IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STANLEY ALLEN VEZEY Plaintiff, v. 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-19-02233CI

DECISION AND ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

I. Introduction

This case arises from the dispute over the location of the special legislative session of July 2019. The dispute was resolved without judicial intervention. Because the dispute has been resolved and the plaintiff's claims are moot, the plaintiff's complaint raises only non-justiciable political questions, the defendants were immune from service of process at the time of the initiation of this case, and the plaintiff lacks standing, the plaintiff's complaint is dismissed.

II. Background

On June 13, 2019, the Governor issued a Proclamation calling a special session of the Legislature, to be convened in Wasilla beginning on July 8, 2019. On July 8, however, the defendants, the Speaker of the House and the President

of the Senate instead convened in Juneau along with a majority of the members of the legislature. A minority of legislators went to Wasilla.

The plaintiff is an Alaska resident. The plaintiff filed a complaint on July 10, 2019, which alleges that the defendants violated Article II, Section 9 of the Alaska Constitution[1] and AS 24.05.100[2] by convening in Juneau. As relief, he seeks: (1) a declaratory judgment that the session convened by the defendants in Juneau was illegal, and that all actions taken at this meeting are null and void; (2) an injunction compelling the defendants to then convene the Alaska Legislature in Wasilla, pursuant to the Governor's June 13 declaration; (3) an order enjoining any and all actions taken at the purported special session in Juneau from being implemented or enforced; (4) a declaratory judgment that the meeting of a majority of legislators in Juneau is subject to AS 25.60.037; and (5)

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[1] *See* AK Const. Art. II, § 9 ("Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.").

[2] AS 24.05.100(a)(1) states that "[t]he Governor may call the legislature into special session by issuing a proclamation." Subsection (b) provides as follows:

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

an order granting Plaintiff his costs and attorney's fees pursuant to AS 09.60.010(c). The defendants were personally served with process while convening at the State Capitol building in Juneau on July 11, 2019.

On July 17, 2019, nine days after the session began, six days after the complaint was delivered to the defendants, the Governor issued a supplemental proclamation naming Juneau as the site of the special session. That supplemental proclamation reads as follows in relevant part:

> 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:
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> 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.[3]

Following this supplemental proclamation, the entire legislature re-convened in Juneau and resumed the special session. The budget was passed and signed into law by the governor.

The defendants filed the present motion to dismiss on the following grounds: (1) the defendants were immune from service at the time they were

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[3] *Executive Proclamation by Governor Michael J. Dunleavy – FIRST SUPPLEMENTAL PROCLAMATION SECOND SPECIAL SESSION*, July 17, 2019 (available at https://gov.alaska.gov/wp-content/uploads/sites/2/07172019-Proclamation.pdf)

served, and therefore the plaintiff's case should be dismissed under Civil Rule 12(b)(2) due to lack of personal jurisdiction; (2) the lawsuit was rendered moot by the governor's supplemental proclamation; and (3) the plaintiff's claims are non-justiciable under the political question doctrine. Because the plaintiff's complaint did not clearly articulate a basis for why he has standing in this case, this Court issued an order for further briefing on the issue of standing.

III. Discussion

A. This Court lacks personal jurisdiction over the defendants because they were improperly served

"Service of process is a preliminary requirement to a court obtaining personal jurisdiction over a party. It satisfies the notice requirement essential to due process of law."[4] "Service of process is so basic that a judgment will be declared void where service is improper."[5] Civil Rule 4(d) requires that a defendant who is an individual be personally served with summons and a copy of the complaint.

Under the Alaska Constitution, legislators "attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from

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[4] *Beam v. Adams*, 749 P.2d 366, 367 (Alaska 1988) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, (1950); *Pew v. Foster*, 660 P.2d 447 (Alaska 1983); and *Aguchak v. Montgomery Ward Co.*, 520 P.2d 1352 (Alaska 1974)).

[5] *Id.* at 367 n. 2 (citing *Aguchak*, 520 P.2d at 1354)

arrest except for felony or breach of the peace."[6] Other states have similar laws immunizing legislators from service of process during legislative sessions, as this immunity is "designed to benefit the public by protecting legislators against compelled distraction and interference during the session."[7] The drafters of the Alaska Constitution contemplated that this immunity would protect legislators from "'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 . . . .'"[8] This history suggests that the scope of immunity should be construed broadly.

