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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA ASSOCIATION OF)
CRIMINAL DEFENSE LAWYERS,)
JAMES H. CANNON, JAMES W.)
McGOWAN, AND REX L. BUTLER)

Plaintiffs,)

vs.)

Case No. 3AN-10-_____ CI

STATE OF ALASKA; DANIEL S.)
SULLIVAN, Attorney General for the)
State of Alaska, in his official capacity)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION AND SUMMARY OF CLAIMS

COME NOW the Alaska Association of Criminal Defense Lawyers (AkACDL), James H. Cannon, James W. McGowan, and Rex L. Butler, Plaintiffs, who, pursuant to Alaska Rule of Civil Procedure 65, move this Court for an injunction against the defendants, the State of Alaska and Daniel S. Sullivan, Attorney General for the State of Alaska, and seek declaratory relief stating that the amendments to Alaska statutory law and the Alaska Rules of Criminal Procedure by H.B. 324 (SCS CSH.B. 324(JUD)) / Chapter 19 SLA 10 (hereinafter, “the Bail Bill”) on July 1, 2010, are unconstitutional.

1 1. H.B. 324 (SCS CSH.B. 324(JUD)) / Chapter 19 SLA 10
2 (hereinafter the “Bail Bill”), slated to go into effect on July 1, 2010, includes
3 numerous provisions which violate the Alaska Constitution and seriously erode
4 the right to bail.

5 2. The Alaska Constitution guarantees the right to bail: “The accused
6 is entitled . . . to be released on bail, except for capital offenses when the proof is
7 evident or the presumption great.” Alaska Const., art. I, sec. 11.

8 3. The United States Supreme Court has stated that “[i]n our society,
9 liberty is the norm, and detention prior to trial or without trial is the carefully
10 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The
11 drafters of Alaska’s constitution opted to guard even more zealously than the
12 federal constitution the right to bail. Victor Fischer, delegate to the Constitutional
13 Convention, commented during the convention that the phrase “when the proof is
14 evident and the presumption great” showed that even defendants in capital
15 offenses should generally be eligible for bail: “The actual determination of when
16 a person is released on bail, if charged with a capital offense, is still up to the
17 judge.” 2 *Proceedings of the Alaska Constitutional Convention* 1344–45 (Jan. 6,
18 1956).

19 4. The Alaskan criminal justice system, including the concept of bail,
20 is founded on the belief that all persons are entitled to a fair trial and are
21 presumed innocent until proven guilty. *Doe v. State*, 487 P.2d 47, 51 (Alaska
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1 1971) (citing *Stack v. Boyle*, 342 U.S. 1, 4 (1951)). As the Supreme Court has
2 stressed: “This traditional right to freedom before conviction permits the
3 unhampered preparation of a defense, and serves to prevent the infliction of
4 punishment prior to conviction. Unless this right to bail before trial is preserved,
5 the presumption of innocence, secured only after centuries of struggle, would lose
6 its meaning.” *Stack*, 342 U.S. at 4 (citations omitted). Thus, the right to bail
7 means not only freedom from detention, but the liberty to prepare one’s defense
8 and to be free from punishment.
9

10 5. The Bail Bill will dismantle these protections. It eviscerates the
11 constitutional right to bail for a large class of defendants by creating a
12 presumption against bail for persons accused of any of a number of felonies.
13 Furthermore, it allows for the imposition of bail conditions that can only be
14 viewed as punitive and an attempt to turn pretrial release into a pre-probationary
15 period. These provisions authorize incredible judicial control over the everyday
16 movements of the accused, including: dictating the medical decisions of the
17 accused, authorizing warrantless searches, and coercing the surrender of the right
18 against self-incrimination.
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21 6. The proposed amendments to Alaska’s bail laws will shift burdens
22 onto the accused to rebut the State’s allegations at a hearing that may take place
23 only a few hours or a few days after arrest. If not rebutted, the bill permits the
24 imposition of serious burdens on the rights of the accused. Because initial

1 appearances “must be done in haste,” defendants may not be fully protected by
2 the hearing process: “the defendant may be taken by surprise, counsel has just
3 been engaged, or for other reasons the bail is fixed without that full inquiry and
4 consideration which the matter deserves.” *Id.* at 11. The Bail Bill threatens
5 defendants’ most crucial freedoms at a time in the justice process when a person
6 is least able to oppose the government’s efforts and when the state is least entitled
7 to presume any wrongdoing on the part of the accused.
8

9 7. The numerous unconstitutional provisions of the Bail Bill do
10 indeed, as the Court in *Stack v. Boyle* had warned, render the presumption of
11 innocence, and the struggle to establish this precept, meaningless.

12 8. The Plaintiffs therefore bring this action seeking declaratory and
13 injunctive relief.
14

15 JURISDICTION

16 9. This is a complaint for declaratory and injunctive relief brought
17 pursuant to AS 09.40.230, authorizing injunctions, and AS 22.10.020, naming the
18 superior court as the trial court of general jurisdiction in all civil and criminal
19 cases.
20

21 VENUE

22 10. Venue is proper under AS.22.10.030 and Rule 3 of the Alaska
23 Rules of Civil Procedure.
24

PARTIES

1
2 11. All plaintiffs are either criminal defense attorneys or organizations
3 of criminal defense attorneys. As such, all plaintiffs regularly protect criminal
4 defendants’ constitutional rights. The Bail Bill attacks the constitutional rights of
5 criminal defendants—their clients. Consequently, the Bail Bill inhibits the
6 plaintiffs’ ability to effectively represent their clients and vindicate their
7 constitutional rights.
8

9 12. Plaintiffs are uniquely situated to advance the constitutional rights
10 of criminal defendants with regard to their bail hearings and conditions. Any
11 constitutional challenges to bail conditions become moot once the criminal trial is
12 over and the conditions of bail are removed. The challenges of mootness, the
13 transitory nature of bail conditions, and the immediate imposition of serious
14 compromises to the liberty of the accused, therefore, make individual appeals an
15 inadequate route protect their constitutional rights against a facially
16 unconstitutional statute. As criminal defense attorneys, plaintiffs are impacted by
17 any action that would impair criminal defendants’ procedural constitutional
18 rights, in their role of protecting and advocating for the constitutional rights of
19 criminal defendants. Plaintiffs are uniquely qualified to represent the
20 constitutional rights of the accused with regard to bail proceedings.
21
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23 13. The Alaska Association of Criminal Defense Lawyers (AkACDL)
24 is a nonprofit corporation duly organized in accordance with the laws of the State

1 of Alaska and has its principal place of business in Anchorage, Alaska. The
2 AkACDL exists (1) to promote the study and research of criminal defense law
3 and procedure; (2) to provide a forum for the exchange of information regarding
4 the administration of criminal justice in order to protect individual rights and
5 improve the practice of criminal law; (3) to preserve, protect, and defend the
6 adversary system of justice and the Constitution; and (4) to represent the
7 Association before the legislative, executive, and judicial bodies that determine
8 policy for state and federal governments in a manner that promotes the mission of
9 the Association. The AKACDL is a professional bar association comprised of
10 more than 55 Alaska attorneys including private criminal-defense attorneys and
11 public defenders.
12

13
14 14. James H. Cannon is a private-practice defense attorney in
15 Fairbanks, Alaska. He has been a member of the Alaska Bar since 1975. His
16 practice emphasizes the defense of individuals charged with misdemeanors,
17 felonies, and juvenile-delinquency crimes throughout the Fourth Judicial District
18 and Barrow, Alaska.

