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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

**COMBINED RESPONSE TO STATE OF ALASKA'S PENDING  
MOTIONS FOR SUMMARY JUDGMENT**

**INTRODUCTION**

Plaintiff, Eric Forrer ("Forrer"), on behalf of the public, through counsel, files a combined response to the *State's Motion for Summary Judgement Dismissing the Complaint as Moot*, dated June 22, 2020 and the additional request for summary judgment contained in the *States Opposition to Plaintiff's*

1 ***Motion for Preliminary Injunction and Cross-Motion for Summary Judgment***

2  
3 dated June 30, 2020.

4 **ARGUMENT**

5 **A. Mootness**

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7 This case is not moot, not least due to the pending hearing schedule for July 9,  
8 2020, in regard to Forrer's request for limited injunctive relief. But even if the  
9 court decides not to issue the limited injunctive relief Forrer has requested in  
10 regard to the expenditure of the business relief portion of the CARES Act funds  
11 received by the State of Alaska, entry of summary judgment according to the  
12 doctrine of mootness is not justified. The State's motion for summary  
13 judgement on mootness grounds must be denied under relevant Alaska case law  
14 and because the case is one of substantial public interest.  
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17 Despite the alleged the "ratification" of the governor's spending actions  
18 according to HB 313, this lawsuit should not be dismissed or otherwise  
19 disposed of on procedural or substantive grounds at this juncture and certainly  
20 not based on the concept of mootness. "Under ordinary circumstances, [a court]  
21 will refrain from deciding questions where events have rendered the legal issue  
22 moot." <sup>1</sup> A claim may be moot "if it is no longer a present, live controversy, and  
23 the party bringing the action would not be entitled to relief, even if it prevails." <sup>2</sup>  
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27 <sup>1</sup> *Fairbanks Fire Fighters Ass'n Local 1324 v. City of Fairbanks*, 43 P.3d 1165, 1167  
28 (Alaska 2002) (quoting *Gerstein v. Axtell*, 960 P.2d 599, 601 (Alaska 1998)).

<sup>2</sup> *Id.* (quoting *Gerstein v. Axtell*, 960 P.2d 599, 601 (Alaska 1998)).

Typically, “mootness is found because the party raising [a claim] cannot be given the remedy it seeks even if the court agrees with its legal position.” <sup>3</sup>

Without citation to any relevant mootness legal authority, <sup>4</sup> the State claims HB 313 “cured any alleged deficiencies,” rendering Forrer’s lawsuit is now somehow miraculously “now moot.” <sup>5</sup>

Underlying Forrer’s claims by which he seeks judicial relief is the contention that appropriations of treasury funds must be made by the legislature, that the RPL provisions utilized by the executive branch to allocate public funds are constitutionally dubious and that a putative ratification by the legislature cannot remedy the constitutional violations of this case.

Each of these issues remain in controversy and legally unresolved by the Court. In particular, while the State suggests that HB 313 represents valid curative legislation, <sup>6</sup> the fact that Forrer takes the opposing that the ratification was inadequate to cure the constitutional infirmities undercuts the State’s mootness argument. Forrer is entitled as a matter of law to be heard on this significant public interest issue.

What Forrer fundamentally seeks from this Court is a declaration that the constitutional positions with regard to the expenditure of public funds must

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<sup>3</sup> *Id.* at 1168.

<sup>4</sup> See Alaska R. Civ. P. 77(b)(2) (advising that motions before the courts must include “the points and authorities upon which the moving party will rely”).

<sup>5</sup> State’s *Motion Summary Judgment*, June 22, 2020 at pages 5-6.