At the direction of the Senate President and Speaker of the House, the House and Senate convened in Juneau on July 8, 2019. The defendants were served in Juneau on July 11, 2019 while attending this session at the state capitol building. According to the plain language of the Alaska Constitution, the

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[6] AK Const. Art. 2, § 6.

[7] *Harmer v. Superior Court*, 79 Cal.Rptr. 855, 857 (Ct. App. 1969) (citing *Tenney v. Brandhove*, 341 U.S. 367, 373-74 (1951)). *See also Seamans v. Walgren*, 514 P.2d 166, 168 (Wash. 1973) ("These similar constitutional provisions convince us the 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.");

[8] *Def.'s Mot. to Dismiss* at 6 (quoting *Proceedings of the Alaska Constitutional Convention, comments of Steve McCutcheon*, at 1588 (Jan. 9, 1956) (available at http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/proceedings/Proceedings%20-%20Complete.pdf).

defendants were immune from service at that time. The attempted service of process in this case is void.

The plaintiff asks this court to conclude that the convening in Juneau at the direction of the Senate President and Speaker of the House was improper, and that therefore the defendants were not attending a valid legislative session when served. However, this presents a question that relates solely to the internal organization of the legislature and has been committed by the Constitution to the legislature. It would be impossible for the court to interfere with the decision of the Senate President and the Speaker of the House in this regard without expressing a lack of respect due to a coordinate branch of government and to the office of the Senate President and the Speaker of the House. The court must decline to do so.[9]

The convening of the legislature for the special session by the Senate President and the Speaker of the House in Juneau or elsewhere is sufficient to establish legislative immunity from service of process granted by Article 2, Section 6, of the Alaska Constitution. A quarrel over the internal organization of the legislature once convened is not enough to erase the legislative immunity that is constitutionally guaranteed. Accordingly, this case should be dismissed under Civil Rule 12(b)(2) for lack of personal jurisdiction over the defendants.

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[9] *See Abood v. Gorsuch*, 703 P.2d 1158, 1160-1161 (Alaska 1985).

B. THE PLAINTIFF'S CLAIM IS MOOT

"'A claim is moot if it is no longer a present, live controversy, and the party bringing the action would not be entitled to relief, even if it prevails.'"[10] "In 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."[11] "Typically, [courts] will 'refrain from deciding questions where events have rendered the legal issue moot.'"[12]

In his complaint, the plaintiff seeks an injunction compelling the defendants and other legislators to convene a special session of the Legislature in Wasilla, pursuant to the Governor's order from last June. The plaintiff also seeks a declaratory judgment that the defendants acted illegally by assembling in Juneau. But this dispute resolved itself shortly after the plaintiff filed his complaint when the Governor issued a supplemental proclamation designating Juneau as the location of the second session. That session ended on August 6, 2019, within the thirty-day time window required by the Alaska Constitution.[13]

The plaintiff's request for an injunction compelling legislators to go to Wasilla is moot. So too is the plaintiff's requested declaratory judgment. There is

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[10] *Mitchell v. Mitchell*, 445 P.3d 660, 663 (Alaska 2019) (quoting *Fairbanks Fire Fighters Ass'n, Local 1324 v. City of Fairbanks*, 48 P.3d 1165, 1167 (Alaska 2002)).
[11] *Id.* (quoting *Fairbanks Fire Fighters Ass'n*, 48 P.3d at 1168).
[12] *Id.* (quoting *Gerstein v. Axtell*, 960 P.2d 599, 601 (Alaska 1998)).
[13] *See* AK Const., Art. 2, § 9 ("Special sessions are limited to thirty days.")

no case in controversy at this time. A decision on the merits of the plaintiff's complaint would be an advisory opinion in the absence of a genuine dispute. Moreover, with the session ended, the budget signed, and the appropriations mostly spent, there is no remedy available for the claims presented.

The plaintiff nevertheless claims that the "public interest exception" to the mootness doctrine applies with respect to his requested declaratory judgment. Under that doctrine, if there is a public interest in resolving a moot question, the court may proceed to the merits. The applicability of the public interest exception depends on:

> (1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may cause review of the issues to be repeatedly circumvented, and (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.[14]

The plaintiff claims that the circumstances surrounding last summer's legislative split in the context of the governor's calling of a special session are likely to be repeated, despite the fact that the question has never been raised before and the question was quickly resolved. The plaintiff relies on the fact that the dispute was almost immediately resolved as a reason for the court to continue this case. But the fact that the dispute was immediately resolved by the real parties in interest

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[14] *Matter of Naomi B.*, 435 P.3d 918, 927 (Alaska 2019) (quoting *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371 (Alaska 2007), overruled by *Naomi B.*, 435 P.3d 918).

to the dispute without intervention of the courts is evidence that there is no need for judicial intervention.

