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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.

FILED In the Trial Courts
State of Alaska, Fourth District

AUG 20 2019

By_____Deputy

Case No.: 4FA-19-02233 CI

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MOTION TO DISMISS PURSUANT TO: LEGISLATIVE IMMUNITY; CIVIL RULE 12(B)(2); NONJUSTICIABILITY; AND CIVIL RULE 12(B)(6)

I. INTRODUCTION

Defendants Rep. Bryce Edgmon and Sen. Catherine Giessel ask this Court to dismiss Mr. Vezey's improper lawsuit for a number of reasons. At the time Mr. Vezey filed his suit, Speaker Edgmon and Senate President Giessel were working diligently to advance the people's business during the most recent legislative session. Mr. Vezey's lawsuit and motions, which were repeatedly lobbed at the Defendants in the middle of

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that session, only served (and appear designed) to distract these legislators from their duties during a critically important time. The timing and manner of Mr. Vezey's improper service was facially and constitutionally improper. As a former legislator, Mr. Vezey knows better. The Alaska Constitution affords the Defendants legislative immunity from suits filed during a legislative session precisely to avoid the distractions that inevitably follow when lawsuits – especially those with political aims – are filed. Mr. Vezey's lawsuit also should be dismissed because his claims are moot, nonjusticiable, or simply fail to state a claim upon which relief may be granted. Disappointingly, Mr. Vezey declined to withdraw his claims after the Legislature convened together to address the budget and other issues, which he claimed was the entire reason for his lawsuit. He instead insisted that he wished to proceed with his claims regarding the proper location for a legislative session that already ended (even after the Governor stated that the session should be held in Juneau). The Court should dismiss this lawsuit now.

II. STANDARD OF DECISION

When a Civil Rule 12(b)(2) challenge is raised regarding the court's jurisdiction over a person, whether due to immunity or otherwise, the plaintiff bears the burden of demonstrating personal jurisdiction.[1] Plaintiff cannot do so here. The Court may consider information outside of the Complaint in resolving these issues.[2]

[1] *See, e.g., Grayson v. Anderson*, 816 F.3d 262, 267 (4th Cir. 2016); *cf. Morrow v. New Moon Homes, Inc.*, 548 P.2d 279, 294-95 (Alaska 1976).

[2] *See, e.g., Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

A motion to dismiss under Rule 12(b)(6) should be granted if the complaint fails to state a claim upon which relief can be granted. The court presumes all factual allegations of the complaint are true and makes all reasonable inferences in favor of the non-moving party.[3]

III. STATEMENT OF FACTS REGARDING PERSONAL JURISDICTION[4]

The second special session of the Alaska Legislature commenced on July 8, 2019, and ended on August 6, 2019.[5] The second special session was underway when Mr. Vezey served the Defendants with his lawsuit. The Defendants were personally served at the State Capital Building in Juneau on July 11, 2019.[6]

Following service of the lawsuit, Mr. Vezey and his counsel proceeded to submit numerous motions, letters, and demands to the Defendants during the second special session. These included:

- On July 11, 2019, Mr. Vezey filed a motion for declaratory judgment and preliminary hearing, along with a supporting memorandum and request for hearing. Mr. Vezey simultaneously filed a motion for expedited consideration of his substantive motion. These filings were transmitted by e-mail to the Defendants (who had not consented to e-mail service), and Mr. Vezey also faxed a copy to Rep. Edgmon.

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[3] *Barber v. Schmidt*, 354 P.3d 158, 162 (Alaska 2015).

[4] Defendants address only the facts regarding personal jurisdiction and those which this Court may take judicial notice of under Alaska Rule of Evidence 201. As to all other factual allegations in the Complaint, Defendants are required at this stage to accept all well-pled factual allegations as true for purposes of this motion.

[5] *See* Complaint ¶¶ 3, 11 (stating that the special session began on July 8). The special session can last only 30 days. Alaska Const., art. II, § 9. August 6 was the 30th and final day of the session.

[6] *See* Second Motion for Expedited Consideration of Plaintiff's Motion for Declaratory Judgment and Preliminary Injunction ("Second Motion for Expedited Consideration"), Appendix 1 (return of service for both Defendants) (filed on or about July 16, 2019).

- Following denial of the initial motion for expedited consideration, Mr. Vezey's counsel e-mailed the Defendants on July 15, 2019, in order to initiate a conference regarding expediting Mr. Vezey's motion for declaratory judgment and preliminary injunction. Mr. Vezey's counsel informed the Defendants he would file another motion for expedited consideration, which would be sent to them through multiple channels. He sought an "immediate response to this letter" and asserted that "[t]ime is of the essence."[7]

- The very next day, Mr. Vezey served a second motion for expedited consideration and request for a hearing on expedited time, along with supporting materials, to Sen. Giessel via regular mail and also transmitted copies to her by e-mail.[8]

- Also on July 16, Mr. Vezey served the second motion for expedited consideration and request for a hearing on expedited time, along with supporting materials, to Rep. Edgmon via regular mail, and sent copies by e-mail and facsimile to his legislative office in Juneau.[9]

- Also on July 16, Mr. Vezey attempted to arrange for the Defendants to be served with copies of his motions personally in Juneau.[10]

- On July 18, after Mr. Vezey's second motion for expedited consideration was also denied, Mr. Vezey served a "Disclosure to Court" to the Defendants by mail and sent copies by e-mail (and, as to Rep. Edgmon, by facsimile to four different numbers).

