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STATE OF ALASKA
FIRST DISTRICT
AT 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)
in her capacity as an official of)
the State of Alaska.)
Defendants.)
_____)

1JU-20- 00644 Civil

**COMPLAINT FOR DECLARATORY RELIEF AND PROSPECTIVE
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 and other sources as required by Article IX, Section 13 of the Alaska Constitution. Forrer also seeks prospective equitable relief in the form of a permanent injunction

Amended Complaint

Eric Forrer vs. State of Alaska, et al

1
2 requiring the Alaska Department of Revenue to make payments of funds received
3 by the State of Alaska from all sources in accordance with appropriations made by
4 the Alaska Legislature consistent with Article IX, Section 13 and as authorized by
5 law.
6

7 **PARTIES**

8
9 2. Plaintiff, Eric Forrer, is a citizen and registered voter of Alaska who has
10 made his home in Alaska since 1962; Forrer presently resides in the City and
11 Borough of Juneau.
12

13 3. The State of Alaska is a sovereign state within the republic of the United
14 States of America and governed according to the Alaska Constitution.
15

16 4. Lucinda Mahoney is currently the Commissioner of the Alaska
17 Department of Revenue, an exempt position appointed by the Governor of the State
18 of Alaska and confirmed by the Alaska Legislature. Ms. Mahoney is sued in her
19 official capacity as Commissioner of Revenue in order to obtain injunctive relief
20 requiring the Department of Revenue to receive funds from all legal sources but not
21 withdraw funds from the treasury except to the extent such payment of money is
22 authorized by an appropriation enacted by the Alaska Legislature or otherwise
23 sanction by valid authorization enacted by the legislature.
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26 **JURISDICTION**

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2 5. The Superior Court has jurisdiction to hear this dispute according to AS
3 22.10.020.

4
5 **FACTS**

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

7 **Expenditures** – No money shall be withdrawn from the treasury except in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

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

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

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

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

22 11. The State of Alaska is in receipt of federal funds provided through the
23 CARES Act.
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2 12. The State of Alaska is believed to be in receipt of approximately \$1.5
3 billion from the federal government through the CARES Act.

4
5 13. The State of Alaska is intent on allocating federal funds received through
6 the CARES Act to various agencies for multiple purposes.

7
8 14. For example, the State of Alaska is seeking to disburse funds received
9 from the federal government through the CARES Act for the following purposes:

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

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

14
15 . \$52 million for two specific transportation projects focused on airport
16 support and the Whittier Tunnel;

17
18 d. \$10 million for homeless programs;

19
20 e. \$100 million in fishing industry assistance;

21
22 f. \$290 in small business relief;

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

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

26 ii. an additional \$311 million to all cities and boroughs as well as many
27 unincorporated communities.
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2 15. The proposal by the State of Alaska to obligate the payment of the money
3 describe in paragraph 14, infra, was adopted by the Alaska Legislature on May 20,
4 2020, essentially adopting the Revised Program Legislative Request procedures
5 utilized by the Legislative Budget & Audit Committee on May 11, 2020, typically
6 referred to as the “RPL” process.
7

8 16. The Alaska Legislature convened on May 18, 2020, took up two acts
9 related to allocation of the federal CARES Act funds before adopting an act
10 purporting to ratify the allocation made by LB&A on May 11, 2020.
11

12 17. The act adopted by the Alaska Legislature on May 20, 2020, seeking to
13 ratify the allocation of public funds provided to the State of Alaska under the CARES
14 Act is inconsistent with Article IX, Section 13 of the Alaska Constitution requiring
15 moneys in the Alaska treasury be expended according to an appropriation.
16
17

18 18. The allocation of at least a portion of the CARES Act funds specified by
19 the LB&A on May 11, 2020, cannot be ratified by an act of the Alaska Legislature.
20

21 **ALLEGATIONS**

22 19. This lawsuit is brought by Forrer in the interest of the public to enforce
23 the obvious and express provisions of the Alaska Constitution, including the
24 provisions requiring that expenditures of money in the treasury of the State of Alaska
25 be allocated and withdrawn in accordance with appropriations made by law.
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2 20. Statutory provisions in Alaska purport to give limited legal authority to
3 the State of Alaska to obligate and expend money in Alaska's treasury provided that
4 valid pre-existing appropriations or authorizations (including an enactment by the
5 Alaska Legislature authorizing an expenditure according to pre-existing receipt
6 authority to spend federal funding), are established in law.
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9 21. Utilization of the RPL process to encumber or obligate payment of all of
10 the proposed expenditures in paragraph 14, *supra*, is inconsistent with Article IX,
11 Section 13 of the Alaska Constitution.
12

13 22. Allocation and expenditures of items e, f & g in paragraph 14, *supra*,
14 are particularly susceptible to constitutional challenge as no valid authorization
15 for the proposed expenditures exists in Alaska law.
16

