IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA LEGISLATIVE COUNCIL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GOVERNOR BILL WALKER, in his official capacity as Governor for the State of Alaska, and VALERIE DAVIDSON, in her official capacity as Commissioner of the Department of Health & Social Services,	)	
	)	
Defendants.	)	
	)	Case No. 3AN-15-09208 CI

DECISION AND ORDER

I. INTRODUCTION

Did Governor Bill Walker and Department of Health & Social Services Commissioner Valerie Davidson[1] violate the law when they accepted federal funding to expand Medicaid? This question arises in the context of a complex social and political debate, yet this court's task is limited. This court must determine what it means under state law for the Social Security Act to require Medicaid coverage. This court also must determine whether the Social Security

[1] Unless the context requires greater specificity, the court refers to the Governor and the Commissioner collectively as the "the Governor."

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Act still requires Medicaid coverage after the United States Supreme Court's decision in *National Federation of Independent Business v. Sebelius* ("*NFIB*").[2]

This court's limited role in the Medicaid expansion debate is appropriate to the court's role of interpreting statutes. In *NFIB*, Chief Justice John Roberts wrote:

> Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation's elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices.[3]

Chief Justice Roberts was referring to the United States Supreme Court but what he wrote applies equally to this court. This order interprets the law. It says nothing about the merits of expanding Medicaid. It says nothing about the merits of giving that choice to either the executive or the legislative branch of government. "Under the Constitution, that judgment is reserved to the people."[4]

Both parties have moved for summary judgment. The parties have fully briefed the issues before the court. The court also received an amicus brief filed on behalf of two individuals who received Medicaid coverage for the first time

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[2] 132 S.Ct. 2566 (2012).

[3] *Id.* at 2579 (opinion of Roberts, C.J.).

[4] *Id.* at 2608 (opinion of Roberts, C.J.).

because of the expansion. The court held oral arguments on February 4, 2016. Having considered the briefing and arguments, the court grants the Governor's motion for summary judgment and denies the Alaska Legislative Council's motion for summary judgment. This case is dismissed.

II. FACTS AND PROCEEDINGS

A. *The Medicaid System*

Congress created the Medicaid program through the Social Security Amendments of 1965. The 1965 Amendments added Medicaid to Title XIX of the Social Security Act.[5] Through Medicaid, the federal government offers funds to states that assist needy individuals in obtaining medical care.[6] In order to receive federal funds, participating states must cover certain groups of individuals and provide certain minimal services.[7] The federal government offers additional funds to states that cover optional groups and to states that provide optional services.

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[5] Social Security Amendments of 1965, 79 Stat. 286 (1965) (codified as amended at 42 U.S.C. § 1396).

[6] *See* 42 U.S.C. §§ 1396a, 1396b.

[7] 42 U.S.C. § 1396c gives the Secretary of Health and Human Services the authority to withhold federal payments to states under the Medicaid program if the state is not complying with these federal requirements.

In 1972, Alaska became the 49th state to choose to participate in Medicaid.[8] At that time, participating states were required to cover individuals who qualified for four federal programs.[9] Alaska's 1972 Act tied Medicaid eligibility directly to the four federal programs by stating "A resident of the state who is eligible to receive financial assistance under [the four federal programs] of the Social Security Act . . . is eligible to receive medical assistance under title XIX of the Social Security Act."[10]

This method of legislative drafting did not last long. In 1972, the federal government enacted the Social Security Amendments of 1972.[11] The 1972 Amendments consolidated three of the four federal programs into one new

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[8] Ch. 182, § 1, SLA 1972.

[9] These mandatory programs aided the elderly, 42 U.S.C. § 301 et seq.; families with dependent children, 42 U.S.C. § 601 et seq.; the blind, 42 U.S.C. § 1201 et seq.; and the permanently and totally disabled, 42 U.S.C. § 1351 et seq.

[10] Ch. 182, § 1, SLA 1972.