19
20 15. James W. McGowan is a private-practice attorney in Sitka, Alaska
21 whose practice includes both criminal and civil cases. He has been a member of
22 the Alaska Bar since 1977. He represents clients in both federal and state,
23 misdemeanor and felony, criminal trials. Mr. McGowan was a public defender
24

1 for over eight years, has represented thousands of defendants in criminal cases,
2 and has argued on behalf of criminal defendants in hundreds of trials.

3 16. Rex L. Butler is a private-practice attorney in Anchorage, Alaska
4 whose practice includes both criminal and civil cases. He has been a member of
5 the Alaska Bar since 1983. He represents criminal clients in both felony and
6 misdemeanor cases.

7
8 17. Defendant State of Alaska is named as a party defendant pursuant
9 to AS 44.80.010, as it acts through various agencies, departments, divisions, and
10 instrumentalities in the execution and administration of all government functions.

11 18. Defendant Daniel S. Sullivan is Attorney General for the State of
12 Alaska and head of the Department of Law for the State of Alaska. As Attorney
13 General, he is responsible for enforcing and defending the laws of the State of
14 Alaska, including the Alaska Constitution. He heads the Department of Law, the
15 primary agency for the prosecution of criminal offenses in Alaska. He is sued in
16 his official capacity only.

17
18 **STATEMENT OF FACTS**

19 19. On February 2, 2010 Governor Parnell introduced a number of
20 crime bills into the Alaska House and Senate. Among the bills introduced were
21 the "Bail Bill," H.B. 324, and its substantially similar counterpart, S.B. 252.

22
23 20. The House Finance committee held a hearing regarding H.B. 324
24 on April 12, 2010, at which Richard Svobodny, Deputy Attorney General for the

1 Criminal Division of the Department of Law, and Daniel S. Sullivan, Attorney
2 General for the State of Alaska, provided testimony.

3 21. The Senate Judiciary committee held hearings regarding S.B. 252,
4 the companion bill to H.B. 324, on February 19 and 24, 2010, at which Susan
5 McLean, Director of the Criminal Division of the Department of Law, provided
6 testimony.

7
8 22. H.B. 324 passed the House on April 14, 2010 and passed the Senate
9 on April 17, 2010.

10 23. On May 15, 2010, Governor Parnell signed H.B. 324 into law. It is
11 scheduled to take effect July 1, 2010.

12 **Unconstitutional Provisions of the Bail Bill**

13 **A. Presumption Against Bail**

14
15 24. Section 5 of the Bail Bill amends the Alaska Code of Criminal
16 Procedure by adding AS 12.30.011(d)(2) (appearing in the Bill at p. 7 lines 15–
17 21) (hereinafter, “Presumption Against Bail”). This new provision reverses the
18 typical presumption for pretrial release for certain felonies and even some
19 misdemeanor cases. This change is effected by the creation of a “rebuttable
20 presumption that no condition or combination of conditions will reasonably
21 assure the appearance of the person or the safety of the victim, other persons, or
22 the community” in these cases.
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1 25. The effect of such a presumption is that a person w accused of one
2 of the specified crimes, or whose circumstances meet one of the specified criteria,
3 must present evidence sufficient to convince a judge that there are certain bail
4 conditions, bond, or otherwise, that will ensure his appearance and the
5 community’s safety.

6 26. The statute is silent as to what a judge is to do should the accused
7 fail to convince the judge and rebut this presumption against bail. However,
8 given that rebuttable presumptions typically stand as proven if they are not
9 adequately rebutted, defendants who are not able to rebut this presumption will
10 thereby be automatically held without bail until trial.

11
12 **B. Mandated Methamphetamine Bond**

13 27. Section 5 of the Bail Bill adds a new provision codified at AS
14 12.30.016(d) (appearing in the bill at p. 9, lines 23–31) (hereinafter, “Mandated
15 Methamphetamine Bond”). The new provision would require a mandatory
16 \$250,000 cash bond for a person accused of manufacturing methamphetamine if
17 the person had been previously convicted of a crime involving methamphetamine,
18 including possession of methamphetamine. Still, there is an exception to this
19 general rule: if the accused can prove that his only role in the charged offense was
20 as an aider or abettor and that he did not stand to benefit financially from the
21 manufacture.
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1 28. In practice, this exception means that a person convicted of a
2 previous methamphetamine offense and charged with manufacturing
3 methamphetamine would have to admit guilt in a charged crime if he wished to
4 avoid the \$250,000 bond.

5 **C. Compulsory Medical Treatment**

6 29. Section 5 of the Bail Bill adds a provision the amended AS
7 12.30.011(b) (appearing in the bill at p. 5, lines 18–22) (hereinafter, “Compulsory
8 Medical Treatment”), which lists a number of discretionary bail conditions a
9 judicial officer may impose to ensure the appearance of the accused at trial and
10 the safety of the community. Among these conditions are those numbered (15)
11 and (16) (appearing in the bill at p. 6, lines 23–26), which would provide,
12 respectively, that a judicial officer may order the accused (if he is under the
13 treatment of a licensed healthcare provider) to follow the provider’s treatment
14 recommendations and to take medication that has been prescribed by the licensed
15 healthcare provider.
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18 30. Enforcement of such a provision would require that a judge gain
19 access to the medical records of the accused, or in the alternative compel the
20 accused or a provider to testify on the question of the medical treatment of the
21 accused. The judge, according to the statutory scheme, could then order that the
22 accused comport with the treatment recommendations contained in any medical
23 plan.
24

