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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,	)	Case No. 3AN-19-08349 CI
Defendants.	)	

STATE OF ALASKA'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

The plaintiffs, American Civil Liberties Union of Alaska, Bonnie L. Jack, and John D. Kauffman are suing Governor Michael J. Dunleavy and the State of Alaska ("the State") because they claim that the Governor violated the Alaska Constitution when he used his line item veto authority to reduce the budget of Alaska's appellate courts. The plaintiffs seek declaratory judgment that the Governor's line item veto breached the separation of powers doctrine and violated Article II § 15 of the Alaska Constitution's limits on gubernatorial veto power. They also seek an injunction ordering the Governor to refrain from interfering with the judicial branch and to return $334,700 to the appellate courts' 2020 fiscal year budget. But the plaintiffs lack standing and their claims present non-justiciable political questions best resolved through the political

process. Even if this Court finds that the plaintiffs have standing and their claims are justiciable under the political question doctrine, the Court should decline declaratory relief and dismiss the plaintiffs' claims on prudential grounds.

II. LEGAL STANDARD FOR MOTION TO DISMISS

A motion to dismiss tests the legal sufficiency of a complaint.[1] Alaska Civil Rule 12(b)(6) provides for early dismissal for failure to state a claim upon which relief can be granted.[2] Although the court must presume that all well-pleaded factual allegations are true and make all reasonable inferences in favor of the non-moving party, the court is not required to consider unwarranted factual inferences or conclusions of law in resolving the merits of a Rule 12(b)(6) motion to dismiss.[3] The court must decide a motion to dismiss from the pleadings, but a motion to dismiss may reference—and the court may consider—matters of public record.[4]

In particular, this Court should take judicial notice of the Alaska Supreme Court's response to the governor's veto for purposes of determining this Motion to Dismiss.[5] A court may consider materials outside the pleadings on a motion to dismiss if those materials are subject to "strict judicial notice" and the plaintiff has opportunity

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[1] *Dworkin v. First Nat. Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968).

[2] *Guerrero v. Alaska Hous. Fin. Corp.*, 6 P.3d 250, 253 (Alaska 2000).

[3] *Dworkin*, 444 P.2d at 779; *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988).

[4] *Nizinski v. Currington*, 517 P.2d 754, 756 (Alaska 1974).

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

to dispute facts judicially noticed.[6] Alaska Rule of Evidence 201(b) states the general rule for taking judicial notice:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

The Alaska Supreme Court's response to the governor's veto was publicized and is generally available.[7] The Alaska Supreme Court's statements about Alaska's judiciary cannot reasonably be questioned.

III. FACTUAL BACKGROUND AND THE PLAINTIFFS' COMPLAINT

For purposes of resolving the motion to dismiss, the plaintiffs' factual allegations are presumed to be true. The State does not, however, admit the accuracy of any specific allegations by repeating them here.

Governor Dunleavy submitted a proposed budget to the Alaska Legislature on December 14, 2018.[8] In that budget, the Governor requested $7,106,400 for the Alaska appellate courts.[9]

On February 15, 2019, the Alaska Supreme Court issued a decision in *State v. Planned Parenthood of the Great Northwest*,[10] holding that a 2014 state statute that

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6 *Pedersen v. Blythe*, 292 P.3d 182, 185 (Alaska 2012).

7 *See, e.g.*, Sean Maguire, "Alaska Court System responds to governor's funding cut over abortion rulings," (July 8, 2019) available online at https://www.ktuu.com/content/news/Alaska-Court-System-responds-to-governors-funding-cut-over-abortion-rulings-512227412.html.