[11] Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329 (codified as amended in scattered sections of 42 U.S.C.).

program—Supplemental Security Income.[12] This change became effective in 1974.[13]

As a result of this change, Alaska's Medicaid statutes referenced defunct federal programs. Alaska responded by amending the eligibility language in AS 47.07.020. The new subsection (a) made all individuals "for whom the Social Security Act requires Medicaid coverage" eligible for Medicaid. In subsection (b), the legislature added new optional groups that the state elected to cover. The legislature also added subsection (d), which states "Additional groups may not be added unless approved by the legislature."

Since these changes, the interaction between federal and state laws has been consistent. Congress has created new mandatory groups by adding new subclauses to 42 U.S.C. § 1396a(a)(10)(A)(i). The clause requires that state plans "must . . . provide for making medical assistance available" to the groups listed in the clause. Individuals in these groups are automatically eligible for services through AS 47.07.020(a) because the Social Security Act requires coverage. Thus, Alaska is never out of compliance with respect to mandatory groups. Meanwhile, Congress has created new optional groups by adding new subsections

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[12] *Id.* § 301, 86 Stat. 1329, 1465–78 (codified as amended at 42 U.S.C. § 1381 et seq.).

[13] *Id.*

to 42 U.S.C. § 1396a(a)(10)(A)(ii). Pursuant to AS 47.07.020(d), these groups are not eligible for services in Alaska unless the legislature approves them. In the past, the legislature has approved optional groups for coverage by adding them to AS 47.07.020(b).

B. *The Affordable Care Act and NFIB*

In 2010, Congress passed the Patient Protection and Affordable Care Act ("Affordable Care Act")[14] to reduce the number of Americans without health insurance and to decrease the cost of healthcare. To achieve this goal, the Affordable Care Act required states to provide Medicaid to individuals with incomes below 133 percent of the federal poverty level.[15] Congress added the expansion group to the list of mandatory groups in 42 U.S.C. § 1396a(a)(10)(i). Non-complying states risked losing all Medicaid funding. The Affordable Care Act provided that the federal government would pay 100 percent of the costs of covering the expansion through 2016 with the percent of cost coverage decreasing to 90 percent by 2020.[16]

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[14] Pub. L. No. 111-148, 124 Stat. 119 (2010).

[15] 42 U.S.C. § 1396a(a)(10)(A)(i)(VII). The statute effectively required states to cover individuals with incomes below 138 percent of the poverty line because of a 5 percent "income disregard." 42 U.S.C. § 1396a(e)(14)(I).

[16] 42 U.S.C. § 1396d(y)(1). States must cover their own administrative costs.

Because the Social Security Act required states to cover the expansion group, individuals in that group were automatically eligible for Medicaid in Alaska. However, Alaska took no action to implement expansion. Instead, Alaska joined 25 other states in challenging the Affordable Care Act in part with respect to Medicaid expansion. By a slim majority, the United States Supreme Court upheld the Act but held that the penalty for noncompliance—losing existing Medicaid funding—exceeded Congress's power under the Spending Clause and was therefore unconstitutional.[17]

Because of *NFIB*, states can choose whether to cover the expansion group without fearing the loss of existing Medicaid funds. However, if a state chooses to cover the expansion group, the federal government pays a significant portion of the costs associated with the expansion. States effectively have the option of covering the expansion group.

C. *Expansion in Alaska and the Legislative Council's Lawsuit*

After the Supreme Court's decision in *NFIB*, Alaskans elected Bill Walker as their new governor. The Governor expressed a desire to expand Medicaid. The Governor introduced two legislative bills that would have expressly made the expansion group eligible for Medicaid. The legislature did not hold a vote on

[17] *NFIB*, 132 S.Ct. 2566, 2608 (opinion of Roberts, C.J.), 2641–42 (concurring opinion of Ginsburg, J.) (2012).

either bill. In July 2015, the Governor sent a letter to the Legislative Budget and Audit Committee. In the letter, the Governor gave notice of his intention to accept federal funds to expand Medicaid. The Committee took no action in response to the Governor's letter.

