

Stephen Koteff, No. 9407070
Joshua A. Decker, No. 1201001
ACLU of Alaska Foundation
1057 W. Fireweed Lane, Ste. 207
Anchorage, AK 99503
(907) 263-2007
skoteff@acluak.org

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

**Amended Complaint for
Declaratory and Injunctive
Relief**

“[T]he underlying rationale of the doctrine of separation of powers is the avoidance of tyrannical aggrandizement of power by a single branch of government”

Bradner v. Hammond, 553 P.2d 1, 5 (Alaska 1976).

Introduction

1. A hallmark of a democratic society is the independent strength of each of its coequal branches of government.

2. Alaska’s government is divided into three branches—legislative, executive, and judicial—and each branch is given specific powers and functions by the Alaska Constitution.

3. The Constitution enumerates the separate powers of each branch to ensure that no branch encroaches on the authority reserved to another branch. The Alaska Constitution therefore embodies a crucial element of our democracy—the doctrine of the separation of powers.

4. The separation of powers doctrine limits the authority of each branch to interfere in the powers that have been delegated to the other branches.

5. When one branch of government impermissibly intrudes on the function of another branch, it violates the separation of powers and undermines a vital pillar of democracy.

6. On June 28, 2019, Governor Michael J. Dunleavy, in an unprecedented affront to the Alaska Constitution, committed a startling breach of the separation of powers by using his line item veto authority to partially defund the Alaska Court System.

7. Governor Dunleavy repeated this unconstitutional attack on the judiciary on April 7, 2020, when he again defunded the Alaska Court System using a line item veto.

8. Governor Dunleavy's court system vetoes were explicit measures of retaliation in response to a February 2019 Alaska Supreme Court decision holding unconstitutional the state's attempts to limit indigent women's rights to abortion.

9. Governor Dunleavy's court system vetoes were intended to punish the 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.

10. Such actions, if left unchecked, threaten our democracy and the core system of checks and balances.

11. Such actions, if unabated, undermine the public trust in the independence and impartiality of the judiciary.

12. Plaintiffs therefore 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.

Jurisdiction and Venue

13. This is a complaint for declaratory and injunctive relief brought pursuant to AS 22.10.020(a) and (g). This court has original jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

14. Venue is proper in this district pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

Parties

15. Plaintiff American Civil Liberties Union of Alaska is a nonpartisan, nonprofit corporation organized in accordance with the laws of the State of Alaska and has its principal place of business in Anchorage, Alaska. The ACLU of Alaska has approximately 3,500 members across the state. The ACLU's mission is to advance and defend the cause of civil liberties and the rights of Alaskans under the United States Constitution and the Alaska Constitution. Included among the interests and core values of the organization and its members is the preservation of the integrity of the Alaska Constitution and the principles embodied in it. The ACLU of Alaska has no economic incentive to bring this action and is a public interest litigant under the laws of Alaska. It sues on its own behalf and on behalf of its members.

16. Plaintiff Bonnie L. Jack is a lifelong resident of Anchorage, Alaska. Ms. Jack brings this action because of her strong belief in the democratic system of three separate but equal branches of government, and to preserve that democratic system for the benefit of Alaskan citizens. Ms. Jack has no economic incentive to bring this action and is a public interest litigant under the laws of Alaska.

17. Plaintiff John D. Kauffman is an attorney and a resident of Anchorage, Alaska. Plaintiff Kauffman brings this lawsuit as a citizen of Alaska to preserve all Alaskan's state constitutional rights, which are threatened when the courts are attacked by the executive branch. Mr. Kauffman also brings this lawsuit to honor and abide by his oath as an attorney, which has as its first obligation to support the Constitution of the United States and the Constitution of the State of Alaska. Mr. Kauffman has no economic incentive to bring this action and is a public interest litigant under the laws of Alaska.

18. Defendant Michael J. Dunleavy is the Governor of the State of Alaska and is the head of the executive branch of Alaska state government. Governor Dunleavy is sued in his official capacity.

19. Defendant State of Alaska is a sovereign entity organized in accordance with the laws of the United States.

Factual Statement

20. On December 14, 2018, Governor Dunleavy submitted a proposed budget for the July 1, 2019, to June 30, 2020 Fiscal Year (FY 2020) to the Alaska Legislature, as he was required to do pursuant to Article IX § 12 of the Alaska Constitution, with which he intended in part to fund the appellate courts of the Alaska Court System in the amount of \$7,106,400.

21. On February 15, 2019, the Alaska Supreme Court issued a decision in the case of *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (Alaska 2019). In its decision, the Court held that a 2014 state statute narrowing a woman's eligibility to receive Medicaid funding for an abortion was unconstitutional. The Court concluded that the statute violated the equal protection clause of the Alaska Constitution because it imposed Medicaid eligibility criteria on women seeking abortions that were more onerous than criteria applied to women who sought to carry a pregnancy to term.

