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7 **SUPERIOR COURT FOR THE STATE OF ALASKA**
8 **FIRST JUDICIAL DISTRICT AT JUNEAU**

9 ERIC FORRER)
10 Plaintiff,)
11 vs.)
12)
13 STATE OF ALASKA)
14 anc SHELDON FISHER,)
15 Commissioner of the Alaska)
16 Department of Revenue)
17 in his capacity as an official of)
18 the State of Alaska.)
19 Defendants.)
20 _____)

1JU-18- 00699 Civil

21 **AMENDED COMPLAINT FOR DECLARATORY RELIEF AND**
22 **POTENTIAL EQUITABLE RELIEF**

23 Plaintiff, Eric Forrer ("Forrer"), for his cause of action alleges as follows:

24 **INTRODUCTION**

25 1. This lawsuit is brought in the interest of the public by Forrer seeking
26 declaratory relief pertaining to a legislative enactment signed into law by
27 Governor William Walker establishing a bond debt scheme not authorized by and
28 inconsistent with the Alaska Constitution. Forrer also seeks contingent equitable

1 relief in the form of a permanent injunction stemming from the failure of the State
2 of Alaska, as articulated by the Commissioner of the Alaska Department of
3 Revenue, to adhere to the requirements pertaining to bonded indebtedness
4 established by the Alaska Constitution.
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7 PARTIES

8 2. Plaintiff, Eric Forrer, is a citizen and registered voter of Alaska who has
9 made his home in Alaska since 1962, living in Alakanuk, St. Michael's, Fairbanks
10 and Juneau while engaged in commercial and subsistence fishing, engaged as a
11 woodworker and contractor, during which time he was married, raised a child and
12 among other tasks served as a Regent of the University of Alaska, and as a member
13 of the Alaska Post-Secondary Education Commission. Forrer presently resides in
14 the City and Borough of Juneau.
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18 3. The State of Alaska is a sovereign state within the republic of the United
19 States of America and governed according to the Alaska Constitution.
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21 4. Sheldon Fisher is currently the Commissioner of the Alaska Department
22 of Revenue, an exempt position appointed by the Governor of the State of Alaska
23 and confirmed by the Alaska Legislature. Mr. Fisher is sued in his official
24 capacity as Commissioner of Revenue in order to obtain injunctive relief, as
25 necessary.
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JURISDICTION

5. The Superior Court has jurisdiction to hear this dispute according to AS 22.10.020.

FACTS

6. Article IX, sec. 8 of the Alaska Constitution provides:

State Debt. No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

7. Article IX, sec. 10 of the Alaska Constitution provides:

Interim Borrowing. The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debts so contracted shall be paid before the end of the next fiscal year.

8. Article IX, sec. 11 of the Alaska Constitution provides:

Exceptions. The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue

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2 bonds by a public enterprise or public corporation of the
3 State or a political subdivision, when the only security is
4 the revenues of the enterprise or corporation. The
5 restrictions do not apply to indebtedness to be paid from
6 special assessments on the benefited property, nor do they
7 apply to refunding indebtedness of the State or its political
8 subdivisions.

9 9. Article IX, sec. 13 of the Alaska Constitution provides:

10 **Expenditures.** No money shall be withdrawn from
11 the treasury except in accordance with appropriations
12 made by law. No obligation for the payment of money
13 shall be incurred except as authorized by law. Unobligated
14 appropriations outstanding at the end of the period of time
15 specified by law shall be void.

16 10. Article IX, sec. 7 of the Alaska Constitution provides:

17 **Dedicated Funds.** The proceeds of any state tax or license
18 shall not be dedicated to any special purpose, except as
19 provided in Section 15 of this article or when required by
20 the federal government for state participation in federal
21 programs. This provision shall not prohibit the
22 continuance of any dedication for special purposes
23 existing upon the date of ratification of this section by the
24 people of Alaska.

25 11. Article IX, sec. 6 of the Alaska Constitution, states:
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2 **Public Purpose** - No tax shall be levied, or appropriation
3 of public money made, or public property transferred, nor
4 shall the public credit be used, except for a public purpose.

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6 12. The lawmaking powers of the Alaska Legislature and the ability of the
7 administration of the State of Alaska to enact laws and administer the laws of the
8 State of Alaska are established and constrained by the provisions of the Alaska
9 Constitution, including the provisions referenced in paragraphs 6 – 11, above.

10
11 13. The ability of the State of Alaska to engage in the issuance of debt
12 instruments, including bonds, is established and constrained by the provisions of
13 the Alaska Constitution, including the provisions referenced in paragraphs 6 – 11,
14 above.