On August 24, 2015, the Legislative Council[18] filed this lawsuit alleging that the Governor's plan violated AS 47.07.020(d) and the Alaska Constitution.[19] The Legislative Council requested a preliminary injunction preventing the Governor from implementing the expansion. This court denied the Legislative Council's motion, and the Alaska Supreme Court denied the Legislative Council's petition for review. The Governor began implementing Medicaid expansion on September 1, 2015.

Both parties have moved for summary judgment pursuant to Civil Rule 56. The parties agree that this dispute involves only a question of law and that there

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[18] The Legislative Council is a permanent interim committee of the Alaska Legislature and includes fourteen legislators. *See* Alaska Const. art. II, § 11; AS 24.20.020. It has the authority to sue in the name of the legislature during the interim between sessions. AS 24.20.060(4)(F).

[19] The Legislative Council also claimed that the Governor's plan would violate an appropriations act and AS 37.14.041. The Legislative Council subsequently abandoned these claims.

are no disputed questions of material fact. Accordingly, the court must determine which party is entitled to judgment as a matter of law.[20]

III. DISCUSSION

A. *Statutory Interpretation*

1. *The court gives no deference to the Department's interpretation of the statute.*

Because the Legislative Council challenges an agency's actions, the court must first determine if it should defer to the agency's interpretation. Alaska courts use two different standards to review an agency's interpretation of a statute.[21] If the interpretation "implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions," courts apply the reasonable basis standard and will defer to the agency's interpretation so long as it is reasonable.[22] However, if "the agency's specialized knowledge and experience would not be particularly probative on the meaning of the statute," courts apply the substitution-of-judgment standard and give no deference to the

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[20] *See Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785–86 (Alaska 2015).

[21] *See Marathon Oil Co. v. State, Dep't of Natural Resources*, 254 P.3d 1078, 1082 (Alaska 2011) (citing *Matanuska–Susitna Borough v. Hammond*, 726 P.2d 166, 175 (Alaska 1986)).

[22] *Id.* (citing *Hammond*, 726 P.2d 166, 175 (Alaska 1986)).

agency.[23] Courts give more deference to agency interpretations that are "longstanding and continuous."[24]

The primary question in this case is what the phrase "for whom the Social Security Act requires Medicaid coverage" means. Answering this question does not implicate Department expertise or specialized knowledge. Instead the answer depends on the legislature's intent in amending Alaska's Medicaid statute in 1974. "The question whether [the Department] properly interpreted the legislature's mandate . . . is answerable through statutory interpretation or other analysis of legal relationships about which the courts have specialized knowledge and experience."[25]

Furthermore, this task is not within the fundamental polices or statutory function of the Department. Alaska Statute 47.07.040 gives the Department the authority to make arrangements or regulatory changes "not inconsistent with the law" as required under federal law to prepare, submit, and administer Alaska's Medicaid plan. Specifically, the statute requires the Department to prepare the

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[23] *Id.* (citing *Hammond*, 726 P.2d 166, 175 (Alaska 1986)).

[24] *Id.* (citing *Premera Blue Cross v. State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins.*, 171 P.3d 1110, 1119 (Alaska 2007)).

[25] *State, Dep't of Heath and Soc. Servs. v. Gross*, 347 P.3d 116, 122 (Alaska 2015) (quoting *Lakosh v. Dep't of Envtl. Conservation*, 49 P.3d 1111, 1117 (Alaska 2002)) (internal quotation marks omitted) (alterations in original).

plan, to act as the single state agency to administer the plan, and to act for the state in any negotiations with the federal government regarding the plan.[26]

The Governor argues that the delegation of authority contained in AS 47.07.040 entitles the Department to deference in its statutory interpretation of the statute. The Alaska Supreme Court recently rejected this argument with regard to a similar grant of authority in a related statute.[27] As the Court explained, the grant was unlike the broad grants of authority that lead to agency deference.[28] This court finds the same result here. The Department's statutory function is to "prepare a state plan," "submit" the plan, "administer" the plan, and make "arrangements or regulatory changes, not inconsistent with the law."[29] None of these roles envisions the Department definitively deciding the meaning of AS 47.07.020. While the Department must interpret the law to make regulatory

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[26] AS 47.07.040.

