

Committees:

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Legislative Budget &
Audit

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Finance Subcommittee
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REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

TO: Representative Chris Tuck, Chair, Legislative Budget and Audit Committee

FROM: Representative Andy Josephson 

DATE: October 28, 2020

RE: Special Audit Request/ Department of Law Spending on Contract Relating to *Janus*

I write today to request a special audit be conducted of the Department of Law, Civil Division's expenditures on outside counsel thus far in FY 2021 for matters relating to the US Supreme Court's *Janus v AFSME* decision (hereafter, *Janus*).

Background

As Chair of the Department of Law Budget Subcommittee in the House, I engaged in extensive conversations with staff from the Department of Law (DOL) relating to my concerns about their spending on outside counsel. We also held hearings on this matter during the FY 2021 subcommittee budget process. Specifically, I was most troubled that a contract was entered into in January 2020 by the DOL with an outside law firm, Consovoy McCarthy, PLLC, to handle "matters related to *Janus* decision" which allowed for the expenditure of up to \$600,000 in state funds.¹ (The opinion in the *Janus* case from the Supreme Court was issued on June 27th 2018 and it should have been disposed of for all time.) The DOL had also previously entered into a \$50,000 contract with this same firm for work relating to the same topic in August of 2019.²

In drafting the FY 2021 budget for this department, our subcommittee expressly segregated spending on *Janus* matters into a separate appropriation item to limit the funds that DOL could expend on *Janus* related contracts.³ For reasons unclear to me, Governor Dunleavy chose to veto the \$20,000 allocated by the legislature specifically allowed to be spent on *Janus* related items.⁴

¹ See Appendix A, Consovoy Contracts.

² See Appendix A, Consovoy Contracts.

³ See Appendix B, excerpt from HB 205 as enrolled, page 23 line 29 through page 25 line 9.

⁴ See Appendix C, excerpt from HB 205 with partial vetoes and reductions, page 25 line 4 through line 9.

This choice on the part of the Governor leaves the DOL with no legal ability to spend any of their civil division appropriation for FY 2021 on contracts related to this matter.

It has come to my attention that Consovoy McCarthy, PLLC filed an amicus brief on October 12th 2020 on behalf of the State of Alaska, in a *Janus* related lawsuit against the governor of Washington, *Belgau v Inslee*.⁵ Though I have made multiple inquiries to Attorney General Designee Ed Sniffen and DOL staff about how this recent amicus brief was funded, I have not received a timely or adequate response.⁶

If the DOL has continued to spend on contracts related to *Janus* in FY 2021 this would be an active effort on their part to circumvent the legislature's power of appropriation and I assert this would be a violation of AS 37.07.080(a) and Article IX, Section 13 of the Alaska Constitution which prohibit state agencies from transferring money from one appropriation to another. I hope that committee members consider this request carefully, regardless of their views on the *Janus* decision itself, and recognize the importance of protecting the legislature's legal role as the appropriators.

Purpose of Audit

To assess contracts and spending on outside counsel by DOL's Civil Division for matters relating to the *Janus* decision in FY 2021. I ask that the audit include the following objectives over a time frame determined appropriate by the legislative auditor:

- Determine whether any funds were expended on *Janus* related contracts (concerning public employees' union membership, union dues, or related matters) since the beginning of FY 2021 or whether any new contracts relating to *Janus* were entered into.
- Determine whether and how the state financially supported the work of Consovoy McCarthy, PLLC's filing of the October 2020 amicus brief on behalf of the State of Alaska in *Belgau v Inslee*.
- Determine whether the DOL, through expenditures on contracts related to *Janus*, violated AS 37.07.080(a), Article IX, Section 13 of the Alaska Constitution or any other state law.
- Follow up on any other related concerns the Legislative Auditor identifies during the audit.

⁵ See Appendix D, "Brief for the State of Alaska as *Amicus Curiae* in Support of Petition for Rehearing en Banc," 12 October 2020, *Belgau v Inslee*, Case 19-35137, *Janus* is specifically mentioned over 40 times in this brief.

⁶ See Appendix E, Communications with Department of Law, Re: *Belgau* Amicus.