

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Kevin Cuddy (Bar No. 0810062)
STOEL RIVES LLP
510 L Street, Suite 500
Anchorage, AK 99501
Telephone: 907.277.1900
Facsimile: 907.277.1920
kevin.cuddy@stoel.com

Attorneys for Defendants

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.

FILED In the Trial Courts
State of Alaska, Fourth District

AUG 20 2019

By _____ Deputy

Case No.: 4FA-19-02233 CI

**DEFENDANTS' OPPOSITION TO MOTION FOR DECLARATORY
JUDGMENT AND PRELIMINARY INJUNCTION**

10

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

I. INTRODUCTION

Mr. Vezey says that the purpose of filing his suit was to seek “legal guidance from the court so that the legislature can end its substantially counterproductive standoff and get down to the important business at hand.”¹ Just days later, Governor Dunleavy issued a supplemental proclamation stating that the Legislature’s second special session should be convened in Juneau (where the Legislature had, in fact, already commenced the special session).² Insofar as Mr. Vezey’s request was to “end a standoff,” that standoff ended when the Governor issued his supplemental proclamation. The Legislature has been working on the people’s business, and Mr. Vezey’s Motion (and lawsuit) is moot. Despite this, Mr. Vezey has indicated that he will not voluntarily dismiss his lawsuit and wishes to pursue his claims. In effect, Mr. Vezey continues to insist that the Legislature should convene a second special session in Wasilla – and the Court should take the extraordinary step of compelling two individuals to require the Legislature to convene there – even though the special session already concluded and neither the Governor nor the Legislature seeks this outcome. Mr. Vezey’s baseless Motion should have been withdrawn and should certainly be denied on a number of grounds.

¹ Memorandum in Support of Motion for Declaratory Judgment and Preliminary Injunction and Hearing Request (“Motion”) at 1. Defendants use the pagination included in Mr. Vezey’s Motion, but note that the pagination jumps from the first page of the Motion to “page 5,” at least in the copies that Mr. Vezey served on the Defendants and their counsel.

² See Exhibit A.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Even if the Motion were not moot, which it is, there are no grounds for an affirmative or mandatory injunction here.³ Mr. Vezey does not provide the Court with any legal basis for his Motion. In fact, Mr. Vezey does not cite to a single case anywhere in his Motion, instead relying on heated rhetoric and flawed reasoning. There is simply no basis for Mr. Vezey's request that the venue for the second special session of the Legislature be declared as Wasilla, especially when (1) both the Governor and the Legislature agreed that the venue should instead be Juneau, and (2) the second special session concluded on August 6. It follows that Mr. Vezey also is not entitled to an injunction compelling the Defendants to convene a session of the Legislature where neither the Governor nor the Legislature wishes to convene. The Court should deny Mr. Vezey's Motion and dismiss his lawsuit.

II. ARGUMENT

A. The Motion Should Be Denied as Moot

"A claim is moot if it is no longer a present, live controversy, and the party would not be entitled to relief, even if it prevails. We have noted that [i]n most cases, mootness is found because the party raising an appeal cannot be given the remedy it seeks even if [the court agrees] with its legal position."⁴ As made clear in both the Motion and Mr. Vezey's proposed order, he seeks two types of relief: (1) a declaratory judgment

³ The Motion should also be denied on procedural grounds. As laid out in the Defendants' motion to dismiss (filed simultaneously and incorporated here), Mr. Vezey's service attempts were in direct violation of the defendants' legislative immunity – which, as a former legislator, Mr. Vezey presumably knew (and ignored) at the time.

