

Megan A. Wallace, Attorney For Alaska State Legislature
Legislative Affairs Agency, Division Of Legal And Research Services
120 4th Street, State Capitol, Room 3, Juneau, Alaska 99801
(907) 465-2450

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 THE ALASKA LEGISLATIVE COUNCIL,)
4 on behalf of THE ALASKA STATE)
5 LEGISLATURE,)

6 Plaintiff,)

7 v.)

8 HONORABLE MICHAEL J. DUNLEAVY,)
9 in his official capacity as Governor)
10 for the State of Alaska,)
11 KELLY TSHIBAKA, in her official)
12 capacity as Commissioner of)
13 Administration for the State)
14 of Alaska, and MICHAEL JOHNSON,)
15 in his official capacity as Commissioner of)
16 Education and Early Development for)
17 the State of Alaska.)

18 Defendants.)

Case No. 1JU-19-00753 CI

FILED
STATE OF ALASKA
FIRST DISTRICT
AT JUNEAU

2019 JUL 16 AM 11:23

CLERK TRIAL COURTS
BY AB
DEPUTY CLERK

13 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
14 **AND AN ACCOUNTING**

15 For its claims for relief, and without waiving any rights, privileges or immunities of
16 Legislative Council, the Legislature, or any member of the Legislature, Plaintiff alleges
17 as follows:

18 **PARTIES**

19 1. Plaintiff Alaska Legislative Council (hereinafter "Council") is a permanent
20 interim committee of the Alaska State Legislature (hereinafter "Legislature") and
21 consists of 14 legislators.

22 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND AN ACCOUNTING

Legislative Council v. Dunleavy, et. al, Case No. 1JU-19-_____ CI

1 2. On May 28, 2019, the Legislature delegated to the Council the authority to
2 initiate and direct litigation regarding the appropriations described in this complaint by a
3 vote of 14 yeas and 4 nays in Alaska State Senate and a vote of 23 yeas and 14 nays in
4 the Alaska State House of Representatives. Council has the power to file this
5 complaint.

6 3. On June 13, 2019, Council met and voted by a vote of 14 yeas and 0 nays to
7 file this complaint on behalf of the Legislature regarding the appropriations described in
8 this complaint.

9 4. Defendant Michael J. Dunleavy is the Governor of the State of Alaska.

10 5. Defendant Kelly Tshibaka is the Commissioner of the Department of
11 Administration of the State of Alaska.

12 6. Defendant Michael Johnson is the Commissioner of the Department of
13 Education and Early Development of the State of Alaska.

14 **JURISDICTION**

15 7. This court has subject matter jurisdiction to hear this complaint under AS
16 22.10.020 and article IV, sections 1 and 3, Constitution of the State of Alaska.

17 8. This court has personal jurisdiction to hear this complaint under AS
18 09.05.015.

19 9. Venue is proper in the First Judicial District.
20
21

FACTUAL ALLEGATIONS

1
2 10. Under articles II and IX, Constitution of the State of Alaska, the power of
3 appropriation rests with the Legislature.

4 11. Under article III, section 16, Constitution of the State of Alaska, the
5 Governor "shall be responsible for the faithful execution of the laws."

6 12. Under article VII, section 1, Constitution of the State of Alaska, "[t]he
7 [L]egislature shall by general law establish and maintain a system of public schools
8 open to all children of the State"

9 13. On February 7, 2018, the Alaska State House of Representatives passed HB
10 287 (brf sup maj fld). On April 14, 2018, the Alaska State Senate passed SCS HB
11 287(FIN). On April 18, 2018, the Alaska State House of Representatives passed SCS
12 HB 287(FIN) by concurring in the Senate amendments. On April 30, 2018, SCS HB
13 287(FIN) was transmitted to Governor Bill Walker. On May 4, 2018, Governor Bill
14 Walker signed SCS HB 287(FIN) into law, which became chapter 6, SLA 2018.

15 14. Chapter 6, SLA 2018, which took effect July 1, 2019, appropriates full
16 funding for public school districts in the state and for transportation of students, as well
17 as one-time additional money for public schools, for the fiscal year 2020.

18 15. Alaska Statute 14.17.610(a) provides that "[o]n or before the 15th day of
19 each of the first nine months of each fiscal year, one-twelfth of each district's state aid
20 shall be distributed on the basis of the data reported for the preceding fiscal year."

1 16. Defendants have failed to execute or otherwise disburse the funds
2 appropriated by the Legislature for public school districts for the fiscal year 2020.
3 Without disbursement of state funding to public school districts, public schools across
4 the State will not be able to open their doors for the 2019-2020 school year.

5 **PLAINTIFF'S FIRST CLAIM (STATE AID)**

6 17. The allegations in paragraphs 1-16 of this complaint are realleged and
7 incorporated by reference.

