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IN THE 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 STATE OF ALASKA, Defendants.	Case No. 3AN-19-08349 CI

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

The plaintiffs, American Civil Liberties Union of Alaska, Bonnie L. Jack, and John D. Kauffman, claim that Governor Michael J. Dunleavy and the State of Alaska (collectively, "the Governor") violated the Alaska Constitution when the Governor used his line item veto authority to reduce the budget of Alaska's appellate courts. But the plaintiffs' complaint should be dismissed for three reasons.

First, the plaintiffs lack standing. Second, the questions raised by the plaintiffs are nonjusticiable political questions. And, third, this Court should decline to consider the case for prudential reasons. The only way for this Court to resolve the plaintiffs' claims would be to issue an advisory opinion on abstract questions that intrude on the legislature's and governor's constitutionally delegated powers. Accordingly, the plaintiffs have failed to state a claim for which relief may be granted, and this Court should dismiss their claims with prejudice.

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I. The plaintiffs lack standing to bring this case.

A. Introduction.

"Standing is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions."[1] An abstract question is one posed without concrete facts.[2] An advisory opinion is one that would have no effect on the parties before the court.[3] The plaintiffs in this case are asking for an advisory opinion resolving an abstract question. They are asking for a legal ruling solely for the sake of a legal ruling; the only effect of a decision in this case will be to tell the plaintiffs "you are right" or "you are wrong." Because the Alaska Supreme Court has already reassured Alaskans that the veto had no effect on its fairness or impartiality, and because the amount of money vetoed is negligible to the Alaska Court System's budget, a ruling by this court will have no practical impact on the plaintiffs. This is precisely the type of case that the standing doctrine is intended to foreclose.

B. The plaintiffs lack interest-injury standing.

The plaintiffs have alleged no injury to their interests; they have only stated their

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1 *Friends of Willow Lake, Inc. v. State, Dep't of Transp.*, 280 P.3d 542, 546 (Alaska 2012).

2 The definition of "abstract" in this context is "disassociated from any specific instance" or "insufficiently factual." Merriam-Webster's Collegiate Dictionary (11th Edition 2016) (available online at https://www.merriam-webster.com/dictionary/abstract). *See also* The American Heritage Dictionary of the English Language (5th Edition 2016) ("Abstract ... 1. Considered apart from concrete existence ... 2. Not applied or practical; theoretical").

3 *Gilbert M. v. State*, 139 P.3d 581, 588 (Alaska 2006) ("A decision that would have no effect on the parties before the court is purely advisory and therefore the appeal is nonjusticiable").

desire to have a legal question answered. It is true that an "identifiable trifle" is adequate to fight out a question of principle,[4] but the plaintiffs have alleged only a question of principle.

The plaintiffs compare themselves to the children in the case of *Kanuk v. State,* who challenged government policies that they alleged contributed to global warming.[5] Some of the children stated serious harms that they alleged were the result of global warming, but other children stated more trifling harms.[6] For example, two children were sad because of a glacier shrinking, allegedly as the result of global warming.[7] But even those children alleged a concrete effect of the government's policies: a large glacier shrinking. The melting of the glacier damaged their aesthetic interest in seeing it.[8]

The children in *Kanuk* did not allege that the government's policies made them sad, they alleged that the *effects* of the government's policies made them sad. The plaintiffs in this case have only alleged that the governor's veto offends them. They have only stated a question of principle.

In *Friends of Willow Lake v. State*, an association of recreational users of Willow Lake and owners of land abutting Willow Lake sued over the legality of a government

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4 *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (quoting *Wagstaff v. Superior Ct.,* 535 P.2d 1220, 1225 (Alaska 1975)).

5 *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1092 (Alaska 2014).

6 *Id.* at 1093.

7 *Id.*

8 *Id.* at 1092 ("The affected interest may be economic or intangible, such as an aesthetic or environmental interest") (quoting *Friends of Willow Lake v. State, Dep't of Transp. & Pub. Facilities,* 280 P.3d 542, 547 (Alaska 2012)).

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plan allowing float plane use of Willow Lake.[9] The association considered the noise of the float planes to be a nuisance.[10] This was sufficient to establish interest-injury standing.[11] Again, the Friends of Willow Lake did not allege that they were offended by the existence of the government's plan; they alleged that their interests were harmed by the float plane noise that was the *effect* of the government's plan.

