

IN THE SUPREME COURT FOR THE STATE OF ALASKA

SUMMER SAGOONICK; CH'EELIL P., a minor, by)
and through her guardian, ENEI P.; CECILY S. and)
LILA S., minors, by and through their guardians,)
MIRANDA W. and BOB S.; CARRIE DOCK;)
LINNEA LENTFER; BAY W., a minor, by and)
through his guardian, MILLER W.; and JAMIE T., a)
minor, by and through her guardian, BERTHA T.,)

Plaintiffs-Appellants,)

v.)

) Supreme Court No. S-19417

STATE OF ALASKA; ALASKA GASLINE)
DEVELOPMENT CORPORATION; and FRANK)
RICHARDS, President of the Alaska Gasline)
Development Corporation, in his capacity,)

Defendants-Appellees.)

Trial Court Case No. 3AN-24-06508

APPEAL FROM THE SUPERIOR COURT
FOURTH JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE JUDGE DANI R. CROSBY

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Filed in the Supreme Court
for the State of Alaska
on this ___ of June, 2025

Meredith Montgomery,
Clerk Appellate Courts

By: _____
Deputy Clerk

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Pursuant to Rule 517.2(a)(2) of the Alaska Rules of Appellate Procedure, four members of the Alaska Legislature (“Legislators”) and the League of Women Voters of Alaska (“LWVAK”), by and through undersigned counsel, respectfully requests that this Court grant it leave to file a brief as *amici curiae* in support of Plaintiffs-Appellants in this matter. In accordance with Rule 517.2(a)(2), the Legislators and LWVAK are filing their proposed amicus brief contemporaneously with this motion. As indicated in the attached Affidavit of Counsel, Appellants have consented to the filing of this brief while Appellees state that they have not yet taken a position on whether they oppose the filing of the amicus brief.

Amici curiae are four members of the Alaska Legislature and the League of Women Voters of Alaska (“LWVAK”).

Senator Jesse Kiehl represents Senate District B, covering Juneau, Haines, Skagway, Gustavus, and Klukwan. Representative Hezekiah Russel Holland III represents House District 9, covering parts of Anchorage and the City of Whittier. Representative Andy Josephson represents House District 17, covering parts of Anchorage. Representative Genevieve Mina represents House District 19, covering parts of Anchorage. As members of the Alaska Legislature, we serve the citizens of Alaska and have a special interest in ensuring the proper, constitutionally-based, functioning of Alaska’s system of checks and balances. In this system, the courts, the legislature, and the executive are co-equal, with the jurisdiction of the courts prescribed by laws passed by the legislature.

Amici LWVAK is a grassroots, nonpartisan, nonprofit organization that encourages informed, active, and inclusive participation in government in order to promote political responsibility and so that Alaska's government may better serve the democratic interests and principles of *all* peoples of Alaska, including underrepresented groups. LWVAK's primary mission is to ensure effective representative government through voter registration, education, and mobilization.

This appeal implicates the doctrine of separation of powers, the political question doctrine, and the integrity of co-equal branches. As Legislators, we draft and pass laws with the understanding that, if challenged, such laws will be reviewed for constitutionality by an independent judiciary. The lower court's decision to dismiss this case without addressing the merits undermines the separation of powers and integrity of co-equal branches. If the lower court's decision is upheld, this result would have deleterious consequences for the ability of Alaska's judiciary to fulfill its role to hear and resolve constitutional claims and, flowing from that, the legislature's consideration of legislation that may implicate constitutional rights but which would no longer be subject to a judicial safeguard. LWVAK has a particular interest in ensuring that the voices and interests of all individuals, particularly those underrepresented in government such as children, are spoken and accounted for in political decision-making. As part of the effort to ensure that all branches of government are held politically accountable to underrepresented groups, including children, LWVAK supports judicial remedies when necessary to safeguard the fundamental rights of underrepresented individuals when other branches of government have failed them. Based on these principles, LWVAK has an

interest in ensuring that Alaska’s courts fulfill their duty to maintain an outlet for young Appellants to seek vindication of their constitutional rights by exercising jurisdiction over this case.

