

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

**American Civil Liberties Union of  
Alaska, Bonnie L. Jack, and  
John D. Kauffman,**

No. 3AN-19-08349CI

Plaintiffs,

v.

**Michael J. Dunleavy, in his official  
capacity as Governor of Alaska;  
and the State of Alaska,**

**Plaintiffs' Notice Regarding  
Oral Argument and  
Request for Clarification**

Defendants.

Plaintiffs American Civil Liberties Union of Alaska, Bonnie L. Jack, and John D. Kauffman submit this Notice in response to the Court's March 24, 2020, Order requesting the parties' respective positions on oral argument. Although Plaintiffs would ordinarily prefer that the Court hold argument as scheduled on the summary judgment motions, Plaintiffs recognize that the circumstances dictated by the COVID-19 pandemic require the parties to abandon their usual expectations and proceed in accordance with the limitations that most effectively protect public health and safety. Plaintiffs are also mindful that these limitations place additional burdens on the Court.

Plaintiffs believe that the issues presented in this case, while unprecedented in nature, are not so complex or technical that oral argument is necessary for either side to flesh out or otherwise refine its position. All the parties' pleadings, motions, and supporting documents filed to date indicate that the Court is faced with a definitive choice between competing legal points of view. Plaintiffs are confident that the Court can render a fully informed decision based on the written submissions and existing record.

Forgoing argument may also be necessary for the Court to render a timely decision. In most cases, the appropriate solution might be to continue the argument until such a time that the Court and parties can appropriately reconvene. But as the Court has recognized, should Plaintiffs prevail, an order restoring the vetoed funds to the Appellate Courts' fiscal year 2020 budget would need to issue soon so the court system can use those funds before the fiscal year ends on June 30, 2020. Waiting too long would weaken or completely undermine the effectiveness of this remedy, and at this point, no one can be certain when conditions that would allow argument to be held will return.

Therefore, given the current state of the pandemic, the relative positions of the parties and the arguments briefed to date, and the need for an expeditious resolution of the case, Plaintiffs conclude that oral

argument should not be required for the Court to adequately consider each party's case and decide the cross-motions. As the Court notes, however, the briefing is not yet complete: Plaintiffs' Opposition/Reply is due April 3, and Defendants' Reply is due on April 10. It is therefore possible that issues could be raised in Defendants' Reply that Plaintiffs do not presently anticipate and would otherwise seek to address at oral argument. In that case Plaintiffs would seek leave to file a sur-reply to ensure that their opportunity to be heard is not prejudiced.

Finally, if the Court declines to hold the argument, Plaintiffs request that the Court clarify its intent to rule on the motions expeditiously. At the January 15 scheduling conference, Plaintiffs understood the Court to say that it intended to announce its decision on the motions at the close of oral argument on April 15. In the absence of oral argument, Plaintiffs respectfully request that the Court inform the parties, if possible, of when a decision can be expected.

Dated March 31, 2020



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### CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, the foregoing was filed by fax to (907) 264-0495 and served on the following via electronic mail:

Jessica Leeah (*jessica.leeah@alaska.gov*)  
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Stephen Koteff