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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAMEN AGUILA, MARIO LANZA DYER, and JAMIE SCARBOROUGH,	)	
Plaintiffs,	)	
vs.	)	
MUNICIPALITY OF ANCHORAGE,	)	
Defendant.	)	
	)	Case No. 3AN-25-04570CI

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO CONVERT TO AN ADMINISTRATIVE APPEAL

1. As the Municipality explained in its motion, the Alaska Supreme Court "ha[s] consistently held that '[h]owever denominated, a claim is functionally an administrative appeal if it requires the court to consider the propriety of an agency determination.'"[1]

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[1] *Yost v. State, Div. of Corps., Bus. And Pro. Licensing*, 234 P.3d 1264, 1273 (Alaska 2010) (quotation marks omitted).

Accordingly, if a case challenging the lawfulness of administrative action *can* be an appeal, then "it *must* be treated as an appeal fully subject to the appellate rules."[2]

Those principles require the Court to convert this matter to an appeal. In their opposition, Plaintiffs/Appellants do not dispute that the Anchorage Municipal Code, as interpreted by the Alaska Supreme Court in *Smith*, has designated abatements as final administrative actions subject to administrative appeal.[3] They do not dispute that *Smith* held that such appeals are proper vehicles for resolving constitutional questions like those presented here, such as whether abatement "violate[s] due process because it allow[s] the Municipality to seize personal property [allegedly] without an opportunity for a hearing."[4]

Accordingly, under the applicable case law, there should be no dispute that, because the constitutional challenges to abatement that Plaintiffs/Appellants seek to bring here can be heard in an administrative appeal, they must be. As the Supreme Court has made clear, "[i]f the appellate rules apply, relief may be sought *only* in an appellate action."[5] That efficient method for resolving this appeal is thus compelled by precedent.[6]

2. Plaintiffs/Appellants incorrectly resist that conclusion. In doing so, they (a) misunderstand the case law as allowing any appellant to avoid the appellate rules simply by

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2 *Fedpac Int'l, Inc. v. State*, 646 P.2d 240, 241 (Alaska 1982) (emphasis added).

3 *See* AMC 15.20.020B.15.e ("A posted notice of campsite abatement is a final administrative decision and appeals shall be to the superior court … in accordance with the Alaska court rules."); *Smith v. Municipality of Anchorage*, 568 P.3d 367 (Alaska 2025).

4 *Smith*, 568 P.3d at 369.

5 *Fedpac,* 646 P.2d at 241 (emphasis added).

6 Contrary to Plaintiffs'/Appellants' suggestion, Opp. 10, efficiency is an important consideration in the doctrine: "[A]ppellate review should be less expensive and time consuming than" original actions because such actions "entail[] discovery and evidentiary hearings." *Dep't of Corr. v. Kraus*, 759 P.2d 539, 540 (Alaska 1988).

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saying the words "declaratory judgment" in the complaint; (b) contradict representations their counsel recently made to the Alaska Supreme Court in *Smith*; and (c) incorrectly imply that *Smith* appeals violate due process.

a. In their opposition, Plaintiffs/Appellants voluntarily abandon nearly all of their original claims. They state that their sole "surviving claim is for declaratory relief."[7] And they assert that this matter therefore cannot be converted to an appeal because, they say, "claims for declaratory relief are not governed by the Appellate Rules," period.[8]

That analysis misunderstands the case law. No precedent from the Alaska Supreme Court holds that an appellant can escape the appellate rules simply by including the words "declaratory judgment" in a complaint. And for good reason. Such an easily invoked exception would swallow the rule. The Supreme Court has previously rejected such empty formalism, holding that the line between an original action and an appeal does not depend on the "labeling" a litigant may have chosen in a complaint; the "essential question is a *functional* one."[9] Accordingly, no appellant could bring what is functionally a challenge to administrative action simply by filing a complaint seeking a declaratory judgment against the administrative action. The Municipality is aware of no case to the contrary.