A question of principle cannot stand alone. It must be based on an injury to a party's interests, however trifling. This requirement serves the purposes of the standing doctrine by giving a concrete factual setting to a question of principle. This Court should find that the plaintiffs do not have interest-injury standing.

C. The plaintiffs lack citizen-taxpayer standing.

1. Because the Alaska Supreme Court has already affirmed its integrity, and because the amount of money at stake is negligible, the plaintiffs have not alleged a matter of public significance.

The plaintiffs allege that "Governor Dunleavy's court system veto was intended to punish the [Alaska Supreme] Court for exercising its judicial power, to threaten the Court with further budget reductions for decisions with which he may disagree, and to improperly influence the Court and erode its independence,"[12] and that this intention

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9 *Friends of Willow Lake v. State, Dep't of Transp. & Pub. Facilities,* 280 P.3d 542, 544-45 (Alaska 2012).

10 *Id.* at 550.

11 *Id.* at 547 ("FOWL's members, especially its riparian landowners, have economic and aesthetic interests in the [government plan]'s validity and enforcement. Similarly, FOWL's public nuisance claim represents a sufficient injury to FOWL's riparian landowner members' interest in the quiet enjoyment of their land.")

12 Complaint at p. 3, ¶ 8.

violated the constitutional principle of separation of powers. But the Alaska Supreme Court has already assured "all Alaskans that the Alaska Court System will continue to render independent court decisions based on the rule of law, without regard to the politics of the day."[13] Thus, the question of whether the Governor's veto violated separation of powers is only abstract. Because it did not have any of the effects that the plaintiffs allege it was intended to have, the question is merely an intellectual exercise.[14]

The plaintiffs cite *Sonneman v. State*[15] in support of the argument that *any* alleged constitutional violation, no matter how abstract, raises a matter of public significance. But the Court in *Sonneman* actually stated that a party raising a constitutional issue is "likely" to meet the public significance requirement,[16] not that such a party is guaranteed to do so. And the Alaska Supreme Court has stated elsewhere that "[t]axpayer-citizen standing cannot be claimed in all cases as a matter of right."[17]

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13 Supreme Court of the State of Alaska, "Alaska Supreme Court Statement Regarding Recent Budget Cuts" (July 3, 2019) *available at* https://public.courts.alaska.gov/web/media/docs/budget-cuts.pdf.

14 The plaintiffs suggest this Court must convert this Motion to Dismiss into a Motion for Summary Judgment in order to consider the Alaska Supreme Court's statement, but that is not correct. Courts may take judicial notice of a fact not subject to reasonable dispute for purposes of deciding a motion to dismiss. *See Pedersen v. Blythe*, 292 P.3d 182, 185 (Alaska 2012); Alaska Rule of Evidence 201. The plaintiffs have not identified any reasonable grounds to question the accuracy of the Alaska Supreme Court's statement. As argued in the underlying Motion to Dismiss, a plaintiff with reasonable grounds to question the accuracy of the statement, such as a litigant who reasonably fears an adverse decision due to judicial coercion or a judge who actually feels coerced, would be a more appropriate plaintiff and have standing.

15 *Sonneman v. State,* 969 P.2d 632, 634-35 (Alaska 1998).

16 *Id.* at 636.

17 *Trustees for Alaska v. State*, 736 P.2d 324, 329 (Alaska 1987).

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The plaintiff in *Sonneman* alleged that the change in name placement on ballots would result in certain candidates receiving an unfair advantage.[18] If Mr. Sonneman had alleged only that the placement of names on the ballot offended his deeply held beliefs about the Alaska Constitution, the analysis of his standing would likely have been different.

The plaintiffs also argue that, even if the veto had no actual effect on the independence and integrity of the Alaska Court System, alleged damage to the "public perception of the courts" is a matter of public significance. The plaintiffs cite *Baxley v. State*[19] in support of this argument. In that case, the government engaged in competitive bidding before issuing an oil and gas lease.[20] The government later amended the lease to be arguably more favorable to the lessee.[21] Among other things, the amendment eliminated a term granting the state a "net profit share" in the lease (a percentage of the lessee's production).[22] The citizen taxpayers in that case alleged that the amendment "violates constitutional provisions, may reduce the State's income, undermines public confidence in the integrity of the bidding system, and violates the public trust."[23] The court held "those issues have public significance."[24] If the plaintiff in that case had

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18 *Id.* at 635.