To sum up, in the space of a week, Mr. Vezey personally served the Defendants with a summons and complaint (and attempted another round of personal service of other filings), sent them a letter seeking an "immediate response" to pending litigation, and mailed, e-mailed, and faxed (as to Rep. Edgmon) numerous filings demanding expedited responses.

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[7] *See* Second Motion for Expedited Consideration, Appendix 2 (letter of William R. Satterberg Jr., dated July 15, 2019).

[8] *See* Affidavit of Joanne Sipes in Support of Plaintiff's Second Motion for Expedited Consideration ¶ 3 (filed on or about July 16, 2019).

[9] *See id.* ¶ 4.

[10] *See id.* This service attempt was not completed.

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IV. ARGUMENT

A. The Defendants were constitutionally immune from service of process at the time Mr. Vezey improperly served them. Service was void.

A number of state constitutions, including Alaska's, and courts recognize the enormous harm that could be visited upon a state if its legislators were distracted from their core duties by the filing of civil lawsuits against them during a legislative session, whether for political purposes (like Mr. Vezey's) or otherwise. States therefore recognize a form of "legislative immunity" making legislators immune from civil process[11] while a legislative session is ongoing (or while members are going to or returning from those sessions). "While conveying incidental personal advantage, such immunities are designed to benefit the public by protecting legislators against compelled distraction and interference during the session."[12]

The framers of the Alaska Constitution recognized that it would be difficult, if not impossible, for legislators to carry out their important responsibilities if they were being haled into court during the middle of a legislative session. Article II, Section 6 of the Alaska Constitution therefore provides as follows:

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[11] A civil summons and complaint constitute "civil process." *See* Alaska R. Civ. P. 4 (titled "Process" and covering issuance, form, and service of summons); *Black's Law Dictionary* 1370 (4th ed. 1951) (process "is generally defined to be the means of compelling the defendant in an action to appear in court" and noting that "[t]he word 'process' is in common-law practice frequently applied to the writ of summons, which is the instrument now in use for commencing personal actions"); *see also Seamans v. Walgren*, 514 P.2d 166, 168 (Wash. 1973) (applying civil process clause to service of summons and complaint on legislator two days before legislative session, rendering attempted service ineffective).

[12] *Harmer v. Superior Court*, 79 Cal. Rptr. 855, 857 (Ct. App. 1969) (citing *Tenney v. Brandhove*, 341 U.S. 367, 373-74, 377 (1951)).

> Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions *are not subject to civil process* and are privileged from arrest except for felony or breach of the peace.

(Emphasis added.) Thus, the Defendants were not subject to civil process on July 11, 2019, when Mr. Vezey improperly attempted to serve them with process.

The drafting history of the "immunities" clause of Article II, Section 6 confirms that the Defendants are entitled to legislative immunity here. During the constitutional convention addressing this clause, Mr. McCutcheon explained that "it was the intention of our Committee that while in session the legislators should be protected from the service of any type which would impede or impair their attending a session of the legislature, excepting in the event that they do create a felony or create a breach of the peace . . . ."[13] There was a brief objection from Mr. Rivers asserting that the immunity should be limited to actually being forced to leave the Legislature to respond to the process.[14] Other members pointed out that the immunity should be broader than that, and Mr. Hellenthal and Mr. Rivers agreed to research the issue jointly.[15] Shortly thereafter, Mr. McCutcheon offered an amendment to the clause, adding language that would make legislators "not subject to civil process."[16] Mr. Rivers – who had previously objected to

[13] Proceedings of the Alaska Constitutional Convention 1588 (Jan. 9, 1956), http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf.

[14] *Id.* at 1589.

[15] *See id.* at 1589-90. Mr. Buckalew inquired to Mr. Rivers: "I don't think [the legislator] should be allowed to be served with a civil suit until after the legislator [sic] was over?" *Id.* at 1589.

[16] *Id.* at 1684 (Jan. 10, 1956).

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the more expansive scope of the clause – noted that this language was contained in the constitution for the State of Washington and agreed that it should be adopted for Alaska's constitution as well.[17] There was no objection to the proposed amendment and it was adopted.

Given the framers' explicit reference to the Washington constitution, Washington's case law interpreting the provision is instructive. Washington's "immunities" clause is indeed similar to Alaska's. It provides that legislators "shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session."[18] In *Seamans v. Walgren*, the Washington Supreme Court decided that "immunity was granted by our constitution to protect the legislators from distraction during the stated periods of time and should be broadly construed. Immunity from service of 'any civil process' should be granted during the constitutionally described time periods."[19] Importantly, the Washington Supreme Court specifically rejected a narrow reading of the clause that might only protect a legislator from "significant interference such as physical arrest and removal of a legislator from the legislative chambers."[20] Citing comparable provisions in the state constitutions of Michigan and California, which were intended to ensure that "the State

[17] *Id.* (referencing Washington's clause regarding immunity from civil process and saying, "[i]t sounds pretty good to me").
[18] Wash. Const., art. II, § 16.
[19] 514 P.2d 166, 168 (Wash. 1973).
[20] *Id.* at 167.

