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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STANLEY ALLEN VEZEY,

Plaintiff,

vs.

BRYCE EDGMON, Speaker of the Alaska State House of Representatives, and CATHERINE A. GIESSEL, President of the Alaska State Senate, Individually,

Defendants.

Case No.: 4FA-19-02233 CI

DEFENDANTS' RESPONSE BRIEF ON STANDING ISSUE

I. INTRODUCTION

Pursuant to the Court's Amended Request for Supplemental Briefing on the Issue of the Plaintiff's Standing (dated Nov. 5, 2019), the Defendants offer this response brief regarding Mr. Vezey's lack of standing.

II. ARGUMENT

Mr. Vezey devotes a substantial portion of his supplemental brief to lecturing the Court about its alleged misapprehension of the legal issues or the stakes involved.[1] Mr. Vezey is mistaken, but Defendants do not address these errors in detail because the dispositive legal question renders much of his brief irrelevant. Mr. Vezey is unable to satisfy his burden of establishing either interest-injury or citizen-taxpayer standing.

[1] *See* Plaintiff's Supplemental Brief re: Standing ("Vezey Br.") at 1-7, 15-17.

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A. Mr. Vezey Does Not Have Interest-Injury Standing

In a nutshell, Mr. Vezey's "interest-injury" argument is that he is a resident of Alaska and entitled to the benefit of State appropriations, and he believes that it is conceivable that some appropriations may eventually be disrupted as the result of a hypothetical legal challenge.[2] There are (at least) three fundamental problems with Mr. Vezey's contention.

First, Mr. Vezey's claimed "injury" is entirely speculative and hypothetical.[3] He has not suffered any injury, and he does not claim to have suffered any. In fact, Mr. Vezey avers that he received a permanent fund dividend ("PFD") as a result of the procedures that he now contends may have been improper.[4] As a party that *benefited* from the action at issue, Mr. Vezey lacks standing to raise these issues.[5] Mr. Vezey's brief instead asserts that his purported injury is his "reasonable apprehension" that certain budgetary appropriations may at some point be placed "in jeopardy" if someone brings a legal challenge to the way the appropriations were handled. This is not a reasonable apprehension because, for reasons stated in Defendants' earlier briefing, the second special session was handled properly and is not subject to any valid legal challenge. More pointedly, Mr. Vezey has offered no evidence of any injury. His affidavit merely states

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[2] *See id.* at 8-12.
[3] *See Bowers Office Prods., Inc. v. Univ. of Alaska*, 755 P.2d 1095, 1097-98 (Alaska 1988) ("while Alaska's standing rules are liberal this court should not issue advisory opinions or resolve abstract questions of law").
[4] *See* Affidavit of Stanley Allen Vezey ¶ 4.
[5] *See Tesoro Corp. v. State, Dep't of Revenue*, 312 P.3d 830, 845-46 (Alaska 2013) (finding that Tesoro lacked standing to raise claim because it had not identified an actual injury it had suffered as a result of the conduct at issue).

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that Mr. Vezey has been a resident of Alaska, that he has received a PFD, and that he pays certain taxes and fees to the State.[6] He says nothing about any apprehension – reasonable or otherwise – concerning legal challenges. Unsupported assertions in a supplemental brief are not evidence.[7]

Second, Mr. Vezey's lawsuit is self-defeating. While Mr. Vezey claims that his economic interest in a PFD check is in serious jeopardy of being voided as a result of a legal challenge, *Mr. Vezey's ill-considered legal challenge is the only thing causing this jeopardy.* If Mr. Vezey were somehow to prevail in his lawsuit and obtain a ruling that the second special session (or some part thereof) were invalid, he would have triggered the very losses that he claims he is trying to avoid. This is akin to Mr. Vezey shooting himself in the foot and then alleging interest-injury standing to challenge gun safety laws. Mr. Vezey should not be permitted to use willfully self-inflicted litigation risk as a way to bootstrap his way to interest-injury standing.

Third, Mr. Vezey admits that he is asserting generic political concerns that affect the public as a whole, not him personally in any direct and meaningful way.[8] As the Alaska Supreme Court has confirmed, "'a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper

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[6] *See generally* Affidavit of Stanley Allen Vezey.

[7] *See, e.g., Versarge v. Township of Clinton New Jersey*, 984 F.2d 1359, 1370 (3d Cir. 1993) ("[W]e have repeatedly held that unsubstantiated arguments made in briefs or at oral argument are not evidence to be considered by this Court.").

[8] *See, e.g.*, Vezey Br. at 8 (asserting that he filed suit to protect "the interests of all Alaskans"); *id.* at 11-12 (asserting that he is raising issues regarding preservation of all Alaskans' permanent fund dividend payments, which includes roughly 91% of Alaskans).

application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large'—does not present a controversy."[9] Such is the case here.

B. Mr. Vezey Does Not Have Citizen-Taxpayer Standing.

Mr. Vezey is not an "appropriate" plaintiff, and he therefore fails to satisfy the citizen-taxpayer test for standing. As explained in the Defendants' opening brief, the other legislators who traveled to Wasilla were more directly affected by the Defendants' actions, and there is nothing to indicate that they would be unwilling to sue if they thought their rights had been violated in some way.[10] "That individuals who are more directly affected have chosen not to sue despite their ability to do so does not confer citizen-taxpayer standing on an inappropriate plaintiff."[11] Mr. Vezey is an inappropriate plaintiff.