The cases on which Plaintiffs/Appellants rely address a different circumstance not present here: declaratory judgments seeking to invalidate a regulation or statute on the ground that it was enacted in violation of some other structural requirement unrelated to the

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7 Opp. 1.

8 Opp. 3.

9 *Winegardner v. Greater Anchorage Area Borough Bd. of Equalization*, 534 P.2d 541, 545 (Alaska 1975) (emphasis added).

lawfulness of administrative action. Accordingly, declaratory actions focused on whether a legal provision was properly enacted in the first place (because, for example, it allegedly unlawfully delegates power away from the legislature) can proceed in original suits because they do not challenge the lawfulness of administrative action taken under and consistent with the regulation or statute. But legal challenges focused on whether a statute or regulation can be lawfully applied in administrative actions without violating individual constitutional rights must be channeled for appellate review under the appellate rules. That is the proper understanding of the Alaska Supreme Court's guidance in this area.

In *Owsichek v. State, Guide Licensing & Control Board*, for example, the Supreme Court held that injunctive claims targeted at the lawfulness of administrative actions (there, exclusive guiding permits) had to proceed under the appellate rules.[10] That conclusion was required, the Court explained, to avoid evasion of the appellate rules, such as the 30-day limit for filing administrative appeals. "If we held otherwise, after the time for appeal set forth in the Appellate Rules had elapsed, many persons could still frame the issue they would have raised in their administrative appeal as a request for injunctive relief."[11] It did not make a difference that the plaintiff challenged the administrative actions on constitutional grounds: "If we held that every complaint alleging the deprivation of constitutional rights stated an independent action, almost any person who was dissatisfied with the result of an administrative proceeding could bypass the requirements of [the appellate rules] by including such allegations in his or her complaint," and "[t]here is no authority and no

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10 627 P.2d 616, 619 (Alaska 1981).

11 *Id.* at 620.

persuasive reason for judicially creating such a large gap in the applicability of [the appellate rules] to actions challenging an administrative decision."[12] All of the plaintiffs' claims for relief aimed at administrative actions were therefore required to proceed as appeals.

In addition to challenging administrative actions regarding exclusive guiding permits, the plaintiff in *Owsichek* had also separately sought a judgment declaring the statute at issue "unconstitutional because it delegates authority to the Guide Board without adequate standards."[13] The Supreme Court allowed that matter to go forward as an original action, not simply because it sought "declaratory relief" as such, but because it sought declaratory relief regarding a structural challenge to the existence of the statute and regulations that would "require[] the superior court to review only the statute and regulations and not the Guide Board's decision"—relief that "does not challenge the board's decision" as violating any individual rights.[14]

The Supreme Court applied the same reasoning in *State, Department of Transportation & Public Facilities v. Fairbanks North Star Borough*.[15] There, the State sought a declaration that a Borough ordinance was promulgated in excess of the Borough's statutory authority to legislate on that issue and was therefore invalid.[16] The Supreme Court concluded that the complaint could proceed because it "does not allege any error in an administrative action," so "the doctrine" about appellate review of administrative action and

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12 *Id.* at 620.
13 *Id.* at 619.
14 *Id.* at 619.
15 936 P.2d 1259 (Alaska 1997).
16 *Id.* at 1262.

exhausting administrative remedies "does not apply."[17] "As in *Owsichek*, the State's request for declaratory relief" of that type "requires the superior court to consider only the relevant statutes and regulations" and "is properly characterized as an independent action."[18]

The Supreme Court has thus made clear that claims whose function is to challenge the legality of administrative actions taken under a statute, regulation, or ordinance as unlawful, including violations of individual constitutional rights such as due process, can and must by brought by appealing from administrative actions. But separate claims challenging the regulations, statutes, or ordinances themselves on legal grounds wholly unrelated to administrative action (such as *ultra vires* or legislative non-delegation claims) can be heard in original actions seeking those particular types of declaratory relief.

