seeks equitable relief related to the business relief funds
8 in category III, F, is that the executive branch has embarked on a plan for
9 expending public funds by which there are no standards. The constitutional
10 requirements that public funds be expended via the appropriation process are
11 being ignored and now the executive branch is setting aside the minimal standards
12 they originally advanced through the LPR process as approved by the Legislative
13 Budget & Audit Committee (“LB&A”), and as “ratified” by the legislature in HB
14 331.
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16
17 Without question, it is obvious that there is tremendous public and political
18 pressure to expend CARE Act funds provided by the federal government for the
19 relief of Alaskans. While Forrer apprehends the need to expeditiously allocate
20 and distribute the funds, it is Forrer’s position that the CARES Act funds allocated
21 for business relief must be expended according to defined standards. [See
22 generally, *Affidavit of Eric Forrer*, paragraphs 24, 25 26, & 27, attached].
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25 There are two ways the court can assure allocation and expenditure of
26 public funds for relief of businesses according to ascertainable standards. First,
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1 the court could rule as a matter of equity that no valid appropriation for the
2 expenditure of the business relief funding can take place. This remedy would be
3 completely consistent with express constitutional requirements but run smack into
4 a variety of problems related to the dysfunctional political environment that is part
5 of contemporary Alaska.
6

7
8 Secondly, the court could narrowly tailor equitable relief requiring the
9 executive branch to adhere to the designated standards for the expenditure of
10 business relief embodied in HB 331.
11

12 While Forrer believes the grant of an injunction that conditions the
13 expenditure of CARES Act funds allocated for business relief on an appropriation
14 is sound from a constitutional perspective, the ability of the legislature to promptly
15 convene and address the issue in a mature manner is highly problematic.
16 [Affidavit of Eric Forrer, paragraph 23, attached]. At risk of seeming to concede
17 the underlying constitutional merits presented in this case, (which Forrer does not
18 concede), the court should entertain adoption of a narrower equitable remedy that
19 requires any expenditure of business relief funds by the executive branch take
20 place according to the minimal standards ratified by the legislature in HB 331. At
21 least some standards would be applicable to the expenditure of public funds if the
22 court so conditioned the spending on the law as written.
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2 Granting equitable relief in this case where the executive branch is
3 seemingly bent on spending the money for business relief in manner that ignores
4 standards that originated with the executive and then were ratified by the
5 legislature is appropriate. Failure to grant some sort of equitable relief will result
6 in a situation where the CARES Act funds allocated for business relief can be
7 expended without regard to any standards. Whim, caprice and the likelihood that
8 the allocation of public funds will be completed in an arbitrary manner are
9 possible. Better to apply the standards set out in HB 331 than no standards at all,
10 as is seemingly the intent of the executive branch. At least apply the standards for
11 expenditure of business relief in HB 331 so that some of the funds can be used to
12 help Alaskans now. The parties can sort out the constitutionality of the acts or
13 omissions by the executive branch and the legislature via considered arguments
14 according to a briefing schedule determined by the court at the pending July status
15 hearing.
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20 **Argument and Basis for Equitable Relief According to Standard of Review**

21 The subject of this suit and the request for injunctive relief is grounded in
22 a need to protect and preserve the Alaska Constitution. An injunction requiring
23 that the CARES Act funds stay sequestered in treasury of the State of Alaska until
24 the funds are properly allocated and authorized to be withdrawn according to basic
25 constitutional principles is what Forrer ultimately seeks. But at a minimum, at
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1 least with regard to the CARES Act funds allocated for expenditure by HB 331,
2 the standards ratified by the legislature must be given force and meaning.
3

