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

Josett Banks, et al., Appellants, v. **Municipality of Anchorage,** Appellee.	No. 3AN-23-06779-CI
Joene Atoruk, et al., Appellants, v. **Municipality of Anchorage,** Appellee.	No. 3AN-23-07037-CI

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APPELLANTS' SUPPLEMENTAL BRIEF REGARDING *SMITH V. ANCHORAGE*

The Court invited supplemental briefing regarding the impact of *Smith v. Municipality of Anchorage* on these consolidated administrative appeals.[1] *Smith* makes clear that this Court has subject-matter jurisdiction over the constitutional issues raised here.[2] *Smith* further instructs superior courts to ensure that the administrative record is adequate for meaningful appellate review of those issues.[3] Here, review of the breadth of Appellants' constitutional claims requires additional records from the Municipality. As suggested in *Smith*,[4] this Court should order the Municipality to supplement the administrative record with all records relevant to the challenged "prohibited campsite" determinations and abatements.

[1] Order for Suppl. Briefing (Dated May 12, 2025) (citing *Smith v. Municipality of Anchorage*, S-18710, 2025 WL 1352024 (Alaska May 9, 2025)).
[2] *Smith*, 2025 WL 1352024, at *2–6.
[3] *Id.* at *6–8.
[4] *Id.* at *8.

ARGUMENT

I. *Smith* confirms that this Court has subject-matter jurisdiction over the constitutional issues raised in these consolidated administrative appeals.

The Alaska Supreme Court held in *Smith* that the superior court has authority to consider constitutional claims raised in administrative appeals of "prohibited campsite" nuisance determinations and abatements.[5] These consolidated appeals are procedurally identical to *Smith*; thus, this Court should proceed with Appellants' constitutional claims.

II. The Court should order the Municipality to supplement the administrative record because the current record is insufficient for appellate review.

The Court in *Smith* recognized that "[a] right to appeal generally encompasses the right to a record sufficient for appellate review"[6] and directed the superior court "to take the necessary steps to ensure that it has such a record."[7] Here, Appellants have consistently maintained that more robust factual development would facilitate judicial review of the full breadth of their claims.[8] The Municipality concedes as much.[9] The Court should therefore order the Municipality to supplement the administrative record with all documents relevant to these appeals.

A. A supplemented record will facilitate consideration of Appellants' facial and as-applied arguments.

Appellants demonstrated in their Opening Brief that the Municipality's "prohibited

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[5] *Id.* at *1.
[6] *Id.* at *7.
[7] *Id.* at *1.
[8] *See, e.g.*, Mot. for Trial de Novo at *13–16 (Dated Oct. 26, 2023); Reply in Supp. of Trial de Novo at *2–3 (Dated Nov. 29, 2023); Opening Br. at *41 (Dated Dec. 9, 2024).
[9] Opp'n to Mot. for Trial de Novo at *2 (Dated Nov. 14, 2023) ("The Appellants are correct that a larger record is needed to address constitutional claims of homeless camp abatements[.]"); Appellee Br. at *16 (Dated April 2, 2025) ("[T]he spare administrative record does not facilitate adjudication of matters outside the face of the notice.").

camping" nuisance regime is unconstitutional, relying largely on facial analysis due to the thin administrative record. While the Court could analyze Appellants' claims as briefed, a more robust factual record will support Appellants' facial arguments and facilitate simultaneous consideration of their as-applied claims. Even where the supplemented record fails to provide new detail,[10] the absence of such detail will help illuminate the constitutional infirmities of the Municipality's "prohibited campsite" regime.

B. The record is not limited to the posted notice.

The *Smith* Court attributed the sparsity of the record to the Municipality's belief that appellate review was limited to the narrow question of whether the posted notice complied with the Municipal Code.[11] The Court held, however, that "the superior court's jurisdiction is not so limited."[12] Because the Municipality has relied here on the same justification for its spare administrative record,[13] it should now be ordered to supplement the record with all documents and other materials relevant to the challenged "prohibited campsite" determinations and abatements.

