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

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

ERIC FORRER
Plaintiff,

MAY 13 2020

By JS Deputy

vs.

STATE OF ALASKA
and LUCINDA MAHONEY,
Commissioner of the Alaska
Department of Revenue
in her capacity as an official of
the State of Alaska.
Defendants.

1JU-20-00644 Civil

**COMPLAINT FOR DECLARATORY RELIEF AND POTENTIAL
EQUITABLE RELIEF**

Plaintiff, Eric Forrer ("Forrer"), for his cause of action alleges as follows:

INTRODUCTION

1. This lawsuit is brought by Forrer in the interest of the public seeking declaratory relief pertaining to the failure by the Alaska Legislature to enact valid appropriations for the expenditure of money received from the federal government as required by Article IX, Section 13 of the Alaska Constitution. Forrer also seeks contingent equitable relief in the form of an injunction requiring the Alaska

Complaint

Eric Forrer vs. State of Alaska, et al

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2 Department of Revenue to make payments of federal funds received by the State
3 of Alaska according to the CARES Act in accordance with appropriations made
4 by the Alaska Legislature and as authorized by law.
5

6 **PARTIES**

7 2. Plaintiff, Eric Forrer, is a citizen and registered voter of Alaska who has
8 made his home in Alaska since 1962; Forrer presently resides in the City and
9 Borough of Juneau.
10

11 3. The State of Alaska is a sovereign state within the republic of the United
12 States of America and governed according to the Alaska Constitution.
13

14 4. Lucinda Mahoney is currently the Commissioner of the Alaska
15 Department of Revenue, an exempt position appointed by the Governor of the
16 State of Alaska and confirmed by the Alaska Legislature. Ms. Mahoney is sued
17 in her official capacity as Commissioner of Revenue in order to obtain injunctive
18 relief allowing the Department of Revenue to receive funds from the federal
19 government authorized by the CARES Act but not withdraw CARES Act funds
20 except to the extent such payment of money is authorized by an appropriation
21 enacted by the Alaska Legislature.
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24 **JURISDICTION**

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26 5. The Superior Court has jurisdiction to hear this dispute according to AS
27 22.10.020.
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FACTS

6. Article IX, Section 13 of the Alaska Constitution provides:

Expenditures – No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

7. The ability to make appropriations and obligate the expenditure of money by the Alaska Legislature are established and constrained by the provisions of the Alaska Constitution, including the provision referenced in paragraphs 6, above.

8. The ability to obligate the expenditure of money by the administrative branch of the State of Alaska are established and constrained by the provisions of the Alaska Constitution, including the provision referenced in paragraphs 6, above.

9. The Congress of the United States has enacted legislation generally referred to as the "CARES Act" in response to the COVID-19 pandemic.

10. The CARES Act provides funding to various jurisdictions, including the State of Alaska, for various purposes related to ameliorating the impact of the COVID-19 pandemic.

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2 11. The State of Alaska is in receipt of federal funds provided through the
3 CARES Act.

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5 12. The State of Alaska is believed to be in receipt of approximately \$1.5
6 billion from the federal government through the CARES Act.

7
8 13. The State of Alaska is intent on allocating federal funds received
9 through the CARES Act to various agencies for multiple purposes.

10
11 14. For example, the State of Alaska is seeking to disburse funds received
12 from the federal government through the CARES Act for the following purposes:

13 a. \$381 million in Health and Social Services costs, including
14 about \$50 million targeted for nonprofits;

15 b. \$125 million for various education, public safety,
16 transportation and programs associated with the University of
17 Alaska;

18 c. \$52 million for two specific transportation projects focused on
19 airport support and the Whittier Tunnel;

20
21 d. \$10 million for homeless programs;

22
23 e. \$100 million in fishing industry assistance;

24
25 f. \$290 in small business relief;

26 g. \$568 million in municipal assistance allocated as follows:

27 i. \$257 million for the existing Community Assistance
28 (revenue sharing) program, and;

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2 ii. an additional \$311 million to all cities and boroughs as
3 well as many unincorporated communities.
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5 15. The proposal by the State of Alaska to obligate the payment of the
6 money describe in paragraph 14, *infra*, is slated to take place according to the
7 Revised Program Legislative Request procedures, typically referred to as the
8 "RPL" process.
9