4 Relief from this court in the form of an in order to protect the public interest
5 is appropriate. The Alaska Legislature acted by passing HB 331 and allocated
6 CARES Act funds according to ascertainable standards. Now, the executive
7 branch is intent on deviating from the standards set out in law by the legislature
8 for the expenditure of business relief, even if the act passed by the legislature was
9 not an appropriation as is required by the Alaska Constitution. Are the courts to
10 give no meaning to acts of the legislature and simply allow the executive branch to
11 do as it desires?
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14 By enjoining withdrawal of the CARES Act funds deposited in the Alaska
15 treasury on the condition that the business relief funds be expended according to
16 the express terms of HB 331, the judiciary can protect and preserve the
17 fundamental constitutional principle that public funds must be spent according to
18 standards enacted in law and sort out the deeper constitutional issues related to the
19 appropriation question at a later time. [*Affidavit of Eric Forrer*, paragraph 28,
20 attached].
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23 Failure to condition the expenditure of business relief portion of the CARES
24 Act funds on the standards in HB 331 will result in irreparable harm to Alaska's
25 most fundamental constitutional principles and likely result in an arbitrary
26 allocation of business relief funds. In the event the business relief funds are
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1 expended improperly and without regard to the legal standards contained in HB
2 331, unwinding the improper transactions will be an exercise in forensic futility.
3 Better to grant limited limited equitable relief now that protects the business relief
4 portion of the CARES Act funds from arbitrary allocation that deviates from the
5 criteria contained in HB 331. [*Affidavit of Eric Forrer*, paragraphs 19 & 20,
6 attached].
7

8
9 Granting equitable relief in regard to the business relief component of the
10 CARES Act funding scheme is not impermissible meddling by the judiciary in
11 legislative matters or otherwise encroaching on the constitutional separation-of-
12 powers doctrine. Equitable relief requiring the business relief funds to be
13 expended according to the law is appropriate in the circumstances.
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16 One challenge in this dispute is to define what the case is not about as much
17 as what Forrer believes is essential. In Forrer's view, this dispute is about
18 adhering to Alaska's constitution. Nothing more and nothing less.
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20 Forrer is not intent on disputing the merits of the allocations designated by
21 the LB&A committee on May 11, 2020, as ratified by the legislature. Forrer has
22 no interest in meddling in how the legislature decides to allocate the CARES Act
23 funding but having done so in the odd manner by which they finally accomplished
24 the task, he believes the allocation formula embedded in HB 331 should be
25 followed, especially as it pertains to the business relief component of that
26 legislative act.
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2 Viewed through the lens of constitutional analysis, the allocations by the
3 LB&A on May 11, 2020 are unconstitutional according to Article IX, Section 13
4 and other provisions of the constitution, including Article II, Sections 11, 13, 14
5 and 15. Even as ratified by the legislature, the allocations present significant
6 constitutional issues. But these large constitutional issues can be argued and
7 disposed of via prospective relief down the trail. For now, Forrer seeks limited
8 equitable relief only with regard to the business relief component of the CARES
9 Act allocation that is certainly being abused by the executive branch.
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12 Forrer believes the proposed withdrawal of CARES Act funds from the
13 treasury using the RPL rubric adopted by the LB&A on May 11, 2020, presents
14 significant constitutional and other possible legal problems.⁸ Based on analysis
15 centered on the Alaska Constitution and law, Forrer believes there is no existing
16 authority in acts passed by the legislature and reviewed by the governor that
17 would afford the LB&A authority to use the RPL process to allocate expenditures
18 of nearly one billion dollars in CARES Act funding. The fraught nature of the
19 RPL allocative process and resort to using the RPL process while the legislature is
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23 ⁸ Forrer is ultimately challenging the allocation of CARES Act funds and the withdrawal of
24 those funds from the treasury on constitutional grounds. Whether allocation of a portion of
25 these funds is consistent with federal law, including standards for spending the CARES Act
26 funding adopted by the federal government is not a point of contention for Forrer and not
27 implicated by the lawsuit he filed. But, Forrer notes, substantial questions have been raised
28 about the propriety of using CARES Act funds for municipal revenue sharing, as is
seemingly contemplated by the May 11, 2020 LB&A allocation. Conceivably, the
legislature could appropriate CARES Act funds in a manner consistent with the Alaska
Constitution that would be incompatible with federal law or regulatory guidelines, an issue
not being challenged by Forrer in this litigation.

