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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

GORDON FRANKE and JOHN FROST, Plaintiffs, vs. JOHN BOYLE, in his capacity as COMMISSIONER of the STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, Defendant.	Case No.: 3:23-cv-_____ (____)

COMPLAINT

COME NOW Plaintiffs, Gordon Franke ("Franke") and John Frost ("Frost") (collectively, "Plaintiffs"), by and through undersigned attorneys, and bring this action against John Boyle, in his capacity as the Commissioner of the State of Alaska, Department of Natural Resources, and allege as follows:

INTRODUCTORY STATEMENT

1. This Complaint seeks declaratory and injunctive relief to prevent Defendant John Boyle, in his capacity as Commissioner of the State of Alaska, Department of Natural Resources, from enforcing certain alleged easements crossing Plaintiffs' privately-held properties located on Campbell Lake in Anchorage, Alaska, which violate Plaintiffs' rights under the United States and Alaska Constitutions.

2. The Department of Natural Resources' advocacy and enforcement of the alleged easements disregards relevant federal law, which controls the validity and scope of the easements. The DNR claims its authority over the alleged easements is derived from federal legislation enacted in the mid-1800s, which granted a right-of-way "for the construction of highways over public lands, not reserved for public uses . . ." The DNR has taken the position that the alleged easements originate from 1923 when, through legislation, the Territory of Alaska purported to dedicate an easement on every section line across the then-territory. The crux of this litigation is whether that blanket legislation, without further action or specification, was effective under federal law. It was not, and the DNR's interpretation and threatened application of the 1923 legislation and its progeny should be declared unlawful. In short, both the manner by which the Territory could accept these rights-of-way, and the uses that may be made of them if validly accepted, are ultimately questions of federal law.

3. Plaintiffs seek declaratory and injunctive relief in order to eliminate ongoing threats to their safety, security, and rightful enjoyment of their property. The alleged easements occur on land on which the Plaintiffs reside and are situated just a few feet away from their homes or even, as to one, through his home. The DNR's erroneous pronouncements and analysis concerning the easements have the predictable effect of encouraging repeated trespass across Plaintiffs' private yards, resulting in littering, physical damage, and serious invasion of their privacy, and amounts to an uncompensated taking of their property.

PARTIES

4. Plaintiffs Franke and Frost are residents of Anchorage, Alaska. In bringing this lawsuit, Plaintiffs seek to confirm and retain their right to enjoy their private property and to prevent and mitigate future harm.

5. Defendant John Boyle is sued in his official capacity as the Commissioner of the State of Alaska, Department of Natural Resources. Commissioner Boyle is responsible for the implementation, execution, and administration of regulations, customs, practices, and policies of the DNR, and Plaintiffs are informed and believe that Commissioner Boyle is presently enforcing the statutes, regulations, practices, and policies complained of in this action. Specifically, through affirmative statements, publications, and its failure to act, the DNR has endorsed and publicized its erroneous contention that a public

section line easement runs through Plaintiffs' respective properties, violating their right to quiet enjoyment of them.

6. As described below, Plaintiffs have suffered, and continue to suffer, ongoing injuries, along with real and immediate threats thereof, to their property caused by the DNR, which they seek to remedy fully by a favorable decision through declaratory relief.

JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States, Article VI, Clause 2 (Supremacy Clause) and its Fourth, Fifth, and Fourteenth Amendments (Privacy, Takings, and Due Process Clauses), along with corresponding sections of the Alaska Constitution.

8. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' Second, Third, and Fourth claims arise under the Constitution and laws of the United States and present federal questions, as well as the Declaratory Judgment Act, 28 U.S.C. §§ 2201; 42 U.S.C. § 1983; and 28 U.S.C. § 1367(a).

9. Venue is proper in this Court under 28 U.S.C. §§ 1391(e) and 81A because the lands at issue in this lawsuit are located within the District of Alaska.

PLAINTIFFS' PROPERTIES AND ALLEGED EASEMENTS

10. Franke is the owner and in possession of certain real property located at 3900 North Point Drive in Anchorage, Alaska, particularly described as:

> Lot 1, Block 1, CAMPBELL LAKE HEIGHTS SUBDIVISION ADDITION NO. 3, Anchorage Recording District, Third Judicial District, State of Alaska, per Plat No. 69-30 ("Franke Lot").

11. Frost is the owner and in possession of certain real property located at 3823 W. 100th Avenue in Anchorage, Alaska, particularly described as:

> Lot 37, Block 1, CAMPBELL LAKE HEIGHTS SUBDIVISION, Anchorage Recording District, Third Judicial District, State of Alaska, per Plat No. 63-12 ("Frost Lot").