That narrow exception to the doctrine of appellate channeling does not apply here. Plaintiffs/Appellants do not contend that the abatement ordinance is invalid for a reason *external* to whether application of that ordinance in an administrative action would violate individual constitutional rights. To the contrary, their request for declaratory relief seeks a declaration that "the Municipal Code's 'prohibited camping' regime violates the Alaska Constitution"[19] on grounds entirely focused on the lawfulness of the administrative abatements at issue in the underlying causes of action. They thus seek a declaration that:

- abating camps "without adequate notice and without individual pre-deprivation hearings … violates the[ir] due process rights"[20];

17 *Id.*
18 *Id.*
19 Compl. 21.
20 Compl. 15.

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- "abating encampments … constitutes a banishment regime" and "is a form of cruel and unusual punishment"[21];
- "seizure and destruction of plaintiffs' unabandoned personal property … violates plaintiffs' right to be free from unreasonable seizures"[22]; and
- "disclosure or destruction of personal information during an abatement … violates Plaintiffs' constitutional right to privacy."[23]

Those requests for declaratory relief are focused entirely on whether abatement of prohibited encampments—administrative actions—would violate various individual constitutional rights in various alleged ways. The declaratory judgments that Plaintiffs/Appellants seek here are thus conceptually inseparable from abatement action taken under the Code. They bear no relation to the kind of declarations the litigants sought in *Owsichek* or *Fairbanks North Star Borough* regarding the validity of the legal regimes at issue on grounds wholly unrelated to administrative action taken under those regimes.

As the Supreme Court explained in another case between Fairbanks North Star Borough and the State, the kind of argument that Plaintiffs/Appellants advance here "fails primarily because it is not possible to divorce" the subject on which Plaintiffs/Appellants seek a declaratory judgment (the lawfulness of abatement) "from the administrative action" of abatement.[24] In that other Fairbanks case, the Borough brought an inverse condemnation and takings claim against the State regarding State right of way. The Supreme Court

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21 Compl. 16.
22 Compl. 17-18.
23 Compl. 18.
24 *Fairbanks N. Star Borough v. State*, 826 P.2d 760, 764 (Alaska 1992).

explained that "it is not possible to divorce the state's use of the land from the administrative action" establishing the State's claim of right of way because "[t]he right-of-way exists only because of the administrative action," and the Borough's "claim that the state has no legal right to construct the highway on its lands is a direct challenge to the administrative decision."[25] The same is true here. It is not possible to divorce Plaintiffs'/Appellants' claimed individual rights to camp in their preferred locations without removal of their personal property from abatement actions removing such property. After all, as *Smith* explains, "what more is there to abatement besides the removal of personal property from a prohibited campsite?"[26] The declaratory relief sought here regarding the lawfulness of administrative action is thus not wholly independent of administrative action. (If the lawfulness of abatement were independent of administration action, it is hard to see how *Smith* could proceed as an appeal.) Precisely because these claims are *not* separate from administrative abatement action, they cannot proceed separately from an appeal of such administrative action.

b. That analysis comes as no surprise to counsel for Plaintiffs/Appellants, as they advanced the same analysis before the Alaska Supreme Court in *Smith*. There, the ACLU argued that "[t]he questions raised by the Municipality's abatement provisions and practices"—due process, cruel and unusual punishment, and search or seizure—required "constitutionally adequate means to access the Court System," and such "necessary access

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25 *Id.*

26 *Smith*, 568 P.3d at 371.

has been provided for" by administrative appeals.[27] Indeed, the ACLU emphasized, administrative appeals are the *only* proper avenue for bringing such constitutional challenges to abatement: "[C]ivil actions that, at their core, seek to challenge an administrative action are properly converted into agency appeals."[28] So "if an individual filed an original action in superior court seeking relief in the form of holding an abatement invalid, the court could not grant that relief without reversing the agency's determination that abatement was appropriate and noticing it accordingly."[29] "The action would properly then be converted into an administrative appeal."[30]

Having prevailed on that argument in the Alaska Supreme Court in *Smith*, the same ACLU counsel should not now argue the opposite in this Court. Without acknowledging or explaining their own switch in position, counsel for the ACLU queries why the *Municipality* has switched positions *after Smith* and further notes that Superior Courts *before Smith* had indicated that challenges to abatement could proceed through original actions.[31] The accusation that the Municipality "cannot explain why it has reversed course"[32] is incorrect.