19 *Baxley v. State*, 958 P.2d 422 (Alaska 1998).

20 *Id.* at 425-26.

21 *Id.* at 427.

22 *Id.*

23 *Id.* at 428-29.

24 *Id.* at 429.

alleged *only* loss of public confidence in the integrity of the bidding system, the standing analysis likely would have been different.

Further, the Alaska Supreme Court has already "reassure[d] all Alaskans" as to its integrity and independence, and thus, this allegation is completely speculative and unsupported.[25] Alaskans are entitled to rely on the Court's assurance. The allegation that the Governor's veto damaged the "public perception of the courts" is just as abstract as the plaintiff's other allegations.

Thus, a decision by this court would have no practical effect on the integrity or independence of the Alaska Court System, which was never impaired. The only remaining effect, then, is the restoration of $334,700 to the budget of the Alaska Appellate Courts—which is less than five percent of the appellate courts' budget and less than one-half of one percent of the judicial branch's entire budget.[26] Because this amount is of such low magnitude, it cannot establish a question of public significance standing alone. This negligible amount of money does not convert the abstract issues raised by the plaintiffs into a case of "actual controversy."[27]

2. Because the plaintiffs have not alleged that they are directly affected by the veto, they are not appropriate plaintiffs.

To avoid issuing advisory opinions, courts find that citizen taxpayer plaintiffs are

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25 Alaska Supreme Court Statement.

26 This Court should take judicial notice of the publicly-available budget of the Alaska Judiciary for Fiscal Year 2020 released by the Alaska Office of Management and Budget, available online at https://omb.alaska.gov/ombfiles/20_budget/ACS/Enacted/20depttotals_acs.pdf.

27 AS 22.10.020(g).

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not appropriate if there are more directly affected individuals capable of suing.[28] It is true, as the plaintiffs argue, that plaintiffs may be appropriate even if they are not the "most directly affected."[29] But the plaintiffs' problem is that they are *not directly affected at all*. The plaintiffs compare themselves to the plaintiffs in *Fannon v. Matinuska-Susitna Borough*, in which taxpayers challenged the borough's tax on tobacco products at the wholesale and distributor level.[30] The Court pointed out that wholesalers and distributors would likely pass the cost of the tax to consumers, and the borough would expend taxpayer money to collect the tax.[31] So citizens of the borough who paid taxes and purchased tobacco in the borough were appropriate plaintiffs, even though wholesalers and distributors were more directly affected.[32] The Court distinguished that case from one in which the plaintiffs paid no taxes in a borough.[33] So *Fannon* supports the conclusion that an appropriate plaintiff must be directly affected, even if not the *most* directly affected.

The plaintiffs also quote at length from *Trustees for Alaska v. State* for the proposition that the "crucial inquiry is whether the more directly concerned potential

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28 The defendant does not contend that the ACLU, Ms. Jack or Mr. Kauffman are "sham" plaintiffs or that they are inadequately represented. *See Trustees for Alaska v. State*, 736 P.2d 324, 329-30 (Alaska 1987).

29 *See Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 987 (Alaska 2008).

30 *Id.* at 986.

31 *Id.*

32 *Id.*

33 *Id.* (*citing Greater Anchorage Area Borough v. Porter & Jefferson,* 469 P.2d 360 (Alaska 1970)).

plaintiff has sued or seems likely to sue in the foreseeable future."[34] But they incorrectly marginalize the Alaska Supreme Court's more recent decision in *Keller v. French*: "That individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff."[35] In that case, there was "no indication the … plaintiffs might personally be exposed to any … abuses of legislative power; they do not claim that they were potential witnesses or investigative targets, or that the investigation would somehow implicate them."[36] In other words, they were not directly affected at all. And the fact that more directly-affected plaintiffs had actually sued does not mean that the rest of the Court's analysis is "inapplicable" to this case as the plaintiffs claim.[37] To the contrary, *Keller* stands for the proposition that persons more directly affected must be "somehow limited in their ability to sue."[38] Thus, the plaintiffs cannot establish they have standing through their unsupported assertion that no potential litigant or judge plans to sue or is likely to do so.