The scope of the political question doctrine and prudential considerations that courts may use to dismiss claims as non-justiciable are issues of concern for the Legislators and LWVAK. Members of Alaska’s legislature have a strong interest and unique perspective in ensuring the proper functioning of Alaska’s system of separation of powers and checks and balances, in which the courts, legislature, and executive branch are co-equal. The Legislators and LWVAK submit that this information is highly relevant to the Court in rendering its decision in this matter.

Accordingly, the Legislators and LWVAK respectfully request that this Court grant them leave to file the proposed amicus brief in support of Plaintiffs-Appellants that is filed contemporaneously here.

Respectfully submitted, this 11th day of June, 2025.



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CERTIFICATE REQUIRED BY APPELLATE RULE 513.5(C)(2)

Undersigned counsel certifies that the typeface used in this brief is 13-point
(proportionally spaced) Times New Roman.

By: 

Karen E. Schmidt

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS, AFFIDAVIT OF COUNSEL, and the contemporaneously-filed BRIEF OF *AMICI CURIAE* ALASKA LEGISLATORS AND LEAGUE OF WOMEN VOTERS OF ALASKA IN SUPPORT OF PLAINTIFFS-APPELLANTS were served via electronic mail on the following:

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Dated: June 11, 2025



Karen E. Schmidt

IN THE SUPREME COURT FOR THE STATE OF ALASKA

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Defendants-Appellees.)

Trial Court Case No. 3AN-24-06508

Having reviewed the Motion for Leave to file Brief of *Amici Curiae* Alaska Legislators and the League of Women Voters of Alaska in Support of Plaintiffs-Appellants, as well as any response in opposition thereto, and being duly advised thereby, IT IS HEREBY ORDERED by this Court that the motion is GRANTED.

DATED at Anchorage, Alaska this ___ day of _____, 2025.

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) Supreme Court No. S-19417

) **AFFIDAVIT OF COUNSEL**

Trial Court Case No. 3AN-24-06508

I, Peter Van Tuyn, Esq., being first duly sworn under oath, depose and state as follows:

1. I make the following statements based upon my personal knowledge and belief.
2. I have been licensed to practice law in Alaska since 1989.
3. I am managing partner of the law firm Besseney & Van Tuyn, LLC.
4. Our law firm is representing a group of Alaska legislators and the League of Women Voters of Alaska who seek leave to file an *amici curiae* brief in the above-captioned matter.

4. The Appellees state that they have not yet taken a position on whether they oppose the filing of the amicus through an email to me from their counsel, Assistant Attorney General Laura Wolff..

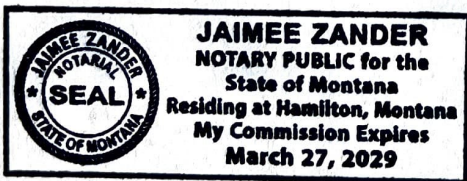
5. The Appellants consented to the filing of the *amici curiae* brief through an email to me from their counsel, Andrew Welle.

FURTHER AFFIANT SAYETH NAUGHT,



Peter Van Tuyn, Esq.

SUBSCRIBED AND SWORN to before me this 10 day of June 2025, at
Hamilton, Montana.



Notary Public in and for Montana

My Commission Expires: March 27, 2029

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JURISDICTIONAL STATEMENT

Amici concur with the jurisdictional statement of the Appellants (“Youth Plaintiffs”).

STATEMENT OF ISSUES PRESENTED

Amici concur with the statement of issues presented made by Youth Plaintiffs.

STATEMENT OF THE CASE

Amici concur with the statement of the case presented by Youth Plaintiffs.