8 Complaint for Declaratory and Injunctive Relief at ¶ 19.

9 *Id.*

limited a woman's eligibility to receive Medicaid funding for an abortion violated the equal protection clause of the Alaska Constitution.[11]

On June 13, 2019, the Alaska Legislature transmitted an operating budget to Governor Dunleavy approving the $7,106,400 requested for the appellate courts.[12] On June 28, 2019, Governor Dunleavy exercised his line item veto power and reduced the appellate court's budget to $6,771,700, or $334,700 less than the amount he originally requested.[13] Governor Dunleavy provided the following explanation for the reduction: "The Legislative and Executive Branch (sic) 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."[14]

The Alaska Supreme Court issued a statement in response to the Governor's veto on July 3, 2019:[15]

> Alaska, like the country as a whole, has a system of government with three co-equal branches. At its most basic, this means that the legislature makes the law, the governor enforces the law, and the supreme court, when faced with a constitutional challenge to a law, is required to decide it. Legislators, governors, and all other Alaskans certainly have the right to their own opinions about the constitutionality of government action, but ultimately it is the courts that are required to decide what the constitution mandates. In

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[10] 436 P.3d 984 (Alaska 2019).

[11] Complaint at ¶ 20.

[12] *Id*. at ¶ 21; Alaska Supreme Court Statement.

[13] Complaint at ¶ 24.

[14] *Id*. at ¶ 25.

[15] Alaska Supreme Court Statement.

> a democracy based on majority rule, it is important that laws be interpreted fairly and consistently. *We assure 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*. (Emphasis added)

The legislature, which had five days to override the veto, convened a special session on July 8, 2019.[16] The legislature failed to override the veto.[17]

On July 16, 2019, the plaintiffs filed the complaint in this case. They claim that the Governor violated the Alaska Constitution when he used his line item veto authority to reduce the budget of Alaska's appellate courts. First, they claim that the Governor's veto was retaliatory, and that any such retaliation or punishment is an intrusion on the function of the judiciary in violation of the separation of powers doctrine.[18] Second, the plaintiffs claim that the Governor's veto constitutes a reallocation of an appropriation in violation of Article II § 15 of the Alaska Constitution's limits on gubernatorial veto power.[19] The plaintiffs seek declaratory judgment and an injunction ordering the Governor to refrain from interfering with the judicial branch and to return $334,700 to the appellate court's 2020 fiscal year budget.[20]

IV. ARGUMENT

At the outset, the Governor agrees that the Alaska Constitution establishes the judiciary as a separate co-equal branch of government alongside the legislative and

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[16] Complaint at ¶ 26.

[17] *Id*.

[18] Complaint at ¶¶ 27-36.

[19] *Id*. at ¶¶ 37-41.

[20] *Id*., Prayer for Relief at ¶¶ 1-4.

executive branches. The Governor also agrees that the Alaska Constitution requires that the judiciary be funded to carry out its constitutional responsibilities. The Constitution, however, specifically leaves it to the legislative and executive branches to decide how much funding the court system, along with other state department, requires. If the Legislature or the Governor left the judicial branch completely unfunded that would be unconstitutional. But that is not what happened here.[21] Both the Legislature and the Governor provided adequate funding for the judiciary to carry out its constitutional responsibilities. Thus, the plaintiffs' complaint should be dismissed for three reasons.

First, the plaintiffs lack standing. They have articulated no practical impact of the veto either to their own interests or to the general public interest. The Alaska judiciary remains independent and adequately funded. The plaintiffs articulate only abstract legal questions and essentially request this Court to give an advisory opinion.

Second, it is well-established that certain questions are political as opposed to legal, and as a result, must be resolved by the political branches rather than by the judiciary. 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.

Finally, even if this Court concludes that the plaintiffs have standing and have presented a justiciable question, this Court should dismiss the case on prudential grounds. The Governor's veto does not represent a significant interference with the

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[21] Alaska Supreme Court Statement.

Court System's ability to perform its job, and 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. Essentially, the plaintiffs ask this Court to do what they claim the Governor has done.

Accordingly, the plaintiffs have failed to state a claim for which relief may be granted, and this Court should dismiss their claims with prejudice.

A. The plaintiffs lack standing to bring this case.

Alaska Statute 22.10.020(g) authorizes, but does not require, courts to issue declaratory judgments in cases of "actual controversy." This reference to "actual controversy" encompasses considerations of standing.[22] Standing is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions.[23] The "fundamental question" raised by a motion to dismiss for lack of standing is "whether the litigant is a proper party to seek adjudication of a particular issue."[24]

Alaska courts recognize three types of standing, two of which are relevant to this case: interest-injury standing and citizen-taxpayer standing.[25] To establish the first, the plaintiffs must demonstrate "a sufficient personal stake in the outcome of the

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[22] *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d 364, 368 (Alaska 2009).