[27] *See Gross*, 347 P.3d 116, 122 (Alaska 2015) (holding AS 47.05.010(9) not a statutory grant of authority that entitles an agency to deference). In relevant portions AS 47.05.010(9) gives the Department the authority to "adopt regulations, not inconsistent with law, defining need, [and] prescribing the conditions of eligibility for assistance."

[28] *Id.* at 122 n.40 (citing *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, 628 P.2d 897, 903 (Alaska 1981), and *Kelly v. Zamarello*, 486 P.2d 906, 912 (Alaska 1971), as examples of such broad grants of authority).

[29] AS 47.07.040.

changes "not inconsistent with the law," the role of determining the law is "within the traditional province of judicial review."[30]

Finally, the Department's interpretation is not longstanding because this is the first opportunity the Department has had to interpret AS 47.07.020(a) with respect to the situation created by *NFIB*. The Governor's interpretation of AS 47.07.020(a) focuses on the textual command of the Social Security Act while the Legislative Council's interpretation focuses on the penalty for noncompliance. Before *NFIB*, the Social Security Act textually commanded states to cover groups listed in 42 U.S.C. § 1396a(a)(10)(A)(i) and supported that command with the penalty of expulsion from Medicaid.[31] *NFIB* created a unique situation where, for the first time, the Social Security Act textually commands states to cover a group but it does not penalize noncomplying states. While the Department has consistently provided Medicaid coverage to groups added to 42 U.S.C. § 1396a(a)(10)(A)(i) without additional state legislative action, these actions are consistent with both parties' interpretation of AS 47.07.020(a). Therefore, it is not clear whether the Department's interpretation in this case

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[30] *See Gross*, 347 P.3d 116, 122 (Alaska 2015) (quoting *Lakosh*, 49 P.3d 1111, 1117 (Alaska 2002)).

[31] 42 U.S.C. § 1396a(a)(10)(A)(i), as relevant, states that a state plan "must . . . provide for making medical assistance available" to the groups listed in the clause.

reflects a fair and considered judgment rather than a convenient litigation position. Accordingly, the longstanding-and-continuous factor does not weigh in the Governor's favor.

2. *Alaska Statute 47.07.020(a) requires the Governor to cover the expansion group.*

Alaska Statute 47.07.020(a) states "All residents of the state for whom the Social Security Act requires Medicaid coverage are eligible to receive medical assistance under [Medicaid]." The parties disagree as to whether "requires" focuses on the language of the Social Security Act or on the penalty for noncompliance. Both interpretations are consistent with the terms of the statute. However, the Governor's interpretation is more convincing because it relies on the plain, rather than a specialized, meaning of the statute.

Alaska courts "interpret statutes according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters."[32] Courts "decide questions of statutory interpretation on a sliding scale: The plainer the language of the statute, the more

[32] *City of Hooper Bay v. Bunyan*, 359 P.3d 972, 977–78 (Alaska 2015) (quoting *Marathon Oil Co. v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1082 (Alaska 2011)) (internal quotation marks omitted).

convincing contrary legislative history must be."[33] Courts construe the language of a statute in "'accordance with its common usage,' unless the word or phrase in question has 'acquired a peculiar meaning, by virtue of statutory definition or judicial construction.'"[34] "In ascertaining the plain meaning of [a] statute, [courts] refrain from adding terms."[35]

The Governor's interpretation is simple. The Medicaid program is found in Title XIX of the Social Security Act. 42 U.S.C. § 1396a(a) contains the requirements for a state Medicaid plan. Clause (10)(A)(i) contains a list of groups that a state plan "must . . . provide for making medical assistance available." The Affordable Care Act placed the expansion group in clause (10)(A)(i). Therefore, the Social Security Act textually commands participating states to provide medical assistance to the expansion group.

