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

STANLEY ALLEN VEZEY, Plaintiff, vs. BRYCE EDGMON, Speaker of the Alaska State House of Representatives, and CATHERINE A. GIESSEL, President of the Alaska State Senate, Individually, Defendants.	Case No.: 4FA-19-02233 CI

REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION

At bottom, Mr. Vezey's suit hinges on his mistaken belief that the Legislature lacks the authority to decide how it will organize its affairs, including deciding where it will meet for a special session. He asserts that the Alaska Constitution assigns this authority instead to the Governor (it does not, as Mr. Vezey has admitted in other filings in this very case) and asks this Court to declare that much of the second special session must be invalidated.

The Court should decline Mr. Vezey's invitation to adjudicate the political questions raised in this case. Neither Mr. Vezey nor the Governor may dictate where and how the Legislature conducts its business. Because this core issue regarding the validity of the Legislature's second special session is not justiciable, all of Mr. Vezey's claims – which are wholly predicated on the supposed invalidity of that session – must be dismissed. Defendants are also entitled to dismissal of the Complaint due to legislative immunity, the mootness of the requested relief, and the separation of powers doctrine.

II. ARGUMENT

A. Mr. Vezey's Claims Are Not Justiciable.

In their opening brief, Defendants explained that issues regarding the Legislature's internal organization and workings were nonjusticiable.[1] Defendants further highlighted that the Alaska Supreme Court had repeatedly held that the Legislature was constitutionally entitled to control its internal affairs even when some aspects of those internal workings were addressed in statutes – and that the courts should not adjudicate the Legislature's alleged violations of those statutes.[2] Importantly, Mr. Vezey does not dispute any of this. Instead, he attempts to distinguish these authorities by arguing that the nonjusticiability doctrine does not apply when constitutional law is implicated, and by then claiming that the Governor's purported authority to "designate the location of the special session is

[1] *See generally* Motion to Dismiss Pursuant to: Legislative Immunity; Civil Rule 12(b)(2); Nonjusticiability; and Civil Rule 12(b)(6) (the "Motion") at 18-23.
[2] *See id.* at 21-22 (citing *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982), and *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 337 (Alaska 1987)).

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clearly a matter of constitutional law and is, therefore, justiciable."[3] While it is true that the nonjusticiability doctrine does not apply to cases where courts are ensuring "compliance with the provisions of the Alaska Constitution,"[4] there simply is no constitutional provision addressing the location of a special session. Mr. Vezey's only argument against application of the nonjusticiability doctrine fails on its own terms.

It is clear for at least three reasons that the Alaska Constitution does not assign the Governor the ability to dictate the location of a special session.

First, Mr. Vezey already admitted it: "Alaska's Constitution is silent as to where the Legislature shall meet. Alaska Statutes are not silent on this subject."[5] In other words, the location of the special session is a purely *statutory* issue and is not contained in any of the provisions of the Alaska Constitution.[6]

Second, a careful review of the Alaska Constitution's text confirms that Mr. Vezey was correct about the absence of any such provision. While article II, section 9 authorizes both the Governor and the Legislature (by two-thirds vote of the legislators) to call a special

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[3] Opposition to Motion to Dismiss Pursuant to: Legislative Immunity; Civil Rule 12(b)(2); Nonjusticiability; and Civil Rule 12(b)(6) ("Opp.") at 22.
[4] *Abood v. Gorsuch*, 703 P.2d 1158, 1161 (Alaska 1985) (citation omitted).
[5] Reply to Defendants' Opposition to Motion for Declaratory Judgment and Preliminary Injunction at 2.
[6] Mr. Vezey argues briefly that the power to call a special session implicitly includes the power to choose the location. *See* Opp. at 28. Mr. Vezey cites no legal authority for his expansive view of the provision. Nor does he explain why the Legislature would have enacted a redundant statute on this point if the location of the session was already addressed in the constitutional provision. *See Joseph v. State*, 315 P.3d 678, 684 (Alaska App. 2013) (noting that a primary rule of statutory construction is that a court should assume that the Legislature did not enact redundant statutes).

