



2. On April 12, 2024 I received and reviewed this Court’s order granting the Plaintiffs’ Motion for Summary Judgment and denying the Defendants’ Motion to Dismiss (the “Order”). The effect of the Order was to invalidate AS 14.03.300-.310 in their entirety.

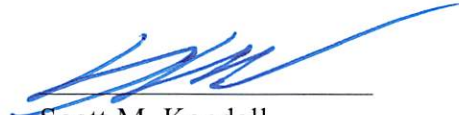
3. On April 13, 2024 I contacted counsel for the Defendants to discuss the possibility of a stay. Although counsel responded, they did not indicate whether or not the Defendants intend to seek a stay, nor did they provide any other substantive response.

4. On April 15, 2024 I emailed counsel for both the Defendants and the Intervenor stating that the Plaintiffs were willing to stipulate to a stay of the Order until the end of the current school year or the current state fiscal year. *See* Exhibit A, attached.

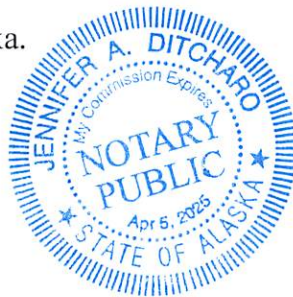
5. Later in the day on April 15, 2024 I received a response from the Intervenor’s counsel stating their demand for an indefinite stay of the Order, until whatever date the Alaska Supreme Court rules on the matter. In response, I offered to agree to an expedited appeal that would resolve this matter before the end of the current fiscal year. Intervenor’s counsel responded they “cannot agree to a shorter stay” and that they would not agree to an expedited appeal process, instead preferring “the usual process.” *See* Exhibit B, attached.


6. At the time of signing this affidavit I have not received any substantive response from Defendants’ counsel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Scott M. Kendall  
Alaska Bar No. 0405019

SUBSCRIBED AND SWORN to before me on this 15<sup>th</sup> day of April, 2024, at  
Anchorage, Alaska.



  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: 4/5/25

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the  
foregoing was served via email on  
April 15, 2024, on the following:

Craig Richards  
Law Offices of Craig Richards  
[crichards@alaskaprofessionalservices.com](mailto:crichards@alaskaprofessionalservices.com)

David Hodges  
Institute for Justice  
[dhodges@ij.org](mailto:dhodges@ij.org)

Kirby Thomas West  
Institute for Justice  
[kwest@ij.org](mailto:kwest@ij.org)

Jeff Rowes  
Institute for Justice  
[jrowes@ij.org](mailto:jrowes@ij.org)

Margaret Paton-Walsh, AAG  
Alaska Attorney General's Office  
[margaret.paton-walsh@alaska.gov](mailto:margaret.paton-walsh@alaska.gov)

CASHION GILMORE & LINDEMUTH

By: /s/Todd Cowles

**From:** Scott Kendall scott@cashiongilmore.com  
**Subject:** Re: Alexander v. DEED  
**Date:** April 15, 2024 at 11:57 AM  
**To:** Paton-Walsh, Margaret A (LAW) margaret.paton-walsh@alaska.gov, Richards, Craig crichards@alaskaprofessionalservices.com

Following up on this, I realize I didn't provide a deadline.

Specifically, we would like your answer before COB today.

Thanks again,  
— Scott

**Scott Kendall**  
Cashion Gilmore & Lindemuth  
(907) 339-4967  
510 L Street, Suite 601  
Anchorage, AK 99501  
scott@cashiongilmore.com

On Apr 15, 2024, at 11:32 AM, Scott Kendall <scott@cashiongilmore.com> wrote:

Mags and Craig—

I'm sure that you are both still looking over the decision, however I did want you to know that the Plaintiffs are supportive of asking Judge Zeman for a stay of his decision until the end of the school year (or the end of the state fiscal year if that makes more sense). Please let me know whether your clients will support or oppose that request.  
I'm also available for a call for the next 30 minutes (until noon) or again at 3pm to 4:30pm.  
Talk to you soon.

