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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**, Plaintiffs, v. **Michael J. Dunleavy**, in his official capacity as Governor of Alaska; and the **State of Alaska**, Defendants.	Case No. 3AN-19-08349CI COPY Original Received AUG 2 6 2019 Clerk of the Trial Courts **Opposition to Motion to Dismiss**

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Defendants have moved to dismiss this case, arguing that Plaintiffs lack standing and that their claims present nonjusticiable political questions. Barring success on those theories, Defendants would have the Court dismiss Plaintiffs' case nonetheless based on "prudential grounds" because, they argue, the Governor's veto will have no real impact and it would be a waste of resources to declare the

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Governor's veto action unconstitutional. But Defendants fail to acknowledge the Alaska Supreme Court's liberal standing jurisprudence that firmly establishes Plaintiffs' interest-injury standing and citizen-taxpayer standing in this case, and Defendants' non-justiciability argument is flatly contradicted by Alaska case law. Furthermore, Defendants' request that the Court decline to rule on prudential grounds trivializes the existential threat to the Court's independence and integrity posed by the Governor's retaliatory and coercive act. For these reasons, the Court should deny Defendants' Motion to Dismiss.

I. Plaintiffs Have Standing to Sue

The question of a plaintiff's standing is "limited to whether the litigant is a proper party to request an adjudication of a particular issue . . . ," the "basic requirement" being one of "adversity." *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (internal quotations omitted). "The concept of standing has been interpreted broadly in Alaska." *Id.* The Alaska Supreme Court has rejected "a restrictive interpretation" of standing, developing instead "an approach 'favoring increased accessibility to judicial forums.'" *Id.* (quoting *Coghill v. Boucher,* 511 P.2d 1297, 1303 (Alaska 1973)). Alaska courts recognize

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two primary categories of standing: interest-injury standing, and citizen-taxpayer standing. *Id.* Alaska courts also recognize associational standing, allowing organizations to bring suit on behalf of their members who would otherwise have standing to sue in their own right.

Interest-injury standing is established if a plaintiff can "show a 'sufficient personal stake in the outcome of the controversy to ensure the requisite adversity.'" *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1092 (Alaska 2014) (quoting *Larson v. State, Dep't of Corr.*, 284 P.3d 1, 11 (Alaska 2012)). Under this analysis, "the degree of injury to interest need not be great: an identifiable trifle is enough for standing to fight out a question of principle." *Larson*, 284 P.3d at 12. "The affected interest may be economic or intangible, such as an aesthetic or environmental interest." *Kanuk,* 335 P.3d at 1092 (quotations and citations omitted).

Citizen-taxpayer standing exists where "the case in question [is] one of public significance." *Trustees for Alaska*, 736 P.2d at 329. In addition, the plaintiffs must be appropriate parties to bring the case. *Id.* Plaintiffs may not be the appropriate parties "if there is a plaintiff more directly affected by the challenged conduct in question who has or

is likely to bring suit," or if "there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action." *Id.* A plaintiff must also be capable "of competently advocating the position it has asserted." *Id.*

A. Plaintiffs Have Interest-Injury Standing

All the Plaintiffs in this case have interest-injury standing under established Alaska Supreme Court precedent. Each has shown a "sufficient personal stake in the outcome of the controversy to ensure the requisite adversity." *Kanuk*, 335 P.3d at 1092. As the Complaint makes clear, the action complained of in this matter is Governor Dunleavy's unconstitutional breach of the separation of powers, committed when he defunded the Court System in the amount of $344,700 in direct retaliation for the Alaska Supreme Court's February 15 decision in *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (Alaska 2019). Plaintiff American Civil Liberties Union of Alaska and its members' interests and core values include "the preservation of the integrity of the Alaska Constitution and the

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principles embodied in it."[1] Complaint at ¶ 14. Plaintiff Bonnie L. Jack's interest is the preservation of Alaska's democratic system of three separate but equal branches of government. *Id.* ¶ 15. And Plaintiff John D. Kaufman's interest is the preservation of state constitutional rights, which he believes are threatened when the courts are attacked by the executive branch. *Id.* ¶ 16.