22. On June 13, 2019, the Alaska Legislature transmitted an operating budget to Governor Dunleavy, approving the amount the Governor had proposed to fund the appellate courts—\$7,106,400. The Legislature also proposed providing three percent additional funding to

appellate court employees to bring their salaries up to par with their executive branch counterparts.

23. On June 28, 2019, relying on the veto authority granted him in Article II § 15 of the Alaska Constitution, Governor Dunleavy rejected the Legislature's proposed salary increases for appellate court employees by striking them from the budget. This veto was not unexpected; Governor Dunleavy had previously expressed his intent to reduce spending to balance the state budget.

24. The result of Governor Dunleavy's veto of the proposed salary increases would have brought the appellate courts' budget back to the original amount proposed by the Governor on December 14; however, Governor Dunleavy made an additional cut in funding to the appellate courts.

25. In a separate veto, attached as Exhibit 1 and available online at Office of Management and Budget, Veto Change Record Details, June 28, 2019, at 122, <https://omb.alaska.gov/fiscal-year-2020-enacted-budget>, Governor Dunleavy reduced the appellate courts' budget for FY 2020 to \$6,771,700. This amount is \$334,700 less than the amount Governor Dunleavy originally proposed on December 14.

26. Governor Dunleavy described this unilateral reduction by saying: “The Legislative and Executive Branch are opposed to State funded elective abortions; the only branch of government that insists on State funded elective abortions is the Supreme Court. The annual cost of elective abortions is reflected by this reduction.”

27. The veto was subject to override by a vote of three-fourths of the membership of the Alaska Legislature under Article II § 16 of the Alaska Constitution. The Legislature convened in special session on July 8, 2019, and, pursuant to Article II § 16, had five days to override the veto. The Legislature failed to override the veto within the requisite five days, and thus the veto was allowed to remain law.

28. On March 28, 2020, the Alaska Legislature passed HB 205 containing the state’s operating budget for FY 2021, which runs from July 1, 2020 to June 30, 2021. The legislature’s FY 2021 budget restored the \$334,700 to the Alaska Court System that the governor’s June 2019 veto had cut from the court’s FY 2020 budget.

29. On April 7, 2020, Governor Dunleavy again vetoed \$344,700 from the Alaska Court System’s budget. The governor explained this FY 2021 reduction by saying: “Reduce funding for the Alaska Court System consistent with Legislative intent language included in HB 205

that no money appropriated under Medicaid Services may be expended for an abortion and consistent with FY 2020 reduction in funding.”

Attached as Exhibit 2 and available online at Office of Management and Budget, HB205 FY 21 Veto Change Records, April 7, 2020, at 65, <https://omb.alaska.gov/fiscal-year-2021-enacted-budget>.

30. The governor’s FY 2021 veto of the Alaska Court System’s budget was not overridden by the legislature. The veto became effective on July 1, 2020.

Count I
Governor Dunleavy’s Court System Vetoes Violate the Doctrine of Separation of Powers

31. The doctrine of separation of powers is inherent to the very structure of the three-branch system of government. The government is divided into three branches—the legislative, executive, and judicial—each of which is given the powers and functions appropriate to it.

32. The doctrine of separation of powers is violated whenever one branch of government impermissibly intrudes on the function of another branch.

33. Article IV § 1 of the Alaska Constitution vests the judicial power of the State of Alaska in a supreme court, a superior court, and the courts established by the legislature.

34. The vesting of “judicial power” in Alaska’s courts represents a constitutional guarantee of an independent and impartial adjudication by those courts on matters brought before them.

35. Neither the legislative nor the executive branch is constitutionally permitted to exercise judicial power.

36. The Governor of Alaska, as the head of the executive branch, may validly exercise the veto power provided to him in Article II § 15 of the Alaska Constitution to “strike or reduce items in appropriation bills.” The Governor may not, however, use his veto power in an unconstitutional manner.

37. Any action taken by the executive branch of the State of Alaska to retaliate against the courts for their exercise of judicial power is unconstitutional because it impermissibly intrudes on the function of the judiciary.

38. When the executive branch retaliates against or withholds funds from the court system because the court has exercised its judicial power, it unconstitutionally and 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.

39. Governor Dunleavy's court system vetoes were made in direct retaliation for the Alaska Supreme Court's decision in *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984 (Alaska 2019).

40. Governor Dunleavy's court system vetoes violate the Alaska Constitution and the separation of powers because they retaliate against and seek to punish the court system for exercising its judicial powers and seek to undermine the independence of the judiciary.

Count II
Governor Dunleavy's Vetoes Violate Article II § 15 of the Alaska Constitution's Limits on Gubernatorial Veto Power

41. Article II § 15 of the Alaska Constitution authorizes the Governor to, "by veto, strike or reduce items in appropriation bills."