The Legislative Council's interpretation is more complex because it requires understanding the anti-commandeering principle and Congress's constitutional spending powers. "As every schoolchild learns, our Constitution

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[33] *Id.* (quoting *Marathon Oil Co.*, 254 P.3d at 1082 (Alaska 2011)) (internal quotation marks and alteration brackets omitted).

[34] *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 150–51 (Alaska 2002) (quoting *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 788 (Alaska 1996)) (alteration brackets omitted).

[35] *Id.*

establishes a system of dual sovereignty between the States and the Federal Government."[36] The federal government does not have the authority under the Constitution to "commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program."[37] This limitation on the federal government's power has been referred to as the "anti-commandeering principle."[38]

While the federal government cannot commandeer a state's legislative process, the federal government can often achieve the same result through its Spending Clause powers. Congress has the "Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States."[39] The federal government can

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[36] *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

[37] *New York v. United States*, 505 U.S. 144, 176 (1992) (quoting *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 283 (1981)) (alteration brackets omitted).

[38] *See New York*, 505 U.S. 144, 202 (1992) (opinion of White, J.) (referring to the majority's "'anticommandeering' principle"); *Branch v. Smith*, 538 U.S. 254, 301–02 (2003) (opinion of O'Connor, J.) (referring to the Court's "anti-commandeering principle"); *Nat'l Collegiate Athletic Ass'n v. Governor of N.J.*, 730 F.3d 208, 227–37 (3d Cir.2013) (discussing the "anti-commandeering principle").

[39] U.S. Const., Art. I, § 8, cl. 1. *See also NFIB*, 132 S.Ct. 2566, 2579 (2012) ("Put simply, Congress may tax and spend.").

spend for the general welfare by offering funds to the states and making conditions on those offers.[40]

The Legislative Council argues that the Governor's interpretation of AS 47.07.020(a) ignores the fact that the federal government cannot merely require a state to act. Instead, the federal government convinces states to comply with its Medicaid requirements by conditioning funds on compliance. The Legislative Council therefore argues that "requires" in AS 47.07.020 incorporates the constitutional prohibition on commandeering. Under the Legislative Council's reading, "requires" might be properly read to mean "requires in order to receive existing Medicaid funds."

The word "require" is not defined in Alaska's Medicaid statute or elsewhere in the Alaska Statutes. It has not acquired a particular meaning through judicial construction. A contemporaneous dictionary defines "require" as "To direct, order, demand, instruct, command, claim, compel, request, need, exact."[41] The Governor's interpretation falls squarely within this general definition. The Social Security Act tells states they "must" cover the expansion group. The word "must" implies a direction, an order, a demand, an instruction, or a command.

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[40] *See South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (citing examples).

[41] Black's Law Dictionary 1468 (4th ed. 1968).

Although the Legislative Council's interpretation is consistent with the statute, this interpretation requires a specific meaning for the word "requires." Had the legislature intended such a specific meaning, for clarity's sake, the legislature could have used additional terms. The court declines to add such terms without strong evidence that this was the legislature's intent.

Furthermore, it is unlikely that the legislature was aware of the anti-commandeering doctrine when it enacted AS 47.07.020(a). The United States Supreme Court has struck down laws under the anti-commandeering principle on only two occasions.[42] Both of these cases were decided in the 1990s.[43] It is unlikely that the 1974 Alaska Legislature infused the word "requires" with a special meaning premised on a constitutional doctrine established in 1992.[44]

Finally, the policy behind the statute supports the court's conclusion. There is a rule of statutory construction that courts should construe remedial statutes

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[42] *See New York*, 505 U.S. 144, 166 (1992); *Printz v. United States*, 521 U.S. 898, 918 (1997). It could be argued that *NFIB* is another such case.