1 **D. Compulsory Work Requirement**

2 31. Section 5 of the Bail Bill adds a provision to the amended
3 provisions of AS 12.30.011(b) (appearing in the bill at p. 5, lines 18–22)
4 (hereinafter, “Compulsory Work Requirement”), which lists a number of
5 discretionary bail conditions a judicial officer may impose to ensure the accused’s
6 appearance at trial and the safety of the community. Among the conditions is one
7 numbered (6) (appearing in the bill at p. 6, lines 3–4), which would enable a
8 judicial officer to require an arrestee to “maintain employment or, if unemployed,
9 actively seek employment.” This provision would permit a judicial officer to
10 oversee and monitor the accused’s appearance at work or his job-seeking
11 progress.
12

13 **E. Domestic Violence Home Restriction**

14 32. Section 8 of the Bail Bill (appearing in the bill at p. 12) (hereinafter,
15 “Domestic Violence Home Restriction”) amends AS 12.30.027(b), previously
16 found void and unconstitutional. The original statute required that as a condition
17 of bail, a judge must bar someone accused of a crime involving domestic violence
18 from returning to the residence of the victim. The statute was amended to include
19 a list of requirements which, when all met, would permit a judge to remove this
20 mandatory condition.
21

22 33. However, the Domestic Violence Home Restriction expands the
23 scope of the prior statute already found unconstitutional by including the alleged
24

1 victim's place of employment along with the alleged victim's residence as areas
2 from which the accused should be excluded.

3 **F. Warrantless Searches**

4 34. Section 5 of the Bail Bill adds to the amended provisions of AS
5 12.30.016(b)(2) (appearing in the bill at p. 8, lines 19–23) (hereinafter,
6 “Warrantless Search” provision), which would, after a person has been charged
7 with an alcohol-related offense, enable a judicial officer to require the accused to
8 submit to warrantless searches of his home, vehicle, property, and person should
9 the police officer have “reasonable suspicion” that the accused is violating a no-
10 alcohol condition of release.
11

12 35. Section 5 also adds a similar provision, AS 12.30.016(c)(2)
13 (appearing in the bill at p. 9, lines 8–12) (hereinafter included in the “Warrantless
14 Search” provisions category), which would, after a person has been charged with
15 a drug-related offense, enable a judicial officer to require the accused to submit to
16 warrantless searches of his home, vehicle, property, and person should the police
17 officer have “reasonable suspicion” that the accused is violating a no-drug
18 condition of release.
19

20 36. These provisions would permit any officer to perform warrantless
21 searches of defendants and their property without first satisfying the probable
22 cause requirement of article I, section 14 of the Alaska Constitution.
23
24

1 **G. Initial Appearance Extension**

2 37. Section 23 of the Bail Bill amends Alaska Rule of Criminal
3 Procedure 5(a)(1) (appearing in the bill at p. 18–19) (hereinafter, “Initial
4 Appearance Extension”) to change the period within which an arrestee must be
5 brought before a judicial officer from twenty-four hours to forty-eight hours.

6 38. This provision extends the time for all arrestees without stating any
7 reason for doing so.

8 **H. Suspicionless Searches**

9 39. Section 5 of the Bail Bill adds to the Alaska Code of Criminal
10 Procedure AS 12.30.016(b)(3)-(4) (appearing in the bill at p. 8, lines 24–27)
11 (hereinafter, “Suspicionless Searches”) which would, when a person has been
12 charged with an importation crime, DUI or refusal to submit to a breath test,
13 enable a judicial officer to require the person to submit to breath tests and/or
14 urinalysis or blood tests as conditions of bail.

15 40. When applied, these provisions would permit any officer, at any
16 time, to require the accused to submit to these suspicionless searches.

17 **I. Antiabuse Treatment**

18 41. Section 5 of the Bail Bill adds a new subsection to AS
19 12.30.016(b)(5) (appearing in the bill at p. 8, lines 28–29) (hereinafter,
20 “Anitabuse Treatment”) which would, when a person has been charged with the
21 offense of driving under the influence, refusal of a sobriety test, or an alcohol-
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1 trafficking offense, enable a judicial officer to require the person to take drugs
2 that inhibit substance abuse.

3 42. This provision would enable a judicial officer to impose antiabuse
4 drug treatment as a condition of release.

5 **J. Ongoing Treatment Plan**

6 43. Section 5 of the Bail Bill adds to the Alaska Code of Criminal
7 Procedure AS 12.30.016(b)(6) (appearing in the bill at p. 8, lines 30–31)
8 (hereinafter “Ongoing Treatment Plan”) which would, once a person has been
9 charged with an alcohol-related offense, enable a judicial officer to require the
10 person to “follow any treatment plan imposed by the court under AS 28.35.028.”
11

12 44. The referenced statute is a punitive statute by which the court can
13 order a defendant who enters a no contest or guilty plea to agree to a substance
14 abuse treatment plan that, among other things, must span at least eighteen
15 months. AS 28.35.028.
16

17 45. The Bail Bill permits a treatment plan patterned on the one required
18 by AS 28.35.028 to be imposed as a condition of bail.

19 46. This means that the treatment plan imposed as a condition of bail
20 would extend for eighteen months.
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CLAIMS FOR RELIEF

1. Presumption Against Bail

47. The Presumption Against Bail provision would create a rebuttable presumption against bail in cases where the accused has been charged with one of the specified felonies or in certain other cases.

48. Deputy Attorney General Svobodny testified before the House Finance Committee that the Presumption Against Bail does not mean that the accused will not get out of jail, it just means that it is the accused “who starts talking first” in a bail hearing.

49. Attorney General Daniel S. Sullivan testified before the House Finance Committee that it makes “enormous sense” that certain felons should have the burden of convincing the judge that they can be released.

50. Susan McLean, director of the criminal division of the Department of Law, testified before the Senate Judiciary Committee that the new Presumption Against Bail provision is in line with federal law.

51. The federal statute referenced contains an additional clause, not in the Bail Bill’s Presumption Against Bail provision, that requires the judicial officer to order detention without bail should the presumption not be defeated. *See* 18 U.S.C. § 3142 (2008).

52. The statute requires the judge at the bail hearing to presume in certain cases, subject to rebuttal by the accused, that “no condition or

1 combination of conditions will reasonably assure the appearance of the person as
2 required and the safety of any other person and the community.” H.B. 324, Sec.
3 5, p. 7, lines 19-21. If the accused fails to rebut this presumption, the court at the
4 bail hearing must find that no conditions can protect the community or make the
5 accused appear at trial.

6 53. The statute unconstitutionally negates judicial discretion by making
7 it impossible for a judge to order conditions by which that prisoner *could* be
8 released—conditions the judge has been statutorily ordered to find inadequate.