8 18. In section 5(c), ch. 6, SLA 2018, the Legislature appropriated "[t]he amount
9 necessary to fund the total amount for the fiscal year ending June 30, 2020, of state aid
10 calculated under the public school funding formula under AS 14.17.410(b) . . . from the
11 general fund to the public education fund (AS 14.17.300)."

12 19. Defendants have failed to execute the appropriation made in section 5(c), ch.
13 6, SLA 2018, or to distribute the amount appropriated in section 5(c), ch. 6, SLA 2018,
14 to school districts in accordance with Alaska Statute 14.17.610(a).

15 20. Defendants' failure to distribute the amount appropriated in section 5(c), ch.
16 6, SLA 2018, to school districts in accordance with Alaska Statute 14.17.610(a)
17 infringes on the ability of the Legislature to maintain a system of public schools in
18 accordance with article VII, section 1, Constitution of the State of Alaska.

19 21. Defendants' failure to execute the appropriation made in section 5(c), ch. 6,
20 SLA 2018, unlawfully infringes upon the legislative power of appropriation and is in
21

1 violation of article III, section 16, Constitution of the State of Alaska, and in violation of
2 the separation of powers doctrine.

3 22. Plaintiff is entitled to declaratory and injunctive relief ordering Defendants
4 to faithfully execute the appropriation made in section 5(c), ch. 6, SLA 2018 and to
5 distribute the funds to school districts in accordance with Alaska Statute 14.17.610(a)
6 without further delay.

7 **PLAINTIFF'S SECOND CLAIM (TRANSPORTATION**
8 **OF STUDENTS)**

9 23. The allegations in paragraphs 1-22 of this complaint are realleged and
10 incorporated by reference.

11 24. In section 5(d), ch. 6, SLA 2018, the Legislature appropriated "[t]he amount
12 necessary to fund transportation of students under AS 14.09.010 for the fiscal year
13 ending June 30, 2020, . . . from the general fund to the public education fund
14 (AS 14.17.300)."

15 25. Defendants have failed to execute the appropriation made in section 5(d), ch.
16 6, SLA 2018, or to distribute the amount appropriated in section 5(d), ch. 6, SLA 2018,
17 to school districts in accordance with Alaska Statute 14.17.610(a).

18 26. Defendants' failure to distribute the amount appropriated in section 5(d), ch.
19 6, SLA 2018, to school districts in accordance with Alaska Statute 14.17.610(a)
20 infringes on the ability of the Legislature to maintain a system of public schools in
21 accordance with article VII, section 1, Constitution of the State of Alaska.

1 27. Defendants' failure to execute the appropriation made in section 5(d), ch. 6,
2 SLA 2018, unlawfully infringes upon the legislative power of appropriation and is in
3 violation of article III, section 16, Constitution of the State of Alaska, and in violation of
4 the separation of powers doctrine.

5 28. Plaintiff is entitled to declaratory and injunctive relief ordering Defendants
6 to faithfully execute the appropriation made in section 5(d), ch. 6, SLA 2018, and to
7 distribute the funds to school districts in accordance with Alaska Statute 14.17.610(a)
8 without further delay.

9 **PLAINTIFF'S THIRD CLAIM (GRANT FUNDING)**

10 29. The allegations in paragraphs 1-28 of this complaint are realleged and
11 incorporated by reference.

12 30. In section 4, ch. 6, SLA 2018, the Legislature made the following
13 appropriation:

14 The sum of \$30,000,000 is appropriated from the general fund to
15 the Department of Education and Early Development to be
16 distributed as grants to school districts according to the average
17 daily membership for each district adjusted under
18 AS 14.17.410(b)(1)(A) - (D) for the fiscal year ending June 30,
19 2020.

1 31. Defendants have failed to execute the appropriation made in section 4, ch. 6,
2 SLA 2018, or to distribute the amount appropriated in section 4, ch. 6, SLA 2018, to
3 school districts.

4 32. Defendants' failure to distribute the amount appropriated in section 4, ch. 6,
5 SLA 2018, to school districts infringes on the ability of the Legislature to maintain a
6 system of public schools in accordance with article VII, section 1, Constitution of the
7 State of Alaska.

8 33. Defendants' failure to execute the appropriation made in section 4, ch. 6,
9 SLA 2018, unlawfully infringes upon the legislative power of appropriation and is in
10 violation of article III, section 16, Constitution of the State of Alaska, and in violation of
11 the separation of powers doctrine.

12 34. Plaintiff is entitled to declaratory and injunctive relief ordering Defendants
13 to faithfully execute the appropriations made in section 4, ch. 6, SLA 2018, and to
14 distribute the funds to school districts in accordance with Alaska Statute 14.17.610(a)
15 without further delay.

