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

KEVIN F. McCOY and MARY C. GEDDES,)
)
 Plaintiffs,)
)
 vs.)
)
 MICHAEL J. DUNLEAVY, Governor of)
 the State of Alaska,)
)
)
 Defendant.)
)

Case No 3AN-19-0830 CI

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Kevin F. McCoy and Mary C. Geddes, proceeding *pro se*,
state for their complaint against the defendant and allege as follows:

I. SUMMARY OF THE CIVIL ACTION

1. This is a complaint for declaratory judgment and injunctive relief filed by two Alaska citizens against the Governor of their State. The Governor violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution when, on June 13, 2019, he unilaterally ordered the Alaska Legislature to convene a Second Special Session in a location other than the state capital in Juneau without the Legislature's agreement. This order subverted

Complaint for Declaratory Judgment and Injunctive Relief
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the ability of the Legislature to gather a sufficient number of its members to do its business.

A copy of the Governor's Executive Proclamation ordering the Legislature to conduct a Special Session in Wasilla, Alaska is attached as Exhibit A to this Complaint.

II. SUMMARY OF RELIEF REQUESTED

2. Plaintiffs seek a declaratory judgment holding that:

(a) The Governor's June 13, 2019 Executive Proclamation requiring the Legislature to convene the Second Special Session in Wasilla, Alaska violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.

(b) AS 24.05.100(b), as it pertains to the Governor's authority to call special sessions away from the capital, violates the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution unless construed to require Legislative agreement to the location away from the capital.

(c) All proceedings conducted pursuant to defendant Dunleavy's June 13, 2019 Executive Proclamation are void and without legal effect or consequence because the initiating proclamation violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.

3. Plaintiffs request entry of a preliminary and a permanent injunction that:

(a) enjoins defendant Dunleavy from ordering the Alaska Legislature to convene at a location other than the Capital without the Legislature's agreement; and

(b) enjoins defendant Dunleavy from implementing his 182 line-item vetoes of the FY2020 operating budget until the expiration of such time as is allowed by the Alaska Constitution for the legislature to consider and vote on whether to override any of the Governor's appropriation vetoes; that is, until after the fifth day of the next regular or lawfully proclaimed special session of the legislature;

III. PARTIES

4. *Pro se* Plaintiff Kevin F. McCoy is a public interest claimant for protection and enforcement of a constitutional claim pursuant to AS 09.60.010(c). At all time relevant to this cause of action, Mr. McCoy has been a resident of Anchorage in the Third Judicial District. He is a citizen of Alaska, having resided here since 1976.

5. *Pro se* Plaintiff Mary C. Geddes is a public interest claimant for protection and enforcement of a constitutional claim pursuant to AS 09.60.010(c). At all times relevant to this cause of action, Ms. Geddes has been a resident of

Anchorage in the Third Judicial District. She is a citizen of Alaska having resided here since 1984.

6. Defendant Michael J. Dunleavy, is the Governor of the State of Alaska. He issued the June 13, 2019 Executive Proclamation purporting to require the Alaska State Legislature to convene the Second Special Session in Wasilla.

III. JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action pursuant to AS 22.10.020 because it is a civil action seeking injunctive and declaratory relief.

8. Venue is proper in the Third Judicial District pursuant to Alaska Rule of Civil Procedure 3(e).

IV. ALLEGATIONS OF LAW

9. The Separation of Powers Doctrine is implicit in the Alaska State Constitution. The Executive, the Legislature, and the Courts are the three co-equal branches of government under the Alaska Constitution. The Separation of Powers Doctrine is designed to preclude the exercise of arbitrary power and to safeguard the independence of each branch of government.

10. Article II, Section 9 of the Alaska Constitution provides in the pertinent part:

Special sessions may be called by the governor[.] At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special Sessions are limited to 30 days.

11. Article II, Section 16 of the Alaska Constitution provides in the pertinent part:

Bills vetoed after the adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature.

12. AS 24.05.100 ("Special sessions") provides:

(a) The legislature may hold a special session not exceeding 30 calendar days in length. The special session shall be called in either of the following ways:

(1) The governor may call the legislature into special session by issuing a proclamation. At a special session called by the governor, legislation is limited to the subjects designated by the governor in the proclamation or to the subjects presented by the governor, and to reconsideration of legislation, if any, vetoed following a regular session of that legislature. To enable the legislators to make travel and other arrangements, a proclamation for a special session shall be issued at least 30 days in advance of the convening date stated in the proclamation unless

(A) the proclamation is issued under AS 26.23.020(k) ;

(B) the special session is called to address a disaster; in this subparagraph, "disaster" has the meaning given in AS 26.23.900;

(C) the proclamation is issued while both houses are in regular or special session; or

(D) the proclamation is issued within one hour after the second house has adjourned from a regular or special session.