[23] *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009) (quoting *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Alaska 2004)).

[24] *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (Alaska 2010).

[25] The third type is third party standing, which has no potential application here. *See*, *Wagstaff v. Superior Court, Family Court Div.*, 535 P.2d 1220 (Alaska 1975).

controversy and an interest which is adversely affected by the complained-of conduct."[26] To establish the second, the plaintiffs must demonstrate that the case is one of public significance and that they are appropriate plaintiffs.[27] A plaintiff is not appropriate if there are other potential plaintiffs more directly affected by the challenged conduct who are capable of suing.[28]

1. The complaint raises only abstract questions of law.

The plaintiffs express generalized concern that Governor Dunleavy's veto contravenes the principle of separation of powers embodied in the Alaska Constitution, but they allege no practical impact of the veto. For example, the complaint alleges that "Governor Dunleavy's court system veto was intended to punish the [Alaska Supreme] Court…, to threaten the Court…, and to improperly influence the Court and erode its independence."[29] The complaint alleges that "[s]uch actions, if left unchecked, threaten our democracy and the core system of checks and balances."[30] It also alleges that "[s]uch actions, if unabated, undermine the public trust in the independence and impartiality of the judiciary."[31] Although the complaint makes dire predictions regarding the cumulative effects of many such actions, if continuing "unchecked" or

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26 *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009) (quoting *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1040 (Alaska 2004) and *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (Alaska 2000), internal quotation marks omitted).

27 *Id*. at 302.

28 *Id*. *See also*, *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255-56 (Alaska 2010).

29 Complaint at ¶ 8.

30 *Id*. at ¶ 9.

31 *Id*. at ¶ 10.

"unabated," the complaint does not allege that the veto has actually improperly influenced the Court or eroded its independence, that any similar such vetoes are likely in the future, or that the challenged veto is part of a broader pattern. Thus, the questions posed by the plaintiffs are purely abstract and lack the basic adversity necessary for standing.

Further, it is beyond question that article 2, section 15 of the Alaska Constitution expressly empowers the governor to "veto, strike or reduce items in appropriation bills," and that this power covers all appropriations bills, including those to the court system. The governor cannot violate the separation of powers by exercising a power that the constitution expressly grants to him. In any event, the Alaska Supreme Court has already responded to the veto and assured all Alaskans, including the plaintiffs, 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."[32] The plaintiffs identify no reason to doubt the Alaska Supreme Court's express assurance on this issue.

2. None of the plaintiffs has interest-injury standing.

The plaintiffs to this action are the American Civil Liberties Union of Alaska, Bonnie L. Jack, and John D. Kauffman.[33] The ACLU of Alaska alleges that its mission is "to advance and defend the cause of civil liberties and the rights of Alaskans under

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[32] Alaska Supreme Court Statement.

[33] It is not alleged whether Ms. Jack and Mr. Kauffman are members of plaintiff ACLU of Alaska.

the United States Constitution and the Alaska Constitution."[34] It alleges that this mission includes "the preservation of the integrity of the Alaska Constitution and the principles embodied in it."[35] It does not allege any injury to itself or its individual members other than abstract concern that the Governor's veto contravened the principles it seeks to advance and protect.[36]

The complaint alleges that plaintiff Bonnie L. Jack holds strong beliefs in the democratic system of three separate but equal branches of government.[37] Other than an allegation that the Governor's veto offends Ms. Jack's strong beliefs, the complaint does not allege any injury to Ms. Jack.

The complaint likewise alleges that plaintiff John D. Kauffman seeks "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."[38] The complaint does not allege any injury to Mr. Kauffman other than his abstract concern that "all Alaskans' state constitutional rights … are threatened when the courts are

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[34] Complaint at ¶ 14.

[35] *Id*.