session,[7] the location is not addressed. The Alaska Constitution instead broadly authorizes the Legislature to establish its own rules of procedure regarding how the Legislature will conduct its business.[8]

Third, apparently recognizing the fatal flaw in his position, Mr. Vezey takes the extraordinary step of inventing an entirely new term to describe AS 24.05.100; he claims it is a "constitutional statute."[9] Mr. Vezey resorts to these linguistic gymnastics precisely because he recognizes that there is no provision of the Alaska Constitution that addresses the location of a special session. He thus tries to manufacture a new category – made up out of whole cloth – to make a statute (AS 24.05.100) sound more like a constitutional provision. This is nonsense. Every statute "implicates the Constitution" insofar as statutes are a product of the legislative authority bestowed by the Alaska Constitution. The fact that some statute has some similarities to a constitutional provision does not make that statute into a constitutional provision. Statutes are different from constitutional provisions, for obvious reasons, and Mr. Vezey offers no sensible explanation – and certainly no legal authority – for why this particular statute should be given different status or protections than any other statute.

Because the Court is not being asked to ensure compliance with the provisions of the Alaska Constitution here, but rather whether legislative leaders acted in violation of a statute (AS 24.05.100), the nonjusticiability doctrine applies. Mr. Vezey does not dispute

[7] Alaska Const., art. II, § 9.
[8] Alaska Const., art. II, § 12.
[9] Opp. at 23.

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that there is a textually demonstrable commitment of the issue to the Legislature. Nor does he dispute that it would be impossible for the Court to grant the requested relief without expressing a lack of respect due to the Legislature. Nor does he dispute that there is a need to adhere to a political decision that had already been made.[10] Defendants' arguments on these points are unrebutted. The Could should decline to interject itself into the Legislature's internal workings, including decisions regarding where and how it will meet.

In addition to the unrebutted arguments presented in the Motion, Defendants note that the Wisconsin Supreme Court recently declined an analogous request to invalidate a series of legislative acts from a session that was purportedly invalid.[11] The reasoning in that case fully supports a finding that Mr. Vezey's lawsuit is nonjusticiable. The facts are as follows: The Wisconsin Legislature convened a special session in December 2018, passing certain laws and confirming certain appointees.[12] Plaintiffs sued, claiming that the actions were unenforceable because they were purportedly taken "in a constitutionally invalid session."[13] Following a ruling in plaintiffs' favor by the trial court, the Wisconsin Supreme Court promptly reversed. Key portions of the ruling are quoted at length due to their clear relevance to the instant dispute:

> The separation of powers operates in a general way to confine legislative powers to the legislature. From the very nature of things, the judicial power cannot legislate nor supervise the making of laws.
>
> The judiciary may not interfere with the Legislature's execution of its constitutional duties. This court will not, under separation of powers

[10] *See generally* Motion at 19-23.
[11] *See League of Women Voters of Wis. v. Evers*, 929 N.W.2d 209 (Wis. 2019).
[12] *See id.* at 215.
[13] *Id.*

concepts and affording the comity and respect due a co-equal branch of state government, interfere with the conduct of legislative affairs. The proper judicial role does encompass consideration of the constitutionality of the laws enacted by the Legislature. . . . The process by which laws are enacted, however, falls beyond the powers of judicial review. Specifically, the judiciary lacks any jurisdiction to enjoin the legislative process. . . .

How the Legislature meets, when it meets, and what descriptive titles the Legislature assigns to those meetings or their operating procedures constitute parts of the legislative process with which the judicial branch has no jurisdiction or right to interfere.

> The judicial department has no jurisdiction or right to interfere with the legislative process. That is something committed by the constitution entirely to the legislature itself. It makes its own rules, prescribes its own procedure, subject only to the provisions of the constitution.

No court may intermeddle in purely internal legislative proceedings.

. . . .

. . . The legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution.[14]

As the Court will recall, the nonjusticiability doctrine "stems primarily from the separation of powers doctrine."[15] The Alaska Constitution likewise vests the legislative process entirely to the Legislature itself and permits the Legislature to set its own rules of procedure, subject only to any constitutional limitations.[16] Consistent with the Wisconsin Supreme Court's recent decision, this Court should not intermeddle in purely internal

[14] *Id.* at 221-23 (internal quotation marks, citations, and alterations omitted).
[15] *Malone v. Meekins*, 650 P.2d 351, 356 (Alaska 1982).
[16] Alaska Const., art. II, §§ 1, 12.

