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IN THE SUPREME COURT OF THE STATE OF ALASKA

Madilyn Short, Riley Von Borstel, Kjrsten Schindler, and Jay-Mark Pascua, Appellants, v. State of Alaska, Office of Management and Budget and Department of Administration and Governor Michael J. Dunleavy, in an official capacity, Appellees.	)	Supreme Court No. S-18333
Trial Court Case No. 3AN-22-04028 CI		

PETITION FOR REHEARING

The Appellees petition, pursuant to Alaska Rule of Appellate Procedure 506(a)(1)-(3), for rehearing on just one sentence in footnote 1 of this Court's opinion. This Court misconceived a material question on appeal when it stated that "[t]he legislature has . . . amended the HEIF statute, removing the HEIF from the general fund and thus making it ineligible for the sweep."[1]

That sentence is dicta that purports to resolve a question of Alaska constitutional law not before the Court. This case does not present the issue of whether a fund the legislature describes as "separate" falls outside the "general fund," as that term is used in Article IX, subsection 17(d) of the Alaska Constitution. Whether the legislature can draft its way around the sweep mandated by the Constitutional Budget Reserve

[1] Opinion at 2 n.1.

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amendment—by a simple majority vote rather than the three-fourths majority the amendment requires[2]—is a question not presented in this appeal. Because analyzing the sweepability of the HEIF—a fund the legislature expressly placed *in* the general fund in 2012[3]—did not require addressing that question, the parties did not brief the issue.

Without delving far into the arguments on either side of the question, the Court's cursory statement in footnote 1 cannot easily be reconciled with the holdings in this case and *Hickel v. Cowper*, both of which honor the intent of the framers of the Constitutional Budget Reserve amendment that "any money withdrawn from the CBR must be repaid."[4] The Court has now twice recognized that the legislature cannot "essentially write [the sweep] out of the amendment."[5] The legislature can no more statutorily alter the meaning of the constitutional term "general fund" than it could statutorily circumscribe the constitutional phrase "available for appropriation" by passing the statutory definition this Court struck down in *Cowper*.[6] But that is exactly the result of the Court's cursory comment in footnote 1: if the Court's comment is correct, the legislature can avoid the sweep via a statutory drafting device passed by a simple majority vote, avoiding the three-quarters majority that the Constitution requires.

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2 Alaska Const. Art. IX, section 17(c).

3 *See* Opinion at 10 n. 30.

4 Opinion at 5.

5 Opinion at 30.

6 *Hickel v. Cowper*, 874 P.2d 922, 928 (Alaska 1994) ("Our task is to identify the meaning that *the people* probably placed on the term." (emphasis added)).

The Court should grant rehearing to remove the dicta on this point, leaving the issue for another case. The Executive Branch proposes the following revised version of the second paragraph of footnote 1:

The legislature has since amended the HEIF statute, designating it a "separate fund in the state treasury . . . ." Ch. 15, § SLA 2022. Our decision reflects the statutes in place during the proceedings underlying the appeal, and we express no opinion about whether the legislature's "separate fund" language takes a fund outside the scope of subsection 17(d)'s sweep mandate. That issue is not before us.

DATED October 7, 2022.

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CERTIFICATE OF SERVICE

I hereby certify, that on October 7, 2022, the foregoing **Petition for Rehearing** was served via electronic mail on the following:

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