17 23. The requirement that expenditures made from the treasury must be
18 made in accord with lawful authorization are constitutional in nature and require
19 that the Alaska Legislature to adhere to substantive and procedural requirements
20 related to law making by the legislative branch, including an opportunity for the
21 citizens of Alaska to be heard on how funds in the treasury should be expended.
22

23 24. The failure by the Alaska Legislature to provide for proper legal
24 authorization to make all of the proposed expenditures set out in paragraph 14,
25 *supra*, is an abdication of the legislature's constitutional power and a violation of
26 the separation of powers implicit in the Alaska Constitution.
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2 25. The statute purportedly used by the Alaska Legislature to make the
3 RPL allocations is unconstitutional because the legislature is the appropriating
4 authority under Article 9, Section 13, and the governor's budgetary control
5 authority lies merely in his veto authority to "strike or reduce" legislative
6 appropriations under Article 2, Section 15.
7

8 26. Under Article 2, Section 14, of the Alaska Constitution, the legislature
9 must bring forward an actual bill for appropriations, which must be subject to the
10 constitutionally mandated procedures of enactment—including three readings and
11 a public process.
12

13 27. The statute the Alaska Legislature purportedly relies on to make the
14 expenditures that are at the heart of this dispute is unconstitutional under the case
15 law of the Alaska Supreme Court, *State v. Fairbanks North Star Borough*, 736
16 P.2d 1140 (1987).
17

18 28. The acts and omissions by the Alaska Legislature and the
19 administrative branch of government in seeking to make expenditures without a
20 lawful appropriation conflict with the following constitutional doctrines: The
21 appropriations power, separation of powers, checks and balances.
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23 29. The acts and omissions by the Alaska Legislature and the
24 administrative branch of government in seeking to make expenditures without a
25 lawful appropriation constitute an unconstitutional delegation of the legislature's
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2 power of appropriation and result in an unconstitutional concentration of power
3 in the executive.

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5 30. The enactment of a bill by the Alaska Legislature on May 20, 2020,
6 purporting to ratify the allocation of CARES Act funds rendered by the Governor
7 and LB&A on May 11, 2020 is constitutionally flawed.

8
9 31. At least for a portion of the allocation of CARES Act funds proposed
10 by the LB&A on May 11, 2020, have no valid pre-existing authorization or other
11 validly enacted law by which the Alaska Legislature could ratify the expenditure
12 of funds.

13
14 32. In this public interest lawsuit, Forrer seeks to require that Alaska
15 Legislature adhere to the Alaska Constitution requirements specified in Article
16 IX, Section 13 and that expenditure of public funds take place in accordance with
17 the appropriation procedures expressly provided for in the constitution.

18
19 **PRAYER FOR RELIEF**

20
21 ***WHEREFORE***, Plaintiff requests the following relief:

22 A. Declaratory relief holding that The Alaska Legislature's ratification of
23 the so-called RPL allocation specified by the LB&A on May 11, 2020 is
24 inconsistent with express terms of the Alaska Constitution;

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26 B. Declaratory relief holding that to the extent the Alaska Legislature may
27 ratify recommendations or spending sanctioned by the LB&A deliberations,
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2 including action taken according to the RPL process, the allocations must be based
3 on valid pre-existing authorization or appropriation authority lawfully enacted by
4 the Alaska Legislature.

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6 C. Equitable relief in the form of a permanent injunction prospectively
7 requiring Lucinda Mahoney and the State of Alaska from withdrawing money
8 from the treasury except in accordance with appropriations or valid authorization
9 made by law;
10

11 D. An award of costs and reasonable fees associated with maintaining this
12 public interest lawsuit, and;
13

14 E. Any other relief necessary to protect the rights of the Plaintiff and the
15 citizens of Alaska under the Alaska Constitution.
16

17 **DATED** this 20th day of May, 2020 at Juneau, Alaska.

18
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20 **LAW OFFICE OF**
JOSEPH W. GELDHOF

21 

22
23 _____
24 Joseph W. Geldhof
25 Alaska Bar # 8111097
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1
2 **Certification**

3 I certify that a copy of this Amended Complaint
4 was hand-delivered to the Office of the Alaska
5 Attorney General on the sixth floor of the Dimond
6 Courthouse in Juneau, Alaska with a request that
7 the document be sent by electronic transmission
8 to Margaret Patton-Walsh, Assistant Attorney
9 General in the Attorney General's Anchorage
10 Office who on information and belief is believed to
11 be counsel of record for the State of Alaska and
12 Commissioner Lucinda Mahoney in this case.

13 I further certify that a copy of this Amended
14 Complaint was sent by via U.S.P.S.
15 to Attorney General Clarkson at the
16 following address:

17
18 1031 West 4th Street, Suite # 200
19 Anchorage, Alaska 99501

20
21 DATED: May 20, 2020

22
23 By: 
24 Joseph W. Geldhof
25
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27
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