The Alaska Supreme Court has held that "[m]ootness 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.'"[15] Moot issues are generally not considered to be "capable of repetition" for the purposes of the public interest exception test "when they 'turn on unique facts unlikely to be repeated.'"[16]

This case turns on unique political facts unlikely to be repeated. There is no basis for concluding that a similar dispute will arise again. More importantly, the political dispute at the root of this case was fleeting and fluid and it was immediately resolved. There is no real and substantial controversy necessitating relief from the court. There was a brief political dispute, part of the natural vicissitudes of the political questions that commonly arise between the legislative and executive branches. The executive and legislative branches resolved these political questions in an expeditious and effective manner. There is no judicial

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[15] *Mitchell*, 445 P.3d at 663 (quoting *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995)).
[16] *Naomi B.*, 435 P.3d at 928 (quoting *E.P. v. Alaska Psychiatric Institute*, 205 P.3d 1101, 1107 (Alaska 2009)).

relief available for political questions. There was no need for judicial intervention during the nine days the executive and legislature worked to resolve any differences, and there is even less need for intervention now that they have done so.

C. THE PLAINTIFF LACKS STANDING TO BRING THIS SUIT.

"[A]ll that is required of a complaint seeking declaratory relief is a simple statement of facts demonstrating that the superior court has jurisdiction and that an actual justiciable case or controversy is presented."[17] However, the plaintiff must have standing for a complaint seeking a declaratory judgment to be justiciable.[18] The standing requirement is "a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions."[19]

Alaska courts have recognized two different forms of standing.[20] The first form is the interest-injury approach, under which "a plaintiff must have an interest adversely affected by the conduct complained of."[21] The second form is citizen-

[17] *Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969).
[18] *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Alaska 2004).
[19] *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) (internal citations omitted).
[20] *Id.*
[21] *Id.*

taxpayer standing, under which individuals may be permitted "to challenge governmental action based on their status as taxpayers or citizens."[22]

1. The plaintiff does not have interest-injury standing.

"To establish interest-injury standing plaintiffs must demonstrate that they have a 'sufficient personal stake' in the outcome of the controversy and 'an interest which is adversely affected by the complained-of conduct.'"[23]

The plaintiff argues that he anticipates an economic injury if the appropriations of HB 2001 and SB 2002, including the Permanent Fund Dividend (PFD), are legally challenged as being constitutionally void. Specifically, the plaintiff claims that because the first reading of HB 2001 was on July 8, and not during what he considers a valid legislative session, its passage violated Article 2, Section 14 of the Alaska Constitution, which provides that "[n]o bill may become law unless it has passed three readings in each house on three separate days . . . ." Meanwhile, the plaintiff claims that the passage of SB 2002 is constitutionally infirm because both houses adjourned for more than three days without the concurrence of the other, in violation of Article 2, Section 10.[24]

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[22] *Id.*

[23] *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009) (citing *Ruckle*, 85 P.3d at 1040; and *Alaskans fir a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (Alaska 2000)).

[24] Once again the plaintiff bases their claim on a criticism of internal legislative processes which presents a non-judiciable question that the court cannot reach.

But these criticisms relate to the internal organization of the legislature, not to constitutional questions. The constitution calls for three readings; but the legislature determines how those readings will take place, not the court. In any case, these bills have since been passed by majorities and have been signed into law by the governor. The 2019 budget is passed and is mostly spent. The 2019 permanent fund dividend has been paid. By passing these bills, the legislature accepted the internal legislative process. Even if there were a flaw in the legislative process, the plaintiff cites no law entitling him or anyone else to a judicial remedy. The plaintiff's claim is merely a "generally available grievance about government"[25] that is insufficient to constitute an injury-in-fact.