STANDARD OF REVIEW

Amici concur with the standard of review presented by Youth Plaintiffs.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici curiae are four members of the Alaska Legislature and the League of Women Voters of Alaska (“LWVAK”). Senator Jesse Kiehl represents Senate District B, covering Juneau, Haines, Skagway, Gustavus, and Klukwan. Representative Hezekiah Russel Holland III represents House District 9, covering parts of Anchorage and the City of Whittier. Representative Andy Josephson represents House District 17, covering parts of Anchorage. Representative Genevieve Mina represents House District 19, covering parts of Anchorage. As members of the Alaska Legislature, we serve the citizens of Alaska and have a special interest in ensuring the proper, constitutionally-based, functioning of Alaska’s system of checks and balances. In this system, the courts, the

legislature, and the executive are co-equal, with the jurisdiction of the courts prescribed by laws passed by the legislature.¹

In short, the legislature makes the law, the executive implements the law, and Alaska's Courts, when confronted with constitutional challenges to laws, are required to hear and resolve the claims. The Court's fulfillment of its duty to hear and resolve claims involving the constitutionality of the policies and conduct of the other branches is vital to a properly functioning democracy. As members of the Alaska Legislature, we draft and pass laws with the understanding that, if challenged, such laws will be reviewed for constitutionality by an independent judiciary. The Superior Court's decision to dismiss this case without addressing the merits undermines the separation of powers and integrity of co-equal branches. If upheld, this result would have deleterious consequences for the ability of Alaska's judiciary to fulfill its role to hear and resolve constitutional claims and, flowing from that, the legislature's consideration of legislation that may implicate constitutional rights but which would no longer be subject to a judicial safeguard.

Amici LWVAK is a grassroots, nonpartisan, nonprofit organization that encourages informed, active, and inclusive participation in government in order to promote political responsibility and so that Alaska's government may better serve the democratic interests and principles of *all* peoples of Alaska, including underrepresented groups. LWVAK's primary mission is to ensure effective representative government through voter registration, education, and mobilization. LWVAK has a particular interest

¹ Alaska Const. Preamble; art. IV§ 1.

in ensuring that the voices and interests of all individuals, particularly those underrepresented in government such as children, are spoken and accounted for in political decision-making. As part of the effort to ensure that all branches of government are held politically accountable to underrepresented groups, including children, LWVAK supports judicial remedies when necessary to safeguard the fundamental rights of underrepresented individuals when other branches of government have failed them. Based on these principles, LWVAK has an interest in ensuring that Alaska's courts fulfill their duty to maintain an outlet for young Appellants to seek vindication of their constitutional rights by exercising jurisdiction over this case.

Amici take no position on the merits of Youth Plaintiffs' claims, only their right to litigate those claims in Alaska's Courts and not be dismissed at the courthouse doors. *Amici* recognize the Youth Plaintiffs' fundamental right to bring constitutional challenges to statutory provisions and respectfully ask this Court to grant these youth the opportunity to present their case.

SUMMARY OF ARGUMENT

Under Alaska's constitutionally-based system of separation of powers, it is the core role and duty of the court to hear and resolve constitutional challenges to laws passed and signed into law by the other government branches. The Youth Plaintiffs' challenge to the legislation mandating the State to pursue a specific development project squarely invokes the courts' core role and duty.

The Superior Court wrongly decided that the Youths' case was barred by the political question doctrine and other prudential concerns. Contrary to the findings of the Superior Court, the separation of powers doctrine does not dictate that if a government policy or action challenged as unconstitutional involves "competing interests" it is immune from judicial review for compliance with Alaska's Constitution.² Indeed, if policies and government actions were immunized from judicial review simply because they involved competing interests, the judiciary would be unable to determine the constitutionality of essentially *any* government policy or action.

Further, the courts' fulfillment of its duty to interpret and enforce Alaska's Constitution in this case no more requires the court to "substitute its own policy judgment for that of the legislature"³ or "second guess the legislature's policy choice,"⁴ than in any constitutionally-based case seeking to invalidate and enjoin enforcement of a statute. Resolving Youth Plaintiffs' claims simply asks the courts to determine whether the laws mandating a specific development project violate substantive rights protected under Alaska's Constitution. Thus, Youth Plaintiffs' claims present an "actual controversy" that "is appropriate for judicial determination." This Court should reverse the Superior Court's dismissal of Youth Plaintiffs' claims.

² Order Granting Motion to Dismiss, p. 2.