[43] Many of the cases foreshadowing the anti-commandeering doctrine similarly occurred after 1974. *See, e.g.*, *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985); *F.E.R.C. v. Mississippi*, 456 U.S. 742 (1982); *Hodel*, 452 U.S. 264 (1981); *Nat'l League of Cities v. Usery*, 426 U.S. 833 (1976).

[44] The court does not mean that the federal government could have commandeered a state's legislative process in 1974 without violating the Constitution. Rather, the court thinks this is relevant to the legislature's knowledge of the federal government's power and probative of the legislature's intent.

liberally.[45] As a part of the Social Security Act, Medicaid is a remedial statute.[46] The primary purpose behind Alaska's Medicaid statute is to provide "the needy persons of this state . . . uniform and high quality care that is appropriate to their condition and cost-effective to the state."[47] Interpreting the statute to require coverage of needy individuals rather than interpreting the statute to forbid coverage promotes this remedial purpose.

The court finds that the Governor's interpretation is correct. The operative phrase in AS 47.07.020(a) asks whether the Social Security Act commands states to provide Medicaid to a group. The Social Security Act does so in this case with respect to the Medicaid expansion group. Since it does, the group is "required" under state law, and members of the group are eligible for Medicaid services in Alaska.

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[45] *See Gross*, 347 P.3d 116, 125 (Alaska 2015) ("[A] remedial statute is to be liberally construed to effectuate its purposes.") (quoting *State ex rel. Smith v. Tyonek Timber, Inc.*, 680 P.2d 1148, 1157 (Alaska 1984)); *Smith*, 689 P.2d 1148, 1157 (Alaska 1984) ("There is no question that a remedial statute is to be liberally construed to effectuate its purposes.").

[46] *Cf. Gross*, 347 P.3d 116, 125 (Alaska 2015) (stating that federal courts recognize the Social Security Act as remedial) (citing *Doran v. Schweiker*, 681 F.2d 605, 607 (9th Cir.1982); *Haberman v. Finch*, 418 F.2d 664, 667 (2d Cir.1969); and *Granberg v. Bowen*, 716 F.Supp. 874, 878 (W.D.Pa.1989)).

[47] AS 47.07.010.

3. *The legislative history of the Alaska Medicaid statute sheds little light on the meaning of the operative phrase.*

Courts look to the legislative history of a statute to help interpret the meaning of words or phrases in the statute. "[T]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be."[48] The legislative history surrounding the 1974 amendment to Alaska's Medicaid statute is most relevant here because that statute created the pertinent language in AS 47.07.020. The legislative history surrounding the 1972 Alaska Medicaid statute is less relevant, but may help provide context to the 1974 amendments. Unfortunately, the dearth of legislative history material provides little aid to the court.

The legislative history materials from 1972 are almost completely devoid of any references to eligibility.[49] However, the materials do show that the legislature considered optional and required *services*. A consultant named Alfred Gillen recommended that Alaska only accept mandatory services because some states had

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[48] *DeVilbiss v. Matanuska-Susitna Borough*, 356 P.3d 290, 295 (Alaska 2015) (quoting *State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Alyeska Pipeline Serv. Co.*, 262 P.3d 593, 597 (Alaska 2011)).

[49] The only references the court is aware of are a brief explanation of the definitions of "categorically needy" and "medically needy" by Commissioner McGinnis and a request by Representative Joshua Wright for the Department to prepare a committee substitute that would define "medically needy." Minutes of House Finance Committee Bill 56 (June 13, 1972).

taken all options and found they could not afford them.[50] He also recommended that the legislature retain control over new optional services.[51] Department Commissioner Fred McGinnis agreed with Mr. Gillen.[52] Consistent with this concern, the legislature included a prohibition on adding optional services without the approval of the legislature.[53]

The legislative history of the 1974 amendments only shows that the changes in the eligibility language in AS 47.07.020 were in response to the change in federal law.[54] In 1974, the legislature also added AS 47.07.020(d), which states "Additional groups may not be added unless approved by the legislature." The history behind this subsection is similarly unhelpful. Commissioner McGinnis stated the new subsection "would clarify that in the future no groups or services

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[50] Minutes of Senate Finance Committee Bill 56 (February 17, 1972). The minutes identify Mr. Gillen as a consultant to the Department on Title XIX.