These interests fit squarely within the range of interests necessary to establish standing, which may be entirely "intangible" or even "aesthetic." *Larson*, 284 P.3d at 12. Defendants do not challenge these interests directly; rather, they assert that the Plaintiffs have not alleged more than an abstract injury to these interests. Motion to Dismiss at 10-12. But in so doing, Defendants have glossed over the Supreme Court's admonition that "the degree of injury to interest need

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[1] The ACLU has "associational standing" to sue on behalf of its members if "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (Alaska 2000). Defendants only dispute that the ACLU's members have standing to sue in their own right, something that has been firmly established for the reasons explained in this Opposition.

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not be great . . . ." *Id.* Indeed, "an *identifiable trifle* is enough for standing to fight out a question of principle." *Id.* (Emphasis added.)

Defendants rely on *Kanuk* to distinguish the interest-injury standing established by the plaintiff-children's assertions of the "practical impacts" of climate change from Plaintiffs' alleged injuries in this case. Defendants ignore, however, some of the specific injury-to-interest statements made by the children, and on which the Court based its standing decision, that alleged fewer "practical impacts" than are obvious in this case. For example, Katherine Dolma feared that "she and her generation will not have the joy of seeing the whales" as the result of climate change. *Kanuk*, 335 P.3d at 1093. Adi Davis feared "that climate change will wipe out the polar bears before she has the chance to see them in the wild and cause glaciers to disappear before her children and grandchildren are able to touch and see them as she has." *Id.* And Avery and Owen Mozen were "sad" because "global warming" had caused the Kennicott Glacier to shrink. *Id.*

The *Kanuk* court had no trouble finding that standing was established by these injury-to-interest statements, given its obligation to draw "all reasonable inferences in the plaintiffs' favor, as courts are required to do on a motion to dismiss . . . ," and "[e]specially in light of

[its] broad interpretation of standing" and its "policy of promoting citizen access to the courts . . . ." *Id.*

It takes little effort to draw similar inferences in Plaintiffs' favor in this case sufficient to deny Defendants' Motion to Dismiss. All three Plaintiffs have joined in the Complaint's assertion that the Governor's action "threaten[s] our democracy and the core system of checks and balances." Complaint ¶ 9. Likewise, all three Plaintiffs contend that the Governor's action "undermine[s] the public trust in the independence and impartiality of the judiciary." *Id.* ¶ 10.

These actions are clearly injurious to the Plaintiffs' articulated interests in "the preservation of the integrity of the Alaska Constitution" (ACLU), "the preservation of Alaska's democratic system of three separate but equal branches of government" (Jack), and "the preservation of state constitutional rights" (Kauffman). Although Plaintiffs have not described their loss of joy or sadness resulting from the Governor's veto, as did some of the children in *Kanuk*, it is easy to infer, as one must do here, that Plaintiffs have presented an *identifiable trifle* in the degree of injury to their interests. Plaintiffs have clearly articulated their interests while setting forth the damage the Governor's action has done to them. For these reasons, and based

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on the Supreme Court's "broad interpretation of standing" and its "policy of promoting citizen access to the courts," *Kanuk*, 335 P.3d at 1093, Plaintiffs have interest-injury standing.

B. Plaintiffs Have Citizen-Taxpayer Standing

As described above, citizen-taxpayer standing exists where "the case in question [is] one of public significance," and the plaintiffs are appropriate parties to bring the case. *Trustees for Alaska v. State*, 736 P.2d 324, 329 (Alaska 1987).

1. This Case is of Public Significance

Plaintiffs allege that Governor Dunleavy unconstitutionally violated the separation of powers by taking an action that impermissibly intrudes on the function of the judiciary. It should be beyond contention that this is a matter of public significance. Nevertheless, Defendants first argue, citing *Sonneman v. State*, 969 P.2d 632 (Alaska 1998), that there must be some demonstrated "impact on a matter of public significance." Motion to Dismiss at 12-13. But this is not the test articulated in *Sonneman*. In fact, *Sonneman* holds that where a party raises a constitutional issue, as the Plaintiffs have done here, that alone is "likely to meet" the public significance requirement. *Id.* at 636; *see also Trustees for Alaska,* 736 P.2d at 329 (public

significance established when constitutional limitations are at issue, and statutory and common law questions may also be very important considerations).

Nowhere in its decision did the *Sonneman* Court attempt to measure the impact of the challenged action to determine whether the plaintiff had citizen-taxpayer standing. To the contrary, the Court held that because the plaintiff had alleged "constitutional violations affecting *not only* his right to vote, but also the *integrity and fairness* of public elections," he had raised "constitutional issues of public significance." *Id.* (Emphasis added.)

