

MAY 14 2018

Clerk of the Trial Courts

By AB Deputy

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

10 ERIC FORRER )  
11 Plaintiff, )  
12 vs. )  
13 STATE OF ALASKA )  
14 and SHELDON FISHSER, )  
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 \_\_\_\_\_ )

11JU-18-00699 Civil

21 **COMPLAINT FOR DECLARATORY RELIEF AND POTENTIAL**  
22 **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 that is about to be signed  
27 into law that would establish a bond debt scheme not authorized by the Alaska  
28 Constitution. Forrer also seeks contingent equitable relief in the form of a  
permanent injunction stemming from the failure of the State of Alaska, as

1 articulated by the Commissioner of the Alaska Department of Revenue, to adhere  
2 to the requirements pertaining to bonded indebtedness established by the Alaska  
3 Constitution.  
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6 **PARTIES**

7 2. Plaintiff, Eric Forrer, is a citizen and registered voter of Alaska who has  
8 made his home in Alaska since 1962, living in Alakanuk, St. Michael's, Fairbanks  
9 and Juneau while engaged in commercial and subsistence fishing, engaged as a  
10 woodworker and contractor, during which time he was married, raised a child and  
11 among other tasks served as a Regent of the University of Alaska, a member of  
12 the Alaska Post-Secondary Education Commission; Forrer presently resides in the  
13 City and Borough of Juneau.  
14

15 3. The State of Alaska is a sovereign state within the republic of the United  
16 States of America and governed according to the Alaska Constitution.  
17

18 4. Sheldon Fisher is currently the Commissioner of the Alaska Department  
19 of Revenue, an exempt position appointed by the Governor of the State of Alaska  
20 and confirmed by the Alaska Legislature. Mr. Fisher is sued in his official  
21 capacity as Commissioner of Revenue in order to obtain injunctive relief, as  
22 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. 11 of the Alaska Constitution provides:

**Exceptions.** The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

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

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

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

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

10. Article IX, sec. 15 of the Alaska Constitution provides:

**Alaska Permanent Fund.** At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund the principal of which shall be used only for those income-producing investments specifically



1  
2 designated by law as eligible for permanent fund  
3 investments. All income from the permanent fund shall be  
4 deposited in the general fund unless otherwise provided by  
5 law.

6  
7 11. The lawmaking powers of the Alaska Legislature and the ability of the  
8 administration of the State of Alaska to enact laws and administer the laws of the  
9 State of Alaska are established and constrained by the provisions of the Alaska  
10 Constitution, including the provisions referenced in paragraphs 6 – 10, above.

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

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

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22  
23 14. HB 331 creates a scheme affording a putative public corporation  
24 designated as the *Alaska Tax Credit Certificate Bond Corporation* with proposed  
25 legal authority to incur bond debt for the purpose of paying off select tax credits  
26 previously established by statutory provisions in Alaska.  
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2 15. 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.”

5  
6 16. 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 17. HB 331 in an amended form referred to as CSHB 331 (Fin) titled:

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14 “An Act establishing the Alaska Tax Credit  
15 Certificate Bond Corporation; relating to the issuance of  
16 bonds by the Alaska Tax Credit Certificate Bond  
17 Corporation; relating to purchases of tax credit  
18 certificates and refunds and payment of tax credits;  
19 relating to the oil and gas tax credit fund; relating to  
20 overriding royalty interest agreements; providing for an  
21 effective date of secs. 2, 5, 8, 10, 31 37 and 40, ch. 3,  
22 SSSLA 2017; and providing for an effective date.”

23  
24 18. The measure contained in HB 331 was enacted by the Alaska  
25 Legislature on May 11, 2018.

26 19. HB 331 is awaiting transmittal to the Governor of Alaska.  
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2 20. Because the provisions contained in HB 331 were made at the request  
3 of the Administration, the likelihood that HB 331 will become law is as certain as  
4 anything can be in the political context.

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6 21. None of the existing tax credits established according to Alaska law are  
7 in default and subject to a judicial judgment.

8  
9 22. The Alaska Legislature has regularly made appropriations for the  
10 satisfaction of the existing tax credits established according to Alaska law since  
11 the inception of the tax credit program; the appropriations made by the Alaska  
12 Legislature are at or exceed the repayment schedule for the tax credits set out in  
13 statute.  
14

15 23. The establishment of the bond scheme contained in HB 331, if fully  
16 enacted and implemented by the State of Alaska would accelerate payments in  
17 satisfaction of the existing tax credits established according to Alaska law.  
18

19 24. Sheldon Fisher or other officials of the administration, in various  
20 statements and testimony before the Alaska Legislature, have repeatedly stated  
21 the proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000  
22 does not constitute a general obligation of the State of Alaska.  
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24 25. Sheldon Fisher or other officials of the administration, in various  
25 statements and testimony before the Alaska Legislature, have repeatedly stated  
26 the proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000  
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2 is not "constitutional debt" of the State of Alaska as specified by the Alaska  
3 Constitution.

