



THE STATE  
of ALASKA  
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501  
Main: 907-269-5100  
Fax: 907-276-3697

October 29, 2020

*Via Email*

The Honorable Andrew Josephson  
Alaska House of Representatives  
Email: Rep.Andy.Josephson@akleg.gov

Re: *Your Letter Dated October 13, 2020*

Dear Representative Josephson:

In your letter dated October 13, 2020, you inquired about the amicus brief prepared by Consovoy McCarthy, PLLC, for *Belgau v. Inslee*, 19-35137 (9th Cir. Oct 12, 2020). As you are aware, attorneys general regularly submit amicus briefs in federal court cases of importance to their states. Alaska has a strong interest in this case because the panel's decision impacts the constitutional rights of Alaska state employees. Alaska's Attorney General issued a legal opinion on August 27, 2019 concluding that the State's payroll deduction process was constitutionally untenable under *Janus v. AFSCME* and recommended actions to bring the state into compliance. The validity of these actions is currently being litigated in state court (*State of Alaska v. ASEA*) and the Attorney General had a duty to consider submitting an amicus brief. Ultimately the work was outsourced to Consovoy McCarthy, a firm with relevant expertise that the Department of Law already had under contract. The Department expects Consovoy McCarthy's total costs for preparing the brief to be under \$6,000, less than what it would have cost to prepare using in-house attorneys.

You raised concern over the Department's use of appropriated funds for outside counsel related to *Janus*. As noted in our review of HB 205 for the Governor (available [here](#), pages 7-8), the appropriation structure adopted for the Department of Law this year was unusual. The Department is comprised of a civil division and a criminal division and not organizationally separated by particular legal matters. Restricting the Department's spending authority in this manner raises issues under the confinement clause of the Alaska Constitution which has been interpreted to prohibit an appropriations bill from administering a program of expenditures. See *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001). In carrying out the state's legal business, the Alaska Supreme Court has held that the Attorney General has the powers and duties ascribed to that position under the common law which includes the authority to bring actions that the Attorney General considers to be in the public interest. See *Public Defender Agency v.*

*Superior Court*, 534 P.2d 947 (Alaska 1975). Accordingly, appropriation language that attempts to restrict the Attorney General from entering into contracts related to a particular legal matter—which could include not only contracts with outside counsel, but also with necessary legal experts—raises significant legal issues and impedes the Attorney General’s ability to fulfill statutory duties as head legal advisor and litigator for the state. Further, an appropriation structure of this nature attempts to restrict the governor’s ability to initiate court action to enforce “any constitutional or legislative mandate” under Article III, sec. 16, of the Alaska Constitution. The *Janus v. AFSCME* decision concerned core First Amendment issues and related litigation involves the application of the First Amendment.

Please contact me with any additional questions.

Sincerely,



Clyde “Ed” Sniffen, Jr.  
Acting Attorney General

cc: Rep. Matt Claman, House Judiciary Chair (via email)  
Miles Bakes, Legislative Director, Governor’s Legislative Office (via email)  
Sharla Mylar, Legislative Liaison, Department of Law (via email)