16 **RELIEF REQUESTED**

17 WHEREFORE, the Alaska Legislative Council, on behalf of the Alaska State
18 Legislature, requests the following relief:

19 1. Declaratory judgment that Defendants have violated the Constitution of the
20 State of Alaska by failing to execute the appropriation made in in section 5(c), ch. 6,
21

1 SLA 2018 and failing to distribute to school districts the amounts appropriated by the
2 Legislature.

3 2. Declaratory judgment that Defendants have violated the Constitution of the
4 State of Alaska by failing to execute the appropriation made in in section 5(d), ch. 6,
5 SLA 2018 and failing to distribute to school districts the amounts appropriated by the
6 Legislature.

7 3. Declaratory judgment that Defendants have violated the Constitution of the
8 State of Alaska by failing to execute the appropriation made in in section 4, ch. 6, SLA
9 2018 and failing to distribute to school districts the amounts appropriated by the
10 Legislature.

11 4. An injunction mandating Defendant Kelly Tshibaka, as the Commissioner of
12 the Department of Administration of the State of Alaska, and Defendant Michael
13 Johnson, as the Commissioner of the Department of Education and Early Development
14 of the State of Alaska, and their successors, agents, and employees to disburse money to
15 school districts in accordance with the following appropriations passed by the
16 Legislature and enacted into law:

17 (A) Section 5(c), ch. 6, SLA 2018;

18 (B) Section 5(d), ch. 6, SLA 2018; and

19 (C) Section 4, ch. 6, SLA 2018.

20 5. An injunction prohibiting Defendant Michael J. Dunleavy, as Governor of the
21 State of Alaska, and his successors, officers, agents, servants, employees, or attorneys
22

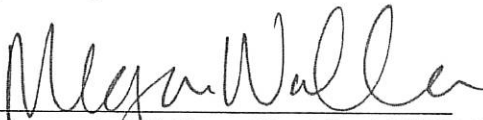
1 from impounding or withholding money from the appropriations described in paragraph
2 4 of this prayer for relief.

3 6. An order requesting Defendants Kelly Tshibaka and Michael Johnson, or their
4 successors, to give Plaintiff an accounting of the expenditures of all money under the
5 appropriations described in paragraph 4 of this prayer for relief, indicating when, how
6 much, and to whom, each expenditure was made.

7 7. Plaintiff's attorney's fees and costs herein.

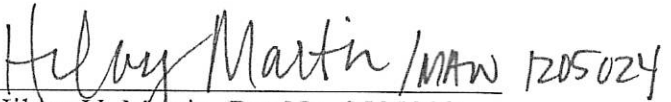
8 8. Such other relief as the Court may find to be just and equitable.

9 Respectfully submitted this 16th day of July, 2019.

10 

11 Megan A. Wallace, Bar No. 1205024
Director

12 Alaska State Legislature, Legislative Affairs Agency
13 Division of Legal and Research Services
14 120 4th Street, State Capitol, Room 3
15 Juneau, AK 99801
Megan.Wallace@akleg.gov
(907) 465-2450

16 

17 Hilary V. Martin, Bar No. 0505039
Assistant Revisor of Statutes
18 Alaska State Legislature, Legislative Affairs Agency
19 Division of Legal and Research Services
20 120 4th Street, State Capitol, Room 3
Juneau, AK 99801
Hilary.Martin@akleg.gov
(907) 465-2450

21 ATTORNEYS FOR THE ALASKA LEGISLATIVE
22 COUNCIL

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND AN ACCOUNTING

Legislative Council v. Dunleavy, et. al, Case No. 1JU-19-_____ CI

jnu.law.ecf@alaska.gov

FILED
STATE OF ALASKA
FIRST DISTRICT
JUNEAU

2019 JUL 16 AM 11:24

CLERK TRIAL COURTS

BY AB
DEPUTY CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

THE ALASKA LEGISLATIVE)
COUNCIL, on behalf of THE ALASKA)
STATE LEGISLATURE,)

Plaintiff,)

v.)

HONORABLE MICHAEL J.)
DUNLEAVY, in his official capacity as)
Governor for the State of Alaska, KELLY)
TSHIBAKA, in her official capacity as)
Commissioner of Administration for the)
State of Alaska, and MICHAEL)
JOHNSON, in his official capacity as)
Commissioner of Education and Early)
Development for the State of Alaska,)

Defendants.)