Although not necessary to establish citizen-taxpayer standing, Plaintiffs have nonetheless alleged actual impacts that flow from the Governor's unconstitutional and retaliatory defunding decision. Plaintiffs' Complaint asserts that the Governor's action "impermissibly intrudes on the function of the judiciary and threatens the separation of powers because it jeopardizes the independent and impartial adjudication of matters before the court and undermines the public perception of the courts as unbiased tribunals and a coequal branch of government." Complaint ¶ 34. Defendants argue that this impact is

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somehow nonexistent because the Court System issued a statement[2] that "assured the public that the Governor's veto will not have an actual impact on the public's interest in an independent and impartial court system." Motion to Dismiss at 13. But it is impossible to know anything at all from this statement about the "public perception of the courts," for example, or whether present or future litigants could have the necessary confidence in a court system that remains vulnerable to fiscal attack in the wake of a politically unpopular decision.

Furthermore, the actual fiscal impact of the Governor's veto is obvious: the Appellate Courts are $344,700 poorer in fiscal year 2020 as a result. Defendants downplay this unavoidable conclusion by characterizing it as one of "low financial 'magnitude," and therefore

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[2] Defendants have asked the Court to take judicial notice of the Court System's July 2, 2019 statement. Motion to Dismiss at 2-3. It is one thing to take judicial notice of a public statement, but it is quite another for Defendants to expect the Court to rely on the factual nature of the statement without giving "notice to the opposing party of its intent to take judicial notice and 'afford him an opportunity to dispute the facts judicially noticed,'" as it is required to do. *Pedersen v. Blythe*, 292 P.3d 182, 184–85 (Alaska 2012) (quoting *Schwartz v. Com. Land Title Ins. Co.*, 374 F. Supp. 564, 578 (E.D. Pa.)). Moreover, it would be improper for the Court to give any weight to Defendants' factual assertion about the *effect* that the statement may have without first converting Defendants' Motion to Dismiss to one of summary judgment and giving Plaintiffs "a 'reasonable opportunity to present all materials made pertinent'" by the motion. *Id.* (citing Alaska Rule Civ. Pro. 12(b)).

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"not considered to be of public significance." Motion to Dismiss at 13. But again, Defendants mischaracterize the Alaska Supreme Court's citizen-taxpayer jurisprudence. The Court has never held that the "financial magnitude" of every challenged action must be weighed to evaluate its public significance. Instead, the Court has determined that, with respect to challenges to *transfers of public land*, "the magnitude of the transaction and its potential economic impact on the State" should be considered. *Hoblit v. Comm'r of Nat. Res.*, 678 P.2d 1337, 1341 (Alaska 1984). Moreover, in *Hoblit*, on which Defendants rely, it was not the "financial magnitude" of the transaction that led the Court to deny standing at all. Rather, it was the amount of *acreage* at issue that Court found not to be significant. *Id.* This was consistent with the Court's prior holdings in challenges to public land transfers. *See Gilman v. Martin*, 662 P.2d 120, 123 (Alaska 1983) ("Any resident or taxpayer of a municipality has a sufficient interest in the disposition of a *significant number of acres* of the municipality's land to seek a declaratory judgment as to the validity of the disposition.") (Emphasis added.)

This case is much more like those not involving public land transfers in which the Alaska Supreme Court has found sufficient

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public significance to support the plaintiffs' standing. For example, in *Baxley v. State*, 958 P.2d 422 (Alaska 1998), the plaintiff challenged the statutory modification of certain oil and gas leases in the Beaufort Sea, arguing that the legislation violated certain constitutional provisions and competitive bidding statutes. *Id.* at 428. The Court noted the plaintiff's constitutional claims, as well as his argument that the challenged statutes "undermine[d] public confidence in the integrity of the bidding system, and violate[d] the public trust." *Id.* at 428-29. The Court held that "[t]hose issues have public significance." *Id.* at 429. Here, as in *Baxley*, Plaintiffs raise a constitutional challenge to an action that threatens public confidence in the integrity of the Court System, and in the separation of powers. This case meets the "public significance" requirement for citizen-taxpayer standing.