12. Both lots (collectively, "Plaintiffs' Properties") are adjacent to Campbell Lake, and are the locations of the primary residences of both plaintiffs. The Franke Lot is on the north side of Campbell Lake and the Frost Lot is located roughly opposite on the south side.

13. Plaintiffs' Properties are located on land which was never owned by the Territory or State of Alaska. It was acquired by private parties from the federal government before Alaska became a state.

14. Generally and historically, the federal government implements a survey grid to identify certain plots or grants of land and delineates property in 640-square-acre areas, called sections. The borders of these sections are called "section lines."

15. A section line, discussed below, crosses Plaintiffs' Properties. On the Franke Lot, this section line is the boundary between Sections 14 and 15 of Township 12 North, Range 4 West, Seward Meridian. On the Frost property, this section line is the boundary between Sections 14 and 15 of Township 12 North, Range 4 West, Seward Meridian.

16. Whether, and to the extent, alternate public easements exist has been the focus of mounting public, and publicized, controversy in and around Anchorage. Based on "frequently asked questions," in December 2019, the DNR issued a "Joint Statement" with the Municipality of Anchorage, attached hereto as Exhibit A, regarding "Campbell Lake Within the Municipality of Anchorage Ownership, Use and Access."

17. The Joint Statement declared that the public could access Campbell Lake by accessing "unvacated section line easements" through Plaintiffs' Properties. It further stated that "the public can lawfully access the water of Campbell Lake. The public can . . . use either of two public-access easements that provide overland access to reach Campbell Lake without permission," referring to the alleged easements on Plaintiffs' Properties. The Joint Statement further warned that private property owners were legally prohibited from obstructing access to easements or interfering with public access, and confirmed that the DNR exercised management authority over the section line easements.

18. Following the issuance of the Joint Statement, Frost and Franke observed a significant uptick in individuals accessing Campbell Lake not only on the alleged easements, but over their undisputed private property, including on improvements such as their docks and driveways. This alleged access has been widely promoted and publicized as legal, consistent with the Joint Statement's representations.

19. The Joint Statement incorrectly assumes the legal validity and creation of the easements, and relies on authorities based on the same. To wit, the DNR cited AS 19.10.010 ("Dedication of land for public highways") as the statute governing the specific location of public easements through Plaintiffs' Properties. This statute dedicates for use as public highways "a tract 100 feet wide between each section of land owned by the state, or acquired from the state, and a tract four rods wide between all other sections in the state."

20. Such easements are commonly referred to as "section line easements," and the State's alleged claim and authority over them is derived from a federal land grant statute enacted amidst an era of expansion and settlement of the American West frontier. Congress passed the Mining Act of 1866 as a means of providing public access across unreserved public domain lands. Later codified as 43 U.S.C. § 932, Revised Statute 2477 ("R.S. 2477") provided in its entirety that "[t]he right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

21. The succinct language of R.S. 2477 has since been characterized as an "offer" to states to acquire these public easements over certain available unreserved and unappropriated public lands.

22. This litigation addresses the State's mistaken contention that the legislative action undertaken to dedicate the alleged easements, without more, is sufficient to accept the offer Congress made in R.S. 2477.

23. Specifically, in 1923, the Territorial Legislature attempted to accept the R.S. 2477 rights-of-way by passing The Territorial Act of 1923, Ch. 19 SLA 1923, which purported to establish that a "tract 4 rods [66'] wide between each section of land in the Territory of Alaska is hereby dedicated for use as Public Highway . . ." Thus, through a single blanket declaration rather than by reference to specific lines on specific tracts of land, the Territorial legislature attempted to establish a right-of-way on and over every single section line on every available acre of federal land in the Territory. This legislation was the precursor to AS 19.10.010.

24. However, since at least 1898, the federal government's position has been that the R.S. 2477 offer cannot be accepted by a general, blanket statute and that a R.S. 2477 easement cannot be created without a site-specific acceptance coupled with actual construction of a highway — given that Congress offered section-line easements for "the construction of highways across public lands." The federal government's long-settled and well-publicized legal interpretation of these words is that acceptance of a federal easement offered by R.S. 2477 is not accomplished by "mere declarations of highways along section lines without actual construction."

25. Plaintiffs assert, as a matter of federal law, that the purported 1923 "acceptance" of an R.S. 2477 right-of-way over and upon each and every section line within the Territory of Alaska was invalid for the reason that such an

acceptance goes well beyond what Congress intended to be the scope of its offer set forth in R.S. 2477.

