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Attorney General's Office
Juneau

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**SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU**

COPY
Original Received

JUL - 5 2018

Clerk of the Trial Courts

By PS Deputy

ERIC FORRER)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA)
and SHELDON FISHER,)
Commissioner of the Alaska)
Department of Revenue)
in his capacity as an official of)
the State of Alaska.)
Defendants.)
_____)

1JU-18-00699 Civil

AFFIDAVIT OF ERIC FORRER

State of Alaska)
) ss.
First Judicial District)

Eric Forrer, being first duly sworn and on my oath, states as follows:

1. I am a resident of Juneau, Alaska.
2. The facts and matters I am providing testimony about in this affidavit are based on my personal observations, beliefs and true to the best of my knowledge.
3. I am the plaintiff in the above-captioned lawsuit.

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2 4. I initiated the above-captioned lawsuit in the interest of the public because the
3 borrowing of \$1,000,000,000 (one billion dollars), via bonds that must be repaid
4 using public funds at some future time is believed to be unconstitutional,
5 fantastically expensive and it misuses public funds at this time.
6

7 5. In order to grasp the true cost of borrowing \$1,000,000,000 and determine
8 whether the issuance of bonds is proper according to the Alaska Constitution, I
9 have engaged in research and gathered facts related to the issuance of the bonds
10 according to the scheme outlined in HB 331.
11

12 6. The factual basis behind the need for HB 331 and various factual issues related
13 to the issuance of \$1,000,000,000 in bonds is opaque in some instances and the
14 subject of controversy or confusion or impossible to ascertain as of the date I am
15 completing this affidavit.
16

17 7. As a matter of fact, the State of Alaska and Sheldon Fisher have not adequately
18 described whether or not the underlying obligation to repay the oil tax credits is a
19 legal debt.
20

21 8. As a matter of fact, it is also unclear how to properly characterize the proposed
22 bonds Sheldon Fisher and the State of Alaska seek to issue in the amount of
23 \$1,000,000,000: at various times Fisher or other representatives of the State have
24 referred to the bonds as an "obligation" or as not being "constitutional debt" or as
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2 "subject-to-appropriation bonds" (a term that appears nowhere in the
3 constitution), or as "revenue bonds."

4 9. Having studied this matter in some detail (seemingly in more detail than
5 members of the legislature and many administrators), I am unable to apprehend,
6 as a matter of fact, what kind of debt the State is seeking to incur according to HB
7 331 or even if the State acknowledges that borrowing \$1,000,000,000 is a type of
8 debt.
9
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11 10. My belief is that the new oil tax credit bond corporation established by HB
12 331 will be an entity consisting of only three existing state employees, all
13 governor-appointed executive officers, and will not require additional personnel,
14 office space, or administrative costs. As a matter of fact, the fiscal note
15 demonstrates the corporation will only require an annual funding of \$2,500; no
16 mention is made of the enormous debt servicing costs.
17
18

19 11. Based on my review of the facts underlying this dispute, I am also not
20 presently certain whether the State of Alaska or the new Alaska Tax Credit
21 Certificate Bond Corporation established by HB 331 is responsible for repaying
22 the bonds and the servicing fees associated with the bond issuance.
23

24 12. My inability to determine who is responsible for repaying the bonds is clouded
25 by factual issues, including the fact that the new Alaska Tax Credit Certificate
26 Bond Corporation appears to have the ability to facilitate the issuance of the bonds
27
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2 but any funds to repay the debt servicing to the bond holders must come from the
3 State of Alaska. I cannot presently determine the State's beliefs as to the nature
4 of the obligation, who will be legally obligated to repay the funds and a number
5 of other factual questions related to what will happen to the State of Alaska and
6 Alaska's citizens if the funds from the bond proceeds are not repaid by the State
7 of Alaska or some other entity.
8