[36] An association has standing to bring suit on behalf of its members when "(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." *Friends of Willow Lake, Inc. v. State, Dep't of Transp.*, 280 P.3d 542, 546 (Alaska 2012). Because the ACLU of Alaska has not alleged that its individual members have any interest in the outcome of this case that is not merely abstract, it cannot establish standing through the interests of its membership.

[37] Complaint at ¶ 15.

[38] *Id*. at ¶ 16. *See* Alaska Bar Rule 5, Section 3.

attacked by the executive branch."[39] Although Mr. Kauffman believes that his oath as an attorney impels him to bring this lawsuit, the complaint does not allege that Mr. Kauffman's license to practice law is jeopardized if he fails to do so. In fact, Mr. Kauffman's interests in this case are the same as Ms. Jack's; his attorney's oath does not differentiate his strongly held beliefs regarding the Alaska Constitution from those of Ms. Jack.

Interest-injury standing requires that a plaintiff be affected by some practical impact of an allegedly illegal act. Although the degree of injury need not be great, it must be more than abstract.[40] For example, although the Alaska Supreme Court held that children affected by global warming had interest-injury standing to challenge allegedly unconstitutional policies contributing to global warming,[41] the children had alleged specific and practical impacts of global warming that *personally affected them*: higher water levels leading to flooding in the area where one child lived, increased air temperatures and spruce bark beetle infestation leading to increased forest fires in the area where another child lived, and so forth.[42] The Supreme Court held that the children

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[39] Complaint at ¶ 16.

[40] *Keller v. French*, 205 P.3d 299, 304-5 (Alaska 2009) ("an identifiable trifle is sufficient to establish standing to fight out a question of principle") (quoting *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1040-41 (Alaska 2004), internal quotation marks omitted).

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

[42] *Id*. at 1093.

had alleged "direct injury to a range of cognizable interests" and therefore the allegations "were sufficient to establish standing."[43]

But here, none of the three plaintiffs has a sufficient personal stake in this matter to support interest-injury standing. The plaintiffs have not alleged that the Governor's veto has actually diminished their constitutional rights to an independent and impartial judiciary or placed them in reasonable fear of such diminishment. Nor have the plaintiffs alleged that the financial impact of the veto has limited their constitutional rights of access to the judicial system. In other words, the plaintiffs here have not alleged any direct injury to their interests associated with the Governor's veto. They present only an abstract legal dispute seeking to vindicate their beliefs about the propriety of the Governor's actions.

3. None of the plaintiffs has citizen-taxpayer standing.

The Alaska Supreme Court's prompt reassurance regarding the independence of the judiciary also means that the plaintiffs have not articulated any genuine issue of public significance. Nor is the financial impact of the veto so significant as to make it a matter of general public importance. Alaska's constitutional system of three equal and independent branches of government remains unimpaired.

"Taxpayer-citizen standing cannot be claimed in all cases as a matter of right."[44] As in the interest-injury inquiry, practical impacts matter. Even if the plaintiff cannot demonstrate a direct injury to his or her personal interests, the plaintiff must be able to

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43 *Id.*

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

demonstrate that the action has some impact on a matter of public interest. For example, in *Sonneman v. State*, a citizen challenged a change in state election policy by which candidates would be named in the same randomly selected order on every ballot, rather than the former practice of printing ballots on a rotation so that each candidate's name appeared first on an equal number of ballots.[45] The citizen alleged a practical impact of naming the same candidate first on every ballot, referred to as a "positional bias."[46] The citizen "cited studies which conclude that the candidate who is listed first will receive an additional five percent of his or her total votes from voters who simply vote for the first candidate on the list."[47] The Court found that the citizen's allegations established citizen-taxpayer standing.[48] In this case, the Alaska Supreme Court has already 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.

Although the veto has some actual impact on the budget of Alaska's appellate courts, impacts of low financial "magnitude" are not considered to be of public significance.[49] In this case, the Governor's veto reduced the appellate courts' budget by less than five percent, and reduced the budget of the judicial branch by less than one-

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

46 *Id*. at 635.

47 *Id*.

48 *Id*. at 636.