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16 14. At the request of Sheldon Fisher or other members of the administration
17 of the State of Alaska, legislation designated as House Bill 331 (“HB 331”), was
18 introduced in the Alaska Legislature for consideration and adoption as part of the
19 statutory laws governing Alaska.

20
21 15. HB 331 creates a scheme affording a putative public corporation
22 designated as the *Alaska Tax Credit Certificate Bond Corporation* with proposed
23 legal authority to incur bond debt for the purpose of paying off select tax credits
24 previously established by statutory provisions in Alaska.
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2 16. HB 331 also contemplates giving the *Alaska Tax Credit Certificate*
3 *Bond Corporation* authority to issue bonds in the amount “not to exceed
4 \$1,000,000,000.”

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6 17. The purpose of the statutory scheme established by HB 331 is to allow
7 the *Alaska Tax Credit Certificate Bond Corporation* to “finance purchases and
8 payments” ... “of transferable tax certificates” ... “production tax credit
9 certificates” ... “and payments claimed” [collectively referred to as “tax credits],
10 under existing statutory law.
11

12 18. Under HB 331, the *Tax Certificate Bond Corporation* must request an
13 annual appropriation each fiscal year for the necessary funds to pay for the debt
14 service owed for the debt incurred by the State of Alaska as a result of issuing the
15 bonds.
16

17
18 19. The source of the funds to meet the appropriation for the debt servicing
19 request referred to in paragraph 18, above, is likely to be general funds.

20 20. The appropriation referred to in paragraph 19, above will likely be
21 incorporated in the State of Alaska’s operating budget for that fiscal year.
22

23 21. HB 331 in an amended form referred to as CSHB 331 (Fin) is titled:

24 “An Act establishing the Alaska Tax Credit Certificate
25 Bond Corporation; relating to the issuance of bonds by
26 the Alaska Tax Credit Certificate Bond Corporation;
27 relating to purchases of tax credit certificates and refunds
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2 and payment of tax credits; relating to the oil and gas tax
3 credit fund; relating to overriding royalty interest
4 agreements; providing for an effective date of secs. 2, 5,
5 8, 10, 31 37 and 40, Ch. 3, SSSLA 2017; and providing
6 for an effective date.”

7
8 22. The measure contained in HB 331 was enacted by the Alaska
9 Legislature on May 11, 2018.

10 23. HB 331 was signed by Governor Bill Walker in Fairbanks, Alaska.

11
12 24. None of the existing tax credits established according to Alaska law are
13 in default or subject to a judicial judgment.

14 25. The Alaska Legislature has regularly made appropriations for the
15 satisfaction of the existing tax credits established according to Alaska law since
16 the inception of the tax credit program; the appropriations made by the Alaska
17 Legislature are at or exceed the repayment schedule for the tax credits set out in
18 statute.
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21 26. The establishment of the bond scheme contained in HB 331, if fully
22 enacted and implemented by the State of Alaska, would accelerate payments in
23 satisfaction of the existing tax credits established according to Alaska law.
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25 27. Sheldon Fisher or other officials of the administration, in various
26 statements and testimony before the Alaska Legislature, have repeatedly stated
27
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1 the proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000
2 does not constitute a general obligation of the State of Alaska.
3

4 28. Sheldon Fisher or other officials of the administration, in various
5 statements and testimony before the Alaska Legislature, have repeatedly stated
6 that the proposed bond debt contemplated by HB 331 in the amount of
7 \$1,000,000,000 is not "constitutional debt" of the State of Alaska as specified by
8 the Alaska Constitution.
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10 29. Sheldon Fisher or other officials of the administration, in various
11 statements and testimony before the Alaska Legislature, have asserted that the
12 proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000
13 does not require authorization by the voters of the state.
14

15 30. Sheldon Fisher or other officials of the administration, in various
16 statements and testimony before the Alaska Legislature, have asserted that the
17 proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000
18 does not implicate or encroach on the "full faith and credit" of the state if
19 authorized, established, marketed and sold to bond holders.
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21 31. Sheldon Fisher or other officials of the administration, in various
22 statements and testimony before the Alaska Legislature, have repeatedly informed
23 the Alaska Legislature and the public that the proposed bond debt contemplated
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2 by HB 331 in the amount of \$1,000,000,000 are not revenue bonds of the State of
3 Alaska.