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could have [legislators'] undivided time and attention in public affairs,"[21] the Washington Supreme Court found that the clause should be "*broadly construed*" to make legislators immune from service of any civil process during the constitutionally described periods.[22] The service made during the period of immunity was therefore ineffective and void.[23]

The same result should apply here. The text, drafting history, and purpose of the "legislative immunities" clause requires that the clause be broadly construed so as to avoid having the filing of lawsuits distract legislators from their legislative duties when their attention must be firmly focused on the State's policy affairs.

This case is a textbook example of why legislative immunity is necessary. Mr. Vezey did not approve of the Legislature's decision to convene the second special session in Juneau and filed suit against two legislative leaders in an effort to compel them – quite literally, through a mandatory injunction – to convene the Legislature elsewhere. He then bombarded those legislators with a series of written filings, motions for expedited relief, hearing requests, and other demands through mail, e-mail, and in-person service. This is necessarily enormously distracting, and it is especially so when legislators are focusing their attention on important issues of public policy under the tight time constraints of a 30-day special session.

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[21] *Id.* at 168 (quoting *Auditor General v. Wayne Circuit Judge*, 208 N.W. 696, 697 (Mich. 1926)).

[22] *Id.* at 168 (emphasis added).

[23] *See id.* at 168-69; *Cook v. Senior*, 45 P. 126, 128 (Kan. Ct. App. 1896) ("The interests of the public are better served by giving the language of our constitution its fair, natural meaning; that is, that a member of the legislature is not liable or subject to the service of civil process during the excepted period, and that the service of original process upon him at such time is void, and gives the court no jurisdiction over the person of such member.").

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Moreover, Mr. Vezey's lawsuit shows the mischief that one improper lawsuit against just two legislators can create.[24] It is all too easy to imagine the chaos that would ensue if five or 10 or more lawsuits were initiated against legislators during any legislative session by partisans who wished to distract those legislators from some important policy issue disfavored by the plaintiffs. Each of those lawsuits would predictably be accompanied by urgent demands for expedited consideration, temporary restraining orders, and letters, faxes, and e-mails insisting that "time is of the essence" for whatever issue the plaintiff wished to pursue.

The Defendants – just like all other legislators – must be permitted to focus their whole attention on their legislative obligations, not retaining counsel to defend against a complaint and respond to expedited motions or demands for hearings on shortened notice. Service of process was void because the Defendants were entitled to legislative immunity. The lawsuit should therefore be dismissed because, in the absence of effective service, the Court has no jurisdiction over the Defendants.[25]

B. The Defendants are entitled to legislative immunity for the act of convening the Legislature.

In addition to immunity from civil process, Article II, Section 6 of the Alaska Constitution also confers immunity on legislators for all "statements made 'in the

[24] Mr. Vezey's lawsuit was also brought in violation of AS 24.40.031, which provides that any action with a legislator as a party may not proceed while the legislature is in session, unless the legislator waives her or his statutory right.

[25] *Seamans*, 514 P.2d at 168-69; *Cook*, 45 P. at 128.

exercise of their legislative duties'"[26] while the Legislature is in session as well as "acts in preparation for the performance of these duties."[27] In *Kerttula v. Abood*, the Alaska Supreme Court explained that this immunity encompasses "activities internal to the legislature such as voting, speaking on the floor of the House or in committee, . . . [and] introducing legislation" as well as to other matters that are "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House."[28] This immunity is intended to further legislative effectiveness by protecting legislators from "intimidation by a hostile executive" and "from the burdens of forced participation in private litigation."[29] This immunity further helps to ensure legislative independence by permitting legislators to perform their duties without undue interference.[30]

Crucially, legislative immunity applies to convening or calling to order a legislative body's session or meeting. *Kerttula* specifically holds that the immunity includes a presiding officer's duty to call a legislative session to order and actions done in preparation for that duty:

> **The president of the senate is the presiding officer at joint sessions and as such has the duty to call a joint session to**

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[26] *Kerttula v. Abood*, 686 P.2d 1197, 1202 (Alaska 1984) (emphasis omitted); *see also* AS 24.40.010.
[27] *Kerttula*, 686 P.2d at 1204.
[28] *Id.* at 1202 (internal quotation marks and citation omitted).
[29] *Id.*
[30] *See id.*

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> **order, once it has been convened by the governor, and to preside over it.** At the joint session, Senator Kerttula thus had a general duty to vote on the Governor's appointees and specific duties to perform as Senate President. **His conversations with the Governor may properly be seen as acts in preparation for the performance of these duties. As such they are privileged.**[31]

Similarly, *Shultz v. Sandberg*, holds that an Alaska Senate President's order compelling the attendance of absent legislators is "entitled to absolute immunity" because it is an "action [that] took place on the floor of the Senate in an effort to convene a joint session."[32] Courts outside Alaska concur that calling or convening a legislative meeting falls within the sphere of legislative immunity.[33] Accordingly, Rep. Edgmon and Sen. Giessel are entitled to the legislative immunity conferred by Article II, Section 6 of the Alaska Constitution and AS 24.40.010 for their actions in convening the second session of the Legislature. Legislative immunity functions as an immunity from suit,[34] and it applies equally to suits seeking monetary, declaratory, or injunctive relief.[35]

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[31] *Id.* at 1204 (emphases added; footnotes omitted).