10 54. The unique phrase “no condition or combination of conditions will
11 reasonably assure” the appearance of the accused and the safety of the public has
12 never been used to mean anything, anywhere in the United States, except that bail
13 should be denied to the person against whom that finding is made. *See, e.g.*, Miss.
14 Const., Art. III, § 29; Okla. Const., Art. II, § 8; Pa. Const., Art. I, § 14; 13 V.S.A.
15 § 7553a; H.R.S. § 804-3; Va. Code Ann. § 19.2-120; A.R.S. § 13-396; Md. R.
16 Crim. P. 5-202; D.C.Code § 23-1322.

18 55. The text of the Bail Bill itself describes various forms of monetary
19 bail as “conditions of release”. *See* H.B. 324, Section 5 (codified at
20 12.30.011(b)(1)) (10% appearance bond); *id.* (codified at 12.30.011(b)(2) (surety
21 bond); *id.* (codified at 12.30.011(b)(3) (cash performance bond).

23 56. The Bail Bill itself requires judges to impose “the least restrictive
24 condition or conditions that will reasonably assure the person's appearance and

1 protect the other persons, and the community” in setting conditions of release,
2 including monetary bond. *See* H.B. 324, Section 5 (codified at 12.30.011(b)).

3 57. That exact language is turned on its head by the Presumption
4 Against Bail, showing that a judge should, by the Bail Bill’s terms, hold that
5 person without possibility of release, where the presumption is not met.

6 58. Based on the language of the Bail Bill as to the impact of a failure
7 to rebut the presumption, the nature of the presumption that the judge must make,
8 and the explicit modeling of the bill on a federal statute explicitly prohibiting bail
9 to certain defendants, the Presumption Against Bail can only be sensibly
10 interpreted to permit the total denial of bail to some defendants.
11

12 **1(a) The Presumption Against Bail provision denies the accused’s**
13 **Constitutional Right to Release on Bail under the Alaska Constitution, Article**
14 **I, § 11**

15 59. Plaintiffs repeat and re-allege paragraphs 1–58 as if set forth
16 entirely herein.

17 60. The Alaska Constitution guarantees the right to bail, except in
18 capital cases. Alaska Const. art I, sec. 11.

19 61. The right to bail is central to the operation of the justice system and
20 the preservation of individual liberty. The Alaska Supreme Court has concluded
21 that “[s]ociety’s interest in pretrial freedom for persons accused of crimes is
22 strong. . . . The presumption of innocence, central to our system of criminal
23

1 justice, also dictates in favor of pretrial release.” *Doe v. State*, 487 P.2d 47, 51
2 (Alaska 1971).

3 62. In *Martin v. State*, the Alaska Supreme Court noted how “a
4 legislative enactment expressly permitting the detention of persons without right
5 to bail would be unconstitutional unless a constitutional amendment were
6 adopted.” 517 P.2d 1389, 1397 (Alaska 1974).

7
8 63. Although the federal courts continue to wrestle with the
9 constitutionality of the Bail Reform Act, the Federal Constitution, unlike the
10 Alaska Constitution, does not declare an absolute right to bail.

11 64. Jurisdictions that do have a constitutional right to bail have found
12 presumptions against bail modeled on the federal statute to be unconstitutional.
13 *See e.g., Simms v. Oedekoven*, 839 P.2d 381 (Wyo.1992); *Tobal v. People*, 2009
14 WL 357975, at *5 n.4 and *5-*6 (V.I., Feb. 11, 2009) (citing to authorities from
15 more than a dozen jurisdictions).

16
17 65. The Presumption Against Bail, would, in cases where the accused
18 fails to rebut the presumption, permit detention without bail. If that were not the
19 case, the shifting burden would have no impact on current law.

20
21 66. The Presumption Against Bail violates the accused’s right to bail
22 under the Alaska Constitution.

1 **1(b) The Presumption Against Bail provision denies the accused’s**
2 **Constitutional Right to Due Process of Law under the Alaska Constitution,**
3 **Article I, § 7**

4 67. Plaintiffs repeat and re-allege paragraphs 1–66 as if set forth
5 entirely herein.

6 68. Article I, Section 7 of the Alaska Constitution holds that “[n]o
7 person shall be deprived of life, liberty, or property, without due process of law.”

8 69. Individual liberty is a fundamental right under the Alaskan
9 constitution, the derogation of which requires a compelling governmental interest:
10 “We think the compelling interest standard has merit and should be adopted in
11 cases where a person’s individual liberty, as guaranteed by the Alaska
12 Constitution, allegedly has been encroached upon.” *Breese v. Smith*, 501 P.2d
13 159, 170 (Alaska 1972).

14 70. The supreme court has held that “[w]hen a law places substantial
15 burdens on the exercise of a fundamental right, we require the State to “articulate
16 a compelling interest” and to demonstrate “the absence of a less restrictive means
17 to advance [that] interest.” *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245–
18 46 (Alaska 2006).

19 71. Detention of the accused prior to trial and any conclusion of guilt,
20 as provided for by the Presumption Against Bail, seriously infringes on a
21 defendant’s liberty. Under the Presumption Against Bail, a wide variety of
22 persons are summarily required to defend their liberty interests, and the State
23 24

1 need not provide *any* compelling argument as to why these defendants are a risk
2 to the community or unlikely to appear for their trial. In cases where the State
3 attempts to place a substantial burden on one’s liberty, it is the State—not the
4 citizen—who has the burden of articulating a compelling interest.

5 72. The Presumption Against Bail thereby violates the accused’s right
6 to due process under the Alaska Constitution.

7
8 **2. Mandated Methamphetamine Bond**

9 73. The Bail Bill mandates that when the accused is charged with
10 manufacturing methamphetamine, and has been convicted of a prior crime
11 involving methamphetamine, the court must impose a mandatory cash bond of
12 \$250,000 unless he can prove that he was merely an aider or abettor in the
13 charged offense.

14
15 **2(a) The Mandated Methamphetamine Bond denies the accused’s**
16 **Constitutional Right against Self-Incrimination under the Alaska**
Constitution, Article I, § 9

17 74. Plaintiffs repeat and re-allege paragraphs 1–73 as if set forth
18 entirely herein.

19 75. Article I, Section 9 of the Alaska Constitution states, “No person
20 shall be compelled in any criminal proceeding to be a witness against himself.”
21

22 76. The United States Supreme Court has held that “a State may not
23 impose substantial penalties because a witness elects to exercise his . . . right not
24

1 to give incriminating testimony against himself.” *Lefkowitz v. Cunningham*, 431
2 U.S. 801, 805 (1977).

3 77. The Mandated Methamphetamine Bond does just this by
4 compelling the accused to either surrender his right against self-incrimination—
5 by admitting having been an aider or abettor in the underlying charge—or endure
6 the substantial penalty of a \$250,000 bond.