4 32. Sheldon Fisher or other officials of the administration, in various
5 statements and testimony before the Alaska Legislature, have repeatedly informed
6 the Alaska Legislature and the public that the proposed bond debt contemplated
7 by HB 331 in the amount of \$1,000,000,000 is not backed by any secured property
8 or interest in property.
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11 33. Sheldon Fisher or other officials of the administration, in various
12 statements and testimony before the Alaska Legislature, has repeatedly informed
13 the Alaska Legislature and the public that the proposed bond debt contemplated
14 by HB 331 in the amount of \$1,000,000,000 does not dedicate a stream of revenue
15 from which the bonded indebtedness to repay the tax credits can be satisfied.
16
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18 34. The Legislative Affairs Agency, Legal Division, on April 13, 2018,
19 rendered an opinion with regard to the proposed legislative measures establishing
20 *Alaska Tax Credit Certificate Bond Corporation* and the legality of issuing
21 \$1,000,000,000 in bonded indebtedness to finance purchases and payments of
22 transferable tax certificates, production tax credit certificates and other payments
23 claimed under existing statutory law, concluding that "... there is a substantial risk
24 that a court may determine that HB 331 is unconstitutional."
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2 35. In response to various inquiries and concerns raised during legislative
3 hearings and by the public about the constitutionality of issuing \$1,000,000,000 in
4 bond debt to finance purchases and payments of transferable tax certificates,
5 production tax credit certificates and other payments claimed under existing
6 statutory law, Commissioner Fisher or other members of the current administration
7 have repeatedly claimed the proposed debt bonds are constitutional.
8

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10 36. In support of his contention that the legislative scheme to establish a
11 corporation for the issuance of \$1,000,000,000 in bonds are not general obligation
12 bonds or revenue bonds as specified in the Alaska Constitution, Commissioner
13 Fisher and other members of the current administration have repeatedly
14 characterized the proposed bonds as being "subject to appropriation" bonds.
15

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17 37. The Alaska Constitution is silent on the concept of "subject to
18 appropriation" bonds.

19
20 38. Commissioner Fisher and other members of the current administration
21 have stated that the issuance of the "subject to appropriation" bonds and a
22 subsequent failure to appropriate funds to pay for the bonded indebtedness will
23 have consequences and impact the credit rating of the State of Alaska.
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26 39. The "subject to appropriation" bonds established by HB 331 are a form
27 of state debt under the Alaska Constitution.
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2 40. The “subject to appropriation” bonded indebtedness scheme established
3 by HB 331 establishes an obligation involving borrowed money where there is a
4 promise to pay money to bondholders in the future.

5
6 41. The “subject to appropriation” bonded indebtedness scheme established
7 by HB 331 contains enforceable legal provisions requiring the State of Alaska to
8 repay “subject to appropriation” bond holders in the future irrespective of whether
9 funds are available or appropriated by a future Alaska Legislature.

10
11 42. Issuance of the “subject to appropriation” bonds will have an impact on
12 the credit rating and the ability of the State of Alaska to incur additional credit.

13
14 43. HB 331 is completely silent as to its public purpose. There are no
15 express legislative findings or an expression of legislative intent in HB 331
16 related to public purpose.

17 18 **ALLEGATIONS**

19 44. This lawsuit is brought by Forrer in the interest of the public to enforce
20 the obvious and express provisions of the Alaska Constitution, including the
21 provisions related to incurrence of state debt, issuance of bonded indebtedness,
22 and the public purpose of appropriations and the prohibition related to dedicating
23 funds.

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26 45. Enactment of HB 331 and the eventual establishment of the *Alaska*
27 *Tax Credit Certificate Bond Corporation* and the authorization to give the newly
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2 established corporation authority to issue \$1,000,000,000 in bonds and use the
3 bond funds for the advanced retirement of tax credits governed by existing
4 statutory law, as contemplated in HB 331, implicates the credit of the State of
5 Alaska.
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7 46. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*
8 *Bond Corporation* and giving the newly established corporation authority to issue
9 \$1,000,000,000 in debt and use the funds for the advanced retirement tax credits
10 under existing statutory law establishes a legal mechanism requiring the
11 dedication of funds for the satisfaction of the bonded indebtedness in a manner
12 that is inconsistent with the Alaska Constitution.
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15 47. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*
16 *Bond Corporation* and giving the newly established corporation authority to issue
17 \$1,000,000,000 in debt and use of the bond funds for the advanced retirement of
18 tax credits and paying back the debt bond with funds “subject to appropriation” is
19 inconsistent with Article IX, Sec. 7 of the Alaska Constitution.
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22 48. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*
23 *Bond Corporation* and giving the newly established corporation authority to issue
24 \$1,000,000,000 in debt and use the funds for the advanced retirement of tax credits
25 without a public vote violates Article IX, Sec. 8 of the Alaska Constitution.
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2 49. The debt scheme contained in HB 331 contemplates repayment to the
3 bond holders who purchased the bonds issued by the *Tax Certificate Bond*
4 *Corporation* on an annual basis but in any event will not be paid before the end
5 of the next fiscal year in which the debt is incurred.
6