⁴ *Mitchell v. Mitchell*, No. S-16877, 2019 WL 3242592, at *3 (Alaska July 19, 2019) (alterations in original; internal quotation marks and footnotes omitted).

ordering that the second special session be held in Wasilla; and (2) a mandatory injunction ordering the Defendants to immediately travel to Wasilla and to convene the second special session there.⁵ Mr. Vezey cannot, however, be given the remedy that he seeks for at least three reasons. First, the second special session ended on August 6.⁶ It would therefore be impossible for the Court to order the second special session to be convened at this time, even if the Court agreed with Mr. Vezey's position.⁷ Second, it is beyond dispute that only the Legislature and the Governor have the constitutional authority to convene a special session of the Legislature.⁸ Both the Governor and the Legislature agreed that the second special session should be held in Juneau.⁹ This Court is not constitutionally empowered to compel the Defendants to convene a special session of the Legislature – only the Governor or the Legislature itself may do so. Mr. Vezey may not dictate how, where, or when the Legislature convenes. Third, the Defendants are not the Legislature; they are legislative leaders, to be sure, but they have just two votes in the Legislature and could not convene a special session even if the Court were to order them to do so.

⁵ See Motion at 8; [proposed] Order at 1.

⁶ The special session began on July 8 and could only last 30 days. See Alaska Const., art. II, § 9; Motion at 6 (stating that the special session began on July 8). August 6 was the 30th and final day of the session.

⁷ *O'Callaghan v. State*, 920 P.2d 1387, 1388 (Alaska 1996) (finding lawsuit moot where the lawsuit sought to void the governor's election, but the governor's term had concluded while the suit was still pending).

⁸ Alaska Const., art. II, § 9.

⁹ See *supra* note 2.

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

Mr. Vezey's Motion was brought during a period when the Governor had expressed a preference for Wasilla as the venue for the second special session, but the facts have evolved and rendered that prior circumstance moot. "Typically, we will refrain from deciding questions where events have rendered the legal issue moot."¹⁰ Since the supplemental proclamation was issued, no one – aside from Mr. Vezey, apparently – has sought to have the second special session convened in Wasilla. Given the Governor's agreement with the Legislature that the special session should be convened in Juneau, there is simply no reason (legal or otherwise) to declare that a special session should be convened elsewhere. "Mootness concerns are particularly acute in cases seeking a declaratory judgment, as we may only grant declaratory relief where the controversy is definite and concrete, . . . a real and substantial controversy admitting of specific relief . . . as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."¹¹ That is precisely the case here. The brief disagreement between the Governor and Legislature has been resolved amicably, with both parties agreeing that the second special session would be convened in Juneau. Mr. Vezey's continuing insistence that the Court should declare that a special session be

¹⁰ *Mitchell*, 2019 WL 3242592, at *3 (internal quotation marks and citation omitted); see also *Ulmer v. Alaska Rest. & Beverage Ass'n*, 33 P.3d 773, 776 (Alaska 2001) ("[We] refrain from deciding questions where the facts have rendered the legal issues moot. A claim will be deemed moot if it has lost its character as a present, live controversy. We have further held that [a] case is moot if the party bringing the action would not be entitled to any relief even if its prevails." (alterations in original; internal quotation marks and footnotes omitted)); *O'Callaghan*, 920 P.2d at 1388.

¹¹ *Mitchell*, 2019 WL 3242592, at *3 (alterations in original; internal quotation marks and footnotes omitted).

convened in Wasilla would require the Court to issue an opinion advising what the law would be upon a hypothetical state of facts in which the Governor was still asserting that the second special session be held in Wasilla. But the Governor is not taking that position, and the Court should decline Mr. Vezey's invitation to issue an advisory opinion based on facts that no longer exist.