1 in session was addressed in a memorandum opinion by the Legislative Affairs
2 Agency.⁹

3
4 Regardless, of the over-arching constitutional problems presented by using
5 the RPL process to expend public funds, the executive branches attempt to ignore
6 the legal standards set out in HB 331 require judicial attention and a remedy.
7 Forrer believes the “ratification” of the allocation adopted by the LB&A on May
8 11, 2020, via HB 331 is insufficient to make a valid expenditure of public funds
9 according to the Alaska Constitution, not least being that such ratification would
10 obliterate the power of Alaska’s executive branch to veto or reduce public funds
11 authorized by the legislature.¹⁰ But at least this act by the legislature contained
12 some standards for the expenditure of public funds. The court should require
13 these standards be applied to any expenditure of business relief funding.
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15
16 While Forrer believes the various provisions of the Alaska Constitution
17 calling for adoption of public spending according to measured and obvious
18 procedures are clear, he acknowledges the paucity of case law pertaining to this
19 subject. There does not appear to be substantial appellate court guidance in
20 Alaska on how the public spending can be altered or adjusted during difficult
21 situations. The most obvious case that addresses the issue of public spending
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27 ⁹ Megan Wallace, Director, *Cares Act RPL’s – May 1st Submission* (May 5, 2020). [Previously
28 submitted by Forrer in his first request for injunctive relief and incorporated here by reference].

¹⁰ Article II, Section 15.

1 during financially difficult times is *Fairbanks North Star Borough v. State*,¹¹ a
2 case stemming from a decision by then Governor Sheffield to cut previously
3 adopted expenditures made by the legislature according to the appropriations
4 process sanctioned by Article IX, Section 13 and other relevant constitutional and
5 legal provisions. The *North Star Borough* case certainly involves the expenditure
6 of public funds and the central issue addressed by the court was whether
7 previously appropriated funds could be unilaterally impounded by the governor.
8 Ultimately, the legislature enacted a measure that ratified and approved the
9 restrictions the governor had sought to impose. The ratification was characterized
10 by the court as a “curative statute”¹² that served to finally put to rest a long-
11 standing dispute between the executive and legislative branches of government as
12 well as interests who were impacted by the chopped appropriations. But the
13 predicate to the ratification question that was upheld in the *North Star Borough*
14 case was the affirmation of the earlier judicial ruling that the governor’s
15 impoundment of appropriated funds was unconstitutional.¹³

16 In the present case before this court, great care and extreme caution should
17 be given to adopting the “ratification” model. Ratification by the legislature is not
18 some talisman that can be invoked to adopt the allocation made by the LB&A’s
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¹¹ 753 P.2d 1158 (Alaska 1988).

¹² *Id.* at 1160.

¹³ *Id.* at 1159; *see also*, *State v. Fairbanks North Star Borough*, 736 P.2d 1140 (Alaska 1987).

1 allocation of public funding on May 11, 2020, and immunize the allocation from
2 constitutional scrutiny.

3
4 In the *North Star Borough* case, the legislature ratified the governor's
5 unconstitutional attempt to impound a lawful appropriation that conformed with
6 the Alaska Constitution. The legislative ratification in *North Star Borough* was
7 related to impoundment and reduction of spending, not additional spending as is
8 the situation at bar. Because the *North Star Borough* case dealt with reductions
9 to valid appropriations previously made by the entire legislature, not proposals
10 rendered by a faction of the legislature which were not validly adopted according
11 to the Alaska Constitution to increase funding, ratification of all the LB&A
12 allocations made on May 11, 2020 is highly problematic.