42. The authority to strike or reduce items does not include the authority to reallocate appropriations made by the Legislature.

43. The Governor is without authority to take any veto action not specifically granted to him in the Constitution.

44. Governor Dunleavy's vetoes of the court system's budget, in the amount equal to the annual cost to the state of elective abortions, are reallocations of appropriations because they remove funding for one

purpose—court system functions—and redirect it to another purpose—Medicaid-covered abortions.

45. Governor Dunleavy’s court system vetoes violate Article II § 15 of the Alaska Constitution because they are impermissible reallocations of appropriations.

Prayer for Relief

Accordingly, based on the foregoing, Plaintiffs request that this Court do the following:

1. Issue a declaratory judgment that Defendant Michael J. Dunleavy violated the Alaska Constitution by breaching the separation of powers when he issued his court system vetoes;
2. Issue a declaratory judgment that Defendant Dunleavy violated Article II § 15 of the Alaska Constitution by making impermissible reallocations of appropriations;
3. Issue an injunction ordering Defendant Dunleavy, in his official capacity as Governor of the State of Alaska, to refrain from any further intrusion or interference with the judiciary branch;
4. Issue an injunction ordering Defendants Dunleavy and the State of Alaska to return to the appellate court’s FY 2020 budget the amount of \$334,700;

5. Issue an injunction ordering Defendants Dunleavy and the State of Alaska to return to the appellate court's FY 2021 budget the amount of \$334,700;

6. Declare that Plaintiffs are the prevailing party and are constitutional public interest litigants under AS 09.60.010(c);

7. Award Plaintiffs' costs and full reasonable attorneys' fees incurred in obtaining the relief sought in this proceeding; and

8. Award such other relief as this Court may deem just and equitable.

Dated July 13, 2020.

Respectfully submitted,

/s/ Joshua A. Decker

Stephen Koteff, Bar No. 9407070
Joshua A. Decker, Bar No. 1201001
ACLU OF ALASKA FOUNDATION
1057 West Fireweed Lane, Suite 207
Anchorage, AK 99503
(907) 263-2007 (telephone)
skoteff@acluak.org

*Counsel for Plaintiffs ACLU of Alaska,
Bonnie L. Jack, and John D. Kauffman*

Certificate of Service

I certify that on July 13, 2020, I served this by email to Jessica Leeah, jessica.leeah@alaska.gov, and Lael Harrison, lael.harrison@alaska.gov.

/s/ Joshua A. Decker

Joshua A. Decker

EXHIBIT 1

**Office of Management and Budget,
Veto Change Record Details, June 28, 2019**

Change Record Detail with Description - Ignoring Included Scenarios (355)
Judiciary

Scenario: FY2020 Veto Scenario (16005)
Component: Appellate Courts (AR C100) (767)
RDU: Alaska Court System (244)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions			
										PFT	PPT	NP	
FY20 3% COLA Increases to Align the Judiciary's Employees Salaries with GGU Salary Increases													
1004 Gen Fund	Veto	-110.8	-110.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0	0
This reduces funding added for salaries, and continues following statutory guidelines for exempt employee salaries.													
The State's fiscal reality dictates a reduction in expenditures across all agencies.													
Elimination of Funding Equal to FY2018 State Funded Abortions													
1004 Gen Fund	Veto	-334.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	-334.7	0	0	0
The Legislative and Executive Branch are opposed to State funded elective abortions; the only branch of government that insists on State funded elective abortions is the Supreme Court. The annual cost of elective abortions is reflected by this reduction.													
The Federal Government also prohibits any federal funds paying for elective abortions.													
Totals		-445.5	-110.8	0.0	0.0	0.0	0.0	0.0	0.0	-334.7	0	0	0

EXHIBIT 2

**Office of Management and Budget,
HB205 FY 21 Veto Change Records, April 7, 2020**

Change Record Detail with Description - Ignoring Included Scenarios (355)
Judiciary

Scenario: FY2021 Veto Scenario (HB205) (16961)

Component: Appellate Courts (AR C100) (767)

RDU: Alaska Court System (244)

Change Record Title	Trans Type	Totals	Personal Services	Travel	Services	Commodities	Capital Outlay	Grants, Benefits	Miscellaneous	Positions		
										PFT	PPT	NP
Reduce Funding for the Appellate Court Budget (ADN: 41-2020-0001)												
1004 Gen Fund	Veto	-334.7	-318.3	0.0	0.0	-7.2	-9.2	0.0	0.0	0	0	0
Reduce funding for the Alaska Court System consistent with Legislative intent language included in HB 205 that no money appropriated under Medicaid Services may be expended for an abortion and consistent with FY 2020 reduction in funding.												
Totals		-334.7	-318.3	0.0	0.0	-7.2	-9.2	0.0	0.0	0	0	0