³ *Id.*

⁴ *Id.*

ARGUMENT

Separation of Powers Compels Judicial Review of Youth Plaintiffs' Lawsuit

A core tenet of Alaska's system of government is the judiciary's obligation to hear and resolve constitutional challenges to the policies and conduct of the other branches of government. The separation of powers between these government branches is disrupted when courts do not fulfill their role to serve as a check on the legislature and review laws alleged to be unconstitutional. Conversely, "[i]t is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers" between the government branches.⁵ The separation of powers doctrine is intended, at its core, "to diffuse power the better to secure liberty."⁶

In dismissing Youth Plaintiffs' constitutional claims, the Superior Court violated its duties under the separation of powers "to ensure compliance with constitutional principles" and "to redress constitutional rights violations."⁷ The Youth Plaintiffs' challenge to the legislation mandating a specific development project squarely invokes the courts' powers and duties under the separation of powers. Youth Plaintiffs asked the Superior Court to exercise its core function under Alaska's separation of powers to measure challenged legislation against the requirements of Alaska's Constitution. Their claims are thus "squarely within the authority of the court, not in spite of, but *because* of,

⁵ *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 915 (Alaska 2001); *see also Bell v. Hood*, 327 U.S. 678, 684 & n.4 (1946) ("[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution.").

⁶ *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (quotation, citation omitted).

⁷ *Sagoonick v. State of Alaska*, 503 P.3d 777, 796 (Alaska 2022) ("*Sagoonick I*").

the judiciary’s role within our divided system of government.”⁸ Separation of powers considerations support full judicial review of Youth Plaintiffs’ claims of constitutional violations.

This Court applies *Kanuk*’s analytical framework to determine whether plaintiffs’ claims are justiciable. This requires answering two questions: (1) whether plaintiffs’ claims for injunctive relief are justiciable under the political question doctrine; and (2) if not, whether prudential considerations counsel abstention from deciding the claims for declaratory relief.⁹

Youth Plaintiffs’ claims are not barred by the political question doctrine or other prudential considerations.

I. The Political Question Doctrine Does Not Bar Judicial Review

This Court has consistently emphasized that questions of constitutional law, particularly claims alleging the infringement of fundamental rights through affirmative government actions and policies, do not implicate the political question doctrine.¹⁰ While the separation of powers doctrine prohibits Alaska courts from resolving purely political questions,¹¹ “merely characterizing a case as political in nature will [not] render it

⁸ *Planned Parenthood of Alaska*, 28 P.3d at 914 (emphasis in original).

⁹ *Sagoonick I* 503 P.3d at 793 (citing *Kanuk ex rel. Kanuk v. State, Dep’t of Nat. Res.*, 335 P.3d 1088, 1096 (Alaska 2014)).

¹⁰ *Planned Parenthood of Alaska*, 28 P.3d at 913-14; see also, *Abood v. League of Women Voters*, 743 P.2d 333, 340 (Alaska 1987); *Abood v. Gorsuch*, 703 P.2d 1158, 1162 (Alaska 1985); *State, Dep’t of Military and Veterans’ Affairs v. Bowen*, 953 P.2d 888, 896 n. 12 (Alaska 1998).

¹¹ *Sagoonick I* 503 P.3d at 793 (citing *Kanuk*, 335 P.3d at 1096).

immune from judicial scrutiny.”¹² The political question doctrine is a “narrow exception” to the rule that “the Judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid.”¹³ The doctrine permits courts to abstain from hearing a claim if “deciding the claim would require [the court] to answer questions that are directed to the legislative or executive branches of government.”¹⁴

The Superior Court wrongly decided that this case was barred by the political question doctrine. First, it found that the Youth Plaintiffs “impermissibly ask this Court to substitute its own policy judgment for that of the legislature” and that “the Court lacks both the authority and the tools to reweigh the competing economic, environmental, social or conservation goals served by the legislature’s policy choice to enact the challenged statute or advance the Alaska LNG Project.”¹⁵ These findings are incorrect. Youth Plaintiffs are not asking the court to reweigh those interests, but rather to assess whether the statute in question violates constitutional rights under Article I (due process under section 7) and Article VIII (equal access to public trust resources under sections 3, 15 and 17 and the sustainable yield of public trust resources under section 4). With its finding, the Superior Court bypasses its duty under the separation of powers doctrine to

¹² *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982).