49 *Hoblit v. Comm'r of Nat. Res.*, 678 P.2d 1337, 1341 (Alaska 1984) (quoting *State v. Lewis*, 559 P.2d 630, 635 (Alaska 1977)).

half of one percent.[50] In *Hoblit v. Commissioner of Natural Resources*, the Alaska Supreme Court held that the state's disposition of twenty acres of land was not "significant" for purposes of establishing citizen-taxpayer standing.[51] The Court distinguished that case from cases with the potential for more significant economic impacts.[52] The relatively small amount at stake in this case also weighs against finding that the matter is one of "public significance" for purposes of citizen-taxpayer standing.

Further, if the $334,700 were essential to the Alaska judiciary's ability to function and the co-equal branches of government were unable to resolve the problem through the appropriation process, it is a generally accepted rule of law that the separate branches of government have the inherent authority to fund their own operations to the extent reasonably necessary to fulfill their constitutional duties.[53] This inherent authority further mitigates the financial significance of the governor's veto; if the money were essential to performance of the judiciary's constitutional functions, the

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[50] 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.

[51] *Hoblit*, 678 P.2d at 1341.

[52] *See id*. (distinguishing case from *Gilman v. Martin*, 662 P.2d 120 (Alaska 1983) which involved disposition of "significant number of acres" of municipal land, and from *State v. Lewis*, 559 P.2d 630 (Alaska 1977) which involved potentially "vast sums of money").

[53] *See*, *In Re the Matter of the Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 784-86 (Minnesota 1976) (citing Carrigan*, Inherent Powers of the Courts* (published by National College of the Judiciary) and cases cited; Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R.3d 569, and cases cited).

judiciary could likely compel it through direct action. The judiciary would not have to rely on a plaintiff like the ACLU to bring an action for declaratory and injunctive relief in order to obtain necessary funding.

Finally, this Court should rule that these plaintiffs lack citizen-taxpayer standing because, in the event that the Governor's veto ultimately has practical impacts (or a series of such vetoes cumulatively have impacts[54]), there will be other, more directly affected plaintiffs capable of suing. The ACLU of Alaska, Ms. Jack and Mr. Kauffman allege only abstract injuries to their beliefs and principles. A more appropriate plaintiff would be a person or entity that actually experiences negative impacts from the governor's veto. For example, an appropriate 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. And, of course, any judge who actually experiences coercion or other negative impacts of allegedly illegal budget reductions may sue for declaratory and injunctive relief.[55]

The Alaska Supreme Court has held on several occasions that the existence of more directly affected potential plaintiffs capable of suing defeated citizen-taxpayer standing. For example, in *Keller v. French*, the Alaska Supreme Court considered

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[54] *See* Complaint at ¶¶ 9 and 10 (referring to potential harm if "[s]uch actions" continue "unchecked" or "unabated").

[55] Nothing prevents judicial officers from seeking declaratory judgment of their own rights and legal relations vis a vis other parties. *See e.g.*, *Hornaday v. Rowland*, 674 P.2d 1333 (Alaska 1983) (district court judge sued for declaratory judgment that presiding judge's order transferring location of his chambers was invalid); *Div. of Elections v. Johnstone*, 669 P.2d 537 (1983) (superior court judge sued for declaratory judgment regarding his retention election schedule).

whether certain legislators had standing to sue other legislators over an allegedly unconstitutional investigation into certain executive actions.[56] The Court held that the plaintiff-legislators had not established either citizen-taxpayer standing or interest-injury standing.[57] The Court observed that the plaintiff-legislators had not alleged any direct harm to their own interests.[58] And the executive branch employees subject to the investigation were more directly affected and capable of suing.[59] In fact, a number of executive employees had already sued to quash subpoenas issued by the defendant-legislators.[60] The Court also pointed out that the governor herself was more directly affected by the investigation and perfectly capable of suing, even though she had not chosen to do so.[61] "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."[62]

Because of the existence of more directly affected potential plaintiffs who are capable of suing, this Court should hold that the ACLU of Alaska, Ms. Jack and

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

57 *Id*. at 302-5.

58 *Id*. at 304-5.

59 *Id*. at 303.