(2) The legislature may call itself into special session if two-thirds of the membership responds in the affirmative to a poll conducted by the presiding officer of each house. Each presiding officer may initiate a poll by their joint agreement, and each shall initiate a poll upon the request of 25 percent of the membership of each house, expressed in writing and signed by those members. When two-thirds of the membership to which the legislature is entitled responds in the affirmative, the president of the senate and speaker of the house shall jointly announce the result of the poll and a date for the convening of the special session. If one of the presiding

officers is deceased, has resigned, or is incapacitated, the presiding officer of the other house may conduct the poll of the members of both houses.

(b) A special session may be held at any location in the state. If a special session called under (a)(1) of this section is to be convened at a location other than at the capital, the governor shall designate the location in the proclamation. If a special session called under (a)(2) of this section is to be convened at a location other than at the capital, the presiding officers shall agree to and designate the location in the poll conducted of the members of both houses.

V. ALLEGATIONS OF FACT

The June 13, 2019 Executive Proclamation

13. On June 13, 2019, defendant Dunleavy issued an executive proclamation calling the Thirty-First Legislature of the State of Alaska to its second special session. The stated purpose of second special session was to consider passing a bill addressing the permanent fund dividend. Specifically, the proclamation asked the legislature to consider:

An appropriation bill that transfers the amount authorized under AS 37.13.145(b) from the earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the payment of permanent fund dividends and for administrative and associated costs for the fiscal year ending June 30, 2020.

14. The proclamation ordered that the second special session be convened on July 8, 2019, in Wasilla, Alaska and recommended the Wasilla Middle School was an appropriate venue.

15. Defendant Dunleavy's action was unprecedented. No previous governor has ever called the Legislature into a special session outside of the capital.

16. On information and belief, defendant Dunleavy did not consult with the Legislature before issuing his proclamation setting the second special session in Wasilla, and the Legislature never agreed to Wasilla as the location.

The 182 Line-Item Vetoes

17. On June 28, 2019, defendant Dunleavy vetoed 182 line-items from the state's FY2020 operating budget passed by the Alaska State Legislature. The funds vetoed from the operating budget totaled 444 million dollars and included:

- \$130 million cut from the University of Alaska
- \$50 million cut from Medicaid
- 20.7 million cut from senior benefits
- \$48.9 million cut from School Bond Debt Reimbursement
- \$6.0 million cut from the Village Public Safety Officer Program
- \$3.4 million from the Ocean Ranger Program
- 2.7 million from Public Broadcasting

Confusion over the lawfulness of Defendant Dunleavy's venue designation

18. Defendant Dunleavy's unilateral proclamation ordering the Legislature to convene in a location other than the capital in Wasilla caused great confusion among legislators and citizens. Some legislators concluded the unprecedented venue directive included in the proclamation violated the Separation of Powers Doctrine; they believed only the legislature itself could determine where it could most effectively fulfill its constitutional responsibilities.

Consequently, they headed to the capital, Juneau, where this year's regular and first special session had been convened. Other legislators felt obligated to obey defendant Dunleavy's unilateral directive to meet in Wasilla notwithstanding reduced access to legislative offices, telecommunications equipment, and computers.

19. There are sixty Alaska state legislators: forty in the House and twenty in the Senate.

20. On Monday, July 8, 2019, the first day of the Special Session, 21 state legislators assembled in Wasilla. The group lacked a quorum but planned to participate in 'technical sessions' throughout the first week of the special session in conformance with the charge from the Governor. According to KTUU news, Senator Mia Costello told members of the public that decision to attend the Wasilla meeting "comes down to the constitution and our duty to obey it. " House Minority Leader Lance Pruitt said that members would stay in Wasilla through the week and wait for legislators in Juneau to come there.

21. Thirty-seven legislators assembled in Juneau, the capital, on Monday, July 8. By the next day, Tuesday, July 9, thirty-eight legislators were present in Juneau but eighteen remained absent. One more legislator arrived on Wednesday, July 10, but the others still remained in Wasilla.