¹³ *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194 (2012). Notably, the Alaska Supreme Court shares with federal courts the test to determine whether judicial review is precluded by the political question doctrine. *See Kanuk*, 335 P.3d at 1096-97. Thus, federal cases such as *Zivotofsky* are relevant to the question at hand.

¹⁴ *Kanuk*, 335 P.3d at 1096.

¹⁵ Order Granting Motion to Dismiss, p. 2.

determine whether these rights are violated by a statute – specifically, AS § 31.25.005(1) and (5) – passed by the legislature and signed into law by the executive.

Notably, judicial review of the constitutionality of statutes is critical to the effective functioning of the legislature. Such review provides guidance to legislators as to how the framing of a given issue in the legislature intersects constitutional rights and standards. This review does not provide legislative or political direction, which appropriately is reserved for the legislative branch. Rather, it helps legislators, such as the legislator *amici* on this brief, understand and navigate the constitutional sideboards to the legislature’s work.

As one example, the Alaska Legislature in 1986 passed a law providing a preference to rural residents to take fish and game for subsistence purposes.¹⁶ Several non-rural Alaska residents challenged that statute as a violation of various provisions of the Alaska Constitution.¹⁷ The Alaska Supreme Court agreed with the plaintiffs’ claims that the rural subsistence preference violated Article VIII of the Alaska Constitution.¹⁸ Despite complicating factors related to this issue -- the federal government manages land it owns within the borders of Alaska with a rural preference pursuant to Title VIII of the Alaska National Interest Lands Conservation Act,¹⁹ thus creating disparate management regimes on state and federal lands in Alaska -- this Alaska Supreme Court opinion has

¹⁶ Act effective June 1, 1986, ch. 52, SLA 1986 (an act relating to the taking of fish and game for subsistence and personal use).

¹⁷ *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

¹⁸ *Id* at 8-9.

¹⁹ *See id.*

guided the Alaska legislative and executive branches in fish and game management since that case was decided in 1989.

Furthermore, the Superior Court misstates *Sagoonick I* and *Kanuk* in concluding that “[t]he Alaska Supreme Court has already decided—twice—that balancing competing interests in natural resource development and conservation under Article VIII is a ‘political question’ that is not suitable for judicial resolution and instead is ‘better directed to the legislative or executive branches of government’—*i.e.*, to the political branches.”²⁰ Were this conclusion correct, cases like the *McDowell* case would have been dismissed without a ruling on the merits, which has not been the case.²¹ On the contrary to the Superior Court’s conclusion, this Court held that the political question doctrine “do[es] not apply” to claims seeking declarations of rights under Alaska’s Constitution and the violation thereof.²² “Indeed,” this Court stated in *Kanuk*, “[u]nder Alaska’s constitutional structure of government, ‘the judicial branch ... has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution.’”²³ This Court thus ruled in both *Kanuk* and *Sagoonick I* that the Youth Plaintiffs’ claims seeking an interpretation of Article VIII “do not present non-justiciable

²⁰ Order Granting Motion to Dismiss, p. 2 (*quoting Kanuk and Sagoonick I*).

²¹ *McDowell*, 785 P.2d 1 (striking statute for Article VIII equal access violation). *See also, Owsichuk v. State, Guide Licensing & Control Board*, 763 P.2d 488, 496 (Alaska 1988) (striking statute for Arctic VIII common use violation).

²² *Kanuk*, 335 P.3d at 1099 & n.58; *Sagoonick I*, 503 P.3d at 799 (*quoting Kanuk*, 335 P.3d at 1099).

²³ *Kanuk*, 335 P.3d at 1099, *quoting Planned Parenthood of Alaska*, 28 P.3d at 913 (Alaska 2001). *See also, Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982).

political questions.”²⁴ Here, Youth Plaintiffs’ requests for declaratory relief also seek recognition of rights and violations thereof under Alaska’s Constitution, and thus they do not present non-justiciable political questions.