[51] *Id.*

[52] *See* Minutes of Senate Finance Committee Bill 56 (April 26, 1972); Minutes of Senate Finance Committee Bill 56 (May 7, 1972).

[53] *See* Ch. 182, § 1, SLA 1972; Minutes of Senate Finance Committee Bill 56 (May 15, 1972).

[54] *See* 1974 House Journal 465–66, Letter from Governor William A. Egan to the Honorable Tom Fink (March 11, 1974); Letter from Commissioner Frederick McGinnis to the Honorable Lowell Thomas, Jr. (March 22, 1974); Senate Finance Committee Report on Committee Substitute for Senate Bill No. 465.

could be added without legislative action."[55] Commissioner McGinnis helpfully explained that the subsection "is self-explanatory."[56]

The court draws little from this legislative history. From the 1972 materials, the court can conclude that the 1972 legislature was concerned about keeping the costs of optional services low and chose to retain control over adding optional services in order to do so. These materials cast little light on the legislature's intent two years later when the legislature changed a separate section of the statute. From the 1974 materials, the court can only conclude that the changes in AS 47.07.020 were in response to changes in the structure of federal law. These conclusions neither support nor refute either party's interpretation of the pertinent language in AS 47.07.020. It is not clear from the legislative history that the legislature intended to depart from the plain meaning of the terms used in AS 47.07.020.

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[55] Minutes of Senate Health, Education and Social Services Committee Bill 465 (March 22, 1974). Neither party argues that this section prevents new mandatory groups from receiving services without legislative action.

[56] Letter from Commissioner Frederick McGinnis to the Honorable Lowell Thomas, Jr. (March 22, 1974).

B. *NFIB did not alter the requirement that states cover the expansion group.*

In *NFIB*, a seven-justice majority agreed that withholding existing Medicaid funding from states that do not comply with the Affordable Care Act exceeds Congress's powers under the Spending Clause.[57] However, a five-justice majority agreed that the unconstitutional provision did not require the Court to strike down the entire act.[58] This five-justice majority was clear in the limit of its holding. Chief Justice Roberts's opinion states:

> As for the Medicaid expansion, that portion of the Affordable Care Act violates the Constitution by threatening existing Medicaid funding. Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to accept the offer. The States are given no such choice in this case: They must either accept a basic change in the nature of Medicaid, or risk losing all Medicaid funding. *The*

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[57] *See NFIB*, 132 S.Ct. 2566, 2633–40 (opinion of Roberts, C.J., joined in relevant part by Breyer and Kagan, JJ.); *Id.* at 2656–68 (dissenting opinion of Scalia, Kennedy, Thomas, and Alito, JJ.). The joint dissenters would have held the act unconstitutional in its entirety. *Id.* "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .'" *Marks v. U.S.*, 430 U.S. 188, 193 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n. 15 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)). Chief Justices Roberts's plurality opinion is the narrowest rational with respect to this holding.

[58] *See NFIB*, 132 S.Ct. 2566, 2607–08 (opinion of Roberts, C.J., joined in relevant part by Breyer and Kagan, JJ); *Id.* at 2641–42 (opinion of Ginsberg, J., joined by Sotomayor, J.). Justice Ginsberg effectively concurred with Chief Justice Roberts with respect to this issue.