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legislative proceedings regarding how and where the Legislature conducts its core activities.

B. Defendants Were Entitled to Legislative Immunity from Service of Process.

Mr. Vezey does not dispute that Defendants were entitled to legislative immunity from service of process if the second special session was valid. Rather, Mr. Vezey's entire argument proceeds from the incorrect premise that the second special session was "not a lawful session."[17] Notably, Mr. Vezey does not allege that the second special session was improper for any reason other than its location. As explained in the Motion, details concerning the specifics of how the Legislature handles its day-to-day business – including the location for its sessions – go to the heart of the Legislature's inherent authority for its internal workings.[18] In granting the Legislature the full legislative power, including the Legislature's right to control its rules of procedure, the Alaska Constitution thus allows the Legislature to decide where it will meet. Mr. Vezey's 36-page brief fails to distinguish (or even acknowledge) any of this legal authority. It follows that the second special session was lawful or, at a bare minimum, that Mr. Vezey's challenge to the location of that session is a nonjusticiable political question. In either case, the session's validity is not subject to challenge here. Accordingly, Defendants' arguments regarding their immunity from service during that session are unrebutted and their Motion should be granted.

[17] Opp. at 12.

[18] *See* Motion at 20-21 & nn.74-75; *see also id.* at 24-25 & n.88.

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C. Defendants Were Entitled to Legislative Immunity for the Act of Calling the Legislature into Session.

As Defendants explained in their opening brief, legislative immunity applies to convening or calling to order a legislative body's session or meeting.[19] Mr. Vezey disputes that Defendants could be entitled to legislative immunity without two-thirds of the Legislature having voted to call a special session.[20] Mr. Vezey improperly conflates the act of calling the special session with the act of calling the session to order. The act of calling the special session requires either a vote of two-thirds of the Legislature voting or a proclamation of the Governor.[21] The latter was done here.[22] After the Governor called the special session, it was Defendants' duty to "proceed with the business of the house in accordance with the rules of the legislature."[23] Mr. Vezey's lawsuit is complaining about Defendants' actions in which they proceeded with legislative business in accordance with the Legislature's rules, including calling the session to order. Mr. Vezey's disagreements with how (including where) Defendants performed their legislative duties are not actionable.[24]

Further, legislators are entitled to this "absolute immunity" for their legislative actions – which these undeniably were[25] – even if it turns out that the legislators were

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[19] Motion at 9-13.
[20] Opp. at 13-14.
[21] Alaska Const., art. II, § 9.
[22] *See* Complaint, Ex. 1.
[23] AS 24.05.170.
[24] *Kerttula v. Abood*, 686 P.2d 1197, 1204 (Alaska 1984); *see* Motion at 11-12 & nn.31-37.
[25] Mr. Vezey admits that Defendants undertook "legislative acts" here – he just disputes their validity. *See, e.g.*, Opp. at 1 (noting that Defendants were "introducing legislation,

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mistaken about the propriety of that conduct.[26] Otherwise, legislators would find themselves at risk of civil liability (or worse) when attempting to perform their legislative duties. Legislators performing legislative acts during a legislative session must receive absolute immunity for those actions, lest they be second-guessed and accused of some wrongdoing in a court of law by a political foe hoping to intimidate those legislators into taking some action preferred by that foe – for example, convening a special session in Wasilla. If a legislator purportedly erred in carrying out any legislative duty, the remedy is through the ballot box – not civil litigation.[27] The strong public policy supporting legislative freedom from executive harassment requires that legislators be given immunity for their legislative acts. Mr. Vezey states that citizens should be able to hold their legislators accountable if those legislators are not performing their duties appropriately, including by compelling them to take certain actions.[28] Mr. Vezey is half right. To be sure, citizens are always able to hold their legislators accountable *through the ballot box* if

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engrossing, enrolling, and submitting measures, and generating purportedly authentic House and Senate Journals").