26. The DNR has been aware of this position, held by the Department of the Interior, the Department of Justice, and federal courts and, to Plaintiffs' knowledge, has chosen to never directly challenge or even consider it. Instead, the DNR has simply ignored the federal government's interpretation of the federal statute in promulgating and enforcing Alaska law controlling the R.S. 2477 easements.

27. The Joint Statement, and DNR's analysis that a public easement was created on Plaintiffs' Property pursuant to AS 19.10.010, has been publicized widely by the DNR and others, resulting in the serious misapprehension that members of the public are free to trespass upon Plaintiffs' Properties under the guise of using a public easement. This has exposed Plaintiffs to repeated trespasses and damage to their land, invasion of their privacy, emotional distress due to the prospect of continued trespasses, impairment of the marketability of their homes, and potential significant diminution of property value.

28. Legislative efforts are underway, and have been partially approved, to direct the DNR to construct "marked access and signage along the easements to Campbell Lake." On March 28, 2023, the Alaska House Finance Committee considered and approved such an amendment to the DNR's budget based on the Joint Statement, which the sponsor of the amendment characterized as evidence

that the dispute over the alleged easements was "legally closed." This litigation seeks relief and actual legal closure of this dispute before the DNR, or members of the public, take permanent measures to facilitate access through the alleged easements, and to cease the continuing harm to Plaintiffs and Plaintiffs' Property.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

29. Commissioner Boyle and the DNR have wrongfully interfered with Plaintiffs' rights and property by seeking to promote and enforce public access to an alleged easement on Plaintiffs' Properties.

30. Plaintiffs are presently and continuously injured by Commissioner Boyles' enforcement of AS 19.10.010 insofar as it violates and infringes upon the rights of Plaintiffs under the Supremacy Clause, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and the Alaska Constitution.

31. Plaintiffs have no adequate remedy at law to address the imminent, unlawful, irrational, and uncompensated harm to their properties, or the ongoing invasion of their properties by the general public under color of state law.

32. Plaintiffs will likely suffer irreparable injury absent an injunction restraining Commissioner Boyle and the DNR from imposing an easement on their properties, by allowing the public to access their properties or execute efforts to "improve" the properties on which the alleged easement occurs by removing vegetation or creating a permanent walkway.

33. In the absence of an injunction, the public will continue to access Plaintiffs' Properties, in derogation of their constitutional rights. Damages are

indeterminate or unascertainable and, in any event, would not fully redress the harm suffered by Plaintiffs.

34. A declaratory relief judgment as to whether Commissioner Boyle and the DNR may impose an easement, with or without just compensation, will serve a useful purpose in clarifying and settling the existence of these easements, will terminate and afford relief from the uncertainty and insecurity giving rise to this controversy, and will not impair, but rather enhance, the public interest.

35. There is a substantial likelihood that Plaintiffs will succeed on the merits of their claim that enforcement of an easement, the physical invasion of their property, and the unreasonable and uncompensated seizure, destruction, and removal of their property violates the U.S. and Alaska Constitutions.

CLAIMS

COUNT I: SUPREMACY CLAUSE
(U.S. Const., Art. VI, Sec. 2)

36. Plaintiffs incorporate their previous allegations as though fully set forth herein.

37. The Territory of Alaska's 1923 blanket "acceptance" of all R.S. 2477 easements along all section lines, without further specificity or action, was and is inconsistent with federal law.

38. The legal authorities on which the DNR relies are predicated entirely on the effectiveness and legality of the 1923 legislation. To the extent that blanket acceptance of R.S. 2477 easements is invalid, as prominent precedent

and scholarship so opines, the Territory failed to hold any ownership interests in Plaintiffs' Property.

39. The Supremacy Clause, Article VI, Section 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding. The Supremacy Clause mandates that federal law preempts state law in any area over which Congress expressly or impliedly has reserved exclusive authority or which is constitutionally reserved to the federal government, or where state law conflicts or interferes with federal law.

40. The DNR's position that the State enjoys control and management over the alleged easements is inconsistent with federal law, as adopted, implemented, and interpreted.

41. Because the enforcement of AS 19.10.010 interferes with Plaintiffs' land ownership and constitutional rights and is in direct conflict with federal law, the DNR's interpretation of the law is invalid and unenforceable under the Supremacy Clause, which provides that the United States Constitution and the laws enacted thereto "shall be the supreme Law of the Land."