7 50. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*
8 *Bond Corporation* and giving the newly established corporation authority to issue
9 \$1,000,000,000 in debt and paying back the bond debt with funds “subject to
10 appropriation” over a period of time exceeding a single fiscal year, is inconsistent
11 with Article IX, Sec. 10 of the Alaska Constitution.
12

13 51. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*
14 *Bond Corporation* and giving the corporation authority to issue \$1,000,000,000
15 in debt, and to subsequently use the funds for the advanced retirement of tax
16 credits in a manner that will absolutely require the State of Alaska to make
17 repayment of the bonded indebtedness violates Article IX, Sec. 13 of the Alaska
18 Constitution.
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21 52. The “subject to appropriation” bond scheme detailed in HB 331 contains
22 a recourse mechanism that makes the bonds state constitutional debt subject to the
23 limitations of the Alaska Constitution.
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2 53. The “subject to appropriation” bond scheme detailed in HB 331 pledges
3 the full faith and credit of the State of Alaska in a manner that is inconsistent with
4 the express limitations of the Alaska Constitution.

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6 54. Failure by future legislatures to make funds available to repay the
7 “subject to appropriation” bonds contained in HB 331 will have a negative impact
8 on the credit rating of the State of Alaska.

9
10 55. The implied promise in HB 331 that future Alaska Legislatures will
11 make appropriations to satisfy the “subject to appropriation” bond scheme
12 contained in the legislation essentially amounts to an impermissible dedication of
13 funds contrary to the Alaska Constitution.

14
15 56. Commissioner Fisher and other representatives of the State of Alaska
16 have repeatedly informed the Alaska Legislature and the public that the so-called
17 “subject to appropriation” bonds detailed by HB 331 do not constitute either a
18 general obligation of the state or state “debt” within the meaning of Article IX,
19 Section 8 of the Alaska Constitution.

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21
22 57. Commissioner Fisher and other representatives of the State of Alaska
23 have repeatedly informed the Alaska Legislature and the public that the so-called
24 “subject to appropriation” bonds contemplated by HB 331 are essentially similar
25 to other cases of bonds floated by the State of Alaska and are, accordingly,
26 constitutional--a position Forrer believes is wrong as a matter of sound judicial
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2 interpretation, and/or that HB 331 bonds are distinguishable based on the
3 circumstances of previous cases of the issuance of debt actually incurred by the
4 State of Alaska.

5
6 58. The provision in HB 331 restricting judicial review of the proposed
7 bond scheme to a period of 45 days following the passage of a resolution
8 authorizing the tax credit bonds is an unconstitutional restriction on the right of
9 citizens and other interested parties seeking judicial review.
10

11 59. Nothing in the language of HB 331 establishing the *Alaska Tax Credit*
12 *Certificate Bond Corporation* expressly clarifies that the proposed
13 \$1,000,000,000 in bonds the corporation is authorized to issue are, as a matter of
14 fact, “non-recourse” bonds backed by nothing other than a political promise to
15 repay the funds. The anticipated revenues to repay the bonds are not based on
16 any known revenue stream other than the “subject to appropriation” rubric, a
17 promise prohibited by Article IX, Section 7 of the Alaska Constitution pertaining
18 to dedication of funds.
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22 60. Instead, HB 331 has sly language that says, in effect, that the state
23 has no obligation to re-pay the bonds sold by the *Alaska Tax Credit*
24 *Certificate Bond Corporation* and that any re-payment of the proposed oil tax
25 credit bonds by the legislature is “subject to appropriation”.
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2 61. As a factual matter, if the legislature elects to default on an
3 appropriation requested by the *Alaska Tax Credit Certificate Bond*
4 *Corporation* to pay for the debt service on the bonds it has issued, the credit
5 rating of the State of Alaska would plummet and likely have a substantial
6 negative impact on the State of Alaska's finances.
7

8 62. Because of the substantial negative impact that would follow from
9 the legislature's failure to appropriate funds to pay for the debt service on the
10 bonds issued by the *Alaska Tax Credit Certificate Bond Corporation*, it is
11 unlikely any future legislature would accept the obvious negative impact that
12 would follow from not appropriating the necessary funds for the bond debt
13 servicing.
14