2. Plaintiffs are Appropriate Parties

Plaintiffs are the appropriate parties to bring this case. Plaintiffs may not be the appropriate parties "if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit," or if "there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action." *Trustees for Alaska*, 736

P.2d at 329. A plaintiff must also be capable "of competently advocating the position it has asserted." *Id.*

In this action, there is no other potential plaintiff who is "more directly affected" by the Governor's unconstitutional breach of the separation of powers than the Plaintiffs. As explained in their Complaint, the Governor's defunding action "threaten[s] our democracy and the core system of checks and balances," Complaint ¶ 9, and "undermine[s] the public trust in the independence and impartiality of the judiciary." *Id.* ¶ 10. All Alaskans are equally affected by these harms, and Plaintiffs "bring this action to correct the abuse of power and offense against democracy perpetrated by Governor Dunleavy in his attack on the independence of the court system and, thereby, to restore and maintain the public's faith in the integrity of the judiciary." Complaint ¶ 11.

Defendants argue that a more directly affected plaintiff "might be a litigant or attorney who justifiably fears an adverse ruling in a specific case due to inappropriate influence on the judiciary by the executive branch." Motion to Dismiss at 15. Alternatively, Defendants assert that such a plaintiff could be a Court System judge who "actually experiences coercion or other negative impacts of allegedly illegal

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budget reductions . . . ." *Id.* But even if these hypothetical litigants could be more directly affected by the Governor's defunding veto than Plaintiffs, Defendants' reference to them here is not enough to make Plaintiffs inappropriate parties. As the Alaska Supreme Court has made clear, "[t]he mere possibility that another party might sue . . . does not necessarily justify a denial of standing." *Baxley v. State*, 958 P.2d 422, 429 (Alaska 1998). *See also Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 986 (Alaska 2008) ("the mere possibility that a more appropriate plaintiff may sue does not mean that appellants are inappropriate plaintiffs").

In *Fannon*, citizen-taxpayers brought suit to challenge a tobacco tax established by the Matanuska-Susitna Borough. The Borough argued that the plaintiffs lacked standing because several identifiable retailers and distributers were "more directly affected by the challenged conduct in question . . . ." *Id.* at 986. The Court found this argument unpersuasive because "the Borough presented no evidence that they are 'likely to bring suit.'" *Id.*

Likewise, in *Trustees for Alaska,* the plaintiffs brought suit alleging the illegality of the state mineral leasing system's failure to require payment of either rent or royalties from mineral leases on

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certain lands. 736 P.2d at 326. The state asserted that the Attorney General was a more appropriate party to bring such an action. The Court's explanation of why it rejected this argument is worth examining in full:

> In our view, the mere possibility that the Attorney General may sue does not mean that appellants are inappropriate plaintiffs. In *Carpenter,* a resident and voter of the House District in question would theoretically have been more interested in litigating the question whether the district was malapportioned than was the non-resident plaintiff in that case. However, no such person had filed suit. We noted that the issues had been fully presented at trial and on appeal by the plaintiff, and held that she had standing. Similarly, in *Coghill v. Boucher,* we suggested that candidates or political parties might be more interested than registered voters and poll watchers in challenging the vote-counting procedures at issue. However, they had not done so. We noted that if the plaintiffs were not afforded standing, "it may well be that any review of executive activity in this area would be completely foreclosed." Thus, *the crucial inquiry is whether the more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future.* The Attorney General has not sued nor are there any indications that he plans to do so.

Id. at 330 (emphasis added; internal citations omitted).

Conducting this "crucial inquiry" here shows that no other plaintiff, more directly concerned or otherwise, has filed suit to challenge the unconstitutional breach of the separation of powers embodied in Governor Dunleavy's defunding veto. Nor is there any indication that one of these yet-to-be identified litigants, lawyers, or

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judges plans to sue or is even likely to sue in the foreseeable future. The results of the inquiry therefore firmly establish that Plaintiffs are the appropriate parties to bring this case.

Nevertheless, Defendants rely on *Keller v. French*, 205 P.3d 299 (Alaska 2009), in an attempt to compel the Court to reach a different conclusion. But *Keller* is inapposite for clear reasons, and Defendants' reliance on it is unavailing. In *Keller*, five legislators brought suit in an attempt to enjoin a legislative investigation into then-Governor Palin's firing of the state's public safety commissioner. *Id.* at 300. Although the plaintiffs in *Keller* claimed that no other potential plaintiffs who had been directly affected had sued or were likely to sue, the Court noted that seven state employees who had been subpoenaed in the investigation, and were thus more directly affected, had in fact sued. *Id.* at 303. That is obviously not the case here. Moreover, the challenged action in *Keller* was a targeted investigation directed at Governor Palin. The Court noted that the Governor and others directly connected to the investigation could "be in a position to be vilified, have their characters assassinated, or be found guilty by association during an investigation that was not fair and just . . . ." *Id.* at 304. None of the plaintiffs, however, were involved in the investigation, and the Court