Mr. Vezey fails to consider the other legislators as potential "appropriate plaintiffs." He dismisses these other legislators as being inappropriate plaintiffs – or at least no more appropriate than himself – because "the Alaska Supreme Court has previously denied justiciability in cases deemed to be disputes between legislators."[12] Mr. Vezey is mistaken. The fact that the Alaska Supreme Court found one dispute non-justiciable does not mean

[9] *Lamb v. Obama*, 2014 WL 1016308, at *1 (Alaska Mar. 12, 2014) (finding interest-injury standing was lacking when plaintiff raised a generic political issue) (unpublished) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992)).

[10] It is difficult to understand Mr. Vezey's insistence that "[t]here is no one more directly affected by Defendants' acts . . . and no one more directly affected by the loss of trust in the legislative leadership than Plaintiff." *Id.* at 13-14. He does not explain the basis for this claim, and none is apparent.

[11] *Keller v. French*, 205 P.3d 299, 303 (Alaska 2009).

[12] Vezey Br. at 14-15 (citing *Malone v. Meekins*, 650 P.2d 351, 359 (Alaska 1982)).

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that legislators are precluded from seeking legal recourse against one another in an appropriate case. For example, in *Kerttula v. Abood*, the Superior Court and then the Alaska Supreme Court both ruled on a discovery dispute in litigation between legislators – the dispute was *not* found to be non-justiciable.[13] Further, the fact that a dispute may be found to be non-justiciable does not speak to the propriety or adequacy of the plaintiff – it speaks to the justiciability of the underlying issue. As Defendants have already briefed extensively, Mr. Vezey's claim is non-justiciable. It does not matter whether the claim is brought by Mr. Vezey, a legislator, or anyone else. In short, the potential justiciability of the underlying dispute does not dictate who qualifies as an "appropriate plaintiff." The other legislators are more appropriate plaintiffs. The fact that they have chosen not to bring suit at this time does not make Mr. Vezey an appropriate plaintiff.

On November 25, 2019, Mr. Vezey filed a supplement to his opposition to defendants' motion to dismiss that addresses, in part, the potential application of the citizen-taxpayer standing test. Defendants explain below why the recent order by the Anchorage Superior Court in *McCoy v. Dunleavy* does not apply to Mr. Vezey's case.[14]

First, while both cases relate to the second special session of the Legislature, the similarities largely end there. The plaintiffs in Anchorage seek a declaration that AS 24.05.100(b) is unconstitutional because it violates article II, section 9 of the Alaska

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[13] 686 P.2d 1197 (Alaska 1984) (litigation between Senator Kerttula and certain Representatives).

[14] *See* Order Regarding Defendant's Motion to Dismiss (*McCoy v. Dunleavy*, Case No. 3AN-19-08301CI) (copy attached to Plaintiff's Supplement to Opposition to Motion to Dismiss Pursuant to: Legislative Immunity; Civil Rule 12(b)(2); Nonjusticiability; and Civil Rule 12(b)(6)).

Constitution and the doctrine of separation of powers. Mr. Vezey, on the other hand, seeks a declaration that the second special session was null and void and subject to the Legislature's Open Meeting Guidelines, and he further seeks injunctions requiring the Defendants to convene a special session in Wasilla and preventing any actions taken during the second special session from being implemented. The legal theories, goals, and requested relief in the two cases are entirely distinct.

Second, the *McCoy* decision applied an overly literal reading of the citizen-taxpayer standing test. A plaintiff is generally not considered to be "appropriate" when there is another potential plaintiff more directly affected by the challenged conduct who had sued or was likely to sue. In seeking to distinguish *Keller*, the *McCoy* decision focused on the fact that other parties (who were admittedly more appropriate plaintiffs) had already filed suit.[15] This was correct, but the Alaska Supreme Court went on to explain in *Keller* that other potential plaintiffs (i.e., executive branch officials) who had not yet sued (and may never sue) were also more appropriate plaintiffs.[16] The fact that they had not yet sued – and, as to Governor Palin, had stated she did not intend to sue – did not somehow make the *Keller* plaintiffs appropriate plaintiffs who could meet the test for citizen-taxpayer standing. The same was true in *Law Project for Psychiatric Rights, Inc. v. State*.[17] The *McCoy* decision relies on citizen-taxpayer cases that predate *Keller* and *Law Project for*

[15] *See id.* at 21.
[16] *Keller*, 205 P.3d at 303-04.
[17] 239 P.3d 1252, 1255-56 (Alaska 2010).

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Psychiatric Rights, Inc. There is no reason to believe that other more appropriate plaintiffs would be unwilling to bring suit here if they believed such action was appropriate.

III. CONCLUSION

Mr. Vezey has not shown (and cannot show) how he was harmed, even indirectly, by the Defendants' conduct. Nor has he demonstrated that he is an appropriate plaintiff or that legislators who traveled to Wasilla would be unable to bring suit if they believed their rights were being infringed. As a result, Mr. Vezey does not have standing to bring this claim. His lawsuit should be dismissed for lack of standing as well as the other grounds already briefed by the Defendants.

DATED: November 29, 2019

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CERTIFICATE OF SERVICE

This certifies that on November 29, 2019, a copy of the foregoing was served via e-mail (pursuant to the parties' agreement) on:

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Kevin Cuddy