> *remedy for that constitutional violation is to preclude the Federal Government from imposing such a sanction. That remedy does not require striking down other portions of the Affordable Care Act.*[59]

Meanwhile Justice Ginsburg's opinion states:

> [I]n view of THE CHIEF JUSTICE's disposition, I agree with him that the Medicaid Act's severability clause determines the appropriate remedy. . . .
>
> The Court does not strike down any provision of the [Affordable Care Act]. *It prohibits only the "application" of the Secretary's authority to withhold Medicaid funds* from States that decline to conform their Medicaid plans to the [Affordable Care Act's] requirements.[60]

Both justices expressly limited the remedy for the constitutional violation to preventing the sanction for non-compliance. States that choose not to comply may suffer no penalty. But prohibiting the application of the penalty did not affect the requirement that states provide Medicaid services to the expansion group. This requirement may lack the coerciveness that Congress intended, but it is still a requirement.

In *NFIB,* the Court "limit[ed] the financial pressure the Secretary may apply to induce States to accept the terms of Medicaid expansion. As a practical matter, that means States may now choose to reject the expansion."[61] In Alaska,

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[59] *Id.* at 2609 (opinion of Roberts, C.J.) (emphasis added).

[60] *Id.* at 2642 (opinion of Ginsburg, J.) (emphasis added).

[61] *Id.* at 2609 (opinion of Roberts, C.J.)

the choice of Medicaid expansion ultimately rests with the legislature. Under current law, the legislature has already made that decision according to this court's interpretation of AS 47.07.020(a). If it so desires, the current legislature can change state law to reject the expansion. Until then, state law requires the Governor to provide Medicaid services to the expansion group.

C. *The Governor did not violate the Alaska Constitution.*

The Legislative Council argues that the Governor violated the Alaska Constitution, which gives "the legislature, and *only* the legislature . . . control over the allocation of state assets among competing needs."[62] However, the Legislative Council's argument assumes that its interpretation of AS 47.07.020(a) is correct. Because the court determines that AS 47.07.020(a) makes the expansion group eligible for Medicaid, the Governor's acts did not violate the Alaska Constitution.

In Alaska, the legislature has the right to decide whether a group is eligible for Medicaid; the governor executes the legislature's command. If the legislature does not make a group eligible and the governor uses state assets to cover the group, the governor has violated the Alaska Constitution. However, if the legislature does make a group eligible, the governor would potentially violate the

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[62] *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991) (quoting *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988)) (emphasis in original); *see also* Alaska Const., Art. II, § 1.

Alaska Constitution if the governor *did not* cover the group. Because of the court's conclusion regarding the meaning of AS 47.07.020(a), we are in the latter scenario. The Governor's actions did not violate the Alaska Constitution.

The Legislative Council may disagree with the Governor about the merits of expanding Medicaid. The way for the legislature to exercise its constitutional power to control the state's assets is through its constitutional power to pass laws.

IV. CONCLUSION

In conclusion, the court finds that the Social Security Act requires Medicaid expansion. The court reaches this conclusion based on the plain meaning of AS 47.07.020(a) and the canon of statutory interpretation that obligates courts to construe remedial statutes liberally. Because the Social Security Act requires expansion, state law makes the expansion group eligible for Medicaid services. Because existing law required the Governor to provide Medicaid to the expansion group, the Governor did not violate the Alaska Constitution by doing so.

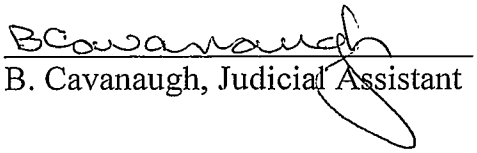
The court grants the Governor's motion for summary judgment and denies the Legislative Council's motion for summary judgment. This case is dismissed.

Dated this 1st day of March, 2016, at Anchorage, Alaska.

FRANK A. PFIFFNER
Superior Court Judge

I certify that on 3-1-16 a copy
of the above was emailed:

T. McKeever/ S. Stone
M. Simonian/ M. Brown
L. Fox/ M. Paton-Walsh/ D. Borghesan
M. Regan/ J. Davis



B. Cavanaugh, Judicial Assistant