22. The confusion over the lawful location of the second special session, caused entirely by defendant Dunleavy's unlawful proclamation, had the effect of preventing the full Legislature - as a body - from meeting, debating, and evaluating whether or not defendant Dunleavy's 182 line-item vetoes should be

overridden within the five-day limit imposed by Article II, Section 16 of the Constitution.

23. The confusion over the lawful location of the second special session continues to impair the legislature's ability, as a body to meet, debate, and evaluate legislation addressing the permanent fund dividend issue identified in the June 13, 2019 Proclamation.

VI. CLAIMS FOR RELIEF

COUNT 1

(AS 24.05.100(b) is facially unconstitutional)

24. Plaintiffs incorporate by reference the allegations contained paragraphs 1 through 23 above.

25. AS 24.05.100(b) is facially unconstitutional because it exceeds the scope of the Governor's lawful authority to call special sessions under Article II, Section 9 of the Alaska Constitution. This statute facially intrudes on the power of the legislature, as an independent branch of government, to determine how best to fulfill its constitutional responsibilities. Purportedly giving the Governor the power to unilaterally determine venue for a special legislative session invites the exercise of arbitrary power and improperly intrudes on the independence of the legislature. The statute shares the same constitutional infirmity as would a statute enacted by the legislature that required the Governor to work in his Anchorage office the second week of each month. Under the Constitution and the doctrine of separation of powers, the Governor gets to decide where to do his work and fulfill his responsibilities; so does the Legislature.

COUNT 2
(AS 24.05.100(b) is unconstitutional as applied)

26. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 25 above.

27. AS 24.05.100(b) is unconstitutional as applied because it was construed by the Governor to set the location for for special sessions far from the state capital without any regard for the Legislature's wishes or the Legislature's independent evaluation of its ability to meaningfully fulfill its constitutional responsibility at a location other than the Capital. AS 24.05.100(b) as applied in this case violated the Separation of Powers Doctrine resulting in the arbitrary exercise of power that improperly intruded on the Constitutional independence of the legislature.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request relief as follows:

1. A preliminary and permanent injunction that:
 - (a) enjoins defendant Dunleavy from ordering the Alaska State Legislature to convene at a location other than the Capital without the Legislature's agreement;
 - (b) enjoins defendant Dunleavy from implementing the 182-line item vetoes in the FY 2020 state operating budget until such time as the Legislature has had its constitutionally guaranteed opportunity to meet following a lawfully proclaimed special session and determined as a body within

the five-day override window whether to override one or more of the Governor's 182 vetoes;

2. A declaratory judgment that:

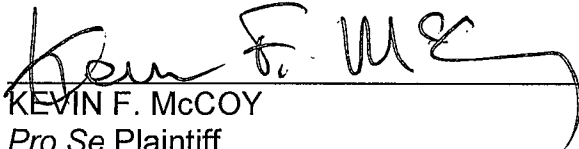
(a) holds that AS 24.05.100(b), as it pertains to the Governor's authority to call special sessions away from the Capital violates the Doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution unless construed to require legislative agreement to the location away from the Capital;

(b) holds that all proceedings conducted pursuant to defendant Dunleavy's June 13, 2019 Executive Proclamation are without effect because the initiating proclamation violated the Doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.


3. For reasonable costs and attorney's fees incurred by plaintiffs as allowed by law; and

4. For any further relief the Court deems just, equitable, and appropriate.

Dated at Anchorage, Alaska this 15th day of July, 2019.



KEVIN F. McCOY
Pro Se Plaintiff
(Alaska Bar # 7705042 Retired)



MARY C. GEDDES
Pro Se Plaintiff
(Alaska Bar # 8511157 Inactive)

STATE OF ALASKA



Executive Proclamation by *Governor Michael J. Dunleavy*

Under the authority of Article II, Section 9, and Article III, Section 17, Constitution of the State of Alaska and in the public interest, I call the Thirty-First Legislature of the State of Alaska into its second special session in Wasilla, Alaska, at 1:00 p.m., on July 8, 2019, at the recommended venue of Wasilla Middle School, to consider passage of bills on the following subject:

An appropriation bill that transfers the amount authorized under AS 37.13.145 (b) from the earning reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045 (a)) for the payment of permanent fund dividends and for administrative and associated costs for the fiscal year ending June 30, 2020.

Dated this 13th day of June, 2019.

Time: 11:00 (a.m./p.m.)



A handwritten signature of Michael J. Dunleavy in black ink, written over a horizontal line.

Michael J. Dunleavy, Governor
who has also authorized the seal of the State
of Alaska to be affixed to this proclamation.

EXHIBIT A