4           26. Sheldon Fisher or other officials of the administration, in various  
5 statements and testimony before the Alaska Legislature, have asserted the  
6 proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000  
7 does not require authorization by the voters of the state or the legislature.  
8

9           27. Sheldon Fisher or other officials of the administration, in various  
10 statements and testimony before the Alaska Legislature, have asserted the  
11 proposed bond debt contemplated by HB 331 in the amount of \$1,000,000,000  
12 does not implicate or encroach on the "full faith and credit" of the state if  
13 authorized, established, marketed and sold to bond holders.  
14

15           28. Sheldon Fisher or other officials of the administration, in various  
16 statements and testimony before the Alaska Legislature, have repeatedly informed  
17 the Alaska Legislature and the public the proposed bond debt contemplated by  
18 HB 331 in the amount of \$1,000,000,000 are not revenue bonds of the State of  
19 Alaska.  
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21           29. 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 the proposed bond debt contemplated by  
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1 HB 331 in the amount of \$1,000,000,000 are not backed by any secured property  
2 or interest in property.  
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4 30. Sheldon Fisher or other officials of the administration, in various  
5 statements and testimony before the Alaska Legislature, has repeatedly informed  
6 the Alaska Legislature and the public the proposed bond debt contemplated by  
7 HB 331 in the amount of \$1,000,000,000 does not dedicate a stream of revenue  
8 from which the bonded indebtedness to repay the tax credits can be satisfied.  
9

10 31. The Legislative Affairs Agency, Legal Division, on April 13, 2018,  
11 rendered an opinion with regard to the proposed legislative measures establishing  
12 *Alaska Tax Credit Certificate Bond Corporation* and the legality of issuing  
13 \$1,000,000,000 in bonded indebtedness to finance purchases and payments of  
14 transferable tax certificates, production tax credit certificates and other payments  
15 claimed under existing statutory law, concluding that "... there is a substantial risk  
16 that a court may determine that HB 331 is unconstitutional."  
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19 32. In response to various inquiries and concern raised during legislative  
20 hearings and by the public about the constitutionality of issuing \$1,000,000,000 in  
21 bond debt to finance purchases and payments of transferable tax certificates,  
22 production tax credit certificates and other payments claimed under existing  
23 statutory law, Commissioner Fisher or other members of the current administration  
24 have repeatedly claimed the proposed debt bonds are constitutional.  
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1           33. In support of his contention that legislative scheme to establish a  
2 corporation for the issuance of \$1,000,000,000 in bonds for the advanced  
3 retirement of the tax credits are not general obligation bonds or revenue bonds as  
4 specified in the Alaska Constitution, Commissioner Fisher and other members of  
5 the current administration have repeatedly characterized the proposed bonds as  
6 being “subject to appropriation” bonds.  
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9           34. The Alaska Constitution is silent on the concept of “subject to  
10 appropriation” bonds.  
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12           35. Commissioner Fisher and other members of the current administration  
13 have stated issuance of the “subject to appropriation” bonds and a subsequent  
14 failure to appropriate funds to pay for the bonded indebtedness will have  
15 consequences and impact the credit rating of the State of Alaska.  
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17           36. The “subject to appropriation” bonds established by HB 331 are a form  
18 of state debt under the Alaska Constitution.  
19

20           37. The “subject to appropriation” bonded indebtedness scheme established  
21 by HB 331 establishes an obligation involving borrowed money where there is a  
22 promise to pay money to bondholders in the future.  
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24           38. The “subject to appropriation” bonded indebtedness scheme established  
25 by HB 331 contains enforceable legal provisions requiring the State of Alaska to  
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2 repay "subject to appropriation" bond holders in the future irrespective of whether  
3 funds are available or appropriated by a future Alaska Legislature.

4 39. Issuance of the "subject to appropriation" bonds will have an impact on  
5 the credit rating and the ability of the State of Alaska to incur additional credit.  
6

7 **ALLEGATIONS**

8 40. This lawsuit is brought by Forrer in the interest of the public to enforce  
9 the obvious and express provisions of the Alaska Constitution, including the  
10 provisions related to incurrence of state debt, issuance of bonded indebtedness and  
11 the prohibition related to dedicating funds.  
12

13 41. Enactment of HB 331 and the eventual establishment of the *Alaska*  
14 *Tax Credit Certificate Bond Corporation* and giving the newly established  
15 corporation authority to issue \$1,000,000,000 in bonds and use the bond funds for  
16 the advanced retirement of tax credits governed by existing statutory law, as  
17 contemplated in HB 331, implicates the credit of the State of Alaska.  
18

19 42. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*  
20 *Bond Corporation* and giving the newly established corporation authority to issue  
21 \$1,000,000,000 in debt and use the funds for the advanced retirement tax credits  
22 under existing statutory law establishes a legal mechanism requiring the  
23 dedication of funds for the satisfaction of the bonded indebtedness in a manner  
24 that is inconsistent with the Alaska Constitution.  
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3 43. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*  
4 *Bond Corporation* and giving the newly established corporation authority to issue  
5 \$1,000,000,000 in debt and use of the bond funds for the advanced retirement of  
6 tax credits and paying back the debt bond with funds “subject to appropriation” is  
7 inconsistent with Article IX, Section 7 of the Alaska Constitution.

