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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 TO EXPEDITE BRIEFING SCHEDULE

Appellants Madilyn Short, Riley von Borstel, Kjrsten Schindler, and Jay-Mark Pascua (collectively the “Student Appellants”), file this emergency motion under Alaska Appellate Rule 504 for an expedited briefing and decision schedule in this appeal. As explained below, the Student Appellants request a decision on the merits of this appeal by no later than May 4, 2022, and a decision on this emergency motion by the close of business on February 24, 2022. This emergency motion is supported by the affidavit of Jahna M. Lindemuth.¹

This appeal concerns the interpretation of article IX, section 17(d) of the Alaska Constitution — which is the Constitutional Budget Reserve’s (“CBR”) repayment

¹ See Affidavit of Jahna M. Lindemuth in Support of Emergency Motion to Expedite Briefing Schedule (Feb. 22, 2022) [hereinafter Lindemuth Aff.].

1 requirement² — in the context of the Alaska Higher Education Investment Fund
2 (“HEIF”).³ The Student Appellants respectfully request expedited consideration so that
3 the legislature will have direction on two points before the end of the current legislative
4 session. First, resolving this appeal would address the number of votes needed in the
5 legislature to access the \$422+ million that have now been “swept” from the HEIF into
6 the CBR. Second, this appeal will assist with resolving outstanding proposed legislation
7 and funding of the scholarship, grant, and loan programs impacting students both now
8 and in the future.
9

10 The legislature will have to adjourn by May 18, 2022, as that is the 121st day of
11 the legislative session.⁴ The Alaska Legislative Council — who filed an amicus brief
12 before the superior court — has indicated that a decision would be needed by no later
13 than May 4, 2022, so that the legislature could incorporate this Court’s decision in the
14 FY2023 budgeting process.⁵ Because of the superior court’s decision, there is over \$422
15 million that now exists within the CBR, and those monies cannot be accessed without a
16 three-fourths vote of both houses of the legislature.⁶ As a practical matter, this money
17 may not only be unavailable to fund this year’s scholarship, grant, and loan programs —
18
19
20

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

22 ³ See AS 37.14.750.

23 ⁴ See Alaska Const. art. II, § 8.

24 ⁵ See Lindemuth Aff. at ¶ 4.

25 ⁶ See Alaska Const. art. IX, § 17(c).

1 an appropriation which was for over \$21 million in FY2022 — but also any other purpose
2 the legislature decides. Alternatively, if this Court were to reverse the superior court’s
3 decision by May 4, the legislature could access this money for any public purpose with a
4 simple majority vote. A decision by May 4, 2022 would greatly assist the legislature in
5 its budgeting process. The need for an expedited decision before this Court was explicitly
6 recognized by both parties jointly seeking expedited consideration in the superior court.⁷

7
8 Furthermore, the Student Appellants brought this lawsuit because they — along
9 with thousands of other students — make long-term decisions counting on the
10 scholarships, grants, and loans that come from the HEIF. The HEIF, established by the
11 legislature in 2012, provided the certainty needed for students to commit to four-year
12 postsecondary educational opportunities in Alaska.⁸ Students make these decisions every
13 year, and they deserve to know whether the source of funding for these programs is
14 secure. Colleges typically require commitments from prospective students by May 1
15 each year, and so removing that uncertainty could play a deciding factor for hundreds of
16 young Alaskans making important decisions about their futures.

17
18 The Student Appellants respectfully request a decision on this emergency motion
19 is needed **by close of business Thursday, February 24, 2022**, because they request a
20

21
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23 ⁷ See Lindemuth Aff. at ¶ 2 & Exhibit 1 (recognizing that any appeal would need to
24 be resolved “before the end of April 2022” “to provide guidance to the legislature during
its upcoming 2022 regular session”).

25 ⁸ See AS 37.14.750.

1 schedule that would require appellate briefing and argument preparation to begin
2 immediately. If the Student Appellants' request for an expedited briefing and oral
3 argument schedule is granted, the Student Appellants will work with opposing counsel
4 and the Clerk of the Appellate Courts to set a briefing schedule that ensures this appeal
5 will be fully briefed in advance of oral argument.