[26] *See, e.g.*, *Kerttula*, 686 P.2d at 1204 n.19 (declining to create an exception to legislative immunity for non-criminal "unconstitutional behavior in preparation for legislative acts"); *see also Shultz v. Sundberg*, 577 F. Supp. 1491, 1495 (D. Alaska 1984); *Bryan v. City of Madison, Miss.*, 213 F.3d 267, 274 (5th Cir. 2000).

[27] Depending on the nature of the alleged conduct, it is conceivable that the Legislature itself could impose discipline. Regardless, civil litigation is not an appropriate or permissible venue for challenging the legislator's legislative acts. *See State v. Dankworth*, 672 P.2d 148, 152 (Alaska App. 1983) (granting immunity because actions "were clearly legislative" even if allegedly improper: "If the motives for a legislator's legislative activities are suspect, the constitution requires that the remedy be public exposure; if the suspicions are sustained, the sanction is to be administered either at the ballot box or in the legislature itself.").

[28] *See, e.g.*, Opp. at 12-13.

they believe that the legislators have not carried out their duties appropriately. But the Alaska Constitution provides that it is the legislative branch – not the judicial branch – that may compel legislators to attend sessions.[29]

D. Mr. Vezey's Lawsuit Is Moot.

Mr. Vezey's lawsuit is moot because his claims are no longer a present, live controversy, and Mr. Vezey would not be entitled to relief from Defendants in any event.[30] Mr. Vezey appears to concede, as he must, that the declaratory and injunctive relief sought in his Complaint are now moot.[31] He nevertheless argues that the "public interest exception" to the mootness doctrine should apply here. Mr. Vezey is mistaken.

Mr. Vezey's brief proceeds as though he is seeking relief against the Legislature as a whole, but he is not. He has sued two individuals.[32] While these individuals are legislative leaders, they are not the Legislature. They cannot convene a special session by themselves.[33] An injunction against these two individuals cannot prevent the implementation of any legislative acts or other official actions taken in July 2019. Declaratory relief against these two individuals would not result in a declaration regarding the Legislature's actions as a whole. Defendants cannot provide any of the requested relief to Mr. Vezey, and Mr. Vezey does not even attempt to explain how these two individuals could do so. This is fatal to all of Mr. Vezey's claims.

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[29] Alaska Const., art. II, § 12; Alaska State Legislature Uniform Rules 15, 16.
[30] *Mitchell v. Mitchell*, 445 P.3d 660, 663 (Alaska 2019).
[31] Opp. at 18.
[32] *See* Motion at 15 (raising argument, which Mr. Vezey ignores).
[33] Alaska Const., art. II, § 9.

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While it is unnecessary for the Court to reach the issue in order to dismiss Mr. Vezey's lawsuit, the Court should also decline to apply the "public interest" exception to the mootness doctrine here. The disputed issue here (which was unprecedented in Alaska) is not likely to be repeated.[34] While Mr. Vezey confidently predicts that this scenario "is likely to arise whenever legislators do not want to cooperate with the executive," and that there will be "endless repetition" of that scenario, he offers no plausible explanation – let alone evidence – that this prediction is accurate. Mr. Vezey's rank speculation is not enough. "[S]peculation about what other parties may choose to do in the future is exactly the sort of indeterminacy that the mootness doctrine was developed to avoid."[35] To state the obvious, if Defendants or the Legislature as a whole were acting as Mr. Vezey claims that it was (i.e., seeking to "halt the legislative process"), then presumably – accordingly to Mr. Vezey's strained logic – the alleged "rogue legislators" would have insisted that the legislative session should be convened somewhere other than Juneau when the Governor issued his supplemental proclamation identifying Juneau as the proper venue. But that did not happen. And it has not happened in the decades leading up to this Governor's unprecedented proclamation. It is not enough for Mr. Vezey to dream up some incredibly unlikely scenario – which has never happened before or since – and then insist that the Governor or the Legislature is likely to act as Mr. Vezey speculates it might. Among other

[34] *See O'Callaghan v. State*, 920 P.2d 1387, 1389 (Alaska 1996) (declining to apply the public interest exception where the disputed issues were not likely to be repeated).
[35] *Ulmer v. Alaska Rest. & Beverage Ass'n*, 33 P.3d 773, 777 (Alaska 2001).