60 *Id*. at 301.

61 *Id*. at 303.

62 *Id*. *See also Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255-56 (Alaska 2010) (holding that nonprofit did not have citizen-taxpayer or interest-injury standing to challenge legality of involuntary administration of psychotropic medication to minors because minors actually subjected to involuntary medication would be more appropriate plaintiffs, and there was no reason to believe that they were incapable of or improperly deterred from suing on their own behalf).

Mr. Kauffman do not have standing to challenge the Governor's veto.[63] They are not appropriate plaintiffs to bring this action.

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

The plaintiffs take issue with the political commentary attached to the Governor's veto, and thus, characterize the veto as retaliatory. Despite the Supreme Court's assurances 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,"[64] the plaintiffs assert that the veto impermissibly intrudes on the function of the judiciary. The plaintiffs in turn invite this Court to intrude on the powers of both the governor and the legislature and unilaterally override the veto. It should decline to do so.

Courts do not resolve all disputes. Rooted in the separation of powers doctrine is the principle that some claims are non-justiciable because they revolve around policy choices and value determinations, and thus require courts to answer questions that are delegated to the discretion of the legislative or executive branches of government (i.e. political questions).[65] To identify political questions, the Alaska Supreme Court has

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[63] This Court may also consider the plaintiffs' allegations regarding the cumulative effect of "[s]uch actions, if left unchecked" or "unabated" to be unripe. Along with standing, ripeness is one of the considerations encompassed by the phrase "actual controversy" in AS 22.10.020(g). *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d 364, 368 (Alaska 2009). Courts should not decide matters lacking "sufficient immediacy and reality" to warrant declaratory judgment. *Id*. at 369. This may be a situation where harms at present are only hypothetical and the future development of concrete facts may aid in the Court's decision.

[64] Alaska Supreme Court Statement.

[65] *Kanuk ex rel. Kanuk v. State, Dep't. of Natural Resources*, 335 P.3d 1088, 1096-97 (Alaska 2014); *State, Dep't of Natural Resources v. Tongass Conservation Soc'y*,

adopted the approach used by the United States Supreme Court in *Baker v. Carr.*[66] In *Baker,* the Court identified six factors for determining whether a case involves a political question:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[67]

The presence of any one of the *Baker* factors indicates a political question, and at least three of the factors apply here.

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931 P.2d 1016, 1018 (Alaska 1997) ("[C]ourts should not attempt to adjudicate political questions . . . . This principle stems primarily from the separation of powers doctrine."); *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 336 (Alaska 1987) (recognizing that the political question doctrine stems primarily from the separation of powers doctrine); *Abood v. Gorsuch*, 703 P.2d 1158, 1160 (Alaska 1985) ("There are certain questions involving coordinate branches of the government, sometimes unhelpfully called political questions, that the judiciary will decline to adjudicate."); *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982) ("The view that [political] questions are nonjudiciable stems primarily from the separation of powers doctrine."); *Baker v. Carr*, 369 U.S. 186, 210 (1962) ("[I]t is the relationship between the judiciary and the coordinate branches of the . . . Government . . . which gives rise to the 'political question.'")

[66] *Kanuk*, 335 P.3d at 1096 (citing *Baker*, 369 U.S. at 217); *Tongass Conservation Soc'y*, 931 P.2d at 1018; *Abood v. League of Women Voters of Alaska*, 743 P.2d at 336; *Malone*, 650 P.2d at 356.

[67] *Baker*, 369 U.S. at 217; *see also*, *Malone*, 650 P.2d at 357; *Kanuk*, 335 P.3d at 1096-97.

1. The plain language of the Alaska Constitution commits the State's spending priorities to the governor and the legislature.

The Alaska Constitution clearly contains a "textually demonstrable constitutional commitment of the issue" to the other branches of government. Under the Alaska Constitution, joint responsibility for the State's annual spending priorities and the power to resolve political disputes that arise in the course of appropriating funding are expressly committed to the governor and the legislature.[68] The governor has the power to submit a proposed budget and appropriation bills to the legislature.[69] The legislature has the power to pass appropriations bills.[70] The governor has broad power to veto, strike, or reduce items in appropriations bills.[71] The legislature may then override any veto with an affirmative vote of three-fourths of its membership.[72]

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68 *Simpson v. Murkowski*, 129 P.3d 435, 446-47 (Alaska 2006).