[32] *Shultz v. Sandberg*, 577 F. Supp. 1491, 1495 (D. Alaska 1984).

[33] *See Price v. Town of Atl. Beach*, No. 4:12-CV-02329-MGL, 2013 WL 5945724, at *4–5 (D.S.C. Nov. 6, 2013); *Padgett v. City of Monte Sereno*, No. C 04-03946 JW, 2007 WL 7758396, at *9 (N.D. Cal. Mar. 20, 2007), *aff'd sub nom. Padgett v. Wright*, 516 F. App'x 609 (9th Cir. 2013); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 688 F. Supp. 1522, 1525-26 (S.D. Fla. 1988).

[34] *Kerttula*, 686 P.2d at 1205 (constitutional text "conveys a meaning of non-accountability—as, for example, immunity from suit").

[35] *Supreme Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 732-33 (1980); *Spallone v. United States*, 493 U.S. 265, 278 (1990); *see also Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975); *Cmty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 959 (9th Cir. 2010); *Brown v. Crawford Cty., Ga.*, 960 F.2d 1002, 1006, 1012 (11th Cir. 1992); *Larsen v. Senate of Pa.*, 152 F.3d 240, 253 (3d Cir. 1998); *Risser v. Thompson*, 930 F.2d 549, 551 (7th Cir. 1991); *Alia v. Mich. Sup. Ct.*, 906 F.2d 1100, 1102 (6th Cir. 1990).

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The actions at issue were "in the exercise of [Defendants'] legislative duties" and/or in preparation for performance of those legislative duties.[36] Mr. Vezey bases his suit on Sen. Giessel and Rep. Edgmon having called a legislative special session to order in Juneau.[37] Mr. Vezey expressly alleges that they did so "as presiding officers of their respective bodies" and "by virtue of their ex officio authority."[38] Under *Kerttula* and consistent with the other authorities cited above, Rep. Edgmon and Sen. Giessel's calling a session to order in their respective chambers by virtue of their offices as President of the Senate and Speaker of the House constitutes statements made in the exercise of their legislative duties.[39]

The statements and actions were also made "while the legislature is in session."[40] Here, by Governor Dunleavy's proclamation, the special session convened on July 8, 2019.[41] The statute governing the organization of special sessions does not condition the commencement of the session on its location. Rather, it prescribes that "[o]n the day set for the assembly of the second regular session or a special session of the legislature, the presiding officer elected at the first regular session shall administer the oath of office to new members and proceed with the business of the house in accordance with the rules of

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[36] Alaska Const., art. II, § 6; *accord* AS 24.40.010.

[37] Complaint ¶¶ 3, 11. Plaintiff phrases their actions as "attempt[ing] to convene a session of the legislature." *Id.* However, as the Alaska Supreme Court clarified in *Kerttula*, it is the governor who convenes a session, while the presiding officer calls it to order. 686 P.2d at 1204.

[38] Complaint ¶ 3.

[39] *See Kerttula*, 686 P.2d at 1204; *Shultz*, 577 F. Supp. at 1495; *Price*, 2013 WL 5945724, at *4-5; *Padgett*, 2007 WL 7758396, at *9; *Church of the Lukumi Babalu Aye, Inc.*, 688 F. Supp. at 1525-26.

[40] Alaska Const., art. II, § 6; AS 24.40.010.

[41] Complaint, Ex. 1.

the legislature."[42] Although phrased in terms of an "attempt," Mr. Vezey's allegations confirm that on July 8, 2019, the special session convened by Governor Dunleavy was called to order in Juneau by Sen. Giessel and Rep. Edgmon as the duly elected presiding officers.[43] Indeed, Mr. Vezey implicitly admits, as he must, that the special session began on July 8. Article II, Section 16 prohibits the Legislature from overriding the governor's vetoes after "the fifth day of the next regular or special session." Yet Mr. Vezey affirmatively alleged that the Legislature's authority to override the vetoes "will expire at midnight on Friday, July 12, 2019,"[44] thereby conceding that the special session commenced on July 8.[45]

In short, the actions about which Mr. Vezey complains satisfy all the conditions that trigger legislative immunity under Article II, Section 6.

C. Mr. Vezey's lawsuit is moot.

Mr. Vezey's Complaint brings four substantive claims (and a fifth claim regarding attorneys' fees), all of which are moot. As Mr. Vezey describes in his lawsuit, "the purpose is to have the court order the legislature to assemble in one location to work out the issues to be addressed as outlined in the governor's proclamation for a special

[42] AS 24.05.170.

[43] *See* Complaint ¶ 11 ("On or about July 8, 2019, Senate President Giessel and House Speaker Edgmon attempted to convene a special session of the Alaska Legislature in Juneau, Alaska."). Although not necessary for legislative immunity, Plaintiff also admits that "a majority of the legislators" were present at the capitol. *Id.* ¶ 17.

[44] *Id.* ¶ 19.

[45] Furthermore, the premise of Plaintiff's motions for expedited consideration was that the special session was already underway. *See* Second Motion for Expedited Consideration, at 1 ("Expedited consideration of the underlying Motion … is paramount because the second special session, itself, can only last for 30 days by law.").