2. The Plaintiff does not have citizen-taxpayer standing.

The Alaska Supreme Court set forth the test for determining whether a plaintiff has citizen-taxpayer standing as follows:

> First, the case in question must be one of public significance. On[e] measure of significance may be that specific constitutional limitations are at issue, as in *Carpenter* and *Lewis*. That is not an exclusive measure of significance, however, as statutory and common law questions may also be very important. Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action. Further, standing may be denied if

[25] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

> the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.[26]

In the present case, the most important factor is that there are others who are more directly affected by the challenged conduct who are able to bring suit. This factor was explored in *Keller v. French*.[27] In that case the Court held that, even if others had not already sued, the Keller plaintiffs still would have lacked citizen-taxpayer standing because there remained another potential plaintiff who was both capable of litigating the issue and more directly affected by the challenged conduct.[28] As the Court explained:

> In addition to the [Kiesel] plaintiffs, as of October 9 when we issued our dispositive order there was at least one other potential plaintiff who was directly affected by the investigation and who was fully capable of suing. The Keller plaintiffs concede that Governor Palin was "arguably more directly concerned," but argue that she is "unlikely to sue." They argue that the governor stated that she would cooperate with the investigation, and that this, along with the fact that she was in the middle of a national election campaign, indicated that she was not going to bring suit. Their interpretation of the citizen-taxpayer standing test is too literal. Even if the governor did not intend to sue, there is no indication that, if she thought her rights were being violated, she would be unable to do so. The Keller plaintiffs do not contend that the governor or any other potential plaintiffs were somehow limited in their ability to sue. 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.[29]

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[26] *Trustees for Alaska*, 736 P.2d at 329-330 (internal citations omitted).
[27] 205 P.3d at 300.
[28] *Id.*
[29] *Id.*

Therefore under *Keller*, the existence of another potential plaintiff who is more directly affected by the challenged governmental conduct and is able to sue, whether or not they intend to do so, is fatal to a claim of citizen-taxpayer standing.

In the present case, the legislators who went to Wasilla are an example of others who are more directly affected by this question and who are capable of suing if they believe their rights have been violated. The fact that these legislators chose not to sue does not mean they are incapable of doing so and does not give the plaintiff standing.[30]

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[30] The plaintiff argues that *Keller* is distinguishable from the present case, relying heavily on an Order Regarding Defendant's Motion to Dismiss from *McCoy et al. v. Dunleavy*, Case No. 3AN-19-08301CI. The *McCoy* litigation arose from the same events as the present case, and it also involves a non-legislator citizen seeking a declaratory judgment regarding AS 24.05.100(b). In that Order, the Anchorage Superior Court held that although members of the Alaska Legislature were potential plaintiffs who were more directly affected by the challenged conduct, the *McCoy* plaintiffs had citizen-taxpayer standing. That holding relied on the following from the opinion in *Trustees for Alaska*: "the crucial inquiry is whether the more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future." 736 P.2d at 330. The Anchorage court reasoned that because the defendant in that case failed to show that these potential plaintiffs were likely to file suit, the actual plaintiffs were appropriate. See 3AN-19-08301CI, *Order Regarding Def. Mot. to Dismiss* at 21. However, the *Keller* Court rejected this interpretation of the citizen-taxpayer test as "too literal." 205 P.3d at 303. The Order in *McCoy* ignores the fact that the Alaska Supreme Court found that the plaintiffs in *Keller* would still have lacked citizen-taxpayer standing even had the Kiesel plaintiffs not sued because then-Governor Palin was a potential plaintiff who was more directly affected. *Id.* Accordingly, *Keller* is not distinguishable from the present case.

3. Because the plaintiff lacks standing, this court lacks subject-matter jurisdiction

In discussing standing, the Alaska Supreme Court has held 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."[31] A lack of standing is therefore a basis for dismissal under Civil Rule 12(h)(3), which provides that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter the court shall dismiss the action."[32]

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[31] *Myers v. Robertson*, 891 P.2d 199, 203 (Alaska 1995), citing *Trustees for Alaska*, 836 P.2d at 329-30, and *Wagstaff v. Superior Court*, 535 P.2d 1220, 1225 (Alaska 1975); *see also Neese v. Lithia Chrysler Jeep of Anchorage, Inc.*, 210 P.3d 1213, 1218 (Alaska 2009) (affirming the trial court's decision granting the defendant's motion to dismiss pursuant to Civil Rule 12(b)(1) due to lack of standing and 12(b)(6) for failure to state a claim).