Case No.: 1JU-19- 00753 CI

**JOINT MOTION AND PROPOSED ORDER REGARDING FISCAL YEAR 2020
EDUCATION FUNDING PENDING RESOLUTION OF LITIGATION**

JOINT MOTION

The Plaintiff, Legislative Council, and the Defendants, Governor Michael J. Dunleavy, Commissioner Kelly Tshibaka, and Commissioner Michael Johnson, representing respectively the legislative and executive branches of Alaska's state government, have a substantial disagreement regarding an important constitutional question which, under the Alaska Constitution, requires resolution by the judicial branch. The question concerns the constitutionality of appropriations for education spending for fiscal year 2020 (FY20) enacted by an appropriation bill passed in 2018 (HB 287, secs. 4, 5(c), and 5(d), ch. 6, SLA 2018). The Legislative Council maintains

ATTORNEY GENERAL, STATE OF ALASKA
Diamond Courthouse
PO Box 110300, JUNEAU, ALASKA 99811
PHONE (907) 465-3600

FILED: 7/16/19 BY: AB INITIALS
DATE

1 the appropriations are lawful and that Defendants should execute the appropriations and
2 distribute the state funds to school districts in FY20 according to the appropriations. The
3 Governor, on the advice of the Attorney General, maintains that the appropriations are
4 unconstitutional and thus there is no lawful appropriation authorizing the release of state
5 funds to school districts for FY20.

6
7 The Plaintiff and the Defendants, however, recognize the importance not only of
8 the constitutional question presented to the Court in this matter, but ensuring that
9 Alaska's schools timely receive state funding while this litigation proceeds.

10 Accordingly, without prejudice to their respective legal positions in this case, the
11 parties request that the Court enter this stipulated order providing for monthly
12 disbursement from the state's general fund to the public education fund (AS 14.17.300)
13 for disbursement to school districts of an amount necessary to fund the total amount of
14 state aid calculated under the public school funding formula under AS 14.17.410(b) and
15 the pupil transportation funding formula under AS 14.09.010 until the Court enters a
16 final judgment, or June 30, 2020, whichever occurs first. State aid to school districts
17 should then be distributed to school districts in accordance with AS 14.17.610 until the
18 Court enters a final judgment, or June 30, 2020, whichever occurs first. Without
19 prejudice to the Plaintiffs' claims for relief, the monthly disbursements will not include
20 the additional \$30 million in school district grants for FY20 also enacted in the 2018
21 appropriation law in section 4, ch. 6, SLA 2018.

22
23
24 The parties intend by separate motion to submit a proposed order with a briefing
25 *Alaska Legislative Council v. Dunleavy, et al.* Case No. 1JU-19-____ CI
26 JOINT MOTION RE EDUCATION FUNDING
PENDING RESOLUTION OF LITIGATION Page 2 of 4

ATTORNEY GENERAL, STATE OF ALASKA
Diamond Courthouse
PO Box 110300, JUNEAU, ALASKA 99811
PHONE (907) 465-3600

1 schedule for expedited consideration of this suit.

2

3

4

5

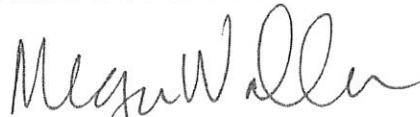
DATED: July 16, 2019.

PLAINTIFF'S COUNSEL

6

7

By:



Megan A. Wallace, Bar No. 1205024
Director

8

9

Alaska State Legislature, Legislative
Affairs Agency

10

Division of Legal and Research Services
State Capitol

11

Juneau, AK 99801


12

Megan.Wallace@akleg.gov

13

(907) 465-2450

14



Hilary V. Martin, Bar No. 0505039

15

Assistant Revisor of Statutes

16

Alaska State Legislature, Legislative
Affairs Agency

17

Division of Legal and Research Services
State Capitol

18

Juneau, AK 99801

19

Hilary.Martin@akleg.gov

(907) 465-2450

20

*Attorneys for the Alaska Legislative
Council*

21

22

DATED: July 8, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

23

24

By:



25

26

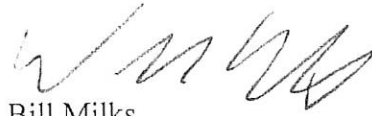
Alaska Legislative Council v. Dunleavy, et al.
JOINT MOTION RE EDUCATION FUNDING
PENDING RESOLUTION OF LITIGATION

Case No. 1JU-19-____ CI

Page 3 of 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Margaret Paton-Walsh
Alaska Bar No. 0411074
Email: margaret.paton-walsh@alaska.gov
Telephone: (907) 269-5100



Bill Milks
Alaska Bar No. 0411094
Email: bill.milks@alaska.gov
Telephone: (970) 465-3600

Attorneys for Defendant

ORDER

IT IS HEREBY ORDERED for good cause and in the public interest that the joint motion is granted and that while this matter is pending before the court, state funding for education shall be disbursed from the state's general fund to the public education fund (AS 14.17.300) on a monthly basis based on the calculation of the amount necessary to fund the total amount of state aid calculated under the public school funding formula under AS 14.17.410(b) and the pupil transportation funding formula under AS 14.09.010. The Defendants shall distribute state aid to school districts in accordance with AS 14.17.610 until this Court enters a final order in this matter, or June 30, 2020, whichever occurs first.

DATED: _____, 2019.

Superior Court Judge