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FILED
STATE OF ALASKA
THIRD DISTRICT
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KEVIN F. McCOY and MARY C. GEDDES,)
)
Plaintiffs,)

vs.)

MICHAEL J. DUNLEAVY, Governor of)
the State of Alaska,)
)
Defendant.)

Case No 3AN-19-0830 CI

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Kevin F. McCoy and Mary C. Geddes, proceeding *pro se*,
state for their complaint against the defendant and allege as follows:

I. SUMMARY OF THE CIVIL ACTION

1. This is a complaint for declaratory judgment and injunctive relief
filed by two Alaska citizens against the Governor of their State. The Governor
violated the doctrine of Separation of Powers and Article II, Section 9 of the
Alaska Constitution when, on June 13, 2019, he unilaterally ordered the Alaska
Legislature to convene a Second Special Session in a location other than the
state capital in Juneau without the Legislature's agreement. This order subverted

the ability of the Legislature to gather a sufficient number of its members to do its business.

A copy of the Governor's Executive Proclamation ordering the Legislature to conduct a Special Session in Wasilla, Alaska is attached as Exhibit A to this Complaint.

II. SUMMARY OF RELIEF REQUESTED

2. Plaintiffs seek a declaratory judgment holding that:

(a) The Governor's June 13, 2019 Executive Proclamation

requiring the Legislature to convene the Second Special Session in Wasilla, Alaska violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.

(b) AS 24.05.100(b), as it pertains to the Governor's authority to call special sessions away from the capital, violates the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution unless construed to require Legislative agreement to the location away from the capital.

(c) All proceedings conducted pursuant to defendant Dunleavy's June 13, 2019 Executive Proclamation are void and without legal effect or consequence because the initiating proclamation violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.

3. Plaintiffs request entry of a preliminary and a permanent injunction that:

(a) enjoins defendant Dunleavy from ordering the Alaska Legislature to convene at a location other than the Capital without the Legislature's agreement; and

(b) enjoins defendant Dunleavy from implementing his 182 line-item vetoes of the FY2020 operating budget until the expiration of such time as is allowed by the Alaska Constitution for the legislature to consider and vote on whether to override any of the Governor's appropriation vetoes; that is, until after the fifth day of the next regular or lawfully proclaimed special session of the legislature;

III. PARTIES

4. *Pro se* Plaintiff Kevin F. McCoy is a public interest claimant for protection and enforcement of a constitutional claim pursuant to AS 09.60.010(c). At all time relevant to this cause of action, Mr. McCoy has been a resident of Anchorage in the Third Judicial District. He is a citizen of Alaska, having resided here since 1976.

5. *Pro se* Plaintiff Mary C. Geddes is a public interest claimant for protection and enforcement of a constitutional claim pursuant to AS 09.60.010(c). At all times relevant to this cause of action, Ms. Geddes has been a resident of

Anchorage in the Third Judicial District. She is a citizen of Alaska having resided here since 1984.

6. Defendant Michael J. Dunleavy, is the Governor of the State of Alaska. He issued the June 13, 2019 Executive Proclamation purporting to require the Alaska State Legislature to convene the Second Special Session in Wasilla.

III. JURISDICTION AND VENUE

7. This Court has original jurisdiction over this action pursuant to AS 22.10.020 because it is a civil action seeking injunctive and declaratory relief.

8. Venue is proper in the Third Judicial District pursuant to Alaska Rule of Civil Procedure 3(e).

IV. ALLEGATIONS OF LAW

9. The Separation of Powers Doctrine is implicit in the Alaska State Constitution. The Executive, the Legislature, and the Courts are the three co-equal branches of government under the Alaska Constitution. The Separation of Powers Doctrine is designed to preclude the exercise of arbitrary power and to safeguard the independence of each branch of government.

10. Article II, Section 9 of the Alaska Constitution provides in the pertinent part:

Special sessions may be called by the governor[.] 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 30 days.

11. Article II, Section 16 of the Alaska Constitution provides in the pertinent part:

Bills vetoed after the adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature.

12. AS 24.05.100 ("Special sessions") provides:

(a) The legislature may hold a special session not exceeding 30 calendar days in length. The special session shall be called in either of the following ways:

(1) The governor may call the legislature into special session by issuing a proclamation. At a special session called by the governor, legislation is limited to the subjects designated by the governor in the proclamation or to the subjects presented by the governor, and to reconsideration of legislation, if any, vetoed following a regular session of that legislature. To enable the legislators to make travel and other arrangements, a proclamation for a special session shall be issued at least 30 days in advance of the convening date stated in the proclamation unless

(A) the proclamation is issued under AS 26.23.020(k) ;

(B) the special session is called to address a disaster; in this subparagraph, "disaster" has the meaning given in AS 26.23.900;

(C) the proclamation is issued while both houses are in regular or special session; or

(D) the proclamation is issued within one hour after the second house has adjourned from a regular or special session.

(2) The legislature may call itself into special session if two-thirds of the membership responds in the affirmative to a poll conducted by the presiding officer of each house. Each presiding officer may initiate a poll by their joint agreement, and each shall initiate a poll upon the request of 25 percent of the membership of each house, expressed in writing and signed by those members. When two-thirds of the membership to which the legislature is entitled responds in the affirmative, the president of the senate and speaker of the house shall jointly announce the result of the poll and a date for the convening of the special session. If one of the presiding

officers is deceased, has resigned, or is incapacitated, the presiding officer of the other house may conduct the poll of the members of both houses.