Best,  
— Scott

**Scott Kendall**  
Cashion Gilmore & Lindemuth  
(907) 339-4967  
510 L Street, Suite 601  
Anchorage, AK 99501  
scott@cashiongilmore.com

**From:** Kirby West kwest@ij.org 

**Subject:** RE: Alexander v. DEED

**Date:** April 15, 2024 at 2:15 PM

**To:** Scott Kendall scott@cashiongilmore.com

**Cc:** Paton-Walsh, Margaret A (LAW) margaret.paton-walsh@alaska.gov, Craig Richards crichards@alaskaprofessionalservices.com, David Hodges dhodges@ij.org, Lauren Sherman lauren@cashiongilmore.com

KW

Hi Scott,

Thanks for explaining your position more fully. We continue to feel confident that the program will ultimately be held to be constitutional, and cannot agree to the shorter stay. We will plan to file our own motion.

Thank you for your offer on the appeal. I'm aware of the expedited process, but at this stage we plan to forego it and file our appeal through the usual process.

Best,  
Kirby

**Kirby Thomas West**  
*Attorney\**



**INSTITUTE FOR JUSTICE**

901 N. Glebe Road, Suite 900

Arlington, VA 22203 | 703-982-9320



**The Washington Post**

\* Licensed only in Pennsylvania

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**From:** Scott Kendall <scott@cashiongilmore.com>

**Sent:** Monday, April 15, 2024 4:56 PM

**To:** Kirby West <kwest@ij.org>

**Cc:** Paton-Walsh, Margaret A (LAW) <margaret.paton-walsh@alaska.gov>; Craig Richards <crichards@alaskaprofessionalservices.com>; David Hodges <dhodges@ij.org>; Lauren Sherman <lauren@cashiongilmore.com>

**Subject:** Re: Alexander v. DEED

Kirby—

I appreciate your response.



We plan to ask the court to extend the stay through the end of the fiscal year in order to prevent any disruption to parents and districts who relied on the law as it was at the start of this school year. However, we cannot agree to an indefinite stay of the court's decision given that, under normal appeal timelines additional unconstitutional spending could be allowed for one (or even two) additional school years. Further, such a stay would only encourage or continue parents' and districts' reliance on a statutory scheme that was sui generis unconstitutional when it was first proposed. Given the Alaska Legislature's hesitance to legislate during the pendency of any litigation, it would also delay a possible legislative solution.

Obviously, a prompt solution is best. We do not know if that legislative solution is being actively sought, for example. But, given we can only control this litigation, we would not oppose a stay through the end of the fiscal year paired with an expedited Petition for Review or Appeal to the Alaska Supreme Court such that (assuming the Court agreed) we would have a final decision before the stay expired.

You might not be aware, but our Supreme Court does have an ability when the occasion arises to provide a summary decision on an extremely expedited basis where necessary. We would be willing to agree to such an expedited process should you (or the State) wish to request it.

Best,  
—Scott

**Scott Kendall**  
Cashion Gilmore & Lindemuth  
(907) 339-4967  
510 L Street, Suite 601  
Anchorage, AK 99501  
[scott@cashiongilmore.com](mailto:scott@cashiongilmore.com)

On Apr 15, 2024, at 12:27 PM, Kirby West <[kwest@ij.org](mailto:kwest@ij.org)> wrote:

Hi Scott,

Craig forwarded me your message asking about a stay. Intervenors intend to appeal, and we are planning on asking the court for a stay pending appeal rather than the just until the end of the school year. Given the number of students currently in the program, we think it makes much more sense to wait until we have a final decision from the Alaska Supreme Court to depart from the status quo. Would Plaintiffs support that request, rather than the more limited stay?

Thanks,

Kirby

**Kirby Thomas West**  
*Attorney\**



901 N. Glebe Road, Suite 900  
Arlington, VA 22203 | 703-982-9320



\* Licensed only in Pennsylvania