The plaintiffs in this case have alleged that the governor's veto was targeted at intimidating and compromising the Alaska Supreme Court. The Alaska Supreme Court has already publicly stated that it is neither intimidated nor compromised. And the plaintiffs have not alleged that they are in any way affected except that they object to

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34 *Trustees for Alaska. v. State*, 736 P.2d at 330.

35 *Keller v. French,* 205 P.3d 299, 303 (Alaska 2009).

36 *Id.* at 304.

37 Opposition to Motion to Dismiss at 17.

38 *Keller*, 205 P.3d at 303.

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the veto as a matter of principle.

An advisory opinion is one that will have no effect on the parties before the court. A plaintiff on whom the ruling will have no effect is not an appropriate plaintiff. And an abstract question is one devoid of factual presentation. A plaintiff who objects only as a matter of principle does not present a factual context for the legal dispute. A plaintiff who actually feels an effect of the Governor's veto, such as a judge who feels intimidation or a litigant who fears an unfair decision due to judicial intimidation, would be a more appropriate plaintiff. Such a person would be equally capable of suing. And such a plaintiff would provide the court with a factual setting in which to evaluate the legal dispute.

II. The plaintiffs seek to resolve non-justiciable political questions.

The plaintiffs challenge the Governor's "statement of his objections"[39] and invite this Court to intrude on the powers of both the governor and the legislature and unilaterally override the veto. The plaintiffs argue that because they claim a constitutional violation, the doctrine of justiciability does not apply to this case.[40] Although the Alaska Supreme Court has in the past made statements to that effect, the doctrine of justiciability is not as clear-cut as the plaintiffs would lead this court to believe. As the U.S. Supreme Court has explained:

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39 Alaska Const. art. II § 15 ("The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.").

40 Opposition to Motion to Dismiss at 17-18.

> Justiciability is . . . not a legal concept with a fixed content or susceptible of scientific verification. Its utilization is the resultant of many subtle pressures, including the appropriateness of the issues for decision . . . and the *actual* hardship to the litigants of denying them the relief sought.[41]

The Alaska Supreme Court has likewise held that "[i]t is not possible to draw the exact boundary separating justiciable and nonjusticiable questions."[42]

Of course, the plaintiffs are correct that the Alaska Supreme Court has resolved challenges to the constitutionality of gubernatorial vetoes. But the political question doctrine was not an issue raised in those cases.[43] Moreover, there is plenty of support for applying the doctrine to a challenge, like the one here, that presents a separation of powers conflict between the branches.[44] In *Alaska Legislative Council v. Knowles*, the Alaska Supreme Court acknowledged the "inherently political" nature of this very type of dispute:

> Subjecting the substantive adequacy of each objection to judicial scrutiny would be unavoidably time-consuming. Judicial involvement would be unlikely to generate bright-line distinctions that would provide guidance useful in avoiding future disputes and litigation. And ultimately such disputes are inherently political because they implicate the appropriations and budgetary powers of the legislative and executive, and the political relationship between

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41 *Poe v. Ullman*, 367 U.S. 497, 508-09 (1961) (Frankfurter, J., plurality opinion) (emphasis added) (*quoted with approval by Abood v. League of Women Voters of Alaska,* 743 P.2d 333, 336 (Alaska 1987)).

42 *Abood*, 743 P.2d at 336.

43 *See Wielechowski v. State,* 403 P.3d 1141 (Alaska 2017); *Simpson v. Murkowski*, 129 P.3d 435 (Alaska 2006); *Alaska Legislative Council ex rel. Alaska State Legislature v. Knowles*, 86 P.3d 891 (Alaska 2004); *Alaska Legislative Council v. Knowles*, 21 P.3d 367 (Alaska 2001).

44 *See Alaska Legislative Council v. Knowles,* 21 P.3d at 376.

