

HOUSE CONCURRENT RESOLUTION NO. 28
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES BARNES, Phillips, Williams, Toohey, Vezey, James, Martin, Foster, Porter, Mulder, Olberg, Green, Bunde, Sanders, Hudson, Larson, Kott, MacLean, Hanley, Therriault

SENATORS Halford, Taylor, Sharp, Donley, Leman, Phillips, Little, Pearce, Rieger, Frank, Miller

Introduced: 1/19/94
Referred: Judiciary

A RESOLUTION

1 **Relating to requesting the Governor to direct the Attorney General to undertake**
2 **all available means to have the partial settlements agreed to by the state in**
3 **Cleary v. Smith and the court orders issued in that case that impose required**
4 **conditions of confinement and continued monitoring and oversight of the**
5 **correctional system by the courts dissolved or modified.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 **WHEREAS**, in the early 1980s, the state was sued by various inmates of state
8 correctional institutions who alleged in a case, known as Cleary v. Smith (Cleary), that some,
9 if not all, of the conditions of their confinement were unconstitutional; and

10 **WHEREAS**, in Cleary, the state entered into partial settlement agreements to resolve
11 some of the issues of the litigation in the superior court, and the superior court made various
12 findings of fact and conclusions of law and issued orders and decisions based upon the partial
13 settlement agreements and the findings of fact and conclusions of law; and

14 **WHEREAS** the superior court, in Cleary, did not find in all cases that the conditions
15 of confinement were at that time unconstitutional; it only found that in some circumstances

1 the conditions of confinement may become unconstitutional at some future unspecified date;
2 and

3 **WHEREAS**, despite this failure to find present unconstitutional conditions of
4 confinement, the superior court decided, and in at least some situations the state agreed to
5 allow the court, to dictate conditions of confinement for the correctional system of the state,
6 either through the settlement agreements or the court's orders and decisions, and the superior
7 court continues to oversee the correctional system to ensure that the state complies with all
8 of its orders and decisions; and

9 **WHEREAS** the settlement agreements and orders and decisions of the superior court
10 in many situations impose burdens on the state that extend beyond the levels that are required
11 by the state constitution for conditions of confinement as decided by courts both before and
12 after Cleary; and

13 **WHEREAS** any unconstitutional conditions of confinement found by the superior
14 court have long ago been satisfied by the state, and continued court intervention in the day-to-
15 day affairs of the correctional system is no longer necessary; and

16 **WHEREAS** the Cleary case has helped to make this state's correctional system one
17 of the most, if not the most, expensive correctional system in the United States, if not the
18 world, based upon per prisoner costs of incarceration, by its mandating of conditions beyond
19 those necessary to comply with the constitution; and

20 **WHEREAS** continued oversight of the correctional system by the superior court, even
21 when no constitutional violations existed or continue to exist, directly impinges on authority
22 of the legislature to enact laws relating to the corrections system and the authority of the
23 executive branch to implement and enforce those laws and constitutes a fiscal burden that the
24 state cannot afford in these times of declining prices for and production of oil; and

25 **WHEREAS** Alaska Rule of Civil Procedure 60(b) allows a court to relieve a party
26 from the burden of a judgment, order, or other proceeding; and

27 **WHEREAS**, in *Rufo v. Inmates of the Suffolk County Jail (Rufo)*, the United States
28 Supreme Court considered the reach of federal Rule of Civil Procedure 60(b), upon which
29 Alaska Rule of Civil Procedure 60(b) is based, in the context of a motion to relieve the
30 Commonwealth of Massachusetts and a Massachusetts county from a consent decree that was
31 entered into to resolve jail litigation on the ground that changed circumstances made it no
32 longer equitable that the decree be enforced, the changed circumstances being fiscal

1 constraints (declining state revenues) and a purported change in the law; and

2 **WHEREAS**, in *Rufo*, the United States Supreme Court said that modification under
3 federal Rule of Civil Procedure 60(b) may be warranted when changed factual conditions
4 make compliance with the court order substantially more onerous or when statutory or
5 decisional law has changed to make legal that which the order was designed to prevent and
6 that a court, in considering whether to grant a modification, should consider the public
7 interest; in this regard the United States Supreme Court said: "To refuse modification of a
8 decree is to bind all future officers of the State, regardless of their view of the necessity of
9 relief from one or more provisions of a decree that might not have been entered had the matter
10 been litigated to its conclusion . . . Financial constraints may not be used to justify the
11 creation or perpetuation of constitutional violations, but they are a legitimate concern of
12 government defendants in institutional reform litigation and therefore are appropriately
13 considered in tailoring a consent decree modification"; and

14 **WHEREAS** this reasoning of the United States Supreme Court, though not binding
15 on Alaska courts in the interpretation of Alaska Rule of Civil Procedure 60(b), is certainly
16 instructive as to how Alaska Rule of Civil Procedure 60(b) should be applied and that, due
17 to declining revenue, the current and future legislatures and state officials should not be held
18 to the settlement agreements, orders, and decisions in the *Cleary* case;

19 **BE IT RESOLVED** that the Alaska State Legislature respectfully requests the
20 Governor to direct the Attorney General to undertake all available means to dissolve or modify
21 the partial settlement agreements, orders, and decisions in *Cleary v. Smith*.

22 **COPIES** of this resolution shall be sent to the Honorable Bruce Botelho, Attorney
23 General; and the Honorable Frank Prewitt, Commissioner of Corrections.