

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LEGISLATIVE BUDGET AND)
AUDIT COMMITTEE, on behalf of)
the ALASKA STATE LEGISLATURE,)

Plaintiff,)

v.)

GOVERNOR MICHAEL J.)
DUNLEAVY, et al.,)

Defendant.)

Case No. 3AN-22-09637 CI

**ORDER GRANTING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

A reduction of oil pipeline tariffs as a result of proceedings before the Federal Energy Regulatory Commission (FERC), which has the effect of increasing the net taxable value of oil transiting the pipeline, has produced hundreds of millions of dollars in additional state oil tax revenue. Plaintiff seeks an order compelling defendants to deposit those funds into the Constitutional Budget Reserve Fund. Defendants maintain they belong in the general fund. The parties have filed cross-motions for partial summary judgment asking this Court to interpret and apply the language of the amendment creating the Constitutional Budget Reserve Fund. Specifically, the parties dispute the meaning of the word “involving” in Article IX, § 17(a) of the Alaska Constitution.

In 1990, Alaska voters created the Constitutional Budget Reserve Fund (CBRF) when they approved Article IX, § 17(a) of the State Constitution by a nearly two-to-one margin.¹ The CBRF serves as an emergency savings account, with constitutionally mandated limitations on the legislature’s ability to access the money. Section 17(a), the section at issue in this case, creates the fund. The section provides that:

¹ <https://www.elections.alaska.gov/doc/forms/H28.pdf>.

all money received ... as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation ... involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund.

This litigation concerns the scope of the phrase “of an administrative proceeding or of litigation ... involving ... royalties, ... or involving taxes imposed on mineral income, production, or property.” The plaintiff, the Legislative Budget & Audit Committee, contends that any proceeding that might have a downstream effect on the amount of royalties or taxes “involves” royalties or taxes. Based on this argument, the Committee argues that changes to state royalties and taxes that result from adjustments to interstate pipeline tariff rates after FERC proceedings should be deposited into the CBRF. The defendants argue that proceedings “involving” royalties or taxes are proceedings that determine liability for or the amount of royalties and taxes owed to the State; and that FERC proceedings decide tariff rates and are therefore not included.

The Committee’s argument rests primarily on the contention that “involving,” as used in Article IX, § 17(a), is essentially synonymous with “affecting.” The Court is unpersuaded. Dictionary definitions of the term “involving” do not resolve the issue. If the drafters had intended to capture all proceedings “affecting” royalties and taxes, they could have used that word instead. If they had intended to capture additional revenues from litigation or administrative proceedings involving tariff rates, they could have included tariffs in the terms of the amendment. But they did neither of these things.

The most natural reading of the phrase “an administrative proceeding or [] litigation involving . . . royalties . . . or taxes” is that the administrative proceeding or litigation is actually *about* liability for royalties or taxes, i.e., a tax or royalty dispute. FERC proceedings are not about royalties or taxes, and they are not about payments that producers will pay to the State. FERC has no jurisdiction over state royalties or taxes, and cannot issue a decision resolving royalty or tax disputes.

At oral argument, the Committee argued repeatedly that Article IX, § 17(a) was always understood and intended to be broadly applied. History, however, stubbornly contradicts this narrative. Only a few years after Article IX, § 17(a) was enacted, the Legislature passed AS 37.10.410, which defined “administrative proceedings involving taxes” for purposes of Article IX, § 17(a). The statute defines “administrative proceedings involving taxes” entirely by reference to *tax disputes*, and not, as the Committee argues, simply any proceeding that collaterally *affects* taxes. Indeed, the statute further narrowed the definition to a tax dispute between the taxpayer and the Department of Revenue. And, as noted in defendants’ Supplemental Briefing In Response to Court’s April 26 Order, subsection (b) of the statute also appears to exclude from the CBRF the additional taxes received by the State as a result of a FERC tariff reduction.²

Both sides attempt to capture the understanding of the voters who passed the amendment through the language of the voter pamphlet. The voter pamphlet’s explanations of the amendment refer to the proceeds of “oil tax disputes” and “mineral revenue lawsuits” as destined for the CBRF if the amendment is passed. This language is more consistent with the defendants’ narrower interpretation of Article IX, § 17(a)’s terms.