69 Alaska Const. art. IX § 12 ("The governor shall submit to the legislature . . . a budget . . . setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State."); *see also Simpson*, 129 P.3d at 446; *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001).

70 Alaska Const. art. II § 1; art. II § 13; art. IX § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law."); art. IX § 7 (prohibiting dedicated funds); art. XI § 7 (prohibiting the use of an initiative to make or repeal an appropriation). *See also*, *Simpson*, 129 P.3d at 446; *Knowles*, 21 P.3d at 371; *University of Alaska Classified Employees Ass'n v. Univ. of Alaska*, 988 P.2d 105, 107 (Alaska 1999); *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988); *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991) ("The purpose of the prohibition on repeal of appropriations by initiative is to ensure that the legislative body remains in control of and responsible for the budget."); *State v. Alex*, 646 P.2d 203, 210 (Alaska 1982) (recognizing that dedications would multiply "until the point is reached where neither the governor nor the legislature has any real control over the finances of the state").

71 Alaska Const. art. II § 15; *see also*, *Simpson*, 129 P.3d at 446-7; *Knowles*, 21 P.3d at 371; *Thomas v. Rosen*, 569 P.2d 793, 795 (Alaska 1977) ("The constitutional history underlying [the governor's veto authority provision] indicates a desire by the

However, despite the constitutional commitment of budget considerations to the executive and legislative branches, as noted above, courts are not left to the mercy of political whims. Most American jurisdictions have adopted the general rule that through the separation of powers doctrine, other branches of government have inherent power to compel payment of those sums of money which are reasonable and necessary to carry out mandated constitutional responsibilities.[73] Thus, if the Governor's veto combined with his veto message was an actual threat to the judiciary's ability to function, the judiciary would likely have recourse.

Because the plain language of the Alaska Constitution deliberately commits the responsibility for proposing and adopting the State's budget to the elected branches of government, this dispute is best resolved through political means. If the people are dissatisfied with the allocation of state resources, or with the Governor's veto statement, they may express that dissatisfaction at the ballot box. This Court should not weigh in on the political questions raised by the plaintiffs here.

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delegates to create a strong executive branch with 'a strong control on the purse strings' of the state").

[72] 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.

[73] *See*, *In Re the Matter of the Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 784-86 (Minnesota 1976) (citing Carrigan, *Inherent Powers of the Courts* (published by National College of the Judiciary) and cases cited; Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes*, 59 A.L.R.3d 569, and cases cited).

2. This Court cannot decide this matter without making an initial policy determination of a kind clearly for non-judicial discretion.

A case also presents a political question "when, to resolve a dispute, the court must make a policy judgment of a legislative nature, rather than resolving the dispute through legal and factual analysis."[74] The plaintiffs ask this Court to disregard the decisions made through the political process and return money to the Court System's budget. Although the court may have the authority to compel appropriations sufficient to enable it to carry out its constitutional responsibilities, that power would be limited to situations in which established methods for procuring necessary funds have failed.[75] Here, the Alaska Supreme Court has indicated that the veto does not threaten its ability to function or its independence. Compelling the vetoed appropriation would therefore place this Court in a legislative role and could damage the judiciary's legitimacy by creating an appearance of impropriety.

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[74] *Kanuk*, 335 P.3d at 1097 (quoting *Equal Emp't Opportunity Comm'n v. Peabody W. Coal Co.*, 400 F.3d 774, 784 (9th Cir. 2005).