[32] Lack of standing is also frequently grounds for dismissal under Rule 12(b)(1) of the Federal Rules of Civil Procedure. *See* Civ. § 1350 *Motions to Dismiss—Lack of Jurisdiction Over the Subject Matter*, 5B Fed. Prac. & Proc. (Wright & Miller) (3d ed.) ("[T]he Rule 12(b)(1) motion to dismiss for a lack of subject matter jurisdiction may also be appropriate . . . when the plaintiff lacks standing to bring the particular suit before the district court."); *see also Donoghue v. Bulldog Investors General Partnership*, 696 F.3d 170, 173 (2d Cir. 2012) ("In conducting de novo review of the denial of a Rule 12(b)(1) motion to dismiss for lack of standing, we borrow from the familiar Rule 12(b)(6) standard . . . ."); *Miller v. Pac. Shore Funding*, 224 F. Supp. 2d 977, 994 (D. Md. 2002), aff'd, 92 F. App'x 933 (4th Cir. 2004) ("Standing, therefore, is a fundamental component of a court's subject-matter jurisdiction. As such, defendants may aptly challenge its existence by a motion to dismiss for lack of jurisdiction over the subject matter, pursuant to Federal Rule of Civil Procedure 12(b)(1).") (internal citations omitted); *Sullo & Bobbitt P.L.L.C. v. Abbott*, 536 F. App'x 473, 475 (5th Cir. 2013) ('Subject matter jurisdiction includes the 'irreducible constitutional minimum of standing.'") (quoting *Lujan*, 504 U.S. at 560).

This is because "a court which does not have subject matter jurisdiction is without power to decide a case."[33]

The plaintiff has not established that he has standing under either the interest-injury doctrine or the citizen-taxpayer test. Because the plaintiff does not have either interest-injury or citizen-taxpayer standing, this court lacks subject matter jurisdiction in this case. Accordingly, it must be dismissed under Civil Rule 12(h)(3).

D. THE SUBSTANCE OF THE PLAINTIFF'S CLAIM PRESENTS A NON-JUSTICIABLE POLITICAL QUESTION.

It is a "well-established principle that courts should not attempt to adjudicate 'political questions.'"[34] This principle flows from the separation of powers doctrine, as it is "'the relationship between the judiciary and the coordinate branches of the . . . Government . . . which gives rise to the 'political question.'"[35] Whether a case involves a non-justiciable political question is a case-by-case inquiry.[36] However, courts have identified several elements that are frequently prominent in cases that present political questions:

> "(1) a textually demonstrable commitment of the issue to a coordinate political department; (2) the impossibility of a court's undertaking an independent resolution of the case without expressing lack of respect due coordinate branches of government;

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[33] *Wanamaker v. Scott*, 788 P.2d 712, 714 n. 2 (Alaska 1990).
[34] *Malone*, 650 P.2d at 356 (citing *Powell v. McCormack*, 395 U.S. at 518; *Baker v. Carr*, 369 U.S. at 210; and *Coleman v. Miller*, 307 U.S. 433, 454 (1939)).
[35] *Id.* (quoting *Baker v. Carr*, 369 U.S. at 210).
[36] *Id.*

> and (3) the need for adherence to a political decision already made."[37]

Alaska courts have repeatedly declined to adjudicate disputes over legislative procedure due to the political question doctrine. In *Malone v. Meekins*, the former Speaker of the House and ten other state representatives sought a declaratory judgment that the ex-Speaker's removal was illegal and unconstitutional.[38] The plaintiffs also alleged that the defendant legislators had usurped the authority of the Speaker and failed to comply with the Alaska Open Meetings Act because they did not give reasonable notice to the plaintiffs or the public before voting to replace the ex-Speaker.[39] However, the Court held that both claims presented non-justiciable political questions.[40] With respect to the first claim, the Court wrote:

> For the courts to assume responsibility for overseeing the officer selection process of a legislative body would be highly intrusive and, in our opinion, inconsistent with the respect owed the legislature by the judiciary. Of significance too is the need to attribute finality to the action taken by the House. While the [vote to replace the Speaker] 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. Nor is it at all

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[37] *Id.* at 357 (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962); *Powell v. McCormack*, 395 U..S. 486, 518 (1969); *Leek v. Theis*, 539 P.2d 304, 327-28 (Kan. 1975); and *Sweeny v. Tucker*, 375 A.2d 698, 706 (Pa. 1977)).
[38] *Id.* at 353.
[39] *Id.* at 354.
[40] *Id.* at 356-59.