13
14 To be sure, *North Star Borough* is useful for gaining a degree of awareness
15 about how to address public funding in times when there are economic hardships.
16 What North Star Borough does not do is sanction the idea that the legislature can
17 pass a bill "ratifying" the decision by a faction of the legislature to allocate funds
18 for which no previous authorization or appropriation has been made. There is no
19 known federal receipt authority or authorization in existing law or a valid
20 appropriation for much of the CARES Act funding held in the treasury. In
21 constitutional terms, especially with respect to the Category III items allocated by
22 LB&A there is nothing to ratify. But having ratified the allocation, is it is
23 incumbent on the judiciary to at least hold the executive branch to the standards
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1 adopted by the legislature in terms of providing CARES Act business relief
2 funding
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4 Forrer believes more is needed than an act ratifying what has not taken
5 place in constitutional terms but then altered like the impoundment situation in
6 *North Star Borough*. But this aspect of the current dispute can be argued and
7 disposed of after briefing by both parties. For now, Forrer seeks limited equitable
8 relief in the form of an injunction only with regard to the business relief portion of
9 the CARES Act funds allocated by HB 331.
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12 When reviewing Forrer's request for equitable relief, Alaska Rule of Civil
13 Procedure 65 governs preliminary injunctions. Forrer and the public may obtain a
14 preliminary injunction by meeting one of two standards: the heightened "probable
15 success on the merits" standard or the more lenient "balance of hardships"
16 standard.¹⁴ "Where the injury from [a] preliminary injunction is not inconsiderable
17 and may not be adequately indemnified by a bond, a showing of probable success
18 on the merits is required before a . . . preliminary injunction can be issued."¹⁵ "The
19 balance of hardships standard requires balancing the harm plaintiff will suffer
20 without the injunction against the harm the injunction will impose on the
21 defendant."¹⁶
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26 ¹⁴ See, e.g. *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

27 ¹⁵ *North Kenai Peninsula Road Maintenance Service Area v. Kenai Peninsula Borough*,
850 P.2d 636, 639 (Alaska 1993).

28 ¹⁶ *Alsworth*, 323 P.3d at 54.

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2 The court may issue a preliminary injunction under the balance of hardships
3 standard “when three factors are present: (1) the plaintiff must be faced with
4 irreparable harm; (2) the opposing party must be adequately protected; and (3) the
5 plaintiff must raise serious and substantial questions going to the merits of the
6 case; that is, the issues raised cannot be frivolous or obviously without merit.”¹⁷
7

8 Here, the plaintiff, Eric Forrer and the public and most importantly the
9 Constitution that was drafted by the citizens of Alaska and ratified by the citizens
10 will be obviously harmed if the legislature and governor of the State of Alaska
11 fails to conform to the constitution and lets the CARES Act funds in the treasury
12 be expended without a valid constitutional act. Forrer, on behalf of the public and
13 in the interest of the Alaska Constitution asks only that this court exercise its
14 equitable power to maintain the *status quo* by keeping the portion of the CARES
15 Act funds that are allocated for business relief in the treasury until the Alaska
16 Legislature adopts an appropriation bill authorizing the expenditure of the funds
17 or, in the alternative, that the executive branch expend the business relief funds
18 according to the express standards contained in HB 331.
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22 Entry of a preliminary injunction under either in favor of the Forrer and the
23 public should be narrowly drawn to protect the Alaska Constitution but without
24 encroaching on any of the duties or options of the legislature or the governor.
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28 ¹⁷ *Id.* at 54 (internal citations and quotations omitted).

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Conclusion

For the reasons set out in this memorandum, the court should enter a preliminary injunction directing the Commissioner of Revenue to maintain the business relief portion of the CARES Act funds currently in the Alaska Treasury until such time as a valid expenditure is adopted by the Alaska Legislature or, in the alternative, that no funds will be expended that do not adhere to the express terms of HB 331. Forrer also requests that Commissioner Anderson be enjoined from expending any of the business relief CARES Act funds except as specified in HB 331. [*Affidavit of Eric Forrer*, paragraph 29, attached].

DATED this 22nd day of June, 2020 at Juneau, Alaska.

**LAW OFFICE OF
JOSEPH W. GELDHOF**



Joseph W. Geldhof
Alaska Bar # 8111097



LAWS OF ALASKA

2020

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Source
HB 313

Chapter No.