7
8 78. The Mandated Methamphetamine Bond denies the accused’s right
9 against self-incrimination under the Alaska Constitution.

10 **2(b) The Mandated Methamphetamine Bond denies the accused’s**
11 **Constitutional Right to Due Process of Law under the Alaska Constitution,**
12 **Article I, § 7**

13 79. Plaintiffs repeat and re-allege paragraphs 1–78 as if set forth
14 entirely herein.

15 80. The Mandated Methamphetamine Bond denies the accused’s right
16 to due process of the law by compelling the choice between due process rights
17 and the right against self-incrimination.

18 81. The Alaska Supreme Court has consistently held that a parolee
19 should not be forced to decide between exercising his due process rights at a
20 parole hearing by asserting his defense, and preserving his right against self-
21 incrimination in regard to an impending criminal trial by remaining silent at the
22 parole hearing. *McCracken v. Corey*, 612 P.2d 990, 997–98 (Alaska 1980).

1 82. The Mandated Methamphetamine Bond would compel accused
2 defendants to make a similar choice: Either surrender due process rights at a bail
3 hearing or surrender the right against self-incrimination by implicating their more
4 minor involvement in the underlying charge.

5 83. Furthermore, the Alaska Supreme Court has found that the accused
6 is entitled to a bail hearing where he may “confront all witnesses who have given
7 testimony regarding the amount of bail, or the terms and conditions of bail, as
8 well as to refute such testimony and to present rebuttal evidence.” *Carman v.*
9 *State*, 564 P.2d 361, 365 (Alaska 1977).
10

11 84. The Mandated Methamphetamine Bond forecloses the accused’s
12 access to a meaningful bail hearing. There is effectively no evidence, outside of
13 admission of guilt, which the accused can provide to lessen the severity of the
14 required \$250,000 cash bond condition of bail.
15

16 85. The Mandated Methamphetamine Bond denies the accused’s right
17 to due process under the Alaska Constitution.

18 **2(c) The Mandated Methamphetamine Bond denies the accused’s**
19 **Constitutional Right Against Excessive Bail under the Alaska Constitution,**
20 **Article I, § 12**

21 86. Plaintiffs repeat and re-allege paragraphs 1–85 as if set forth
22 entirely herein.

23 87. Article I, Section 12 of the Alaska Constitution states that
24 “[e]xcessive bail shall not be required.”

1 94. The current statute regarding a judicial officer’s discretionary
2 imposition of conditions of release does not include a provision about following
3 medical treatment.

4 95. Ms. McLean testified before the Senate Judiciary Committee that
5 the medical treatment requirement “does sound sort of draconian.”

6 **3(a) The Compulsory Medical Treatment provisions deny the accused’s**
7 **Constitutional Right to Privacy under the Alaska Constitution, Article I, § 22**

8 96. Plaintiffs repeat and re-allege paragraphs 1–95 as if set forth
9 entirely herein.

10 97. Article I, section 22 of the Alaska Constitution explicitly guarantees
11 the right to privacy. The Alaska “right to privacy is broader than that afforded by
12 the United States.” *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1980) (citing
13 *Woods & Rhode, Inc. v. State*, 565 P.2d 138, 149 (Alaska 1977); *Ravin v. State*,
14 537 P.2d 494, 514–15 (Alaska 1975) (Boochever, J., concurring)).

15
16 98. The right to privacy encompasses the individual right to choose or
17 reject medical treatment. *See Myers*, 138 P.3d at 246 & 250 (“[F]ew things [are]
18 more personal than one’s own body. . . . Alaska’s constitutional right to privacy
19 clearly . . . shields the ingestion of food, beverages or other substances.”
20 (quotation marks and citations omitted)).

21
22 99. The Alaska Supreme Court has applied the compelling
23 governmental interest standard to the right to refuse medical treatment. The court
24 held that a treatment facility may not involuntarily administer psychotropic drugs

1 unless “the proposed treatment is in the patient’s best interest and no less-
2 intrusive alternative is available.” *Id.* at 239. This determination must be made
3 by a judicial officer at a hearing where the patient has received notice and both
4 sides have been given an opportunity to present evidence and witnesses. *Id.* at
5 244.

6 100. Pretrial defendants “have suffered no judicial abridgment of their
7 constitutional rights.” *United States v. Scott*, 450 F.3d 863, 872 (9th. Cir. 2006).
8 They are thus entitled to full protection of their right to privacy and may not be
9 compelled to submit to involuntary medical treatment unless the State presents a
10 compelling governmental interest and demonstrates that involuntary medical
11 treatment is the least restrictive means of accomplishing that goal.
12

13 101. While the government has an interest in compelling the accused’s
14 appearance at trial, the perfunctory medical treatment determinations to be
15 performed at a bail hearing are insufficient to either advance this interest or to
16 protect the fundamental right to privacy. The lack of specific notice in the statute
17 and the insufficiency of the procedural protections for the accused leave the
18 accused vulnerable to wrongful determinations of medical need, coerced
19 administration of medications and medical treatment that the accused would
20 never select, and casual findings from a judge as an afterthought to a larger
21 proceeding.
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1 102. Even the Defendants recognize the crucial importance of this right.
2 Defendant State of Alaska, through the Defendant Attorney General Sullivan, has
3 filed suit in another sphere against the federal government, for “depriv[ing] . . .
4 citizens . . . of their rights under State law to make personal healthcare decisions
5 without governmental interference.” See Complaint at 4, *McCollum et al. v.*
6 *Sebelius*, Case No. 3-10-cv-91-RV/EMT (N.D. Fla. May 14, 2010), available at
7 [http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Cases/2010health](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Cases/2010health_carelawsuit/AMENDED%20COMPLAINT%20FINAL%20Date%20Stamped%20051410.pdf)
8 [carelawsuit/AMENDED%20COMPLAINT%20FINAL%20Date%20Stamped%20](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Cases/2010health_carelawsuit/AMENDED%20COMPLAINT%20FINAL%20Date%20Stamped%20051410.pdf)
9 [051410.pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Cases/2010health_carelawsuit/AMENDED%20COMPLAINT%20FINAL%20Date%20Stamped%20051410.pdf).

11 103. The Compulsory Medical Treatment provision denies the accused’s
12 right to privacy under the Alaska Constitution.

13 **3(b) The Compulsory Medical Treatment provisions deny the accused’s**
14 **Constitutional Right to Due Process of Law under the Alaska Constitution,**
15 **Article I, § 7**

16 104. Plaintiffs repeat and re-allege paragraphs 1–103 as if set forth
17 entirely herein.