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questioned whether they were affected, even indirectly, by the investigation's proceedings. *Id.* at 303-04. The Court concluded, therefore, that the *Keller* plaintiffs were "attempting to assert the individual rights of potential or 'imaginary' third parties . . . ." *Id.* at 304. The Court distinguished the facts in *Keller* from its entire line of citizen-taxpayer standing jurisprudence, noting that it had "never before allowed citizen-taxpayer standing to be used in this way." *Id.* For these reasons, *Keller* is simply inapplicable to the question of whether Plaintiffs are appropriate parties here. Therefore, the Court should reject Defendants' contentions and find that Plaintiffs have citizen-taxpayer standing in this case.[3]

II. This Case Presents Clearly Justiciable Questions That Must Be Resolved

Defendants argue that Plaintiffs raise nonjusticiable political questions that this Court is powerless to resolve. Defendants' arguments rest entirely on principles that do not apply to cases alleging unconstitutional conduct, and fail to acknowledge the prominent Alaska Supreme Court cases that have adjudicated constitutional

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[3] Defendants do not assert, nor could they, that Plaintiffs are "sham plaintiffs" or that they are incapable of competently advocating their position.

challenges to past governors' line item vetoes. Defendants' proposition is therefore wholly unsupportable. Defendants also seek dismissal of this case on prudential grounds, but this Court's inherent judicial power creates in it ample authority, and obligation, to order the restoration of funds that have been unconstitutionally withheld and to defend the independence of the courts.

To advance their theory of nonjusticiability, Defendants direct the Court to the six factors used to determine if a case presents a political question set forth in *Baker v. Carr*, 369 U.S. 186 (1962), citing several examples of their adoption by the Alaska Supreme Court. Motion to Dismiss at 17-18. But Defendants overlook entirely a key limitation on the application of the *Baker* factors. In a number of previous cases, the Court has "made it clear that the nonjusticiability doctrine [does] not apply to cases involving [its] 'constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution . . . .'" *Abood v. Gorsuch*, 703 P.2d 1158, 1161 (Alaska 1985) (quoting *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982)). *See also Abood v. League of Women Voters of Alaska,* 743 P.2d 333, 339 (Alaska 1987) (same); *Walleri v. City of Fairbanks*, 964 P.2d 463, 467 (Alaska 1998) (*Baker v. Carr* factors inapplicable to claim that contract

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for sale of city utility violated city charter). Accordingly, none of the arguments made by Defendants is applicable to Plaintiffs' claims that the Governor's veto violates the Alaska Constitution.

It is unsurprising, then, that the Alaska Supreme Court has resolved challenges to the constitutionality of a gubernatorial veto on a number of previous occasions. Most recently, in *Wielechowski v. State*, 403 P.3d 1141 (Alaska 2017), the Court considered the constitutionality of then-Governor Walker's line item veto reducing the amount of the Permanent Fund Dividend. *Id.* at 1144. Notably, the Court described its obligation to resolve the case as follows:

> This appeal provides another opportunity to remind Alaskans that, of the three branches of our state government, we are entrusted with the "constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution." This sometimes requires us to answer constitutional questions surrounded by political disagreement. Today we address a constitutional question arising from a political dispute about the legislatively enacted Alaska Permanent Fund dividend program.

Id. at 1142-43 (internal citations omitted).

In 2006, the Court also considered a constitutional challenge to then-Governor Murkowski's line item veto eliminating the longevity bonus for senior Alaskans. *Simpson v. Murkowski*, 129 P.3d 435 (Alaska 2006). There, the plaintiffs alleged, among other things, that

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"the [longevity] program created a contract between them and the State with which Governor Murkowski unconstitutionally interfered . . . ." *Id.* at 437.

In 2004, the Court entertained a challenge to then-Governor Knowles's refusal to recognize a legislative override of his veto of a land transfer meant to benefit the University of Alaska. *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891 (Alaska 2004). And in 2001, the Court considered whether certain vetoes issued by Governor Knowles were constitutionally valid "either because the vetoed passages were not 'items' or because the governor did not adequately explain" them. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 369 (Alaska 2001).