<sup>6</sup> *Id.*

1 take place according to the appropriation standards in the Alaska Constitution,  
2 but mostly <sup>7</sup> as applicable to instances of similar state spending in the future. <sup>8</sup>  
3 Forrer's request for prospective application the constitutional principles he  
4 seeks to litigate in this case strongly suggests summary judgment based on  
5 mootness would be inappropriate.<sup>9</sup> Forrer, who brings this suit as a citizen in  
6 the interests of the state and its people and for the protection of the Alaska  
7 Constitution, should be allowed to seek prospective relief in regard to the  
8 integrity of the Alaska Constitution, a prospect that requires this Court to reject  
9 the State's assertion that the case is moot.  
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13 But even if this Court decides the legislature could validly "ratify" the  
14 governor's spending plan in this case, and that ratification could actually moot  
15 the case, the Court should still hear Forrer's claims because the public interest  
16 exception to mootness applies and this is a case of significant import to the  
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19 <sup>7</sup> The exception to Forrer's request for prospective relief is related only to the business relief  
20 funds the executive branch now seeks to expend according to standards inconsistent with  
21 criteria adopted in HB 313.

22 <sup>8</sup> Non-retroactive application in the form of a prospective declaration and prospective  
23 injunctive relief is what Forrer believes is an appropriate remedy under most of the facts  
24 in this case. At the core of this dispute is Forrer's belief that both the executive branch  
25 and the legislative branch improperly avoided a constitutionally mandated appropriation  
26 process and instead settled on a ratification process that was inapposite to instant dispute.  
27 to the , and retroactive treatment would result in undue hardship to many beneficiaries of  
28 the RPL-distributed CARES Act funds. See *State v. Fairbanks N. Star Borough*, 736  
P.2d 1140, 1144 (Alaska 1987). Forrer argues the prior case law on ratification is  
inapposite, in this instance.

<sup>9</sup> See *Fairbanks Fire Fighters Ass'n Local 1324 v. City of Fairbanks*, 43 P.3d 1165,  
1167 (Alaska 2002) (demonstrating, unlike Forrer's case, the existence of mootness when  
the Court could not "give [the union prevailing party] further relief even if . . . agree[ing]  
with the union's legal argument," because the union was "already given the remedy it  
seeks").



1 welfare of the state. Alaska courts may “choose to address certain issues if  
2 they fall under the public interest exception to the mootness doctrine.”<sup>10</sup> A  
3 court looks to apply the public interest exception to otherwise moot cases by  
4 examining three main factors: “(1) whether the disputed issues are capable of  
5 repetition, (2) whether the mootness doctrine, if applied, may cause the review  
6 of the issues to be repeatedly circumvented, and (3) whether the issues  
7 presented are so important to the public interest as to justify overriding the  
8 mootness doctrine.”<sup>11</sup> “None of the individual factors is dispositive”; a court  
9 must “use [its] discretion to determine whether the public interest dictates that  
10 immediate review of a moot issue is appropriate.”<sup>12</sup> Significantly, cases which  
11 raise questions concerning “the legal power of government officials” have been  
12 regarded as “sufficiently important to the public interest to merit  
13 consideration.”<sup>13</sup>

14 Additionally, it is conceivable, perhaps even likely, that the federal  
15 government will supply Alaska and other jurisdictions in our republic with  
16 additional funds to deal with the COVID-19 pandemic. Repetition of the  
17 funding allocation issues presented in this case may rise again and perhaps in

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26 <sup>10</sup> *Id.* at 1168.

27 <sup>11</sup> *Id.* (quoting *Kodiak Seafood Processors Ass’n v. State*, 900 P.2d 1191, 1196 (Alaska 1995)).  
28 *See also Alaska Pub. Def. Agency v. Superior Court*, 450 P.3d 246, 251 n.18 (Alaska 2019).

<sup>12</sup> *Id.* (citing *Legislative Council v. Knowles*, 988 P.2d 604, 606-07 (Alaska 1999)).

<sup>13</sup> *Id.* at 1169.