18 105. The degree of due process required is contingent upon the private
19 interest involved. The more fundamental the private interest, the more procedural
20 safeguards are required. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

21 106. In the context of involuntarily administering drugs to prisoners, due
22 process requires, at a minimum, that the prisoner receive notice, be able to present
23 evidence, and to cross-examine witnesses. See, e.g., *Washington v. Harper*, 494
24

1 U.S. 210, 235 (1990). In regard to an institutionalized person’s ability to
2 challenge the administration of psychotropic drugs, the Alaska Supreme Court
3 has held that “due process requires that the petition provide sufficient information
4 about the proposed treatment plan for the respondent to prepare to challenge the
5 petition.” *Bigley v. Alaska Psychiatric Inst.*, 208 P.3d 168, 188 (Alaska 2009).

6 107. The Compulsory Medical Treatment provisions would permit a
7 judicial officer to order that a pretrial defendant surrender his fundamental right
8 to make decisions about his own medical treatment and what to do with his body,
9 absent any individualized notice that his liberty to make such fundamental
10 medical decisions might be restricted by the court.

11 108. This procedure does not adequately protect the accused’s
12 fundamental right, which is not diminished by his merely being charged with a
13 crime, to make medical decisions. At a minimum, he is entitled to notice and the
14 ability to adequately prepare and present his case as to why his right to bail
15 should not be conditioned on his submitting to involuntary medical treatment.

16 109. The Compulsory Medical Treatment provisions deny the accused’s
17 right to due process of law under the Alaska Constitution.

20 **4. Compulsory Work Requirement**

21 110. The Compulsory Work provision of the Bail Bill enables a judge to
22 require the accused to maintain employment or, if unemployed, to seek
23 employment as a condition of release.
24

1 111. Ms. McLean submitted to the Senate Judiciary Committee that
2 pretrial defendants often cite the need to go to work as an argument for release
3 and lower cash bond, but then do not actually go to work after release. The
4 Compulsory Work Requirement, she posited, would ensure that defendants
5 actually attend work and that their releases did not effectively “mock” the bail-
6 setting process.

7
8 **4(a) The Compulsory Work provision denies the accused’s Constitutional
9 Right to Due Process of Law under the Alaska Constitution, Article I, § 7**

10 112. Plaintiffs repeat and re-allege paragraphs 1–111 as if set forth
11 entirely herein.

12 113. The Alaska Constitution guarantees that no one should be deprived
13 of his liberty without due process of law. With regard to pretrial release,
14 specifically, conditions of release must serve some compelling governmental
15 interest and may not amount to punishment. *See Bell v. Wolfish*, 441 U.S. 520,
16 535 (1979).

17
18 114. The Compulsory Work Release provision infringes individual
19 liberty without serving any compelling governmental interest. Neither
20 punishment nor the desire to ensure that release avoids being a “mockery,” is a
21 compelling reason to infringe on the accused’s ability to decide what to do with
22 his labor or with the pretrial period of preparing to defend himself in court.

23 115. The Compulsory Work Release provision denies the accused’s right
24 to due process of law under the Alaska Constitution.

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5. Domestic Violence Home Restriction

116. The Domestic Violence Home Restriction attempts to amend an unconstitutional statute by creating a list of requirements which, when satisfied, would permit the accused to return to the home of the alleged victim.

117. Ms. McLean testified before the Senate Judiciary that the Domestic Violence Home Restriction attempts to address the issue in *Williams v. State*, 151 P.3d 460 (Alaska Ct. App. 2006).

118. There is nothing in the legislative history about the State’s need or rationale in applying this prohibition as broadly as it does.

**5(a) The Domestic Violence Home Restriction denies the accused’s
Constitutional Right to Equal Protection under the Alaska Constitution,
Article I, § 1**

119. Plaintiffs repeat and re-allege paragraphs 1–118 as if set forth entirely herein.

120. Article 1, Section 1 of the Alaska Constitution guarantees the right to equal protection under the law.

121. In *Williams v. State*, the Alaska Court of Appeals struck down the previous version of the Domestic Violence Home Restriction, finding that the statute reached too broadly by forbidding all persons accused of domestic violence from living in their homes with their families, an important liberty interest, without demonstrating that the accused demonstrated a threat to the victim in each case. 151 P.3d at 465. The court noted that domestic violence

1 encompasses a wide variety of crimes under Alaska law: “extortion, reckless
2 endangerment, trespass, and criminal mischief, to name a few—are domestic
3 violence crimes if they are committed by one household member against
4 another.” *Id.* at 467. It further reasoned that even in cases that would be
5 considered “typical” domestic violence situations, it may not be necessary for the
6 victim’s safety to require the accused’s removal from the home. *Id.* at 466.

7
8 122. The Domestic Violence Home Restriction continues to be
9 overbroad, denying all persons accused of domestic violence crimes the liberty of
10 returning to their homes for at least twenty days, regardless of lack of concerns
11 about safety or the desires of the victim.

12
13 123. The statute would deny a person convicted of a domestic violence
14 crime against a person, regardless of the circumstances of either that earlier
15 conviction or the present charge and regardless of the danger posed to the victim,
16 with the ability to return home.

17
18 124. While the Department of Law has asserted that the new statute
19 responds to the issues raised in *Williams*, the new statute continues to encompass
20 a wide class of individuals without articulating that in all circumstances, the
21 safety of the victim is at issue. This mandatory and overly-broad condition was
22 repugnant to the Alaska constitution in *Williams*, and continues to be repugnant
23 here.

1 130. The protection against unreasonable search and seizure of the home
2 is particularly strong because “in [no setting] is the zone of privacy more clearly
3 defined than when bounded by the unambiguous physical dimensions of an
4 individual’s home.” *Payton v. New York*, 445 U.S. 573, 589 (1980).

5 131. Usually, a search must meet probable cause standards, but in the
6 event of a “special need,” the standard may be lessened. In the context of pretrial
7 release, general community safety is not a “special need” as this is one of the
8 primary purposes of law enforcement. *See United States v. Scott*, 450 F.3d 863,
9 871 (9th. Cir. 2006). Therefore, the “special need” served by requiring
10 submission to warrantless searches must be to secure the accused’s appearance at
11 trial. *Id.*

12 132. Even parolees have some expectation of protection against
13 unreasonable search and seizure. Although the supreme court has upheld
14 warrantless searches of parolees by their probation officers and those acting under
15 their authority, these searches must be related to the special interest in
16 rehabilitating the parolee—not just for general law enforcement purposes. *See*
17 *Roman v. State*, 570 P.2d 1235, 1240 (Alaska 1977). The court was careful to
18 announce the limited nature of the search permitted and the justification for it:
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22 It is only the dual mandate of correctional officers to
23 rehabilitate their clients and to protect society that justifies an
24 intrusion into the privacy of the released offender. Therefore, the
broad permission to search imposed as a condition of Roman’s
parole, to the extent that it would permit searches by peace officers
other than at the direction of parole authorities, is invalid.