In none of these cases did the Court express a concern for its involvement in the dispute because the challenge to the gubernatorial veto was a political question. Indeed, in *Wielechowski*, the Court explicitly acknowledged the political nature of the dispute while underscoring its "constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution." *Id.* at 1143. That same duty exists for the Court in this case, and Defendants' attempts to convince the Court otherwise are unavailing.

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Furthermore, the Court's duty here will not end with a pronouncement that the Governor has unconstitutionally violated the separation of powers. Plaintiffs seek an order compelling the return of $344,700 to the Appellate Court's budget as a remedy for the violation. Because Governor Dunleavy so provocatively made clear that his withholding of this precise sum was directly related to, and retaliatory for, the Court's independent exercise of its constitutional obligations, the failure to return any portion of this sum to the Court System's budget will result in a permanent weakening of that independence and a diminution in the public's perception of the Court System's integrity. This Court has the inherent authority to issue the order Plaintiffs seek, and it is crucial for it to do so to protect its integrity and independence. Defendants' suggestion that the Court dismiss this case on prudential grounds flies in the face of this important mandate and should be ignored.

Defendants acknowledge that the court has inherent powers to compel payments of money that are "reasonable and necessary to carry out mandated constitutional responsibilities." Motion to Dismiss at 20. Courts in most states recognize that such powers derive from the judiciary's existence "as a separate, independent, and co-equal branch

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of government . . . ." *Folsom v. Wynn*, 631 So. 2d 890, 899 (Ala. 1993) (citing cases). As such, these powers are not limited to compelling funds when the court determines that its financial resources are inadequate. The Court's inherent powers include all of the powers that are reasonably necessary "to protect its dignity, independence, and integrity, and to make its lawful actions effective." *Pena v. Dist. Court of Second Judicial Dist. In & For City & Cty. of Denver*, 681 P.2d 953, 956 (Colo. 1984); *Matter of Spike*, 99 Misc. 2d 178, 181, 415 N.Y.S.2d 762, 765 (Co. Ct. 1979); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 399 (Tex. 1979). In exercising its inherent powers, a court "may protect its own jurisdiction, its own process, its own proceedings, its own orders, and its own judgments; and may, in cases pending before it, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in such cases." *Solomon v. State*, 303 Kan. 512, 525–26 (2015).

The ability to protect its independence and integrity is crucial "to the court's autonomy and to its functional existence . . . ." *Matter of Alamance Cty. Court Facilities*, 329 N.C. 84, 94 (1991). Courts are therefore compelled to act when another branch of government seeks to diminish their independence or erode their integrity, especially when

these attacks are aimed at the court's fiscal resources in retaliation for judicial holdings that are deemed unpopular, or as attempts to influence prospective deliberations or decision making. "[A] court is not free if it is under financial pressure" from those who hold the purse strings. *Carlson v. State ex rel. Stodola*, 247 Ind. 631, 633-34 (1966). "[C]ourts frequently have to rule upon the acts or refusal to act of those controlling the purse strings in rendering justice" and they cannot allow "[t]hreats of retaliation or fears of strangulation [to] hang over such judicial functions." *Id.* at 638.

Therefore, this Court's inherent powers, and its obligation to defend its independence, compel it to act in this case—to adjudicate this dispute, to declare the Governor's impermissible intrusion on the function of the judiciary to be unconstitutional, and to provide a remedy that preserves the integrity of the Court System and the public's confidence in it.

III. Conclusion

Governor Dunleavy's veto of the Appellate Courts' budget is an unprecedented act of retaliation against and attempted coercion of the Alaska Court System. No case in any other state suggests that any other court has suffered such blatant retribution at the hands of

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another branch of government. Yet courts often acknowledge and apply their inherent powers to correct intrusions that are far less offensive to separation of powers principles. This case is of significant public importance, Plaintiffs have satisfied all the requisite elements of standing, and the justiciability of the action is not in doubt. The Court should deny Defendants' Motion to Dismiss and allow Plaintiffs' claims to proceed so that these critical issues can be resolved.

Dated August 26, 2019.

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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**, Plaintiffs, v. **Michael J. Dunleavy**, in his official capacity as Governor of Alaska; and the **State of Alaska**, Defendants.	No. 3AN-19-08349CI COPY Original Received AUG 2 6 2019 Clerk of the Trial Courts **Certificate of Service**

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I hereby certify that on August 26, 2019, Plaintiffs' Opposition to Motion to Dismiss, Request for Oral Argument on Defendants' Motion to Dismiss, and Proposed Order, were served on the following via electronic and U.S. Mail:

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