

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.

E-FILED in the TRIAL COURTS
State of Alaska Fourth District

NOV 21 2019

Clerk of the Trial Courts

Case No.: 4FA-19-02233 CI

DEFENDANTS' SUPPLEMENTAL 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 explain why Mr. Vezey lacks standing to bring his claims.

II. STANDARD FOR DECISION

Alaska Rule of Civil Procedure 12(b)(1) allows a defendant to move for dismissal based on the Court's lack of jurisdiction over the subject matter. "In discussing the standing requirement, [the Supreme Court of Alaska] has stated that an Alaska court has no subject matter jurisdiction unless the lawsuit before it presents an actual controversy involving a genuine relationship of adversity between the parties."¹ The fundamental

¹ *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995).

question regarding standing is “whether the litigant is a proper party to seek adjudication of a particular issue. Although we favor access to judicial forums, a basic requirement of standing is adversity of interests.”²

III. ARGUMENT

There are two types of standing in Alaska: (i) interest-injury standing, and (ii) citizen-taxpayer standing.³ Mr. Vezey is unable to satisfy either of these standing tests. *Keller v. French* is dispositive of Mr. Vezey’s claims. As in *Keller*, there are multiple grounds that support dismissal of Mr. Vezey’s lawsuit, including that the dispute is not justiciable and that Mr. Vezey lacks standing to bring this suit.⁴ His lawsuit should be dismissed.

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

In order to establish interest-injury standing, Mr. Vezey was required to demonstrate that he had a sufficient personal stake in the outcome of the case and an interest which is adversely affected by the complained-of conduct.⁵ Mr. Vezey’s Complaint fails to identify any interest of his that was adversely affected by the Defendants’ conduct here. Instead,

² *Law Project for Psychiatric Rights, Inc. v. State*, 239 P.3d 1252, 1255 (2010); *Myers*, 891 P.2d at 203 (“adversity constitutes the basic requirement for standing in Alaska.”).

³ *Law Project for Psychiatric Rights*, 239 P.3d at 1255. For interest-injury standing, Alaska also recognizes third-party standing, which allows a litigant to raise the rights of a third person in special circumstances. *Id.* Third-party standing is not at issue here as Mr. Vezey does not assert a third party’s rights in this action.

⁴ *Keller v. French*, 205 P.3d 299, 302 (Alaska). Defendants have previously briefed the justiciability issue and rely on that briefing.

⁵ *See id.* at 304.

he points out that the only persons who were allegedly adversely affected were those legislators who assembled in Wasilla – not Mr. Vezey.⁶

There is no indication, evidence, or even allegation that the location of the special session was likely to – or did – cause Mr. Vezey any sort of harm.⁷ At most, Mr. Vezey complains that the fact that some legislators went to Wasilla while others went to Juneau was a waste of money⁸ or that the legislators who convened in Juneau had “forsaken their constitutional duty[.]”⁹ Neither of these allegations describes any “personal stake” that Mr. Vezey has in the outcome of this case. Nor has Mr. Vezey identified any adverse effect he personally has suffered from the Defendants’ conduct. Just as in *Keller v. French*, where five state legislators did not have interest-injury standing to sue a legislative committee by simply contending that “they and Alaskans face damaged reputations if the investigation continues,”¹⁰ here too it is not enough for Mr. Vezey to allege that the Legislature should have met elsewhere. Generalized disagreement with a legislator’s conduct, or an assertion that tax dollars should have been spent differently, is not sufficient to satisfy the test for interest-injury standing. Mr. Vezey has no plausible injury to his own interests from the brief and temporary disagreement regarding the proper location of the second special session.

⁶ Complaint ¶ 22.

⁷ See *Keller*, 205 P.3d at 305 (finding no interest-injury standing where it was not self-evident that the conduct at issue was likely to cause plaintiffs any sort of harm).

⁸ Complaint ¶ 14.

⁹ *Id.* ¶¶ 19-21.

¹⁰ *Keller*, 205 P.3d at 305.

Perhaps unwittingly, Mr. Vezey *does* identify the parties that he believes were adversely affected by the Defendants' conduct: the legislators who assembled in Wasilla. According to his Complaint: "The legislators assembled in Wasilla in accordance with the governor's executive proclamation are unable to conduct business due to a lack of a quorum."¹¹ While it is entirely unclear that any of these legislators who assembled in Wasilla would have standing to bring the claims contemplated by Mr. Vezey, they are clearly more appropriate plaintiffs than Mr. Vezey (or other constituents who may have viewed the second special session from afar). As discussed below, these other legislators are more appropriate plaintiffs than Mr. Vezey, thus confirming that he lacks citizen-taxpayer standing as well.

