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Juneau man sues over the state's plan to spend \$1.5 billion in CARES Act funds

May 13, 2020 by Andrew Kitchenman, Alaska Public Media & KTOO (<https://www.ktoo.org/author/andrewk/>)

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Alaska State Capitol Building, Juneau, Alaska, January 23, 2017. A Juneau man has filed a lawsuit over how Gov. Mike Dunleavy and the state Legislature are spending federal CARES Act funds. (Photo by Skip Gray/360 North)

A Juneau man filed a [lawsuit](https://drive.google.com/file/d/1asPc2bGh2FDKwTGcv6xdt9Ci4RAIjLLL/view?usp=sharing) (<https://drive.google.com/file/d/1asPc2bGh2FDKwTGcv6xdt9Ci4RAIjLLL/view?usp=sharing>) on Wednesday seeking to stop the state government from sending more than \$1 billion in federal CARES Act money to municipalities, small businesses and others, unless the Legislature takes further action.

Eric Forrer, a retired carpenter and former University of Alaska regent, alleged in the lawsuit that the process Gov. Mike Dunleavy's administration and a legislative committee followed to approve the funds isn't constitutional.

In particular, Forrer said that the entire Legislature must approve any state spending. His lawsuit is seeking to have the court find that the Legislature hadn't appropriated the money. And it seeks an injunction that would limit payments to those the Legislature had appropriated — which would require the Legislature to reconvene.

"The (Alaska) Constitution is crystal-clear on this subject: In order to spend money out of the general fund, you have to have authorizing legislation," Forrer said in an interview Wednesday night.

The lawsuit noted that the Legislature is still officially in session and could meet in the next week to approve the funding. The Anchorage Daily News first reported the lawsuit, which names the state and Department of Revenue Commissioner Lucinda Mahoney as the defendants.



"This governor and this Legislature have to follow the constitution now," Forrer said. "Of all times, now is critical. Because if they don't their actions will be unjustifiable. They will be indefensible. They will never be able to make it right by passing retroactive legislation, which they can't agree on at any time. And it will turn into the most gigantic ball of worms in history."

Forrer said he understands the need for the money in the state.

"And I have been told that I may be vilified for doing it and slowing the money down," he said of the lawsuit. "Which is not something I care about. A long-term legacy is something old guys interested in government might be interested in, but being vilified by this crowd is not a problem for me."

Forrer said he's long been a political independent. While he's highly critical of Dunleavy's handling of the university, Forrer said the lawsuit is not about his feelings about the Republican governor, the Legislature or even the how the money would be spent. He said it's about the principle.

Concerns over a lawsuit had delayed the Legislative Budget and Audit Committee meeting to approve most of the money, including \$586 million for communities and \$290 million in small business relief.

Committee Chair Chris Tuck, an Anchorage Democrat, ruled these items out of order, but was overruled by the committee.

Tuck said it's not clear how long it will take for the lawsuit to be resolved.

"We have seven days until session ends" on May 20, Tuck said on Wednesday. "Probably the best thing we can do is get down in session and vote on these monies."

Supporters of the committee action said on Monday that the Legislature can vote to ratify it when the Legislature next convenes.

On Monday, Sen. Cathy Giessel, an Anchorage Republican, said it was essential for the committee to act quickly.

"The people of Alaska are hurting — we all agree on that," she said. "They're also deeply frustrated, because this is not state money we are dealing with. This is federal money that was allocated to the state of Alaska for the specific purpose of assisting the recovery from this virus, to sustain communities, small businesses and our people."

A state law allows the committee to approve federal spending beyond what was budgeted. But the Legislature's nonpartisan legal adviser said the law requires the additional spending be tied to specific items in the budget.

Dunleavy's administration cited several different laws in asking the committee to approve the spending.

This isn't the first time there was a legal challenge to a major mid-year change to the budget. In 1986, then-Gov. Bill Sheffield restricted (http://w3.legis.state.ak.us/docs/pdf/citizens_guide.pdf#page=57) state spending due to oil prices dropping. The city of Fairbanks successfully sued (<https://law.justia.com/cases/alaska/supreme-court/1987/s-2122-1.html>) over the action's legality. But the Legislature later passed a law legalizing the action retroactively.

Juneau lawyer Joe Geldhof is representing Forrer. He's not persuaded that the pandemic is preventing the Legislature from meeting.

"You know, I keep hearing a lot about, 'Oh, this is an emergency and we can't possibly do that,'" Geldhof said. "Well, we are dealing with our constitution in Alaska. We are dealing with a lot of money. And where there is a will to do what's right according to the constitution, they will."

A judge had not been assigned to the case on Wednesday.

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State government plays an outsized role in the life of Alaskans. As the state continues to go through the painful process of deciding what its priorities are, I bring Alaskans to the scene of a government in transition.

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