15 63. As a practical fiscal matter, the legislature in the future will not
16 have full and free discretion to decide whether or not to pay the debt service
17 on the *Alaska Tax Credit Certificate Bond Corporation* bonds.
18

19 64. As a matter of sound fiscal policy and ordinary political prudence,
20 the legislature is virtually compelled to accept the obligation to pay the debt
21 service owed on the bonds issued by the *Alaska Tax Credit Certificate Bond*
22 *Corporation*.
23

24 65. The "subject to appropriation" language in HB 331, as well as
25 language in the bill that purports to insulate the state from any obligation or
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2 responsibility to repay the principal and interest owed the bond holders,
3 creates the false impression that the state is free to refuse any responsibility to
4 pay the debt service on the Corporation.

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6 66. The language contained in HB 331 referenced in paragraph 65,
7 above, is a legal fiction that misleads the public; and as a result, the linguistic
8 disclaimers in HB 331 are inconsistent with Article IX of the Alaska
9 Constitution and null, void and without any legal force.
10

11 67. As a matter of fact, the Department of Revenue has not fully and
12 faithfully complied with Alaska statutes governing the purchase of
13 outstanding oil tax credits issued by the state which are the subject of HB 331,
14 notwithstanding that the state has no legal obligation to purchase and pay for
15 the oil tax credits.
16

17
18 68. The repeated assertions by various participants in the discussions
19 pertaining to the supposed reasons or purpose for adopting HB 331 as being
20 necessary to satisfy an existing debt and forming the basis for incurring
21 bonded indebtedness in order pay the holders of tax credits is false.
22

23 69. The outstanding oil tax credits are not an existing legal debt owed
24 by the State of Alaska.
25

26 70. HB 331 has no articulated, ascertainable public purpose;
27 accordingly, HB 331 violates Article IX, Section 6 of the Alaska Constitution.
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2 71. The Alaska Legislature has and has utilized constitutional authority to
3 make appropriations (subject to the review and veto powers of the Alaska
4 Governor) to satisfy the existing tax credits claimed under Alaska law that are the
5 subject of HB 331. Nothing in this lawsuit by Forrer seeks to encroach on the
6 legitimate constitutional powers of the legislature to make necessary appropriation
7 for legitimate obligations according to the Alaska Constitution.
8

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10 72. Forrer seeks nothing more and nothing less than for the Alaska
11 Legislature and the administration to do their job, including making the difficult
12 choices of balancing the budget without gimmicks and opaque measures that
13 borrow huge sums of money in a manner that is inconsistent with Alaska's
14 constitution in order to advance payment to individuals or entities holding credits
15 who are already getting paid but desire a more rapid payoff of "tax credits" that
16 were characterized as "subject to appropriation" in the first place.
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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests the following relief:

23 A. Declaratory relief holding that the establishment of the *Alaska Tax*
24 *Credit Certificate Bond Corporation* and the issuance of bonds in the amount of
25 \$1,000,000,000 for the accelerated payoff of existing transferable tax credits
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2 claimed under existing statutory law, as contemplated by HB 331, is
3 unconstitutional;

4 B. Equitable relief in the form of an injunction, as necessary, preventing
5 Sheldon Fisher and the State of Alaska from incurring debt "subject to
6 appropriation" schemes that circumvent the express provisions of the Alaska
7 Constitution;
8

9 C. An award of costs and reasonable fees associated with maintaining this
10 public interest lawsuit, and;
11

12 D. Any other relief necessary to protect the rights of the Plaintiff and the
13 citizens of Alaska under the Alaska Constitution.
14

15
16 **DATED** this 23rd day of July, 2018 at Juneau, Alaska.
17

18
19 **LAW OFFICE OF**
20 **JOSEPH W. GELDHOF**

21
22 

23 _____
24 Joseph W. Geldhof
25 Alaska Bar # 8111097
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PROOF OF SERVICE CERTIFICATION

I certify that on this date, a copy
of this corrected version of the
**AMENDED COMPLAINT FOR
DECLARATORY RELIEF AND
POTENTIAL EQUITABLE RELIEF**
was sent via USPS to:

William Milks,
Assistant Attorney General
c/o Alaska Department of Law
Office of the Attorney General
Pouch 3
Juneau, Alaska 99811-0300

DATE: July 29, 2019

Joseph W. Geldhof
Joseph W. Geldhof