6
7 As required by Appellate Rule 504(c) for emergency motions, the telephone
8 numbers and addresses of counsel are as follows:

9 Counsel for Appellants:

10 Jahna M. Lindemuth
11 Scott M. Kendall
12 Samuel G. Gottstein
13 Cashion Gilmore & Lindemuth
14 510 L Street, Suite 601
15 Anchorage, AK 99501
16 (907) 222-7932

17 Counsel for Appellees:

18 Margaret Paton Walsh
19 Kate Demarest
20 Alaska Department of Law
21 1031 West 4th Avenue, Suite 200
22 Anchorage, AK 99501
23 (907) 269-5275

24 The Student Appellants also note that both opposing counsel and counsel for amicus were
25 provided an earlier draft version of this emergency motion on February 21, 2022.


26 Opposing counsel indicated earlier today via email that, although they would not join in

1 the Student Appellants' emergency motion to expedited briefing schedule, they would
2 file a separate response addressing scheduling.

3 The Student Appellants respectfully ask that this Court expedite proceedings so
4 that the parties may have a decision in this appeal no later than May 4, 2022.

6 CASHION GILMORE & LINDEMUTH
7 Attorneys for Appellants

8 DATE: 2/22/2022

9 By: 
10 Jahna M. Lindemuth
11 Alaska Bar No. 9711068
12 Scott M. Kendall
13 Alaska Bar No. 0405019
14 Samuel G. Gottstein
15 Alaska Bar No. 1511099

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a copy of the
18 foregoing was served via email on
19 February 22, 2022 on the following:

20 Margaret Paton-Walsh
21 margaret.paton-walsh@alaska.gov

Kevin Cuddy
kevin.cuddy@stoel.com

22 Katherine Demarest
23 kate.demarest@alaska.gov

Connor R. Smith
connor.smith@stoel.com

24 James E. Torgerson
25 jim.torgerson@stoel.com

26 CASHION GILMORE & LINDEMUTH

By: s/Colleen McGovern
Colleen McGovern

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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

**AFFIDAVIT OF JAHNA M. LINDEMUTH IN SUPPORT OF
EMERGENCY MOTION TO EXPEDITE BRIEFING SCHEDULE**

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Jahna M. Lindemuth, being first duly sworn and deposed, hereby state as
follows:

1. I am counsel of record for Student Appellants Madilyn Short, Riley von
Borstel, Kjrsten Schindler, and Jay-Mark Pascua.

2. Attached as Exhibit 1 is a true and correct copy of a Joint Motion for
Expedited Briefing and Decision Schedule that the parties jointly filed with the superior
court in this case on January 5, 2022. In that joint motion, the parties recognized that
“this case needs to be decided on an expedited basis to provide guidance to the legislature
during its upcoming 2022 regular session,” and that the parties agreed to an expedited

1 schedule "so that the Supreme Court may issue its decision before the end of April 2022"
2 should there be "a subsequent appeal."

3 3. After the superior court entered its February 17, 2022 order, I called and
4 spoke with Margaret Paton Walsh, counsel for Appellees, on February 18, 2022, about
5 expediting the briefing and decision schedule for this appeal.

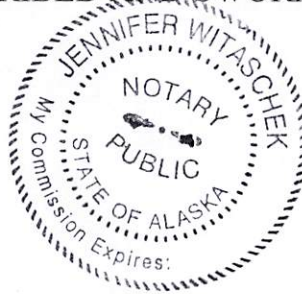
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7 4. I also communicated with Kevin Cuddy, counsel for the Alaska Legislative
8 Counsel (who filed an amicus in support of the Student Appellants before the superior
9 court) on February 18 concerning expediting this matter and the legislature's schedule.
10 Counsel for the Alaska Legislative Counsel indicated that a decision on the merits of this
11 appeal would be needed by no later than May 4, 2022, so that the legislature can
12 incorporate this Court's decision into its FY2023 budgeting decisions. I relayed this
13 information to Ms. Paton Walsh.

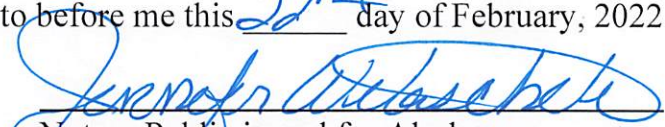
14
15 5. I circulated a draft emergency joint motion to expedite briefing schedule to
16 counsel for Appellees on February 21, 2022. Ms. Paton Walsh responded on the morning
17 of February 22, indicating that Appellees would not join in the Student Appellants'
18 request, and that they would file a separate response.
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FURTHER AFFIANT SAYETH NAUGHT.


Jahna M. Lindemuth
Alaska Bar No. 9711068

SUBSCRIBED AND SWORN to before me this 22nd day of February, 2022.




