

STATE OF ALASKA THE LEGISLATURE

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Resolve No.
36



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

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

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

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

WHEREAS the superior court, in Cleary, did not find in all cases that the conditions of confinement were at that time unconstitutional; it only found that in some circumstances the conditions of confinement may become unconstitutional at some future unspecified date; and

WHEREAS, despite this failure to find present unconstitutional conditions of

confinement, the superior court decided, and in at least some situations the state agreed to allow the court, to dictate conditions of confinement for the correctional system of the state, either through the settlement agreements or the court's orders and decisions, and the superior court continues to oversee the correctional system to ensure that the state complies with all of its orders and decisions; and

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

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

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

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

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

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

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

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

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

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