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things making a recurrence unlikely, as Mr. Vezey notes, the Legislature has the ability to change the statute when the next regular legislative session arrives.

E. Mr. Vezey Incorrectly Claims That Defendants "Misled" the Court.

Mr. Vezey devotes a surprising amount of his brief to baseless accusations that Defendants "misled" the Court in one way or another. Defendants respond briefly to these false allegations here. Because neither Mr. Vezey's accusations nor these responses go to the merits of the Motion, the Court may disregard them as it sees fit.

First, Mr. Vezey complains that Defendants incorrectly asserted that Mr. Vezey had claimed that the "purpose" for his lawsuit was to get the Legislature to convene together to address the budget and other issues.[36] That, however, is almost verbatim how Mr. Vezey's counsel described the purpose of the lawsuit (and Defendants went so far as to quote the relevant language in the Motion): "[T]he 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 session."[37] In short, Mr. Vezey blames Defendants for having made the mistake of believing Mr. Vezey's counsel when he described the purpose of the lawsuit.

Second, Mr. Vezey complains that Defendants "misled" the Court by describing the second special session of the Legislature as an actual session.[38] Mr. Vezey disputes that the session held in Juneau constituted a valid session, and so he apparently takes the view

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[36] Opp. at 25.
[37] Motion at 13-14 (quoting letter of William R. Satterberg Jr., dated July 15, 2019).
[38] Opp. at 26; *see also id.* at 27 (asserting that the Motion "repeats the misrepresentation that Defendants called a special session in Juneau"), 29.

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that any description that differs from his is "misleading." By Mr. Vezey's bizarre logic, his assertions about the supposed invalidity of the session would also be "misleading" because the Court may ultimately disagree with his arguments and find that the session was valid. This is nonsensical. The parties' disagreement regarding the validity of the session does not make their positions "misleading."

Third, Mr. Vezey complains that Defendants attempted some "sleight of hand" by distinguishing between the Governor's ability to "call" a special session and Defendants' duty to "call to order" any such session.[39] There is nothing tricky about this. The Alaska Constitution allows the Governor to "call" a special session – i.e., to direct the Legislature to hold a session and to identify subjects to be addressed.[40] That is where his authority ends. It is then up to Defendants and the Legislature to actually call the session to order and take legislative actions after the session has been "called." *Kerttula* clearly explains this in the context of joint sessions: "The president of the senate . . . has the duty to call a joint session to order, once it has been convened by the governor, and to preside over it."[41] The Governor has the constitutional right to direct the Legislature to meet in a special session, and he shall designate the subjects for legislation (along with reconsideration of certain vetoed bills) during that session. The Alaska Constitution does not otherwise afford him the right to dictate how the Legislature will conduct its affairs, including where it shall meet. Mr. Vezey suggests – again, without any legal support – that the Alaska Constitution

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[39] Opp. at 27-28.
[40] Alaska Const., art. II, § 9.
[41] *Kerttula*, 686 P.2d at 1204 (footnote omitted).

should be read to implicitly permit the Governor to choose the location for a special session. Mr. Vezey offers no evidence that the framers intended that the special sessions would be held anywhere other than in Juneau.[42] It would be quite extraordinary (and improper) to assume that the Alaska Constitution included an implicit authority for the Governor to dictate the Legislature's working conditions, especially as it relates to the moving of a special session to somewhere other than Juneau. Mr. Vezey also does not bother to explain why AS 24.05.100 was enacted if, as he claims, it was redundant.[43]

Fourth, Mr. Vezey complains that the Motion misidentifies the requested relief insofar as it states that Mr. Vezey asks the Court to invalidate the second special session.[44] Instead, Mr. Vezey says, he seeks a declaration that the session was "constitutionally invalid and void ab initio."[45] This appears to be a distinction with a difference. Whether the session is "invalidated" or declared "invalid," the requested end result is still the same. It is unclear what "misrepresentation" Mr. Vezey is complaining about, or whether this is instead just an opportunity to malign Defendants.[46]

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[42] There is evidence to the contrary. *See, e.g.*, Proceedings of the Alaska Constitutional Convention 1686 (1955), http://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf ("I don't believe in saying that when you only have a 30-day extraordinary session and you go to all the expense of bringing your legislators together and *taking them to your capital*, that they should be prevented from exercising their full legislative powers." (emphasis added)).