10 16. The Alaska Legislature is still convened in session but presently
11 recessed.
12

13 ALLEGATIONS

14 17. This lawsuit is brought by Forrer in the interest of the public to enforce
15 the obvious and express provisions of the Alaska Constitution, including the
16 provisions requiring that expenditures of money in the treasury of the State of
17 Alaska be allocated and withdrawn in accordance with appropriations made by
18 law.
19

20 18. Statutory provisions in Alaska purport to give limited legal authority to
21 the State of Alaska to obligate money in Alaska's treasury provided that valid pre-
22 existing appropriations authorize the expenditure.
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24 19. Utilization of the RPL process to encumber or obligate payment of all
25 of the proposed expenditures in paragraph 14, *supra*, is inconsistent with Article
26 IX, Section 13 of the Alaska Constitution.
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2 20. Eric Forrer believes items e, f & g in paragraph 14, *supra*, are
3 particularly susceptible to constitutional challenge as no valid authorization for
4 the proposed expenditures exists in Alaska law.
5

6 21. The requirement that expenditures made from the treasury must be
7 made in accord with lawful authorization are constitutional in nature and require
8 that the Alaska Legislature to adhere to substantive and procedural requirements
9 related to law making by the legislative branch, including an opportunity for the
10 citizens of Alaska to be heard on how funds in the treasury should be expended.
11

12 22. The failure by the Alaska Legislature to provide for proper legal
13 authorization to make all of the proposed expenditures set out in paragraph 14,
14 *supra*, is an abdication of the legislature's constitutional power and a violation of
15 the separation of powers implicit in the Alaska Constitution.
16

17 23. The statute purportedly used by the Alaska Legislature to make the
18 RPL allocations is unconstitutional because the legislature is the appropriating
19 authority under Article 9, Section 13, and the governor's budgetary control
20 authority lies merely in his veto authority to "strike or reduce" legislative
21 appropriations under Article 2, Section 15.
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23 24. In addition, under Article 2, Section 14, of the Alaska Constitution, the
24 legislature must bring forward an actual bill for appropriations, which must be
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2 subject to the constitutionally mandated procedures of enactment—including
3 three readings and a public process.
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5 25. The statute the Alaska Legislature purportedly relies on to make the
6 expenditures that are at the heart of this dispute is unconstitutional under the case
7 law of the Alaska Supreme Court, *State v. Fairbanks North Star Borough*, 736
8 P.2d 1140 (1987).
9

10 26. The acts and omissions by the Alaska Legislature and the
11 administrative branch of government in seeking to make expenditures without a
12 lawful appropriation conflict with the following constitutional doctrines: The
13 appropriations power, separation of powers, checks and balances.
14

15 27. The acts and omissions by the Alaska Legislature and the
16 administrative branch of government in seeking to make expenditures without a
17 lawful appropriation constitute an unconstitutional delegation of the legislature's
18 power of appropriation and result in an unconstitutional concentration of power
19 in the executive.
20

21
22 28. In this public interest lawsuit, Forrer seeks to require that Alaska
23 Legislature follow the Alaska Constitution by coming out of recess and obligating
24 the CARE Acts funds received by the State of Alaska to mitigate the obvious
25 impacts associated with the COVID-19 pandemic with valid legal appropriations.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. Declaratory relief holding that the proposal to withdraw federal funds received by the State of Alaska must be allocated according to appropriations authorized by law;

B. Equitable relief in the form of an injunction, as necessary, requiring Lucinda Mahoney and the State of Alaska from withdrawing money from the treasury except in accordance with appropriations made by law;

C. An award of costs and reasonable fees associated with maintaining this public interest lawsuit, and;

D. Any other relief necessary to protect the rights of the Plaintiff and the citizens of Alaska under the Alaska Constitution.

DATED this 13th day of May, 2020 at Juneau, Alaska.

**LAW OFFICE OF
JOSEPH W. GELDHOF**



Joseph W. Geldhof
Alaska Bar # 8111097

THIS CASE FORCIVILLY ASSIGNED TO
JUDGE FREDERICK CHALLENGER
BY ORDER OF THE PRESIDING JUDGE