> those branches of government. The judiciary has no special competence to settle these types of inherently political disputes. We also think the purposes underlying the statement-of-objections requirement do not demand case-by-case judicial review. The legislature, through knowledge accumulated in dealing with the governor, is capable of interpreting the sufficiency of the objection, and is thus able to decide whether to enact an amended appropriation or to seek a veto override. It is no less able than the judiciary to compare the governor's words and the struck language to decide for itself whether the governor was motivated by "conscientious convictions." And the ultimate arbiter of that question is the electorate.[45]

The Supreme Court of Minnesota faced a veto challenge similar to the one brought here in *The Ninetieth Minnesota State Senate et al. v. Dayton*.[46] In that case, the Minnesota governor exercised his line-item veto power to veto the budgets for the Senate and House of Representatives to bring the legislature "back to the table" to "remove" or "re-negotiate" provisions in bills that the governor found objectionable.[47] The Minnesota legislature brought suit for declaratory judgment that the governor's line-item vetoes were unconstitutional as a violation of the Separation of Powers clause in the Minnesota Constitution.[48] Similar to the plaintiffs' arguments here, the Legislature argued that the governor's veto in that case was unconstitutionally coercive.[49] The Minnesota Supreme Court acknowledged its responsibility for determining when the separation of powers among the three branches of government has been violated, but

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45 *Id.*

46 *The Ninetieth Minnesota State Senate et al. v. Dayton,* 903 N.W.2d 609 (Minn. 2017).

47 *Id.* at 614.

48 *Id.* at 614-15.

49 *Id.* at 619, 622.

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nevertheless, exercised judicial restraint because the case presented "a possible separation of powers conflict *between the branches*."[50] The court reasoned:

> Although these arguments are cast in the framework of constitutional principles and powers, the parties' dispute about coercion essentially asks the court to assess, weigh, and judge the motives of co-equal branches of government engaged in a quintessentially political process. . . . Indeed, this case, unprecedented in the history of Minnesota, essentially asks the Judiciary to choose between the Governor and the Legislature. Specifically, the parties' arguments and positions envision that we conclude either that the Legislature's constitutional power to legislate prevails over the Governor's constitutional power to veto items of appropriation, or that the Governor's line-item veto power prevails over the Legislative power to legislate.[51]

Similarly, the case here asks this Court to step into the shoes of three-fourths of the Legislature (i.e. 45 legislators) to override the Governor's veto and give itself additional funding. The plaintiffs' arguments and position would require this Court to conclude that the Court's budget and power to decide constitutional issues prevail over both the Legislature's constitutional power to legislate and override (or not to override) vetoes and the Governor's constitutional power to veto items of an appropriation. The Alaska Constitution does not require the judiciary to referee political disputes over appropriations or the Governor's motives for exercising his line-item veto power. Instead, the Alaska Constitution unquestionably grants the Governor line item veto power to reduce every line of budgetary appropriations, including those to the courts—there is no exception stated in the Constitution to immunize the court's appropriations

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50 *Id.* at 623 (emphasis added).

51 *Id.* (internal citations and quotations omitted).

from the Governor's line item veto power.[52] Plaintiff's claims are thus reduced to the unsupported notion the Governor can reduce appropriations to the courts but not for some unstated forbidden reasons; *e.g.*, the Governor's disagreement with a court decision. This latter point has no support in the Constitution or case law and plaintiffs' have cited no case authority to uphold their position.

In any event, under Alaska law, courts simply "look to see whether the [governor's statement of objections] makes comprehensible reference to the provision being vetoed, and do not attempt to evaluate the reasoning underlying the objection."[53] For these reasons, the only way for this Court to resolve the plaintiffs' claims would be to intrude on authority that is constitutionally delegated to the governor and the legislature, make policy decisions of the kind clearly for non-judicial discretion, and signal a clear lack of respect for decisions made by Alaska's political branches.

III. Even if the plaintiffs' claims are justiciable under the political question doctrine, the court should dismiss them on prudential grounds.

The Alaska Constitution establishes the judiciary as a separate co-equal branch of government alongside the legislative and executive branches. It is, of course, the

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52 Alaska Const. art. II § 15 ("The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.").

53 *Alaska Legislative Council,* 21 P.3d at 376.