[75] *See* for example, *Pena, et al. v. The District Court of the Second Judicial District In and For the City and County of Denver,* 681 P.2d 953, 957 (Colorado 1984) (concluding that inherent power is limited to funds necessary for the court's proper functioning and can be exercised only after other means have failed); *In Re the Matter of the Clerk of Court's Compensation for Lyon County*, 241 N.W.2d at 785 (warning that the judicial branch should proceed cautiously and with due consideration for the powers and prerogatives of the other branches of government); *Lavelle v. Koch*, 617 A.2d 319, 321 (Pennsylvania 1992) (advising that exercise of inherent power is justified only under conditions so as not to offend the doctrine of separation of powers); *State ex rel. Metropolitan Public Defender Servs., Inc. v. Courtney*, 64 P.3d 1138, 1139 (Or. 2003) (noting that the separation of powers principle is not offended by choice made by other branches unless those choices unduly burden capacity of judiciary to perform its core functions and concluding that budgetary reductions at issue in that case would not prevent judiciary from carrying out its core functions).

3. This Court cannot undertake an independent assessment of the Governor's veto without expressing a lack of respect for decisions made by Alaska's political branches.

Although the plaintiffs complain that the governor has intruded on the judicial function, they effectively ask the court to do exactly the same thing: interfere with a co-equal branch of government's exercise of its constitutional authority by assuming powers expressly granted to that branch by the Alaska constitution.

At the heart of the plaintiffs' case is the premise that the Court System is best suited to "check and balance" the Governor's veto actions. The framers of Alaska's constitution thought otherwise. The plaintiffs would have this Court ignore the legislative override process and step into the role of at least 45 legislators and require the Governor, as a matter of law, to return $334,700 to the Court System's 2020 fiscal year budget. Such an order would render the existing checks and balances of the state's budget process meaningless and signal a lack of respect for both the legislative and executive branches.

Alaska's political branches have considered and made policy decisions on the funding issues raised in the plaintiffs' complaint. The governor has broad power to veto, strike, or reduce items in appropriations bills,[76] and it is then up to three-fourths of the

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[76] Alaska Const. art. II, § 15; *see also*, *Simpson*, 129 P.3d at 447; *Knowles*, 21 P.3d at 371; *Thomas*, 569 P.2d at 795 ("The constitutional history underlying [the governor's veto authority provision] indicates a desire by the delegates to create a strong executive branch with 'a strong control on the purse strings' of the state").

legislature to override that veto.[77] A judicial override of the Governor's veto because of the Governor's political commentary—especially when the veto at issue does not actually impair the court's ability to perform its functions—would invade the territory of both the governor and the legislature. Such a decision would set a precedent for second-guessing all vetoes simply because they are inevitably politically motivated. And it would disregard the fact that, despite its special session, the legislature failed to amass the votes to override the veto. Thus, this Court cannot resolve the plaintiffs' claims without expressing a lack of respect for both the legislative and executive branches.[78]

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

The Alaska Declaratory Judgment Act[79] allows superior courts "to issue declaratory judgments in cases of actual controversy,"[80] and Alaska Civil Rule 57(a) governs the procedure for declaratory relief.[81] The requirement of an actual controversy encompasses standing and ripeness, discussed above, and also prudential

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[77] 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.

[78] *Tongass Conservation Soc'y*, 931 P.2d at 1020 (quotations omitted).

[79] AS 22.10.020(g).

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

[81] Civil Rule 57(a).

considerations.[82] Even where a plaintiff has standing and the matter is ripe, a court may still decline to issue a declaratory judgment for prudential reasons.[83]

"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.[84] For declaratory judgments, the normal principle that courts should decide claims within their jurisdiction "yields to considerations of practicality and wise judicial administration."[85] A court may exercise its broad discretion to decline declaratory relief to avoid a "wasteful expenditure of judicial resources."[86]

As discussed, the Governor's veto does not actually interfere with the Court System's ability to perform its constitutional duties. And the plaintiff is asking this Court to override the Governor's veto after the legislature failed to do so. 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 budget in a time of budget crisis would create an appearance of impropriety and would only serve to compromise the court's credibility.

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82 *Kanuk*, 335 P.3d at 1096.

83 *Id*. at 1100.

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

85 *Id*.

86 *Id*.

V. 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 State 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."[87]

Moreover, the allegations in the complaint are insufficient to establish an "actual controversy" under Alaska Statue 22.10.020(g). And even if the plaintiffs' 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.

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