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session."[46] As the Court is aware (and certainly Mr. Vezey is as well), just two days later the Governor issued a First Supplemental Proclamation (the "Supplemental Proclamation") stating that the second special session would continue in Juneau from July 17, 2019 forward.[47] The Legislature did assemble in one location (Juneau) and worked out the issues as outlined in the Governor's proclamations. To the extent that Mr. Vezey was honestly describing the purpose of his lawsuit, that purpose was satisfied when the Governor submitted his Supplemental Proclamation. The lawsuit became moot at that time and should be dismissed.

If Mr. Vezey was not accurately describing the purpose of his lawsuit, the claims should nevertheless be dismissed as moot for several reasons. "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."[48] For its primary relief, Mr. Vezey's Complaint seeks a mandatory injunction compelling the Defendants to convene the second special session of the Legislature in Wasilla.[49] The second special session, however, ended as constitutionally required on

[46] *See* Second Motion for Expedited Consideration, Appendix 2 (letter of William R. Satterberg Jr., dated July 15, 2019).
[47] *See* Exhibit A. The Court may take judicial notice of this government record. *See* Alaska R. Evid. 201; *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).
[48] *Mitchell v. Mitchell*, No. S-16877, 2019 WL 3242592, at *3 (Alaska July 19, 2019) (alterations in original; internal quotation marks and footnotes omitted).
[49] Complaint at 7 ¶ 2.

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August 6, 2019.[50] First, it is not possible to grant the requested mandatory injunction and convene the second special session at this time.[51] As the Alaska Supreme Court cautioned, "[t]ypically, we will refrain from deciding questions where events have rendered the legal issue moot."[52] Here, the termination of the second session on August 6 did just that. Further, it is beyond dispute that only the Legislature and the Governor – not the judicial branch – have the constitutional authority to convene a special session of the Legislature.[53] This Court cannot grant the requested relief because it is not constitutionally empowered to compel the Defendants to convene a special session of the Legislature, much less to convene it in Wasilla when both the Governor and the Legislature agreed that the second special session should be held in Juneau. 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.[54] This Court should decline to decide the issue and dismiss this moot claim for injunctive relief.

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[50] Alaska Const., art. II, § 9 ("Special sessions are limited to thirty days.").
[51] *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).
[52] *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 it prevails." (alterations in original; internal quotation marks and footnotes omitted)); *O'Callaghan*, 920 P.2d at 1388.
[53] Alaska Const., art. II, § 9.
[54] *Id.*

Mr. Vezey also seeks a declaration that the second special session was convened without proper legislative authority as well as an injunction enjoining any actions taken during that session.[55] Even if these issues were meritorious or were justiciable, neither of which is true, the Supplemental Proclamation mooted the legal issues. Under Mr. Vezey's theory, the Governor had the legal authority to designate the location of the second special session.[56] Through his Supplemental Proclamation, the Governor designated Juneau as the location of that session – thus supplying the legislative authority that Mr. Vezey asserts was previously missing.[57] The Supplemental Proclamation rendered Mr. Vezey's claims moot.

Finally, Mr. Vezey seeks a declaration that the Legislature's second special session should be "subject to AS 25.60.037 [sic], the legislature's Open Meeting Guidelines."[58] The Legislature is excepted from coverage of the Open Meetings Act.[59] Under AS 24.60.037(c), legislators may meet in a closed caucus or in private informal meetings to discuss political strategy, and those meetings are exempt from the legislative open meeting guidelines. Other meetings of a legislative body are generally open to the

[55] Complaint at 7 ¶¶ 1, 3.
[56] *Id.* ¶ 11.
[57] *Cf. Fairbanks N. Star Borough v. State*, 753 P.2d 1158, 1159-60 (Alaska 1988) (describing curative acts); *Sea Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 116-18 (Alaska 1990) (describing ratification of prior acts). To be clear, Defendants do not assert and do not concede that the Legislature lacked authority to take any of the actions that it took. Nevertheless, even assuming for the sake of argument that the Legislature briefly lacked that authority due to the Governor's earlier designation of Wasilla as the venue for the second special session, the Supplemental Proclamation removed that obstacle.
[58] Complaint at 7 ¶ 4. Mr. Vezey presumably meant AS 24.60.37.
[59] AS 44.62.310(h)(3); *see also Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987).

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public in accordance with the open meeting guidelines, subject to the Uniform Rules of the Alaska State Legislature.[60] Mr. Vezey's Complaint fails to articulate how the Legislature's second session was conducted in any way that was contrary to the Open Meeting Guidelines. To the extent that Mr. Vezey is alleging that the portion of the second session prior to July 17 was not a meeting of the Legislature, this argument was rendered moot by the Supplemental Proclamation for the reasons described above. In addition, the statute affords protections and privacy to legislators – including a "meeting of a legislative body" – irrespective of whether a formal session is ongoing. This claim should be dismissed as moot.[61] In addition, Defendants again point out that they are just two legislators; they do not constitute the entire Legislature. Insofar as Mr. Vezey wishes to obtain a declaration regarding the Legislature's conduct as a whole, he has sued the wrong defendants. The Court could not grant Mr. Vezey his requested relief concerning the proper application of the Open Meeting Guidelines to an entire legislative body when only two people have been named as defendants.

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[60] AS 24.60.037(a), (b).