B. Mr. Vezey Is Not Entitled to a Mandatory Injunction

Mr. Vezey's Motion fails to explain why he is entitled to an affirmative injunction here. He simply asks the Court to require House Speaker Edgmon and Senate President Giessel to travel immediately to Wasilla and to convene the second special session of the Alaska Legislature there. "It is well settled that . . . a mandatory injunction will seldom be granted before final hearing, and . . . should be granted only in extreme or exceptional cases [and] . . . with great caution."¹² Mr. Vezey does not claim, let alone offer support to show, that there are any such extreme or exceptional circumstances here. While there was a brief disagreement between the Legislature and the Governor regarding the scope of his authority to designate the location of the special session, the Governor has since agreed that the special session would be held in Juneau. There are no exceptional or extreme circumstances that would warrant compelling the defendants to travel to Wasilla and convene a session of the Legislature there, especially given the Governor's subsequent proclamation.¹³

¹² *State v. Kluti Kaah Native Vill.*, 831 P.2d 1270, 1274 n.9 (Alaska 1992) (first brackets added; alterations in original; internal quotation marks and citation omitted).

¹³ See Exhibit A.

Mr. Vezey has also not established (nor even identified) any of the requirements for the “extraordinary remedy”¹⁴ of injunctive relief. He has not satisfied the heightened standard of a clear showing of probable success on the merits.¹⁵ In particular, Mr. Vezey “requests that an affirmative injunction be issued by the court, ordering House Speaker Edgmon and Senate President Giessel to immediately travel to Wasilla, Alaska and to convene the second special session of the Alaska Legislature for the Thirty-First Legislature.”¹⁶ But neither Governor Dunleavy nor the Legislature is seeking to convene a legislative session in Wasilla. To state the obvious, Mr. Vezey is not authorized to call a special session of the Legislature, nor to dictate the location for that session.¹⁷ He is therefore obviously unlikely to prevail with respect to the relief sought in this Motion.

Mr. Vezey also fails to demonstrate that he is likely to suffer any irreparable injury if the Legislature is not required to convene in Wasilla. The Motion refers vaguely to potential consequences if the Legislature does not pass a capital budget during the second special session,¹⁸ but this aspect of the Motion is clearly moot as well. The Legislature was already doing the people’s business in Juneau. Mr. Vezey fails to explain why the

¹⁴ *Lee v. Konrad*, 337 P.3d 510, 517 (Alaska 2014).

¹⁵ *See State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005). The “probable success on the merits” test would apply here because there is no way for the Defendants’ interests to be adequately protected through a bond or other protection. *See id.* at 978-79. Mr. Vezey’s lawsuit would effectively compel the Defendants to abandon their constitutional duties and convene a session of the Legislature in contravention of both the Governor’s existing proclamation and the Legislature’s own decision, thereby potentially leaving the Legislature unable to function.

¹⁶ Motion at 9.

¹⁷ *See* Alaska Const. art. II, § 9 (restricting the authority to call special sessions to the Governor or by vote of two-thirds of the legislators).

¹⁸ Motion at 5.

Legislature should now go to Wasilla, especially after Governor Dunleavy determined that the second special session should be convened in Juneau. In fact, it is likely that irreparable harm would occur if Mr. Vezey's Motion were granted because the Defendants have no constitutional authority to call a special session in Wasilla. Mr. Vezey's Motion – and this entire lawsuit – is counterproductive.

**C. Mr. Vezey's Request for Declaratory Relief Should Be Dismissed
Either for Mootness or Because the Dispute Is Nonjusticiable**

Mr. Vezey's request for a declaration that the proper venue for the second special session must be held in Wasilla should be denied for a host of reasons. First, as explained above, the request is moot because the second special session has already expired.¹⁹ Second, as also explained above, the request is moot because the Governor determined that the proper venue for that session was in Juneau. Since only the Governor and the Legislature are constitutionally authorized to call a special session, the Court may not declare that the proper venue for the special session is somewhere other than where both the Governor and the Legislature agree that the session should be held.²⁰ These reasons suffice for denial of Mr. Vezey's Motion.

The Motion should also be dismissed because his claim is not justiciable. In assessing justiciability, the Court must assess:

- (1) whether deciding the claim would require us to answer questions that are better directed to the legislative or executive branches of government (the "political question" doctrine), and
- (2) whether there are other reasons – such as ripeness, mootness, or standing – that persuade us that, though the

¹⁹ See *supra* note 6.