1 *Id.* at 1242 n.20.

2 133. Those who have not yet been convicted of a crime have a greater
3 expectation of privacy and protection against unreasonable search and seizure
4 than parolees. The Warrantless Search provisions would compel pretrial
5 defendants to submit to a search by *any* peace officer, without a sufficient
6 demonstration by the government that these searches served a compelling
7 government interest. The accused’s interests in privacy and freedom from
8 unreasonable search and seizure in his home—both rights that the Alaska
9 Constitution zealously guards—are too fundamental to be denied by a perfunctory
10 determination at a bail hearing.
11

12 134. The Warrantless Search provisions deny the accused’s right against
13 unreasonable search and seizure under the Alaska Constitution.
14

15 **6(b) The Warrantless Search provisions deny the accused’s Constitutional**
16 **Right to Due Process of Law under the Alaska Constitution, Article I, § 7**

17 135. Plaintiffs repeat and re-allege paragraphs 1–134 as if set forth
18 entirely herein.

19 136. “The ‘unconstitutional conditions’ doctrine, limits the government’s
20 ability to exact waivers of rights as a condition of benefits, even when those
21 benefits are fully discretionary.” *Scott*, 450 F.3d at 866 (citing *Dolan v. Tigard*,
22 512 U.S. 374, 385 (1994)). The United States Court of Appeals for the Ninth
23 Circuit has found that government cannot exact a pretrial defendant’s surrender of
24

1 his right against unreasonable search and seizure, even though release was
2 discretionary. *Id.*

3 137. In Alaska, the accused has a constitutional right to bail. The
4 coerced waiver of the rights against unreasonable search and seizure and to
5 privacy violates the accused's right to due process by conditioning release on bail
6 upon surrender of these rights.

7
8 138. Moreover, the Bail Bill's procedure for truncating these rights is
9 insufficient under the *Mathews v. Eldridge* test. The fundamental rights of a
10 pretrial defendant, not found guilty of any crime, against unreasonable search and
11 seizure and in privacy cannot be abridged through a simple determination that
12 warrantless searches will better enable the court to monitor conditions of release.

13
14 139. The Warrantless Search provisions deny the accused's right to due
15 process under the Alaska Constitution.

16 **6(c) The Warrantless Search provisions deny the accused's Constitutional**
17 **Right to Privacy under the Alaska Constitution, Article I, § 22.**

18 140. Plaintiffs repeat and re-allege paragraphs 1–139 as if set forth
19 entirely herein.

20 141. The Warrantless Search provisions deny the accused's right to
21 privacy under the Alaska Constitution by permitting unconstitutional searches of
22 the accused's home, vehicle, property, and person.
23
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7. Initial Appearance Extension

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2 142. The Bail Bill changes the period within which an arrestee must be
3 brought before a judicial officer from twenty-four to forty-eight hours.

4 143. Ms. McLean testified before the Senate Judiciary Committee that
5 the preference is always to get someone before a judicial officer as soon as
6 possible, but that sometimes this is simply not feasible.

7
8 144. Ms. McLean also testified that prosecutors may generally need
9 extra time to figure out what happened.

10 145. Nowhere in the legislative history was there any indication that the
11 current twenty-four-hour timeframe imposes a burden or causes prosecutors
12 difficulties.

13 146. In the eighteen years since *Riverside v. McLaughlin*, 500 U.S. 44
14 (1991), Alaska has guaranteed initial appearances within twenty-four hours.

16 **7(a) The Initial Appearance Extension denies the accused's Constitutional** 17 **Right against Unreasonable Search and Seizure under the Alaska** 18 **Constitution, Article I, § 14**

19 147. Plaintiffs repeat and re-allege paragraphs 1–146 as if set forth
20 entirely herein.

21 148. The United States Supreme Court has found that the State must
22 hold a probable cause hearing either before or promptly after the arrest of a
23 person; failure to do so is in violation of the right against unreasonable search and
24 seizure. *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975).

1 149. Even though the Court has articulated that “a jurisdiction that
2 provides judicial determinations of probable cause within 48 hours of arrest will,
3 as a general matter, comply with the promptness requirement of *Gerstein*,” it has
4 also stated that a state’s procedure may, despite its having been effectuated within
5 forty-eight hours, violate the Constitution if there was an unreasonable delay. *See*
6 *McLaughlin*, 500 U.S. at 56 (“Examples of unreasonable delay are delays for the
7 purpose of gathering additional evidence to justify the arrest, a delay motivated
8 by ill will against the arrested individual, or delay for delay’s sake.”).

10 150. The State of Alaska has provided no legitimate reason why it must
11 alter the current practice of allotting twenty-four hours for initial-appearance
12 hearings. It is not clear from the legislative history whether the Extension is
13 motivated by practical concerns, a desire to gather more information before bail
14 hearings, or to extend detention periods. At any rate, extending the maximum
15 time in which initial appearances must be held to the outer limits of the Federal
16 Constitution’s protection serves to unreasonably delay probable cause hearings in
17 violation of Alaska’s more expansive right against unreasonable search and
18 seizure.
19

21 151. The Initial Appearance Extension violates the accused’s right
22 against unreasonable search and seizure under the Alaska Constitution.
23
24

1 **7(b) The Initial Appearance Extension denies the accused’s Constitutional**
2 **Right to a Speedy Trial under the Alaska Constitution, Article I, § 11**

3 152. Plaintiffs repeat and re-allege paragraphs 1–151 as if set forth
4 entirely herein.

5 153. The right to a speedy trial attaches “from the date the defendant is
6 arrested, initially arraigned, or from the date the charge is served upon the
7 defendant, whichever is first.” Alaska R. Crim. P. 45(c)(1).

8 154. The interests to be protected by the speedy trial guarantee have long
9 been outlined by the supreme court: “(1) to prevent harming the defendant by a
10 weakening of his case as evidence and memories of witnesses grow stale with the
11 passage of time; (2) to prevent prolonged pre-trial incarceration; and (3) to limit
12 the infliction of anxiety upon the accused because of long-standing charges.”
13 *Rutherford v. State*, 486 P.2d 946, 947 (Alaska 1971). “Whether a speedy trial
14 violation has occurred depends on the facts of each case and general
15 constitutional principles.” *Id.* at 948.

16 155. The Initial Appearance Extension needlessly prolongs the amount
17 of time that a defendant may be incarcerated before being brought before a
18 judicial officer. The amount of time that the accused may be imprisoned before a
19 bail hearing is now doubled, increasing the timeframe in which an arrestee
20 anxiously awaits his first appearance.

