

anc.law.ecf@alaska.gov

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

KEVIN F. MCCOY and MARY C.)
GEDDES,)
)
Plaintiffs,)
)
v.)
)
MICHAEL J. DUNLEAVY, Governor)
of the State of Alaska,)
)
Defendant.)

Case No. 3AN-19-08301 CI

RECEIVED IN CHAMBERS

DATE: 7.18.19

**DEFENDANT'S OPPOSITION TO MOTION
FOR EXPEDITED CONSIDERATION**

Defendant Michael J. Dunleavy, Governor of the State of Alaska, opposes the plaintiffs' motion for expedited consideration of their motion for a preliminary injunction. Expedited consideration is not warranted because the plaintiffs have not shown that the harms they predict are imminent nor that they would be averted by the requested preliminary injunction. The Court should consider the motion on the normal timeframe to allow for higher quality briefing as well as time for the other branches of government more suited to tackling budgetary issues—the Legislature and the Governor—to continue to work on reaching a solution that may moot this lawsuit. The Legislature and Governor have already made progress towards resolving these issues;¹ the Court should not throw a judicial wrench into the works.

¹ James Brooks, "Gov. Dunleavy calls lawmakers to Juneau in bid to end budget deadlock," Anchorage Daily News (July 17, 2019), available at <https://www.adn.com/politics/alaska-legislature/2019/07/17/gov-dunleavy-calls-lawmakers-to-juneau-in-bid-to-end-budget-deadlock/> (last accessed July 17, 2019).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

The plaintiffs' alleged irreparable harms are not caused by the conduct that their complaint claims is illegal—i.e., the Governor's special session call. The complaint alleges that AS 24.05.100(b)—which allows the Governor to designate the location of a special session that he calls—is unconstitutional, either facially or as applied to a situation where the Legislature does not agree on the location. But the plaintiffs do not claim that the special session in Wasilla has caused them irreparable harm—instead, the alleged harms stem from the Governor's budget vetoes.

And the plaintiffs have not offered proof that the very expedited schedule they propose is needed to avert any of the harms they predict will be caused by the budget vetoes. The effect of the vetoes will unfold over a long period of time in different ways, as individuals and institutions make adjustments to the fiscal effect of the vetoes. The plaintiffs assert in an affidavit filed after their motion for expedited consideration that a ruling is needed as soon as possible because "lives hang in the balance." But the plaintiffs do not provide any support for that alarming claim. The vetoes do not mean that Medicaid reimbursements will end tomorrow, or even next week. Nor will municipalities immediately raise property taxes.² The latest news reports indicate that the University of Alaska has postponed until July 30 its decision on how to adjust to the

² In fact, the notice to homeowners from the Municipality of Anchorage attached to the plaintiffs' affidavit states that "[t]his year, despite the cost-shifting taking place at the State, the Municipality of Anchorage is holding property taxes steady at the local level." Aff. of Kevin F. McCoy and Mary C. Geddes in support of motion for expedited consideration, Appx. E (July 15, 2019).

reduction in funding from the State.³ The plaintiffs cite partial vetoes of appropriations to the Village Public Safety Officer program without establishing what effect those cuts will have—news reports indicate that the veto targets funds earmarked for unfilled positions.⁴ The plaintiffs have thus failed to demonstrate imminent harm.

Moreover, this case is not “noncomplex,” as the plaintiffs suggest in their affidavit. Instead it involves the nuanced constitutional doctrine of separation of powers. Nor does the case present “no disputed facts.” To the contrary, the plaintiffs make factual representations about irreparable harm—an integral part of the preliminary injunction analysis.⁵ They have submitted an affidavit in support of their previously filed motion for expedited consideration asserting specific harms, on top of the more generalized affidavits they filed in support of the motion for preliminary injunction. The plaintiffs should not assume that the defendant will concede their assertion of harms to be accurate—the defendant must be allowed the opportunity to present his defense. Adhering to the standard timeframe will improve the quality of briefing and evidence that the Court receives and will assist the Court in ultimately making the right decision.

Rushing a decision is not worth the cost of shortchanging the quality of the briefing and analysis because the plaintiffs have not even established how the

³ McCoy & Geddes Aff. Appx. D (Tegan Hanlon, “University of Alaska governing board delays vote on whether to declare financial emergency,” Anchorage Daily News (July 15, 2019)).

⁴ James Brooks, “Dunleavy vetoes \$444 million from operating budget,” Anchorage Daily News (June 28, 2019), available at <https://www.adn.com/politics/alaska-legislature/2019/06/28/gov-mike-dunleavy-vetoes-444-million-from-alaska-state-operating-budget/> (last accessed July 16, 2019).

⁵ See *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

preliminary injunction they seek would prevent the harms they allege. Unless and until the Legislature overrides the Governor's vetoes, individuals and institutions (e.g., the University's Board of Regents) will continue to make decisions based on the probability that the vetoes will stand in the end. Regardless of the deadline for overriding the vetoes, they are effective until the Legislature overrides them. If the Legislature had the votes to override them, it would have already called itself into special session at the location of its choice and done so. Yet it has not. So even if the Court were to issue the requested injunction, the Legislature would remain unlikely to override the vetoes. In the meantime, most people and institutions will act on the reasonable assumption that the vetoes will stand, and the plaintiffs' predicted harms will not be averted.

Finally, although the Court's hasty intervention with a preliminary injunction would not prevent the plaintiffs' predicted harms, the other branches of government more suited to tackling budgetary issues—the Legislature and the Governor—continue to work on reaching a solution for the people of Alaska. The Governor has amended his special session proclamation by changing the location to Juneau and adding new subjects for the Legislature's consideration, and the Legislature continues to meet.⁶ The Court should allow the Legislature and the Governor the time and space to find a path forward rather than intervening prematurely and without the benefit of considered deliberation.

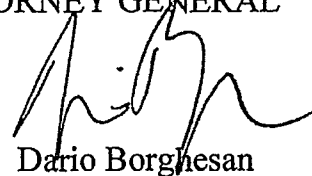
⁶ Brooks, "Gov. Dunleavy calls lawmakers to Juneau in bid to end budget deadlock," *supra* note 1.

For all these reasons, it is better to get the answer to the important constitutional question in this case right than to get it wrong a little sooner. The Court should deny expedited consideration.

DATED July 18, 2019

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:



Dario Borghesan
Assistant Attorney General
Alaska Bar No. 1005015

Margaret Paton-Walsh
Chief Assistant Attorney General
Alaska Bar No. 0411074

Laura Fox
Assistant Attorney General
Alaska Bar No. 0905015

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100