9
10 13. It is my understanding that the legislature's failure to appropriate sufficient
11 funds for debt servicing could impair the credit rating of the state and that this fact
12 is meant to force future legislatures to pay debt servicing or risk the consequence
13 of default.
14

15 14. Representatives of the state have not explained how, if the credit of the state
16 is at risk, the faith and credit of the state is not implicated under HB 331. In fact,
17 the bill does not include express language stating that the faith and credit of the
18 state will not be pledged.
19

20 15. It is also a matter of concern to myself and members of the public that the
21 cost of issuing bonds in the amount of \$1,000,000,000 and the mechanics of
22 repaying bond investors is not understood as a matter of fact.
23

24 16. Sheldon Fisher and other proponents of the bill have inadequately outlined
25 the mechanics of this bond scheme and may have placed the State's finances at
26 risk for a plan that may be unconstitutional.
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2 17. Sheldon Fisher and other representatives of the State have made reference to
3 issuance of the bonds authorized by HB 331 as being "revenue neutral," because
4 a one-time front-end discount will cover the cost of bond interest.
5

6 18. I am not entirely certain what Mr. Fisher and other officials from the State
7 mean by "revenue neutral" but based on my review of HB 331 and the application
8 of common sense financing principles, the goal of achieving a revenue-neutral
9 condition is not achievable.
10

11 19. My review of the discount provision in HB 331 that would supposedly save
12 the State funds when redeeming the oil tax credits suggests to me that the
13 maximum discount rate the State may apply through negotiations is 10%.
14

15 20. As a matter of fact it is extremely difficult to see how using the bond proceeds
16 to buy back the oil tax credits will be revenue neutral.
17

18 21. Here is why I think, as a matter of fact, that the issuance and use of the
19 \$1,000,000,000 bond proceeds will be revenue negative: If you assume a
20 conservative cost of interest for the use of a billion dollars and apply this
21 conservative value for the price of money over the specified repayment schedule
22 contemplated by HB 331, the cost of borrowing appears to exceed any potential
23 savings associated with buying up the oil tax credit even if the maximum
24 mandated discount rate the State may negotiate is applied.
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2 22. By way of example in order to get at this factual issue, assume that bonds are
3 issued with a 3.75% interest rate (nobody can be certain, as a matter of fact, until
4 the bonds are proposed to be marketed.) Assuming a conservative interest value
5 based on present rates and applying this percentage to \$1,000,000,000, the annual
6 cost would be of \$37,500,000. This value, without compounding the interest,
7 would mean the lifetime debt servicing for borrowing \$1,000,000,000 via a bond
8 issuance is \$375,000,000 over the ten-year period specified and authorized by HB
9 331.
10
11

12 23. If one assumes as a matter of fact, as I have, that the maximum discount rate
13 the state can negotiate during the oil tax credit redemption process established by
14 HB 331 is \$100,000,000, then the State's "revenue neutral" characterization
15 cannot be substantiated using standard loan and loan-interest mathematics. A one-
16 time discount of 10 % on the principle is overwhelmed by any modest interest rate
17 which is in force over the standard 10-year life of the bonds. Even if you
18 compound the ten percent discount, it's still not clear that the savings to the state
19 will be positive.
20
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23 24. I also harbor a number of factual concerns (that in some instances have been
24 asked of me by individual Alaskan citizens), about which I have inquired of the
25 State related to the issuance of the \$1,000,000,000 in bonds, including the
26 following:
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- ✓ Questions about the impact on State of Alaska's credit rating and ability to incur additional debt if the issuance of the bonds in the amount of \$1,000,000,000 goes forward;
- ✓ What would happen, as a matter of fact, if the State fails to pay the bond holders, including whether credit rating agencies would take action to restrict the issuance of loans to the State of Alaska that might halt or increase the cost of borrowing for home loans, veterans home loans, student loan programs and industrial development projects that have been undertaken in Alaska in the past via conventional bonding programs that invariably have some sort of revenue stream providing for repayment of the obligation, not some sort of speculative promise that future legislatures will make good on the obligation via an appropriation.
- ✓ I also have attempted to find out the factual basis underlying the original issuance of the discretionary oil tax credits, e.g., who issued the discretionary credits; how many were issued; to whom were the credits issued; how many of the credits were transferred and to whom; along with other factual matters related to the oil tax credit program and the new proposal to redeem any outstanding credits set up by HB 331.