1 the near future. For all these reasons, this case is not move and summary  
2 judgment on this point should be denied.  
3

#### 4 **B. The Merits Underlying Forrer's Constitutional Claims**

5 The case brought by Forrer seeks to resolve significant constitutional  
6 issues revolving around the appropriation powers expressly set out in Article  
7 IX, Section 13. Additional constitutional issues are raised in this case of  
8 obvious significance to the public interest including questions pertaining to the  
9 governor's authority, the legislature's authority and duties, and questions of  
10 separation of powers. Not least of these issues is the attempt by the State to  
11 use the *Fairbanks North Star Borough* case as a justification for allocating  
12 \$1.5B in public funds according to the RPL process and then claiming that a  
13 *post hoc* ratification by the legislature was constitutionally sound. The State  
14 characterizes this assertion as "the legislature can rescue otherwise  
15 unconstitutional spending decisions by passing curative legislation," <sup>14</sup> a  
16 proposition Forrer believes wildly misapplies case law and misconstrues  
17 reality.  
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22 The State apparently also seeks summary judgment by cross-motion in  
23 the filing related to second request for injunctive relief sought by Forrer in  
24 regard to the business relief portion of the CARES Act funds. <sup>15</sup> Without any  
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28 <sup>14</sup> State's *Motion Summary Judgment*, June 22, 2020 at page 6.

<sup>15</sup> State's *Cross-Motion Summary Judgment*, June 30, 2020 at page 30.

Combined Response to Mtn's for S.J.

July 7, 2020

*Forrer v. State of Alaska, et al*

1JU-20-7644 Civil

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2 amplification from the State in their June 30, 2020 filing on why summary  
3 judgment is warranted, Forrer (or at least Forrer's counsel), is at a loss on how  
4 to adequately respond but guesses the basis for the State's contention that it  
5 should obtain summary judgment is based on the scant discussion previously  
6 submitted by the State in regard to the ratification of the allocation via the RPL  
7 topic, where the State suggested the matter should be disposed of according to  
8 the *Fairbanks North Star Borough* case.  
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11 The situation in the *Fairbanks* case where the legislature "cured" what  
12 had been determined by the judiciary to be an unconstitutional act had to do  
13 with the impoundment of a valid appropriation. The unconstitutional act by the  
14 executive branch was eventually ratified by the legislature but the obvious  
15 significance of the ratification act was that it was related to a validly adopted  
16 appropriation made by the legislature.  
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19 In the current case, there is no valid appropriation followed by an  
20 unconstitutional act by that executive branch that can be "cured" by  
21 ratification. The legislature is without the ability to cure the unconstitutional  
22 allocation of funds by the executive branch using the RPL procedures,  
23 procedures the executive branch now is busily seeking to circumvent in any  
24 event.  
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## CONCLUSION

For the reasons discussed in detail, *supra*, this case is not moot. Accordingly, the State's requests for summary judgment on this point should be denied.

With regard to the vague request for summary judgment by cross-motion, as requested by the State on June 30, 2020, this request should be denied, even prior to the State filing a reply as would be normally allowed by the civil rules.

Instead, this court should first deal with the pending request by Forrer's request that the State adhere to the eligibility standards for business relief contained in the RPL drafted by the executive branch and ratified by the legislature. Following that, the court should conduct a scheduling conference and inquire of both parties on when they will be prepared to address the underlying merits of Forrer's constitutional claims.

Given the import of the significant issues at issue in this case, Forrer believes simultaneous briefing by both parties in regard to their respective positions followed by both sides completing a simultaneous reply is appropriate.

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3 DATED this 7<sup>th</sup> day of July, 2020 at Juneau, Alaska.  
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5 LAW OFFICE OF  
6 JOSEPH W. GELDHOF

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8 \_\_\_\_\_  
9 Joseph W. Geldhof  
10 Alaska Bar # 8111097  
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13 **Certification**

14 I certify that a copy of this document  
15 was hand-delivered to: Alaska Attorney General Clarkson,  
16 counsel for the State of Alaska and Commissioners  
17 Lucinda Mahoney and Julie Anderson.

18 DATED: July 7, 2020

19   
20 By: \_\_\_\_\_  
21 Joseph W. Geldhof  
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