"province and duty" of the judiciary to "say what the law is,"[54] but prudential grounds warrant judicial restraint here.[55]

The Alaska Declaratory Judgment Act[56] allows superior courts "to issue declaratory judgments in cases of *actual controversy*."[57] "Declaratory relief is a nonobligatory remedy," and courts have considerable discretion in deciding whether to award it—they have "an opportunity, rather than a duty," to grant declaratory relief.[58] For declaratory judgments, the normal principle that courts should decide claims within their jurisdiction "yields to considerations of practicality and wise judicial administration."[59] A court may exercise its broad discretion to decline declaratory relief to avoid a "wasteful expenditure of judicial resources."[60] The court should be particularly wary of judicial interference in the context of a dispute that has its origins in political decisions, which involves powers expressly delegated to the other two branches of government, and which lacks the prospect of any concrete relief.

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54 *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

55 *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1096 (Alaska 2014).

56 AS 22.10.020(g).

57 *Kanuk*, 335 P.3d at 1100 (emphasis added); *see also Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 358 (Alaska 2001).

58 *Lowell v. Hayes,* 117 P.3d 745, 756 (Alaska 2005) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995), internal quotation marks omitted); *see also Kanuk*, 335 P.3d at 1101.

59 *Lowell,* 117 P.3d at 756.

60 *Id.*

Alaska's political branches have considered and made policy decisions on the funding issues raised in the plaintiffs' complaint. It is beyond question that the governor has broad power to veto, strike, or reduce items in appropriations bills, "with a statement of his objections."[61] It is then up to three-fourths of the legislature to override that veto.[62] A judicial override of the Governor's veto of the court system's own funding—especially when the Governor exercised a power that the constitution expressly grants to him, and when the veto does not actually impair the court's ability to perform its functions—would run counter to the "minimum of coherence" standard adopted in *Alaska Legislative Council v. Knowles*[63] and set a precedent for case-by-case judicial review of all vetoes simply because they are inevitably politically motivated.[64]

As discussed, the Governor's veto does not actually interfere with the Court System's ability to perform its constitutional duties. Although the plaintiffs make dire predictions, the Alaska Supreme Court has already assured all Alaskans, including the plaintiffs, that "the Alaska Court System will continue to render independent court

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61 Alaska Const. art. II § 15; *see also*, *Simpson*, 129 P.3d at 447; *Knowles*, 21 P.3d at 371; *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) (concluding that the constitutional history underlying the governor's veto authority provision indicates a desire by the delegates to create a strong executive branch).

62 Alaska Const. art. II § 16 ("Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature"); *see also*, *Simpson*, 129 P.3d at 446.

63 21 P.3d at 376.

64 *State, Dep't of Natural Resources v. Tongass Conservation Soc'y*, 931 P.2d 1016, 1020 (Alaska 1997) (quotations omitted).

decisions based on the rule of law, without regard to the politics of the day."[65] So without any actual controversy or concrete relief available, the plaintiffs are asking this Court to take the extraordinary step of not only overriding the Governor's veto after the legislature failed to do so, but also tweaking the Court System's own budget at a micro-level. The relief requested by the plaintiffs is antithetical to the underpinnings and constitutional structure of Alaska's government. For the court to respond to politically-motivated declarations—when the amount vetoed is relatively small and will have no impact on the Court's ability to function—to enlarge its own budget in a time of budget crisis would create an appearance of impropriety and would only serve to compromise the court's credibility in the eyes of the Alaska people. If the court were to accept the plaintiffs' invitation to intervene into this budgetary matter—a matter involving the court's own budget—the only branch of government that the public would view as overreaching would be the judiciary.

IV. Conclusion.

Because the plaintiffs lack standing, their claims are best redressed through political processes, and the only way for this Court to answer their claims would be to intrude on authority that is constitutionally delegated to the governor and the legislature, the Governor asks this Court to dismiss their complaint. The plaintiffs raise only abstract legal questions without practical import, and "[t]his Court should not issue advisory opinions or resolve abstract questions of law."[66] And even if the plaintiffs'

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65 Alaska Supreme Court Statement.

66 *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d at 369.

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claims are justiciable under the political question doctrine, the Court should exercise its broad discretion to decline declaratory relief and dismiss the plaintiffs' claims on prudential grounds.

DATED September 10, 2019.

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IN THE 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 STATE OF ALASKA, Defendants.	)	Case No. 3AN-19-08349 CI

CERTIFICATE OF SERVICE

I hereby certify that on this date, true and correct copies of the **Defendant's Reply in Support of Motion to Dismiss** and this **Certificate of Service** were served via U.S. Mail on the following:

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