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2 25. The State has not provided me or the public with anything close to an adequate
3 response to the factual issues I have raised on behalf of the public, as sketched out
4 above.

5
6 26. In an attempt to get answers to various factual issues which I believe are
7 important to properly resolving the constitutional issues that are at the heart of this
8 dispute, I have worked with the attorneys assisting me with this case to seek
9 answers to the factual issues I and members of the public need to know.
10

11 27. The questions I have along with requests to produce documents and requests
12 to narrow the factual issues in dispute were sent to the State on June 11 and 18,
13 2018.
14

15 28. The State of Alaska has not yet complied with what my lawyers call
16 "discovery" as of the date of this affidavit.
17

18 29. It also has not helped me or the public get to the bottom of the many factual
19 issues that have not been resolved in this dispute because the State did not file an
20 *Answer* to the *Complaint* I filed on behalf of the public in the above-captioned
21 case.
22

23 30. Instead of filing an *Answer* in this case, the State filed a motion to dismiss.
24

25 31. From my perspective, I find it impossible to understand the State's position
26 that the case should be dismissed. The relief I ask and that the State says they
27 cannot find is clear. I seek on behalf of the public to have HB 331 declared
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2 unconstitutional. HB 331 is riddled with internal inconsistencies; loan analysis
3 that appears to be based on bad arithmetic, and violations of the state constitution.
4 The bad arithmetic leads directly to bad policy according to the new law; as a
5 result, promises the public an outcome it cannot produce. Finally, the real crux of
6 the matter here is language. If HB 331 is found by the courts to be constitutional
7 on the basis of the language used in its defense, then the precedent will be set that
8 permits the creation and use of debt by the state and by municipalities regardless
9 of the original constitutional restrictions. When the State runs out of oil revenue,
10 our state may be buried in debt with no way out contrary to the expressed
11 sentiments of the constitutional delegates.
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15 32. The conclusions, observations and opinions I have set forth in this affidavit
16 were derived independently and based on my personal knowledge according to
17 my personal inquiry and based on numerous conversations and questioning put to
18 me by many members of the public in Alaska, the persons who are referred to as
19 "the people" in Article I, Section 2 of the Alaska Constitution, a provision which
20 reads: "Source of government----All political power is inherent in the people. All
21 government originates with the people, is founded upon their will only, and is
22 instituted solely for the good of the people as a whole."
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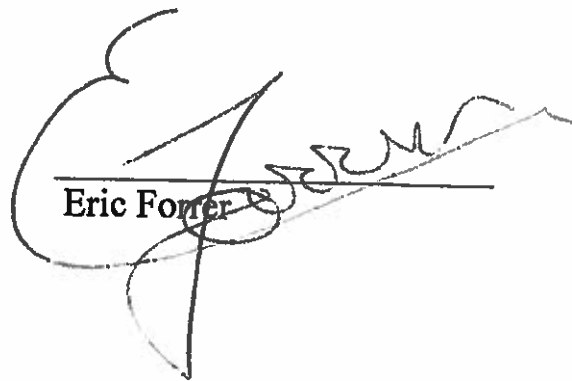
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Further the affiant sayeth naught.

DATED this 2nd day of July, 2018.


Eric Forrer

SUBSCRIBED AND SWORN TO before me this 2nd day of July 2018

Gail O'Dell



Printed Name: GAIL O'DELL
Notary Public in and for the State of Alaska
Residing at: STINEAU ALASKA
My Commission Expires: 08-27-2020