COUNT II: VIOLATION OF DUE PROCESS
(U.S. Const., 14th Amendment and Alaska Const. Art. 1, Sec. 7)

42. The previous paragraphs are incorporated herein by reference as if fully re-alleged.

43. The due process protections of the U.S. Constitution are designed to prevent arbitrary decision-making that can infringe Constitutionally-protected rights. When private property is taken without just compensation or procedural protections, the landowner has been deprived of their due process rights.

44. The due process clause of the Alaska Constitution provides: "No person shall be deprived of life, liberty, or property without due process of law." Substantive due process is a doctrine that is meant to guard against unfair, irrational, or arbitrary state conduct that "shock[s] the universal sense of justice."

45. Defendant' s promotion and enforcement of easements on Plaintiffs' private properties for public use was arbitrary and capricious, shocks the conscience, and constitutes a deprivation of their substantive due process rights.

46. Without prior notice or an opportunity to be heard, Defendant has proclaimed that a public section line easement exists across Plaintiffs' private properties. Defendant has failed to provide Plaintiffs with constitutionally adequate pre-deprivation opportunity to contest this governmental appropriation of private property.

47. This procedure is inconsistent with basic principles of procedural due process, and conflicts with the manner in which Defendant treats other classes of property owners adversely impacted by alleged R.S. 2477 easements.

COUNT III: VIOLATION OF THE TAKINGS CLAUSE
(U.S. Const., 5th Amendment and Alaska Const. Art. I, Sec. 18)

48. The previous paragraphs are incorporated herein by reference as if fully re-alleged.

49. The Takings Clause of the Fifth Amendment provides that private property shall not ". . . be taken for public use, without just compensation."

50. The Fifth Amendment is incorporated against the states through the Fourteenth Amendment.

51. Article I, section 18 of the Alaska Constitution states that "[p]rivate property shall not be taken or damaged for public use without just compensation."

52. In enforcing an easement on Plaintiffs' Properties, Commissioner Boyle has acted outside his lawful authority to authorize an ongoing unconstitutional physical invasion of Plaintiffs' Properties.

53. The enforcement of an easement on Plaintiffs' Properties is in violation of Plaintiffs' rights under the Takings Clause of the Fifth Amendment to the United States Constitution, including their fundamental right to exclude others from their private property.

54. It is well-established that imposition of a public access easement on private property and deprivation of the right to exclude others is a violation of federal constitutional law.

COUNT IV: UNREASONABLE SEIZURE OF PRIVATE PROPERTY
(U.S. Const., 4th Amendment and Alaska Constitution Art. I, Sec. 14)

55. The previous paragraphs are incorporated herein by reference as if fully re-alleged.

56. The Fourth Amendment to the United States Constitution provides, in part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

57. The Fourth Amendment is incorporated against the states through the Fourteenth Amendment.

58. Article I, Section 14 of the Alaska Constitution mandates "[t]he right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated."

59. Plaintiffs' Properties, and the right to exclude others from that property, is protected from unreasonable seizures by the Fourth Amendment. A public invasion of private property sponsored by government officials is a seizure for purposes of the Fourth Amendment.

60. Commissioner Boyle's endorsement and enforcement of the easements on Plaintiffs' Properties amount to an unreasonable seizure of Plaintiffs' Properties.

PRAYER FOR RELIEF

1. Plaintiffs seek declaratory judgment on the basis that Commissioner Boyle is promoting the existence of a fictitious public easement on private land, depriving Plaintiffs of their right to use and enjoy their properties. The Commissioner's interpretation and threatened application of the Alaska Statutes, through DNR's customs, usage, and conduct, are impeding the constitutionally-protected rights of Plaintiffs, and should be declared unlawful and enjoined.

2. Pursuant to 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that the easements at issue are invalid, and that:

A. the State's claimed interest in the subject easements is invalid and without legal effect and Franke and Frost's lands are free and clear of such purported right-of-way;

B. Defendant's interpretation of the DNR's R.S. 2477 authority, and enforcement of the easements, violates Plaintiffs' rights under the Takings Clause of the Fifth Amendment;

C. Defendant's enforcement of the easements is in violation of the Fourth Amendment; and

D. Defendant's enforcement of the easements violates Plaintiffs' rights to Substantive Due Process.

3. Pursuant to 28 U.S.C. § 2202, for a permanent injunction preventing the State from interfering with Plaintiffs' enjoyment of their lands, including enforcement of their possessory rights as landowners;

4. For an award of attorneys' fees, costs, and interest upon any sums awarded; and

5. For such other and further relief as the Court deems just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims triable to a jury.

DATED this 21st day of April, 2023.

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