

NOTE FROM THE EDITOR

The *Alaska Law Review* is pleased to present our June 2020 issue, which is the first in our thirty-seventh volume. The scholarly works in this issue address numerous timely topics with particular significance for Alaska. From the Permanent Fund dividend program to education funding, and from data privacy to domestic violence protective orders, the topics reviewed in the following article, notes, and comments are connected by more than just their importance to the state. Each piece explores some aspect of one of the pillars of a functioning constitutional democracy: the separation of powers and the collective responsiveness of the branches of government. Whether considering the legislature's response to a judicial opinion, the courts' checks on executive power, or the successes and failures in drafting and construing constitutional and statutory provisions, the following scholarship grapples with issues familiar to the entire country. These more universal topics gain special importance when coupled with Alaska's unique challenges and strengths, providing insight into the resilience of Alaska's democracy.

In *Did the Alaska Supreme Court Get it Right in Its Decision in the Alaska Permanent Fund Dividend Case?*, Jack Brian McGee examines the history of the Permanent Fund dividend program and the Alaska Supreme Court's decision in *Wielechowski v. State* upholding the governor's power to reduce the annual dividend. Based on the court's own principles of constitutional interpretation, Mr. McGee argues that the constitutional amendment that established the Permanent Fund also vested authority in the legislature to dedicate the Fund's income, exempting that income from the constitutional prohibition on dedicated funds. Because the legislature exercised that authority when it established the statutory scheme regulating the dividend program, including the mechanism for determining the annual dividend's amount, the dividend program does not require an appropriation and is not subject to the governor's veto. Mr. McGee concludes that the court incorrectly decided *Wielechowski* with detrimental consequences for the long-term management of the Permanent Fund dividend program.

Our first student note, *Alaska's Explicit Right to Privacy Warrants Greater Protection of Alaskans' Personal Data*, presents how the legislature can more effectively protect Alaskans' data privacy rights. Eric Buchanan argues that existing state law fails to adequately protect Alaskans from the exploitation of private companies. The Alaska Constitution explicitly establishes a right to privacy and tasks the legislature with protecting that

right. To uphold that duty in an age of mass data collection and ever-increasing virtual threats to privacy, the legislature must pass comprehensive privacy legislation. Mr. Buchanan presents best practices and principles to serve as a foundation for that legislation, crafted to respond to the challenges and opportunities unique to Alaska's history, legal landscape, and culture.

In our second student note, *The Incomplete Process of Fixing Alaska's Domestic Violence Protective Order Statute*, Samuel R. Buchman examines the Alaska Supreme Court's holding in *Whalen v. Whalen* limiting the extension of protective orders for victims of domestic violence, and the legislature's swift response to that case by amending Alaska's protective order statute. Drawing on a comparative study of various models and provisions adopted in other states, Mr. Buchman presents a menu of additional reforms the legislature may pursue to further address Alaska's domestic violence crisis. To complement these reforms, Mr. Buchman also reviews the court's reasoning in *Whalen* and the protective order statute's long legislative history. This information can assist the legislature in addressing weakness in the current law more proactively while avoiding the same issues that led to the decision in *Whalen*.

Our third student note addresses the pending Alaska Supreme Court case, *Alaska Legislative Council v. Dunleavy*. In *The Alaskan Variable: A Call for Education Clause Analysis in School Funding Cases*, Sarah Laws argues that in recent education cases the court has neglected to ground its analysis in the education clause of the Alaska Constitution. The constitution grants the legislature broad discretion over public education to address Alaska's unique local government structure and the corresponding implications for the education system. This discretion should encompass school funding schemes, like the forward funding at issue in *Dunleavy*. The superior court upheld the scheme but, consistent with the supreme court's recent school funding jurisprudence, focused its analysis on constitutional provisions other than the education clause. Relying on the education clause's history, text, and relevant case law, Ms. Laws argues that the supreme court should pivot its analysis to focus more specifically on that clause. Such a focus would include adopting a presumption of constitutionality in school funding cases to honor the constitution's charge that the legislature "establish and maintain a system of public schools open to all children of the State."

The *Alaska Law Review* is also pleased to present two comments that review recent cases with important implications for practitioners, judges, and lawmakers. In our first comment, *The Need for a Sharpe Appellate Record: Why a Clear and Complete Record on Expert Qualifications is More Important than Ever*, Sarah Laws and Ryan Kuchinski examine the supreme court's decision in *State v. Sharpe*. In *Sharpe*, the court overturned

State v. Coon, holding that when reviewing trial courts' *Daubert* determinations as to the validity and admissibility of scientific evidence, appellate courts should apply a de novo standard of review rather than the previous abuse of discretion standard. Not only does this decision have important implications for appeals, it also provides guidance to trial attorneys on how to best develop an initial clear record in preparation for an appeal.

Finally, the second comment, *Avoiding the Obvious: Plain Meaning and the Endangerment of Alaska's Hunting Laws in Kinmon v. State*, reviews the recent Alaska Court of Appeals decision holding that language in Alaska's law regulating nonresident big game hunting is ambiguous. Authors Brendan McGuire and Cormac Bloomfield argue that the court erred in reaching this conclusion because it misconstrued the statute's plain meaning. Nevertheless, they suggest that the legislature should amend the relevant law to avoid similar rulings in the future. Ensuring statutory clarity is particularly important given that nearly all of Alaska's recent revenue from big game hunting tags comes from nonresident hunters.

This issue of the *Alaska Law Review*, as with all of our previous issues, is freely available on our website, alr.law.duke.edu. There, anybody can access PDFs of all of our content, which are both printable and searchable. We hope that you will visit our site, and continue to engage with the journal. We always welcome your comments, responses, and feedback; please feel free to email us at alr@law.duke.edu.

On behalf of my peers on the *Alaska Law Review* editorial staff, I hope that you enjoy this issue. It is a privilege to participate in this service for the Alaska legal community. We thank the Alaska Bar Association for its confidence in Duke University School of Law, and thank all of our readers for your interest and support.

Shoshana Silverstein
Editor-in-Chief, 2019–2020