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9 44. Enactment of HB 331 establishing the *Alaska Tax Credit Certificate*  
10 *Bond Corporation* and giving the newly established corporation authority to issue  
11 \$1,000,000,000 in debt and use the funds for the advanced retirement tax credits  
12 without a public vote violates Article IX, Section 8 of the Alaska Constitution.

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

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

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10 49. 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 50. Commissioner Fisher and other representatives of the State of Alaska  
16 have repeatedly informed the Alaska Legislature and the public the so-called  
17 “subject to appropriation” bonds contemplated by HB 331 do not constitute either  
18 a general obligation of the state and that the bonds would not be state “debt” within  
19 the meaning of Article IX, Section 8 of the Alaska Constitution.

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22 51. 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 similar bonds floated by the State of Alaska and are, accordingly constitutional,  
26 a position Forrer believes is wrong as a matter of sound judicial interpretation or  
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1 distinguishable based on the previous issuance of debt actually incurred by the  
2 State of Alaska.  
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4 52. The provision in HB 331 restricting judicial review of the proposed  
5 bond scheme to a period of 45 days following the passage of a resolution  
6 authorizing the tax credit bonds is an unconstitutional restriction on the right of  
7 citizens and other interested parties seeking judicial review.  
8

9 53. Nothing in the language of the proposed legislation seeking to establish  
10 the *Alaska Tax Credit Certificate Bond Corporation* makes express the proposed  
11 \$1,000,000,000 bonds the corporation is authorized to issue are non-recourse  
12 bonds backed by nothing other than a political promise to repay the funds  
13 generated by the issuance of the bonds; the anticipated revenues to repay the bonds  
14 are not based on any known revenue stream other than the “subject to  
15 appropriation” rubric, a promise prohibited by Article IX, Section 7 of the Alaska  
16 Constitution pertaining to dedication of funds.  
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20 54. The Alaska Legislature has and has utilized the constitutional authority  
21 to make appropriations (subject to the review and possible veto powers of the  
22 Alaska Governor), to satisfy the existing tax credits claimed under existing Alaska  
23 law that are the subject of HB 331; nothing in this lawsuit by Forrer seeks to  
24 encroach on the legitimate constitutional powers of the legislature to make  
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2 necessary appropriation for legitimate obligations according to the Alaska  
3 Constitution.

4 55. Forrer seeks nothing more and nothing less than for the Alaska  
5 Legislature and the administration to do their job, including making the difficult  
6 choices of balancing the budget without gimmicks and opaque measures that  
7 borrow huge sums of money in a manner that is inconsistent with Alaska's  
8 constitution in order to advance payment to a bunch of individuals or entities  
9 holding credits who are getting paid but desire a more rapid payoff of "tax credits"  
10 that were obviously characterized as "subject to appropriation" in the first place.  
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#### 14 PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff requests the following relief:

16 A. Declaratory relief holding that the establishment of the *Alaska Tax*  
17 *Credit Certificate Bond Corporation* and the issuance of bonds in the amount of  
18 \$1,000,000,000 for the accelerated payoff of existing transferable tax credits  
19 claimed under existing statutory law, as contemplated by HB 331, is  
20 unconstitutional;  
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23 B. Equitable relief in the form of an injunction, as necessary, requiring  
24 Sheldon Fisher and the State of Alaska from incurring debt according "subject to  
25 appropriation" schemes that circumvent the express provisions of the Alaska  
26 Constitution;  
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2 C. An award of costs and reasonable fees associated with maintaining this  
3 public interest lawsuit, and;

4 D. Any other relief necessary to protect the rights of the Plaintiff and the  
5 citizens of Alaska under the Alaska Constitution.  
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7  
8 **DATED** this 14<sup>th</sup> day of May, 2018 at Juneau, Alaska.  
9

10  
11 **LAW OFFICE OF**  
12 **JOSEPH W. GELDHOF**

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14 

15 \_\_\_\_\_  
16 Joseph W. Geldhof  
17 Alaska Bar # 8111097

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22 THIS MATTER IS FORMALLY  
23 ASSIGNED TO  
24 ~~TREVOR N. STEPHENS~~ <sup>18</sup> Jude Pate  
25 SUPERIOR COURT JUDGE  
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