Smith changed the landscape. Before *Smith*, the Municipality consistently argued that administrative abatement appeals could consider only compliance with the notice requirements in Code and that constitutional challenges like those at issue in *Smith* or here could be heard only in original actions. But the highest court in our state rejected that

27 ACLU *Smith* Amicus Br. 2-3 (attached).
28 ACLU *Smith* Amicus Br. 13.
29 ACLU *Smith* Amicus Br. 14.
30 ACLU *Smith* Amicus Br. 14.
31 Opp. 5-6.
32 Opp. 6.

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argument and held in *Smith* that these constitutional challenges are properly heard in appeals. The Municipality is responsibly giving effect to that ruling from our state's highest court and explaining the consequences that flow from it. "If the appellate rules apply, relief may be sought *only* in an appellate action."[33] Opposing counsel's apparent buyer's remorse, by contrast, is not an adequate reason for switching positions after using this same analysis to persuade the Supreme Court to rule in their favor in *Smith*. They cannot have it both ways.

c. Finally, this Court should summarily reject Plaintiffs'/Appellants' argument that it would somehow "deny Plaintiffs their due process right to be heard" to convert this matter into an appeal.[34] Their counsel argued before the state Supreme Court in *Smith* that administrative appeals would provide "constitutionally adequate means to access the Court System."[35] And the Supreme Court agreed, ruling that such due process claims could be heard on appeal specifically because the appellate rules are adequate to the task.[36] Plaintiffs'/Appellants' implication here that the appellate rules themselves violate due process regardless of how they may be applied in this case, and that the state Supreme Court therefore violated due process in *Smith* at the invitation of Plaintiffs'/Appellants' own counsel, should be rejected.

Plaintiffs/Appellants seem to be primarily concerned that the appellate rules do not provide for discovery, and that foreclosure of discovery, they say, is an undue obstacle in their desire to "adjudicate the factual issues underlying the 'prohibited camping' Municipal

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33 *Fedpac*, 646 P.2d at 241 (emphasis added).
34 Opp. 1.
35 ACLU Smith Amicus Br. 3.
36 *Smith*, 568 P.3d at 373-77.

Code determinations and subsequent enforcement actions at the agency level."[37] That argument underscores precisely *why* such review is properly channeled into administrative appeals from administrative actions. As explained in Section 2.a above, the Alaska Supreme Court has repeatedly held that the exception for appellate channeling is available only for the narrow class of claims that "requires the superior court to review *only* the statute and regulations and not the [administrative] decision."[38] By seeking to go beyond solely facial review of the abatement ordinance and to instead "litigate such factual issues" related to abatement actions,[39] Plaintiffs/Appellants demonstrate beyond any doubt that the real function of their request for declaratory judgment regarding the unconstitutionality of abatement actions is the actions themselves. For that reason, those claims must be channeled for appellate review of such administrative actions.[40]

CONCLUSION

For these reasons, the motion to convert this action to an administrative appeal should be granted, and the Court should direct the filing of the administrative record and set an appellate briefing schedule.

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37 Opp. 7.

38 *Owsichek*, 627 P.2d at 619 (emphasis added); *see also Fairbanks N. Star Borough*, 936 P.2d at 1262.

39 Opp. 8.

40 Alternatively, for the same reasons, if this Court were to deny the Municipality's motion to convert this matter into an administrative appeal, this Court should make clear that Plaintiffs/Appellants will not be able to obtain discovery into any matters properly channeled for appellate review, and that any surviving claim must be focused exclusively on judicial review of only the face of the abatement ordinance itself, with dispositive briefing to occur on that purely legal issue.

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Respectfully submitted this 25th day of August, 2025.

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Certificate of Service
I certify that on August 25, 2025, I caused to be emailed a true and correct copy of the foregoing to:

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