> clear that judicial intervention during the reorganization would have shortened it or otherwise have been of benefit.[41]

The Court further held that it could not decide the latter claim because "except in extraordinary circumstances, as where the rights of persons who are not members of the legislature are involved, it is not the function of the judiciary to require that the legislature follow its own rules."[42]

In *Abood v. League of Women Voters of Alaska*,[43] the League of Women Voters, the Anchorage Daily News, and the Fairbanks Daily News Miner filed an action for declaratory and injunctive relief against several legislators, alleging that the defendants had held meetings that were closed to the public in violation of the Open Meetings Act and the legislature's own procedural rules.[44] The Alaska Supreme Court held that because Article 2, Section 12 of the Alaska Constitution[45] expressly authorizes the legislature to adopt its own rules of procedure, and because these procedural rules (including the Open Meetings

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[41] *Id.* at 357.
[42] *Id.* at 359.
[43] 743 P.2d 333 (Alaska 1987).
[44] *Id.* at 334.
[45] That provision provides that:

> The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings. A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The legislature shall regulate lobbying.

Act) did not implicate constitutional restraints on the legislature or violate the fundamental rights of others, but instead only directly affected legislators themselves and the right of the public generally to observe the legislature, the plaintiffs' claim that the legislature failed to comply with these procedural rules was non-justiciable.[46] Although the Open Meetings Act was intended to benefit the public by increasing transparency, the Act "merely establishes a rule of procedure concerning how the legislature has decided to conduct its business."[47] The Court noted that "having made the rule, it should be followed [by the legislature], but a failure to follow it is not the subject matter of judicial inquiry."[48]

Here, as in *Malone* and *Abood*, the plaintiff's core claims relate to a matter of legislative procedure, i.e. the ability to designate the location of a special legislative session. Under Article 2, Section 12, issues of legislative procedure are squarely within the legislature's purview. Although AS 24.05.100(b) states that "the Governor shall designate the location" of special sessions, that rule, like the Open Meetings Act, merely establishes a procedure.[49]

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[46] *Id.* at 338-339. *Cf. United States v. Smith*, 286 U.S. 6, 33 (1932) ("As the construction to be given to the rules affects persons other than members of the Senate, the question presented is of necessity a judicial one.").
[47] *Id.* at 339.
[48] *Id.*
[49] Article 2, Section 9 of the Alaska Constitution, gives the governor the authority to call special sessions, but does not expressly give the governor the authority to determine the location of these sessions. Although A.S. 24.05.100(b) gives the governor the ability to designate a location of the special session, it does not necessarily strip the legislature of their own authority to do so. Presumptions of

Like other rules governing the internal operations of the legislature, a rule regarding the location of special legislative sessions does not in and of itself materially affect citizens who are not a part of the legislature. *Abood* makes clear that adjudicating disputes with respect to the internal organization of the legislature is not properly a matter for the judiciary to decide. The same is true of the plaintiff's request for a declaratory judgment that the convening of legislators in Juneau was subject to the Open Meetings Act.

The final consideration in finding that this case presents a non-justiciable political question that the court should decline to adjudicate is what would happen if the court were to intervene by granting the plaintiff's requested relief. The governor and the legislators expeditiously resolved their dispute without the intervention of any court and went on to conclude the legislative session. Bills were passed by the legislature and signed by the governor. Appropriations were made and almost all of the money has been spent. It is difficult to comprehend the extent of the chaos that would result if a court were to attempt to undo these political budget decisions.

The dispute over the location of the special session was quickly resolved by the real parties in interest to the dispute, the legislature and the Governor. Judicial intervention in this dispute is inconsistent with the respect owed by the

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constitutionality, deference to co-equal branches, and this construction are sufficient to place the statute, on its face, in the category of a rule of internal organization of the legislature, not necessarily inconsistent with the Constitution.

judiciary to the other co-equal branches of government and would only serve to undermine the resolution.

IV. Conclusion

The defendants were immune from service at the time the plaintiff attempted service of process in this case. The plaintiff's claims are moot. The plaintiff lacks standing to bring these claims. And the plaintiff's claims present a non-justiciable political question. The motion to dismiss must be granted.

V. Order

Accordingly, for the reasons set forth above,

IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss is GRANTED.

DATED this 6th day of April, 2020 at Fairbanks, Alaska.

Michael A. MacDonald
Superior Court Judge

I certify that on 4/7/20 copies of this form were sent to: Sattenberg

CLERK: S. Cuddy