[61] Mr. Vezey also asserts that he should be entitled to full attorneys' fees under AS 09.60.010(c). Compl. at 7 ¶ 5. Because Mr. Vezey's claims lack merit and should be dismissed, his request for fees is likewise moot. In any event, the issues that Mr. Vezey is raising here do not concern the establishment, protection, or enforcement of a right under the Alaska Constitution. At best, Mr. Vezey is addressing the proper application of a statute (AS 24.05.100), and therefore the provision is inapplicable.

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D. Mr. Vezey's claims are not justiciable.

While the precise details of this case are unique, the Alaska Supreme Court was faced with similar circumstances in *Malone v. Meekins*[62] and held that the plaintiffs' claims did not give rise to a justiciable claim. This Court should do the same.

In *Malone*, the former Speaker of the House of Representatives, Mr. Duncan, and 10 other state representatives sued other legislators with respect to assorted actions the plaintiffs believed were improper.[63] In particular, Mr. Duncan had failed to convene the House at the appointed hour on June 12, 1981, because of concerns that other legislators were in the process of trying to replace him.[64] When Mr. Duncan had still failed to convene the House four hours later, Rep. Meekins assumed the chair of the House and called it to order. Votes were held to remove Mr. Duncan as Speaker and to select a new Speaker.[65] Plaintiffs claimed that these actions and others were improper. The Alaska Supreme Court noted that one of the plaintiffs' claims presupposed that the June 12 meeting was invalid (much as Mr. Vezey claims that the second special session was invalid), but it expressly declined to make any such determination because it would "be an unwarranted intrusion into the business of the House."[66] The statute at issue related "solely to the internal organization of the legislature, a subject which has been committed

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[62] 650 P.2d 351 (Alaska 1982).
[63] *See generally id.* at 353.
[64] *See id.* at 353-54.
[65] *See id.* at 354.
[66] *Id.* at 356; *see id.* ("It bears noting that appellants' position presupposes that the June 12th meeting was invalid. . . . . However, we find it unnecessary to determine the validity of the actions taken at the June 12th meeting.").

by our constitution to each house."[67] As the Supreme Court explained, "[i]nsofar as compliance with such a statute is concerned, *we believe that a proper recognition of the respective roles of the legislature and the judiciary requires that the latter not intervene*."[68]

In so holding, the Alaska Supreme Court recognized that courts should not attempt to adjudicate "political questions" due to concerns regarding the separation of powers doctrine.[69] The *Malone* Court noted that the issues regarding the Legislature's internal organization were nonjusticiable because (1) there was a textually demonstrable commitment of the issue to the Legislature, (2) it would be impossible for the court to undertake an independent resolution of the issue without expressing lack of respect due to the Legislature, and (3) there was a need to adhere to a political decision that had already been made.[70] The same is true here, as explained below.

First, there is a textually demonstrable commitment of the issue to the Legislature. The statute at issue in Mr. Vezey's lawsuit, AS 24.05.100, relates solely to the internal workings of the Legislature – how, when, and where the Legislature may hold a special session. These special sessions have been committed by the Alaska Constitution to the Legislature.[71]

Second, invalidating the second special session, as Mr. Vezey requests, would fail to provide "the element of due respect which the judiciary owes to the independent and

[67] *Id.*
[68] *Id.* (emphasis added).
[69] *See id.*
[70] *See id.* at 357.
[71] Alaska Const., art. II, § 9.

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coequal legislative branch of government."[72] It would require the Court to insert itself into delicate discussions and negotiations between the Legislature and the Executive regarding the details of special sessions and even to enable the Executive's encroachment into spheres reserved solely to other branches.[73] Details concerning the specifics of how the Legislature handles its day-to-day business – including the venue for its sessions – go to the heart of the Legislature's inherent authority for its internal workings.[74] The Legislature controls its rules of procedure and the core conditions under which it may perform its duties, consistent with constitutional limitations, including where and how it holds a legislative session:

> Within its own domain, the legislative branch of a state government is entitled to a reasonable measure of independence in conducting its internal affairs. As a rule, a legislature's regulation of the atmosphere in which it conducts its core legislative activities – debating, voting, passing legislation, and the like – is part and parcel of the legislative process, and, hence, not subject to a judicial veto.[75]

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[72] *Malone*, 650 P.2d at 357.

[73] The Governor is currently being sued for having slashed the judiciary's budget by hundreds of thousands of dollars in direct response to judicial decisions with which he disagreed. *See ACLU, et al. v. Dunleavy*, 3AN-19-08349 CI.

[74] Alaska Const., art. II, § 12 (allowing the houses of the legislature to adopt their own rules of procedure, to choose their officers and employees, and to judge the election and qualifications of their members); AS 24.05.120; Alaska State Legislature Uniform Rules (last amended 2018), http://w3.legis.state.ak.us/docs/pdf/uniform_rules.pdf); *see also Fla. Senate v. Fla. Pub. Emps. Council 79, AFSCME*, 784 So.2d 404, 408-09 (Fla. 2001) (noting that "it is only the final product of the legislative process that is subject to judicial review" and reversing the trial court's temporary restraining order that barred the legislature from convening a certain hearing); *Paisner v. Attorney General*, 458 N.E.2d 734, 738 (Mass. 1983) (recognizing that the legislature has the power "to act alone in determining its own rules and other internal matters").

[75] *Nat'l Ass'n of Soc. Workers v. Harwood*, 69 F.3d 622, 635 (1st Cir. 1995).