AN ACT

Approving and ratifying the actions of the governor and executive branch in expending certain federal receipts and of the Legislative Budget and Audit Committee in approving the expenditure of certain federal receipts during fiscal years 2020 and 2021; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Approving and ratifying the actions of the governor and executive branch in expending
2 certain federal receipts and of the Legislative Budget and Audit Committee in approving the
3 expenditure of certain federal receipts during fiscal years 2020 and 2021; and providing for an
4 effective date.

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

8 LEGISLATIVE FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that
9 (1) in December 2019, a novel coronavirus known as severe acute respiratory
10 syndrome coronavirus 2 (SARS-CoV-2) was first detected in Wuhan, Hubei province,
11 People's Republic of China, leading to outbreaks of novel coronavirus disease (COVID-19)
12 that have now spread globally;

13 (2) on March 11, 2020, the governor issued a declaration of a public health
14 disaster emergency under AS 26.23.020 in anticipation of the spread of COVID-19 to the

1 state; through passage and enactment into law of ch. 10, SLA 2020, the legislature extended
2 the public health disaster emergency until November 15, 2020;

3 (3) on March 27, 2020, the President of the United States signed into law H.R.
4 748 (P.L. 116-136, Coronavirus Aid, Relief, and Economic Security Act (CARES Act)) in
5 response to the COVID-19 pandemic;

6 (4) on March 29, 2020, the legislature recessed the Second Regular Session of
7 the Thirty-First Alaska State Legislature indefinitely in the face of the COVID-19 pandemic;

8 (5) on April 9, 2020, the President of the United States approved a major
9 disaster declaration for the State of Alaska;

10 (6) on April 21, 2020, in response to the anticipated receipt of additional
11 federal receipts appropriated to states as part of the CARES Act that were not specifically
12 accounted for in passage of the fiscal year 2020 or fiscal year 2021 budgets, the governor
13 issued a revised program legislative (RPL) package, including RPLs 08-2020-0250
14 (\$562,500,000), 08-2020-0251 (\$300,000,000), 05-2020-0074 (\$48,000,000), 05-2020-0075
15 (\$5,000,000), 05-2020-0076 (\$421,500), 08-2020-0054 (\$100,000,000), 12-2020-4049
16 (\$3,585,351), 25-2020-8766 (\$29,000,000), 25-2020-8771 (\$49,000,000), 25-2020-8772
17 (\$3,034,100), and 45-2020-0002 (\$5,000,000), under the authority conferred by
18 AS 37.07.080(h);

19 (7) on May 1, 2020, the governor revised RPLs 08-2020-0250 (\$257,548,754),
20 08-2020-0251 (\$290,000,000), 05-2020-0074 (\$44,911,411), 05-2020-0075 (\$41,869,617),
21 05-2020-0076 (\$421,500), 12-2020-4049 (\$3,585,351), 25-2020-8771 (\$49,000,000), 25-
22 2020-8772 (\$3,034,100), and 45-2020-0002 (\$5,000,000) and issued new RPLs 08-2020-0260
23 through 08-2020-0382 (\$311,024,132) and 04-2020-1059 (\$10,000,000) under the authority
24 conferred by AS 37.07.080(h);

25 (8) on May 1, 2020, the Legislative Budget and Audit Committee approved
26 RPLs 05-2020-0074 (\$44,911,411), 05-2020-0075 (\$41,869,617), 05-2020-0076 (\$421,500),
27 12-2020-4049 (\$3,585,351), 25-2020-8766 (\$29,000,000), and 45-2020-0002 (\$5,000,000), as
28 revised;

29 (9) on May 7, 2020, the governor revised RPLs 25-2020-8771 (\$49,000,000)
30 and 25-2020-8772 (\$1,350,000) and issued new RPLs 25-2020-8776 (\$1,219,100) and 25-
31 2020-8777 (\$465,000);

