

Cashion Gilmore & Lindemuth
510 L Street, Suite 601
Anchorage, Alaska 99501
(907) 222-7932 fax (907) 222-7938

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

EMERGENCY
IN THE SUPREME COURT OF THE STATE OF ALASKA

MADILYN SHORT, RILEY VON BORSTEL,
KJRSTEN SCHINDLER, and JAY-MARK
PASCUA,

Appellants,

v.

GOVERNOR MICHAEL J. DUNLEAVY in his
official capacity, THE STATE OF ALASKA,
OFFICE OF MANAGEMENT AND BUDGET,
and THE STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION,

Appellees.

Case No.: S-18333
Trial Court No.: 3AN-22-04028CI

**EMERGENCY MOTION FOR RECONSIDERATION OF ORDER DENYING
EMERGENCY MOTION TO EXPEDITE BRIEFING SCHEDULE**

Appellants Madilyn Short, Riley von Borstel, Kjrsten Schindler, and Jay-Mark Pascua (collective the “Student Appellants”) respectfully request reconsideration of the Order dated February 25, 2022, which denied the Student Appellants’ emergency motion to expedite, pursuant to Alaska Appellate Rule 503(h)(1)(B).

The Student Appellants renew their request for a decision on the merits of this appeal by no later than May 4, 2022, a request that is *not* opposed by Appellees and is supported by a separate filing of the Alaska Legislative Council. Because this appeal concerns the location and accessibility of over \$422 million, which necessarily has an impact on this year’s legislative session, the FY2023 budget, and the legislature’s appropriation power, this Court should GRANT the Student Appellants’ request and

1 expedite this appeal’s briefing schedule. A decision on this emergency motion is
2 requested by the close of business on March 7, 2022.

3 As explained in the Student Appellants’ emergency motion to expedite, this appeal
4 concerns whether the Alaska Higher Education Investment Fund (“HEIF”) must be
5 “swept” into the Constitution Budget Reserve (“CBR”) pursuant to article IX,
6 section 17(d) of the Alaska Constitution.¹ Because the superior court determined that the
7 HEIF is subject to the annual CBR “sweep,” over \$422 million is now no longer
8 accessible by the legislature through a simple majority vote, and can instead only be
9 accessed by a three-fourths vote of both houses of the legislature.² Furthermore, the \$422
10 million that had previously been invested will likely be liquidated, and the State will
11 consequently see much lower rates of return, and potentially suffer financial losses
12 resulting from the liquidation.³ Accordingly, even if the legislature attempted to remedy
13 this issue by amending the HEIF statute, it will likely be unable to recapitalize the Fund
14 absent clarity from this Court. This appeal is therefore not just about funding this year’s
15
16
17
18
19

20 ¹ See AS 37.14.750.

21 ² See Alaska Const. art. IX, § 17(c).

22 ³ Compare HEIF, Net Asset Value, As of the Month Ending December 31, 2021
23 (valuing the HEIF at \$422.8 million as of December 31, 2021), and HEIF, Net Asset
24 Value, As of the Month Ending November 30, 2021 (valuing the HEIF at \$410.5 million
25 as of November 30, 2021), with Treasury Division, Accounting Section, General Fund
and Other Non-Segregated Investments (GeFONSI) (Jan. 20, 2022) (showing an
annualized rate of return for the CBR of approximately 0.04% for the same timeframe).

1 scholarship, grant, and loan programs for students pursuing postsecondary educational
2 opportunities in Alaska.

3 As required by Appellate Rule 504(c) for emergency motions, the telephone
4 numbers and addresses of counsel are as follows:

5 Counsel for Appellants:

6 Jahna M. Lindemuth
7 Scott M. Kendall
8 Samuel G. Gottstein
9 Cashion Gilmore & Lindemuth
10 510 L Street, Suite 601
11 Anchorage, AK 99501
12 (907) 222-7932

13 Counsel for Appellees:

14 Margaret Paton Walsh
15 Kate Demarest
16 Alaska Department of Law
17 1031 West 4th Avenue, Suite 200
18 Anchorage, AK 99501
19 (907) 269-5275

20 The Student Appellants also note that opposing counsel, in response to a request made
21 on February 27, 2022, reiterated via email today that *they do not oppose expedited*
22 *consideration*, and that the Governor's office actually favors expedited consideration.
23 Appellees' only request is that Appellees not be required to begin drafting its brief until
24 after March 14, 2022. This scheduling request can easily be met by any expedited
25 briefing schedule by making Appellants' brief due on or after March 14.

1 Additionally, the Alaska Legislative Council, representing the legislative branch,
2 plans to separately file a joinder to the Student Appellants' emergency motion for
3 reconsideration. The Legislative Council refrained from intervening in the superior court
4 proceeding because it wanted a quick decision in this case and on appeal. Knowing where
5 the HEIF monies are located is required so that the legislature can take effective action
6 regarding those monies this session.
7

8 The parties disagree on the correct interpretation of article IX, section 17(d), but
9 are in total agreement that this is a case of statewide importance justifying expedited
10 consideration. In fact, this Court has agreed in the past; the two prior times this Court
11 has had to interpret other sections of article IX, section 17, the Court considered those
12 cases on an expedited basis.⁴ This Court should not depart from its standard practice of
13 expediting such appeals, especially when it concerns hundreds of millions of dollars, how
14 those funds can be accessed by the current legislature, and whether the legislature retains
15 the power to appropriate such monies.
16

17 The Student Appellants respectfully request that this Court reconsider its Order
18 dated February 25 and GRANT Appellants' unopposed request to expedite this appeal so
19 that the parties may have a decision by no later than May 4, 2022.
20
21
22

23 ⁴ See *Hickel v. Halford*, 872 P.2d 171, 174 (Alaska 1994) (deciding, on an expedited
24 basis, the interpretation of article IX, section 17(a)); *Hickel v. Cowper*, 874 P.2d 922, 925
25 (Alaska 1994) (deciding, on an expedited basis, the interpretation of article IX,
section 17(b)).

CASHION GILMORE & LINDEMUTH
Attorneys for Appellants

1
2
3 DATE: 2-28-2022

By: 

Jahna M. Lindemuth
Alaska Bar No. 9711068
Scott M. Kendall
Alaska Bar No. 0405019
Samuel G. Gottstein
Alaska Bar No. 1511099

4
5
6
7
8
9 **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the
foregoing was served via email on
February 28, 2022 on the following:

11 Margaret Paton-Walsh
margaret.paton-walsh@alaska.gov

12 Katherine Demarest
kate.demarest@alaska.gov

13 James E. Torgerson
jim.torgerson@stoel.com

14 Kevin Cuddy
kevin.cuddy@stoel.com

15 Connor R. Smith
connor.smith@stoel.com

16
17
18 CASHION GILMORE & LINDEMUTH

19 By: s/Colleen McGovern
20 Colleen McGovern