²⁰ See *supra* note 8.

case is one we are institutionally capable of deciding, prudence counsels that we not do so.^[21]

Both the legislative and executive branches have concluded that the second special session would be held in Juneau, and there is a textually demonstrable constitutional commitment of the issue of convening special sessions to these political branches.²² The Court also could not undertake an independent resolution of the proper venue for the special session – contrary to the stated wishes of both the executive and the legislative branches – “without expressing lack of the respect due coordinate branches of government.”²³ Decisions about where the Legislature should convene are political in nature and, particularly where both the Governor and Legislature agree that the venue should be Juneau (as is the case here), there is simply no basis for a judicial declaration otherwise. In addition, while the Alaska Declaratory Judgment Act gives superior courts the power to issue declaratory judgments in cases of actual controversy, declaratory relief is a “nonobligatory remedy” and the courts have an opportunity – rather than a duty – to grant declaratory relief.²⁴ The Court thus has “broad statutory discretion to decline declaratory relief.”²⁵ This Motion does not, and cannot, clarify or settle any legal relations or otherwise afford some relief from uncertainty because both the Legislature and the Governor agree that the second special session would be held in Juneau.

²¹ *Kanuk ex rel. Kanuk v. State, Dep’t of Nat. Res.*, 335 P.3d 1088, 1096 (Alaska 2014) (footnotes omitted).

²² *See id.* at 1096-97; Alaska Const. art. II, § 9 (authorizing the Governor and the Legislature to call special sessions).

²³ *Kanuk*, 335 P.3d at 1097 (internal quotation marks and citation omitted).

²⁴ *Id.* at 1100-01 (internal quotation marks and citation omitted).

²⁵ *Id.* at 1101 (internal quotation marks and citation omitted).

STOEL RIVES LLP
510 L Street, Suite 500, Anchorage, AK 99501
Main (907) 277-1900 Fax (907) 277-1920

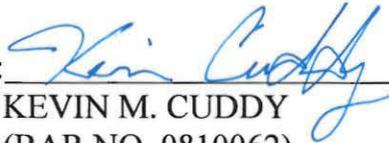
Requiring the Legislature to hold its second special session (which has already passed) in a venue that neither the Legislature nor the Governor wishes for it to proceed makes no sense. Even if the Court were institutionally capable of deciding this Motion, it should decline to do so.

III. CONCLUSION

For the foregoing reasons, the Motion should be denied.

DATED: August 19, 2019

STOEL RIVES LLP

By: 

KEVIN M. CUDDY
(BAR NO. 0810062)
Attorney for Defendants

CERTIFICATE OF SERVICE

This certifies that on August 19, 2019, a copy of the foregoing was served via first class mail on:

William R. Satterberg, Jr.
709 Fourth Ave.
Fairbanks, AK 99701

Lanette Blodgett, Practice Assistant

STATE OF ALASKA



Executive Proclamation by Governor Michael J. Dunleavy

FIRST SUPPLEMENTAL PROCLAMATION SECOND SPECIAL SESSION

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 am amending my June 13, 2019 proclamation calling the Thirty-First Legislature of the State of Alaska into its second special session at 1:00 p.m., on July 8, 2019 as follows:

The Legislature shall continue the second special session that began on July 8, 2019, at 1:00 p.m., under my June 13, 2019 proclamation. From July 17, 2019 forward through the remainder of the constitutional period, the second special session shall continue in the Legislative Chambers in Juneau, Alaska.

The Legislature shall consider, in addition to the subject identified in my June 13, 2019 proclamation, an act authorizing capital appropriations, operating appropriations for certain state programs, repealing appropriations, and making appropriations to capitalize funds.

Dated this 17th day of July, 2019.

Time: 12:00 a.m./p.m.



Handwritten signature of Michael J. Dunleavy.

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