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

Citizen-taxpayer standing arises when taxpayers or citizens wish to challenge governmental action based on their status as taxpayers or citizens.¹² To establish citizen-taxpayer standing, a plaintiff must show that the case is of public significance and that they are an appropriate plaintiff.¹³ Even if this case is of public significance, Mr. Vezey is not an appropriate plaintiff to bring this action and therefore does not have citizen-taxpayer standing. A plaintiff is not the appropriate plaintiff when there is another

¹¹ Complaint ¶ 22.

¹² *Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1219 (Alaska 2009).

¹³ *Keller*, 205 P.3d at 302. There is no precise definition for "public significance." See *Baxley v. State*, 958 P.2d 422, 428 (Alaska 1998).

potential plaintiff more directly affected by the challenged conduct who has sued or is likely to sue.¹⁴

Mr. Vezey's Complaint confirms that there are other potential plaintiffs more directly affected by the Defendants' actions – namely, the legislators who traveled to Wasilla.¹⁵ These legislators were more directly affected, according to Mr. Vezey, because they were “unable to conduct business due to a lack of quorum.”¹⁶ Given that they were more directly affected by the challenged conduct, the only question is whether those legislators are “likely to sue.” The Alaska Supreme Court has held that this portion of the test should not be interpreted too literally.¹⁷ It does not matter whether these other legislators have already filed suit, or even if they indicated that they planned not to file suit. In *Keller v. French*, the plaintiffs did not have citizen-taxpayer standing to stop an investigation into Governor Sarah Palin because Governor Palin was more directly affected by the investigation.¹⁸ The fact that she had indicated she was not going to bring suit did not change the court's conclusion.¹⁹ The issue is whether there is any reason to believe that these legislators who traveled to Wasilla “would be unwilling to sue if they thought their rights were being violated” by the Defendants' conduct.²⁰ Mr. Vezey thus cannot be

¹⁴ *Keller*, 205 P.3d at 302. A plaintiff also lacks citizen-taxpayer standing if he or she is a “sham plaintiff” with no true adversity of interest or if the plaintiff is incapable of competently advocating his or her position. *See id.*

¹⁵ Complaint ¶ 22.

¹⁶ *Id.*

¹⁷ *Keller*, 205 P.3d at 303.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

heard to argue that he should be deemed to have standing because these other legislators are unlikely to sue for one reason or another. "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."²¹

Similarly, in *Law Project for Psychiatric Rights, Inc. v. State*, the Alaska Supreme Court held that the Law Project did not have citizen-taxpayer standing to sue with respect to the State's administration of psychotropic drugs to minors.²² An individual or group directly affected by the State's administration of psychotropic drugs to minors would be the appropriate litigant.²³ Likewise, the legislators who traveled to Wasilla would be appropriate litigants, and there is no indication that they were limited in their ability to bring suit if they believed their rights were affected.

IV. CONCLUSION

Mr. Vezey has not shown (and cannot show) how he was affected, 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.

²¹ *Id.*

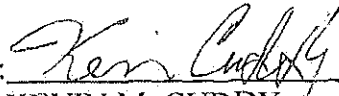
²² *Law Project for Psychiatric Rights, Inc.*, 239 P.3d at 1255-56.

²³ *Id.*; see also *Kleven v. Yukon-Koyukuk Sch. Dist.*, 853 P.2d 518, 526 (Alaska 1993) (holding that a former employee who filed a grievance but resigned before it was resolved did not have standing to challenge employer's grievance process because remaining employees were in a better position to raise the complaints).

STOEL RIVES LLP
510 L STREET, SUITE 500, ANCHORAGE, AK
99501

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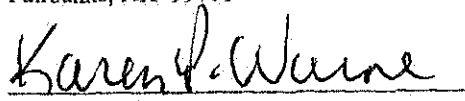
STOEL RIVES LLP

By: 
KEVIN M. CUDDY
Bar No. 0810062
Attorney for Defendants

CERTIFICATE OF SERVICE

This certifies that on November 21, 2019, a copy of
the foregoing was served via first class mail on:

William R. Satterberg, Jr.
709 4th Avenue
Fairbanks, AK 99701


Practice Assistant