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The Legislature is entitled to choose the location for its special sessions, and if it is unable to muster sufficient votes to meet somewhere other than Juneau, then it shall meet in Juneau (as it has done previously). For one branch of government (the judiciary) to empower another branch (the executive) to unilaterally dictate that the third branch (the legislature) must appear at any place of the Governor's choosing within the State for a special session would fail to afford the Legislature the due respect to which it is entitled. Pointedly, if this Court were to rule as Mr. Vezey requests, the Attorney General has already threatened that the Governor may deploy State Troopers to "round up" lawmakers who do not appear in whatever location the Governor selects for any special session, including in remote locations – even along the side of a highway.[76] This Court should decline Mr. Vezey's invitation to interfere in the Legislature's internal affairs and the Legislature's own regulation of the atmosphere in which it conducts its core legislative activities.

The fact that some aspects of the Legislature's internal workings are addressed in statutes, including AS 24.05.100, does not deprive the Legislature of its ultimate constitutional authority to control its internal affairs. Thus, in *Malone*, the Alaska Supreme Court held that the Legislature was entitled to organize its affairs regarding its presiding officers pro tempore, even if its actions violated AS 24.10.020.[77] It further held

[76] James Brooks, *Dispute over special session location escalates*, Anchorage Daily News (June 26, 2019), https://www.adn.com/politics/alaska-legislature/2019/06/26/alaska-legislatures-top-lawyer-says-lawmakers-can-decide-special-session-location/.

[77] *See, e.g.*, *Malone*, 650 P.2d at 356; *Abood*, 743 P.2d at 337 ("In *Malone*, we declined to address the question of whether the legislature had violated AS 24.10.020, which

that the Legislature was entitled to provide notice regarding its meetings that did not include the subject matter, even if such notice violated AS 44.62.310(e).[78] Likewise, in *Abood*, the Alaska Supreme Court held that the Legislature's alleged violation of AS 44.62.310 was also nonjusticiable.[79] It was simply not possible in those cases for the Alaska Supreme Court to inject itself into the Legislature's internal workings and dictate a result while still showing the respect due to a coequal branch of government. Similarly, it is not possible for this Court to rule that the Governor may compel members of the Legislature (under threat of being rounded up by State Troopers) to convene a special session along the side of a highway if the Governor so chooses.[80] This is antithetical to the Legislature's core inherent authority to manage its internal affairs as a coequal branch of government.

Third, there is "the need to attribute finality to the action taken by the" Legislature.[81] The second special session is over. Difficult decisions were made by legislators, and the citizens have absorbed and begun adjusting expectations in response to the actions taken during that session. As the Alaska Supreme Court noted in *Malone*:

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prohibited a person other than the Speaker of the House from convening a session of the House.").

[78] *Malone*, 650 P.2d at 358-59; *Abood*, 743 P.2d at 337 (noting that claim that Legislature had violated AS 44.62.310(e) was not justiciable).

[79] *Abood*, 743 P.2d at 338-39; *see also Paisner*, 458 N.E.2d at 740 ("Such procedural statutes are not binding upon the Houses; consequently they are not laws in the sense contemplated in art. 48. Either branch, under its exclusive rule-making constitutional prerogatives, is free to disregard or supersede such statutes by unicameral action.").

[80] Among other things, only the Legislature may compel the attendance of its absent members. Alaska Const., art. II, § 12.

[81] *Malone*, 650 P.2d at 357.

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> While the June 1981 reorganization did disrupt the legislative processes of the House for a few days, the important point is that the crisis passed, the House reorganized, and has since been engaged in legislative activity, all without judicial intervention. Intervention by a court at this point would be apt once again to disrupt the legislative processes of the House.[82]

Again, the same is true here. While there was some confusion during the few days between the Governor's two proclamations regarding the location of the special session, the crisis passed, and the Legislature was able to perform its legislative duties, all without judicial intervention. If this Court were to intervene now, it would create more chaos, not less.[83]

E. Under the separation of powers doctrine, the Governor may not dictate where the Legislature convenes.

Mr. Vezey's Complaint proceeds under the assumption that AS 24.05.100 gives the Governor unfettered discretion to direct the Legislature where any special session that he calls shall be held and that the Legislature's decision to meet in Juneau was invalid and caused the second session to be void. Mr. Vezey's interpretation of AS 24.05.100 runs afoul of the separation of powers doctrine and, if accepted, renders that statute unconstitutional. Before addressing this issue, Defendants hasten to point out that this ground for dismissal is raised in the alternative. As a matter of prudence, courts ordinarily decline to address potentially difficult constitutional questions when the case

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[82] *Id.*

[83] The Complaint's suggestion that the Legislature might suddenly begin ignoring all Alaska statutes and convene the Legislature abroad is absurd. *See* Complaint ¶ 18. This type of "parade of horribles" argument was also rejected in *Malone* when the plaintiffs "suggested that one result of our ruling will be chaos in legislative proceedings." *Malone*, 650 P.2d at 357. There is simply nothing to support Mr. Vezey's wild and flatly wrong speculation.