1 (10) on May 11, 2020, the governor again revised RPL 08-2020-0251
2 (\$290,000,000) under the authority conferred by AS 37.07.080(h);

3 (11) on May 11, 2020, the Legislative Budget and Audit Committee approved
4 RPLs 08-2020-0250 (\$257,548,754), 08-2020-0251 (\$290,000,000), 25-2020-8771
5 (\$49,000,000), 25-2020-8772 (\$1,350,000), 25-2020-8776 (\$1,219,100), 25-2020-8777
6 (\$465,000), 08-2020-0260 through 08-2020-0382 (\$311,024,132), 08-2020-0054
7 (\$100,000,000), and 04-2020-1059 (\$10,000,000), as revised;

8 (12) the approval of the RPLs on May 1, 2020, and May 11, 2020, was in
9 response to the public health disaster emergency facing the state and was in no way intended
10 to abdicate the legislature's power of appropriation;

11 (13) the approval of the RPLs has been challenged in court.

12 (b) It is the purpose of this Act to approve the expenditure of federal receipts
13 proposed by the governor and to ratify the approval of the RPLs identified under (a) of this
14 section by the Legislative Budget and Audit Committee, in order to remove any uncertainty as
15 to the status of the expenditures under the RPLs.

16 (c) In authorizing the expenditure of federal receipts as proposed by the governor in
17 the RPLs identified under (a) of this section, it is the intent of the legislature that the
18 appropriations identified in the RPLs identified under (a) of this section are increased as
19 approved by the Legislative Budget and Audit Committee.

20 * **Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to
21 read:

22 APPROVAL AND RATIFICATION. The actions of the governor and executive
23 branch in expending the federal receipts in accordance with the revised program legislative
24 (RPL) package identified under sec. 1(a) of this Act and the actions of the Legislative Budget
25 and Audit Committee in approving the expenditure of federal receipts in accordance with the
26 RPLs identified under sec. 1(a) of this Act are approved and ratified.

27 * **Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to
28 read:

29 SUSPENSION OF OTHER LAW. The provisions of sec. 2 of this Act are effective
30 notwithstanding the provisions of any other law, including AS 37.07.080(h).

31 * **Sec. 4.** This Act is retroactive to May 1, 2020.

1 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA
DISTRICT
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Alaska changes rules blocking companies from state virus aid

ASSOCIATED PRESS

ANCHORAGE — Alaska's \$290 million financial assistance program for small businesses impacted by the coronavirus will no longer exclude companies that already received small amounts of federal aid, officials said.

The rule change follows an outcry from businesses and legislators who believe the rules were overly restrictive,

The Anchorage Daily News reported Wednesday.

Alaska Department of Commerce Commissioner Julie Anderson told the Alaska House Finance Committee Tuesday the new rules will permit applicants receiving \$5,000 or less in direct aid from the federal government.

Alaska's aid program distributes grants of \$5,000 to \$100,000. The funds can be used for rent, utilities and other

expenses that are tough to pay because of the pandemic's economic fallout.

Rules put in place when the program began June 1 "created a huge gap in the program and some unintended consequences," Anderson said.

The expanded applicant pool will include beneficiaries of the federal Paycheck Protection Program and Economic Injury Disaster Loan.

Businesses will not be excluded from the state program for receiving help from municipal programs funded by the federal government.

The state also opened up the program to chambers of commerce. Some nonprofit organizations have already received permission to apply.

Businesses that received

more than \$5,000 in federal aid can return those funds to become eligible for the state program, Anderson said.

Commerce department officials previously said they could not change the rules barring federal aid recipients because the Alaska Legislature passed the rule into law. But the Alaska Department of Law said Tuesday it had reinterpreted the matter.

State lawyers considered "legislative intent" and concluded the goal of lawmakers was not to prohibit federal aid recipients, Assistant Attorney General Bill Mills said.

The reinterpretation was made in spite of language ratified by the Legislature specifically stating businesses receiving federal funds "do not qualify" for state aid.

EXHIBIT
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