II. Youth Plaintiffs’ Challenge Should Not Be Dismissed on Prudential Grounds

The Superior Court also wrongly dismissed, on prudential grounds, Youth Plaintiffs’ request for a declaratory judgment that they have “a fundamental right to a climate system that sustains human life, liberty, and dignity under” Alaska’s Constitution.²⁵ As this Court has stated, the “nature of prudential doctrines allows for case-by-case determination rather than adherence to bright-line rules.”²⁶

In *Kanuk*, the Court dismissed the appellants’ claims on prudential grounds because, in the factual context of that case, finding for the appellants “would have no immediate impact ... would not compel the State to take any particular action [or] protect the plaintiffs from the injuries they allege in their complaint.”²⁷ In this case, however, Youth Plaintiffs’ claims present an “actual controversy” that “is appropriate for judicial

²⁴ *Kanuk*, 335 P.3d at 1099; *Sagoonick I*, 503 P.3d at 799.

²⁵ Order Granting Motion to Dismiss, p. 2.

²⁶ *Sagoonick I*, 799 at n. 118 (citing *Johnson v. State*, 328 P.3d 77, 82 (Alaska 2014) (“[T]he general preservation rule [for appealable error] is not absolute, and it is subject to prudential exceptions.”)); *Alaskans for Efficient Gov’t, Inc. v. State*, 153 P.3d 296, 298 (Alaska 2007) (noting that “rule against pre-election review [of initiative’s constitutionality] is a prudential one” and “has never been absolute”); *Matanuska Elec. Ass’n v. Chugach Elec. Ass’n*, 99 P.3d 553, 559 (Alaska 2004) (observing that “the primary agency jurisdiction doctrine is one of prudence, and not an absolute jurisdictional limitation”)).

²⁷ *Kanuk*, 335 P.3d at 1103.

determination” because the controversy—whether a statute that directs a state entity to develop a specific project violates Youth Plaintiffs’ constitutional rights—is “definite and concrete, touching the legal relations of parties having adverse legal interests [and is] a real and substantial controversy admitting of specific relief through a decree of a conclusive character.”²⁸

Rather than a broad pronouncement, Youth Plaintiffs here are asking the court to declare that *specific* statutory provisions mandating a *discrete* project violate the Alaska Constitution.²⁹ The Superior Court cannot dismiss the claims based on prudential grounds by pointing to a distinguishable case without any case-specific analysis, as, once again, “[t]he nature of prudential doctrines allows for case-by-case determination rather than adherence to bright-line rules.”³⁰

In short, Youth Plaintiffs here are challenging “discrete actions implementing State resource development and environmental policies[,]” under Alaska’s Constitution. The challenged laws mandating the discrete project at issue here are “specific actions by

²⁸ *Kanuk*, 335 P.3d at 1100 (alteration in original) (quoting *Jefferson v. Asplund*, 458 P.2d 995, 998-99 (Alaska 1969) (quotation, citation omitted)); Declaratory Judgment Act, AS § 22.10.020(g) (“In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought.”).

²⁹ Complaint, p. 77 (prayer for relief requesting the court “adjudge and declare that AS § 31.25.005(1) and (5)...” violate Alaska’s Constitution).

³⁰ *See infra* note 26.

Alaska’s legislative” branch just as *Sagoonick I* prescribes to fulfill the requirement of a justiciable claim.³¹

CONCLUSION

For the foregoing reasons, this Court should reverse the dismissal of Youth Plaintiffs’ complaint so the parties can present evidence and argument concerning the constitutionality of specific statutes passed by Alaska’s legislature and signed into law by Alaska’s chief executive.

Respectfully submitted, this 11th day of June, 2025.




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³¹ *Sagoonick I*, 503 P.3d at 798; *Id.* at 782 (affirming that plaintiffs may challenge “specific actions by Alaska’s legislative and executive branches”).

CERTIFICATE REQUIRED BY APPELLATE RULE 513.5(C)(2)

Undersigned counsel certifies that the typeface used in this brief is 13-point
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By: 

Karen E. Schmidt