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may be decided on some alternative basis. "If a case may be fairly decided on statutory grounds or on an alternative basis, [courts] will not address the constitutional issues."[84] Mr. Vezey's Complaint should be dismissed on a number of other grounds without reaching the issue of the constitutionality of AS 24.05.100. Nevertheless, because Mr. Vezey's claims hinge on his impermissible interpretation of that statute, the Defendants explain below why his interpretation is unconstitutional. Since Mr. Vezey's claims fail as a matter of law without his unconstitutional interpretation of AS 24.05.100, his lawsuit should be dismissed.

Alaska recognizes the separation of powers doctrine.[85] The "underlying rationale of the doctrine of separation of powers is the avoidance of tyrannical aggrandizement of power by a single branch of government[.]"[86] The executive branch may not meddle in the affairs of the other branches and dictate where the Legislature conducts its business. It has been recognized since the nation's founding that one of the key elements of congressional independence was the ability to set the location of legislative sessions.[87] Indeed, the Montana Supreme Court considered whether a decision regarding the location

[84] *Alaska Fire & Wildlife Conservation Fund v. State*, 347 P.3d 97, 102 (Alaska 2015) (internal quotation marks and citation omitted).
[85] *Bradner v. Hammond*, 553 P.2d 1, 5 (Alaska 1976).
[86] *Id.*
[87] *See, e.g.*, Adrian Vermeule, *The Constitutional Law of Congressional Procedure*, 71 U. Chi. L. Rev. 361, 386-87, 390 n.77 (2004) ("As for the issue of congressional independence, the principal Convention debates centered upon the twin questions of whether rules about the timing and location of congressional sessions should be constitutionalized, and the extent to which the executive should be authorized to participate in the relevant decisions. The background of these debates was a set of chronic complaints about executive influence over legislative procedure generally, and over the timing and location of legislative sessions in particular.").

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of legislative chambers that was apparently delegated to a committee would violate the separation of powers.[88] That court harmonized the statute at issue with the separation of powers doctrine by finding that any right delegated to this committee was subject to the legislature's approval: "The Montana State Senate, a distinguished, honorable, and independent arm of the legislative body, has the right to determine where it will sit."[89] If determining the location of a legislative body's chambers is a protected legislative power, then certainly determining the location of the legislature's actual sessions must be as well. A statute that permits "meddling" by the executive in an exercise of legislative power would be "unconstitutional because it would be violative of separation of powers requirements."[90] The Alaska Constitution vests legislative power in the Legislature.[91] This includes the Legislature's ability to set its own rules of procedure regarding how it conducts its business.[92] As explained above, the ability to choose where it will convene for any special session held outside of Juneau is a fundamental part of the Legislature's internal affairs. Convening a session outside of the capital entails significant logistical, staffing, and cost challenges for the Legislature. The Governor is not permitted to foist these challenges on the Legislature at his whim. This would constitute an impermissible encroachment on the Legislature's autonomy and its ability to manage its own affairs.

In *Bradner v. Hammond*, the Alaska Supreme Court instructs that blending any authority constitutionally vested in one branch of state government with another branch

[88] *Goodover v. Dep't of Admin.*, 651 P.2d 1005, 1007 (Mont. 1982).
[89] *Id.* at 1008.
[90] *Bradner v. Hammond*, 553 P.2d 1, 6 (Alaska 1976).]
[91] Alaska Const., art. II, § 1.
[92] *Id.* § 12.

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will "not be inferred in the absence of an express constitutional provision."[93] There is no express constitutional provision granting the Governor the ability to dictate how or where the Legislature conducts its business.[94] The Court should not infer such a constitutional right to interfere with the Legislature's administration of its affairs.[95]

The Court is under a duty to reconcile, whenever possible, challenged legislation with the Alaska Constitution by rendering a construction that would harmonize the statutory language with the constitutional protections at issue.[96] The permissible construction of AS 24.05.100(b) that reconciles the statutory language with the Legislature's constitutional power to manage its own affairs is as follows: If a special session called by the Governor is to be convened at a location other than the capital, the Legislature must assent to that location. Absent obtaining that assent, the special session shall be held at the capital. This permits the Governor to provide input regarding his preferred location for the special session without trampling the Legislature's rights. Applying that constitutional interpretation of the statute here, Mr. Vezey's Complaint fails as a matter of law.

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[93] *Bradner*, 553 P.2d at 7.

[94] The Governor's constitutional authority vis-à-vis the Legislature's activities is necessarily limited. He may convene the Legislature and he may call a special session of the Legislature in which he designates subjects for that session. *See* Alaska Const., art. III, § 17, art. II, § 9.

[95] *Hickel v. Cowper*, 874 P.2d 922, 927 (Alaska 1994) ("We are unwilling to add 'missing terms' to the Constitution or to interpret existing constitutional language more broadly than intended by the framers or the voters.").

[96] *Bradner*, 553 P.2d at 7 n.22 (citing *State v. Campbell*, 536 P.2d 105, 110-11 (Alaska 1975)).

V. CONCLUSION

For the foregoing reasons, the Court should grant the Defendants' motion and dismiss this improper lawsuit. The Defendants were legislatively immune from service of process at the time the suit was filed, and the Defendants were also entitled to legislative immunity for the act of convening the Legislature. Further, Mr. Vezey's claims are moot, nonjusticiable, and legally defective. The Complaint should be dismissed with prejudice.

DATED: August 19, 2019

STOEL RIVES LLP

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

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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.

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

Exhibit A