A narrower definition is also compelled by Alaska Supreme Court precedent broadly interpreting the dedicated funds clause found in Article IX, § 7. Because the dedicated funds clause is interpreted broadly, any exception to it—such as the CBRF amendment—must be interpreted narrowly in order to harmonize the constitutional provisions.³ The supreme court has cautioned that courts should “defer to the meaning the people themselves probably placed on the provision’ without ‘add[ing] “missing terms” to the Constitution or . . . interpret[ing] existing constitutional language more broadly than

² As noted in defendants’ Supplemental Briefing In Response to Court’s April 26 Order, a superior court order in 1994 held the statute unconstitutional because of an inconsistency between the statute and the manner in which the supreme court defined the term “administrative proceeding” in *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994). However, the problem that led the statute to be struck down does nothing to undermine its consistency with defendants’ position. At the very least the statute provides additional evidence that defendants’ more narrow interpretation of Article IX, § 17(a) has been generally accepted.

³ See *Alaska Civil Liberties Union*, 122 P.3d 781, 786 (Alaska 2005) (“[S]eemingly conflicting parts [of the constitution] are to be harmonized, if possible, so that effect can be given to all parts of the constitution.”)

intended by . . . the voters.’”⁴ So, this Court will not add a “missing term” or broadly and abstrusely interpret the word “involving” to reach the result requested by the Committee.

The Committee invites this Court to adopt an expansive interpretation of section 17(a) with the goal of placing more than one billion dollars into the CBRF. Although the Committee’s complaint and motion focus on FERC proceedings, if the word “involving” in section 17(a) really means “affecting,” then a ruling for the Committee will have an extremely broad impact going far beyond FERC tariff proceedings. Some of the potential impacts are discussed in the affidavit of Colleen Glover submitted by defendants. These and other impacts were raised during oral argument.⁵ The Committee’s response to all of these potential impacts is essentially to shrug and leave them for another day. When challenged by the Court, the Committee failed to articulate any limiting principle that would allay concern. Ignoring the logical and practical consequences of a decision is not a winning argument, nor would it be much of a judicial philosophy..

For these reasons and the additional reasons set forth in defendants’ briefing, the Court hereby GRANTS defendants’ Motion for Partial Summary Judgment and DENIES the Committee’s motion.⁶

The Court declares that FERC tariff disputes are not proceedings “involving” royalties and taxes within the meaning of Article IX, § 17(a) of the Alaska Constitution, because that phrase encompasses only litigation or administrative proceedings to determine the liability for and amount of royalties and taxes owed to the State of Alaska.

⁴ *Wielechowski v. State*, 403 P.3d 1141, 1146-47 (Alaska 2017) (quoting *Hickel v. Cowper*, 874 P.2d at 926, 927).

⁵ For example, does all tax revenue derived from oil fields in which the permits were litigated have to go to the CBRF? Does every “deduct” that affects the net taxable value of a barrel of oil potentially require, if it is litigated, redirecting any added tax revenue to the CBRF? If an oil field were shut down by an event resulting in litigation, does the settlement of that suit require all future tax revenue derived from that field be directed to the CBRF?

⁶ The court also denies the Committee’s request for judicial notice, which it raises for the first time in its supplemental brief filed April 28, 2023. The court did not invite supplemental *evidence*; the court invited legal argument concerning supplemental legal authority. At this late stage of the briefing, defendants would not have an opportunity to respond to the newly proffered materials.

DATED this 28th day of April, 2023, at Anchorage, Alaska.



ANDREW GUIDI
SUPERIOR COURT JUDGE

I certify that on April 28, 2023
a copy of the above was
emailed/mailed to each of the
following at their addresses of
record:

Cuddy / Brown / Torgerson / Paton-Walsh

Chelsea Raine Phelps, Law clerk
J. Rowell, Judicial Assistant Chelsea Raine Phelps