[43] *See supra* note 6.

[44] Motion at 31.

[45] *Id.* at 32.

[46] Mr. Vezey also makes veiled suggestions that "Defendants failed to comply with the detailed procedures for law enactment[,]" *id.*, but never explains what he means. The Legislature complied with all procedures for law enactment.

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F. Separation of Powers.

Mr. Vezey fails meaningfully to address Defendants' alternative argument that his interpretation of AS 24.05.100 runs afoul of the separation of powers doctrine.

The parties agree that "the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."[47] There is no express constitutional provision addressing where the Legislature will meet for a special session. Mr. Vezey has already conceded as much.[48] He reiterated that point later in his brief when attempting to argue that "the constitutional power to call a special session *implicitly* includes the power to choose the location."[49] That is, Mr. Vezey conceded that the ability to choose the location of the special session was not addressed in any express constitutional provision and therefore must be implied or inferred – which is exactly what *Bradner* says cannot be done for the blending of governmental powers. Despite all of this, Mr. Vezey argues that article II, section 9 of the Alaska Constitution expressly gives the Governor the authority to choose the location of the special session.[50] On its face, it does not. That provision simply permits the Governor to call a special session and to designate subjects for legislation. It does not address where or how the Legislature is supposed to carry out its duties. Those core legislative powers are left to the Legislature as part of its inherent authority.

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[47] *Compare* Opp. at 32 (quoting *Bradner v. Hammond*, 553 P.2d 1, 7 (Alaska 1976)) *with* Motion at 25-26.
[48] *See supra* note 5 and accompanying text.
[49] Opp. at 28 (emphasis added).
[50] Opp. at 32.

Finally, Mr. Vezey confusingly argues – with no legal support – that if AS 24.05.100 violates the separation of powers as to the executive, "then it also necessarily violates the separation of powers as to the legislative government."[51] This is obviously incorrect and reflects a deep misunderstanding of the separation of powers doctrine. The Legislature has the inherent authority to control the administration of its affairs, including the location of a special session. Interpreting the statute to *respect* that inherent authority – rather than to undermine it, as Mr. Vezey's interpretation would do – clearly does not violate the separation of powers. Mr. Vezey also complains that Defendants are improperly asking the Court to "rewrite" AS 24.05.100, but courts have a duty to reconcile challenged legislation with the Alaska Constitution by rendering a construction that harmonizes the statutory language with the relevant constitutional protections.[52] Mr. Vezey has offered no valid reason why the Court should do otherwise here.

III. CONCLUSION

Mr. Vezey's entire lawsuit depends on his mistaken belief that the Governor has the right to dictate where and how the Legislature performs its duties. This is wrong as a matter of law. No provision of the Alaska Constitution gives the Governor this power. The Legislature instead has the inherent authority to administer its own affairs, including deciding where and how it will perform its legislative acts. Mr. Vezey's reliance on a statute (AS 24.05.100) is unavailing because Defendants' alleged violation of a statute relating to the Legislature's working conditions is nonjusticiable. In addition, Mr. Vezey's

[51] Opp. at 33. Defendants assume that Mr. Vezey is referring to the Legislature.

[52] *See* Motion at 26 n.96.

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interpretation of that statute would run afoul of the separation of powers doctrine and render the statute unconstitutional. Because the second special session was valid (or, at a minimum, the issue of its validity due to compliance with AS 24.05.100 is nonjusticiable), Defendants are likewise entitled to dismissal of the Complaint due to legislative immunity and the mootness of the requested relief.

DATED: October 3, 2019

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CERTIFICATE OF SERVICE

This certifies that on October 3, 2019, a copy of the foregoing was served via first class mail on:

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Lanette Blodgett, Practice Assistant