Specifically, the Municipality should produce all records related to the "prohibited campsite" determinations, notices, and abatement actions at and around Cuddy and Davis Parks in June 2023. This should include, but not be limited to: all decisional documents

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[10] E.g., Appellants do not anticipate that a supplemented record can show that there were locations where they could legally shelter themselves, that they were afforded pre-deprivation hearings, or that a truly unusual emergency situation existed.
[11] *Smith,* 2025 WL 1352024, at *6.
[12] *Id.* at *1.
[13] Opp'n to Mot. for Trial de Novo at *2 (Dated Nov. 14, 2023) (asserting that a more robust factual record "is not appropriate when the superior court sits in its limited appellate jurisdiction and such record would not relate to the administrative notice and procedure"); Appellee Br. at *16 (Dated April 2, 2025).

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(including all "memoranda, emails, notes, or other documentation of the thought process that presumably went into reaching"[14] determinations that the relevant locations were "prohibited campsites"); the rental agreement for the Summer Solstice Concert, the JBER lease, and any other justifications relied upon in selecting those sites for abatement [Exc. 69, 70]; all records related to the storage of property related to abatement of the Cuddy Park site; all records related to consideration and rejection of alternative, less-restrictive means to further the Municipality's interests; all relevant Anchorage Police Department complaint call logs; and all records related to the decision to notice any and all other city locations as "Closed to the Public" or similar around June 2023. [Exc. 19–21].

C. The record is not shielded from review as executive policymaking.

Smith implicitly rejects any contention that decisional documents are privileged from disclosure. Indeed, the Court's opinion stressed the "central importance of a decisional document in administrative appeals[.]"[15] Far from being privileged, production of such documents prevents arbitrary government action and is essential to judicial review.[16] The Municipality cannot circumvent disclosure of its decisional documents by claiming they are the product of a "purely internal executive policy decision."[17]

D. An order to supplement the record is the most appropriate vehicle for the necessary document production.

The *Smith* Court identified three possible ways for the superior court to ensure that the administrative record is adequate: order the Municipality to supplement the record,

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[14] *Smith,* 2025 WL 1352024, at *6.
[15] *Id.* at *8.
[16] *Id.* (quoting *Southeast Alaska Conservation Council v. State*, 665 P.2d 544, 549 (Alaska 1983), *superseded by statute on other grounds*, Ch. 86, § 1(b), SLA 2003).
[17] Appellee Br. at *16 (Dated April 2, 2025).

remand to the Municipality for further proceedings, or conduct a trial de novo.[18] Here, an order to supplement the record is the most appropriate first step.[19] If the Municipality has decisional documents sufficient to enable appellate review, it should produce them. Then, the parties should be given an opportunity to weigh in on whether the supplemented record is adequate for review. If it remains inadequate, the Court may wish to consider whether the *Smith* ruling constitutes good cause for revisiting its decision denying a trial de novo.[20] Remand to the Municipality, however, is not appropriate here. There are no agency fact-finding procedures for this type of action, and remand would invite the development of post-hoc litigation justifications for the determinations, particularly given how much time has passed since the relevant decision-making. For these reasons, the Court should order the Municipality to supplement the administrative record.

CONCLUSION

Smith makes clear that the superior court has subject-matter jurisdiction over Appellants' constitutional claims and directs the superior court to ensure that it has a sufficient record for meaningful appellate review. This Court can and should remedy the inadequacy of the existing record by ordering the Municipality to supplement it with all decisional documents and other records pertaining to the notices challenged here.

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[18] *Smith,* 2025 WL 1352024, at *8.
[19] Appellants expect that issuance of such an order may change the timing or substance of oral argument currently calendared for July 7, 2025.
[20] Order Den. Mot. for Trial De Novo (Dated February 5, 2024). *See* Alaska Civil Rule 77(k)(1), (5) (good cause may justify reconsideration of a ruling up to 10 days after notice of final judgment, upon either a party's or the Court's own motion).

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CERTIFICATE OF TYPEFACE
This brief uses a 13-point Times New Roman typeface.

CERTIFICATE OF SERVICE
On May 30, 2025, a true and correct copy of the foregoing Supplemental Brief was served on:

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