Notary Public in and for Alaska
My Commission Expires: 9/17/25

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on February 22, 2022 on the following:

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

Katherine Demarest
kate.demarest@alaska.gov

James E. Torgerson
jim.torgerson@stoel.com

Kevin Cuddy
kevin.cuddy@stoel.com

Connor R. Smith
connor.smith@stoel.com

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Plaintiffs,

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,

Defendants.

Court No.: 3AN-22-04028CI

JOINT MOTION FOR EXPEDITED BRIEFING AND DECISION SCHEDULE

Plaintiff-students Madilyn Short, Riley von Borstel, Kjrsten Schindler and Jay-Mark Pascua ("Plaintiffs") and Defendants Governor Michael J. Dunleavy, the Office of Management and Budget, and the Department of Administration ("Defendants") jointly move for an expedited briefing and decision schedule in this case.

The parties agree that this case involves purely legal issues that can be decided on summary judgment, and that this case needs to be decided on an expedited basis to provide guidance to the legislature during its upcoming 2022 regular session. The parties also recognize that there will likely be a subsequent appeal to the Alaska Supreme Court, and have agreed to the following schedule in this court so that the Supreme Court may issue its decision before the end of April 2022.

The parties respectfully request the following briefing schedule:

JOINT MOTION FOR EXPEDITED BRIEFING AND DECISION SCHEDULE
Short, et al. v. Dunleavy, et al., Case No. 3AN-22-04028CI

Page 1 of 3

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(1) Defendants' Opposition and Cross-Motion for Summary Judgment is due by
Wednesday, January 19;

(2) Plaintiffs' Reply in support of Motion for Summary Judgment and Opposition
to Cross-Motion for Summary Judgment is due by Friday, January 28;

(3) Defendants' Reply in support of Cross-Motion for Summary Judgment is due
by Friday, February 4;

This parties request that this court schedule oral argument immediately after the
close of briefing, and request a decision by this court no later than Tuesday,
February 22, 2022.

CASHION GILMORE & LINDEMUTH
Attorneys for Plaintiffs

DATE: January 5, 2022

By: s/Jahna M. Lindemuth

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

TREG R. TAYLOR
ATTORNEY GENERAL
Attorneys for Defendants

DATE: January 5, 2022

By: s/Margaret Paton Walsh (with consent)

Margaret Paton Walsh
Alaska Bar No. 0411074
Kate Demarest
Alaska Bar No. 1011074

JOINT MOTION FOR EXPEDITED BRIEFING AND DECISION SCHEDULE
Short, et al. v. Dunleavy, et al., Case No. 3AN-22-04028C1

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PROPOSED ORDER

Based on the foregoing joint motion for an expedited briefing* and decision schedule,

IT IS SO ORDERED. Oral argument on the cross-motions for summary judgment is scheduled for February 8, 2022 - 10:00 a.m. in Courtroom 503.

Date: 1/5/22


Hon. Adolf Zeman
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on January 5, 2022 on the following:

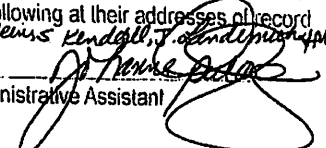
Margaret Paton-Walsh
margaret.paton-walsh@alaska.gov

Katherine Demarest
kate.demarest@alaska.gov

CASHION GILMORE & LINDEMUTH

By: s/ Jennifer Witaschek

* Courtesy copies of all briefing should be provided to chambers when filed. If less than 50 pages, documents can be emailed to jmontanez@akcourts.gov. Otherwise, hard copies should be delivered to chambers.

I certify that on 1/5/2022 a copy of the following was mailed/emailed to each of the following at their addresses of record: S. Gottstein, Kendall, J. Lindemuth, J. Paton-Walsh.

Administrative Assistant

JOINT MOTION FOR EXPEDITED BRIEFING AND DECISION SCHEDULE
Short, et al. v. Dunleavy, et al., Case No. 3AN-22-04028C1

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EMERGENCY
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OF ADMINISTRATION,

Appellees.

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

**[PROPOSED] ORDER GRANTING EMERGENCY MOTION TO EXPEDITE
BRIEFING SCHEDULE**

Upon full consideration of the Appellants' Emergency Motion to Expedite
Briefing Schedule, and any opposition thereto, it is hereby ORDERED that the
Emergency Motion is GRANTED.

Oral argument for this appeal is set for _____.

The parties will meet with the Clerk of the Appellate Courts to determine a
briefing schedule consistent with this oral argument date.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts

DATE: _____

By: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on February 22, 2022 on the following:

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Colleen McGovern