21 156. The Initial Appearance Extension denies the accused’s right to a
22 speedy trial under the Alaska Constitution.
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8. Suspicionless Searches

157. The Suspicionless Search provisions of the Bail Bill would, when imposed as bail conditions, enable a police officer to, at any time, require the accused to submit to urinalysis, breath or blood tests.

8(a) The Suspicionless Search provisions deny the accused’s Constitutional Right against Unreasonable Search and Seizure under the Alaska Constitution, Article I § 14

158. Plaintiffs repeat and re-allege paragraphs 1–157 as if set forth entirely herein.

159. To render the searches in question “reasonable,” the state needs to demonstrate a compelling interest, which is to be weighed against the privacy interest of the individuals. The government must advance a “special need” to justify warrantless searches. *See Scott*, 450 F.3d at 871.

160. The privacy interest advanced is contingent upon not only what is being searched, but how and under what conditions the search is effectuated. *See Anchorage Police Dep’t Employees Ass’n v. Municipality of Anchorage*, 24 P.3d 547 (Alaska 2001). Random drug tests of city employees burdened the employees’ interest in privacy by adding an element of “fear and surprise” and creating “continuous and unrelenting government scrutiny” which exposed one to “unannounced testing at virtually any time.” *Id.* at 557-58.

161. The Suspicionless Searches sanctioned by the Bail Bill permit random searches even broader in scale, because an employee can reasonably

1 expect only to be searched at work. There is no language that limits the time,
2 place or manner in which the Suspicionless Searches may be performed, creating
3 a constant shadow of government scrutiny and a huge burden on the defendant's
4 privacy interests.

5 162. Furthermore, the only "special need" the state can advance in the
6 Suspicionless Searching of pretrial detainees is in securing appearance at trial.
7 There is no nexus between a pretrial releasee consuming alcohol weeks before
8 trial and his ability to appear at trial weeks later. The condition of release is more
9 tailored to general crime control and investigation than to any "special need"
10 related to pretrial release.
11

12 163. The Suspicionless Search provisions deny the accused's right
13 against unreasonable search and seizure under the Alaska Constitution.
14

15 **8(b) The Suspicionless Search provisions deny the accused's Constitutional**
16 **Right to Due Process of Law under the Alaska Constitution, Article I § 7**

17 164. Plaintiffs repeat and re-allege paragraphs 1–163 as if set forth
18 entirely herein.

19 165. The pretrial defendant's "consent" to such searches is no
20 justification for their imposition as the government cannot condition bail, which
21 is a right under the Alaska Constitution, on the waiver of another right, here, the
22 right against unreasonable search and seizure. *See Scott*, 450 F.3d at 866.
23

24 166. Furthermore, the procedures involved are insufficient to protect the
accused's rights. Parolees have the right to be heard and have sufficient notice

1 and opportunity to prepare and present a case before parole conditions permitting
2 warrantless searches are imposed. *See Roman*, 570 P.2d at 1244; *see also Hugo*
3 *v. State*, 2006 WL 2924993, at *4 (Alaska Ct. App. Oct. 11, 2006) (unpublished
4 memorandum decision) (discussing due process requirements for parole
5 conditions, though rejecting defendant’s claims because not preserved on appeal).
6 In the case of Suspicionless Searches, pretrial defendants, who have been
7 convicted of no crime, have no notice that they may be required to submit to these
8 searches and, therefore, have inadequate procedural protection of their rights.
9

10 167. The Suspicionless Search provisions deny the accused’s right to due
11 process under the Alaska Constitution.

12 **8(c) The Suspicionless Search provisions deny the accused’s Constitutional**
13 **Right to Privacy under the Alaska Constitution, Article I § 22**

14 168. Plaintiffs repeat and re-allege paragraphs 1–167 as if set forth
15 entirely herein.
16

17 169. For the reasons outlined under 8(a), the Suspicionless Search
18 provisions deny the accused’s right to privacy under the Alaska Constitution by
19 permitting unconstitutional searches of the accused’s person.
20

21 **9. Antiabuse Treatment**

22 170. The Antibuse Treatment provision of the Bail Bill would permit a
23 judicial officer to order the accused to take antibuse treatment drugs as a
24 condition of bail.

1 **9(a) The Antiabuse Treatment provisions deny the accused’s Constitutional**
2 **Right to Privacy under the Alaska Constitution, Article I § 22**

3 171. Plaintiffs repeat and re-allege paragraphs 1–170 as if set forth
4 entirely herein.

5 172. Alaska’s explicit right to privacy “shields the ingestion of foods,
6 beverages or other substances.” *Myers*, 138 P.3d at 246.

7 173. The Antiabuse Treatment provision denies the accused the
8 fundamental right to make medical decisions without proffering a compelling
9 government interest for doing so. Under the Antiabuse Treatment provision,
10 defendants accused of importation charges, which do not even include
11 consumption as an element of the crime, could be ordered to submit to antiabuse
12 treatment. Common anti-substance abuse medications carry serious complications
13 and pose risk of drug interactions potentially harmful to individual patients.
14 Without substantial procedural protections, the accused may be ordered to take a
15 medication harmful to his health.
16

17 174. The Antiabuse Treatment provision denies the accused’s right to
18 privacy under the Alaska Constitution.
19

20 **9(b) The Antiabuse Treatment provisions deny the accused’s Constitutional**
21 **Right to Due Process of Law under the Alaska Constitution, Article I § 7**

22 175. Plaintiffs repeat and re-allege paragraphs 1–174 as if set forth
23 entirely herein.
24

1 188. That the Court issue a preliminary and permanent injunction
2 restraining defendants, their agents, employees, assigns, and all persons acting in
3 concert or participating with them, from enforcing the Presumption Against Bail,
4 the Mandated Methamphetamine Bond, the Compulsory Medical Treatment, the
5 Warrantless Search, the Compulsory Work Requirement, the Ongoing Treatment
6 Plan, the Suspicionless Search, the Antiabuse Treatment, the Domestic Violence
7 Home Restriction, and the Initial Appearance Extension;
8

9 189. That the Court declare that plaintiffs are “constitutional” and/or
10 public interest litigants under AS 09.60.010(c) and Alaska Civil Rule 82;

11 190. That the Court award plaintiffs their full reasonable costs and
12 attorney’s fees incurred during this litigation, under the applicable court rules and
13 other provisions of law concerning the award of such costs and attorney’s fees to
14 public interest litigants enforcing constitutional rights; and
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16 191. That the Court grant any other and further relief as may be justly
17 and appropriately provided in light of the evidence presented to the Court.
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