(b) 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.

V. ALLEGATIONS OF FACT

The June 13, 2019 Executive Proclamation

13. On June 13, 2019, defendant Dunleavy issued an executive proclamation calling the Thirty-First Legislature of the State of Alaska to its second special session. The stated purpose of second special session was to consider passing a bill addressing the permanent fund dividend. Specifically, the proclamation asked the legislature to consider:

An appropriation bill that transfers the amount authorized under AS 37.13.145(b) from the earnings reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045(a)) for the payment of permanent fund dividends and for administrative and associated costs for the fiscal year ending June 30, 2020.

14. The proclamation ordered that the second special session be convened on July 8, 2019, in Wasilla, Alaska and recommended the Wasilla Middle School was an appropriate venue.

15. Defendant Dunleavy's action was unprecedented. No previous governor has ever called the Legislature into a special session outside of the capital.

16. On information and belief, defendant Dunleavy did not consult with the Legislature before issuing his proclamation setting the second special session in Wasilla, and the Legislature never agreed to Wasilla as the location.

The 182 Line-Item Vetoes

17. On June 28, 2019, defendant Dunleavy vetoed 182 line-items from the state's FY2020 operating budget passed by the Alaska State Legislature. The funds vetoed from the operating budget totaled 444 million dollars and included:

- \$130 million cut from the University of Alaska
- \$50 million cut from Medicaid
- 20.7 million cut from senior benefits
- \$48.9 million cut from School Bond Debt Reimbursement
- \$6.0 million cut from the Village Public Safety Officer Program
- \$3.4 million from the Ocean Ranger Program
- 2.7 million from Public Broadcasting

Confusion over the lawfulness of Defendant Dunleavy's venue designation

18. Defendant Dunleavy's unilateral proclamation ordering the Legislature to convene in a location other than the capital in Wasilla caused great confusion among legislators and citizens. Some legislators concluded the unprecedented venue directive included in the proclamation violated the Separation of Powers Doctrine; they believed only the legislature itself could determine where it could most effectively fulfill its constitutional responsibilities.

Consequently, they headed to the capital, Juneau, where this year's regular and first special session had been convened. Other legislators felt obligated to obey defendant Dunleavy's unilateral directive to meet in Wasilla notwithstanding reduced access to legislative offices, telecommunications equipment, and computers.

19. There are sixty Alaska state legislators: forty in the House and twenty in the Senate.

20. On Monday, July 8, 2019, the first day of the Special Session, 21 state legislators assembled in Wasilla. The group lacked a quorum but planned to participate in 'technical sessions' throughout the first week of the special session in conformance with the charge from the Governor. According to KTUU news, Senator Mia Costello told members of the public that decision to attend the Wasilla meeting "comes down to the constitution and our duty to obey it." House Minority Leader Lance Pruitt said that members would stay in Wasilla through the week and wait for legislators in Juneau to come there.

21. Thirty-seven legislators assembled in Juneau, the capital, on Monday, July 8. By the next day, Tuesday, July 9, thirty-eight legislators were present in Juneau but eighteen remained absent. One more legislator arrived on Wednesday, July 10, but the others still remained in Wasilla.

22. The confusion over the lawful location of the second special session, caused entirely by defendant Dunleavy's unlawful proclamation, had the effect of preventing the full Legislature - as a body - from meeting, debating, and evaluating whether or not defendant Dunleavy's 182 line-item vetoes should be

overridden within the five-day limit imposed by Article II, Section 16 of the Constitution.

23. The confusion over the lawful location of the second special session continues to impair the legislature's ability, as a body to meet, debate, and evaluate legislation addressing the permanent fund dividend issue identified in the June 13, 2019 Proclamation.

VI. CLAIMS FOR RELIEF

COUNT 1

(AS 24.05.100(b) is facially unconstitutional)

24. Plaintiffs incorporate by reference the allegations contained paragraphs 1 through 23 above.

25. AS 24.05.100(b) is facially unconstitutional because it exceeds the scope of the Governor's lawful authority to call special sessions under Article II, Section 9 of the Alaska Constitution. This statute facially intrudes on the power of the legislature, as an independent branch of government, to determine how best to fulfill its constitutional responsibilities. Purportedly giving the Governor the power to unilaterally determine venue for a special legislative session invites the exercise of arbitrary power and improperly intrudes on the independence of the legislature. The statute shares the same constitutional infirmity as would a statute enacted by the legislature that required the Governor to work in his Anchorage office the second week of each month. Under the Constitution and the doctrine of separation of powers, the Governor gets to decide where to do his work and fulfill his responsibilities; so does the Legislature.

COUNT 2
(AS 24.05.100(b) is unconstitutional as applied)

26. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 25 above.

27. AS 24.05.100(b) is unconstitutional as applied because it was construed by the Governor to set the location for for special sessions far from the state capital without any regard for the Legislature's wishes or the Legislature's independent evaluation of its ability to meaningfully fulfill its constitutional responsibility at a location other than the Capital. AS 24.05.100(b) as applied in this case violated the Separation of Powers Doctrine resulting in the arbitrary exercise of power that improperly intruded on the Constitutional independence of the legislature.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request relief as follows:

1. A preliminary and permanent injunction that:
 - (a) enjoins defendant Dunleavy from ordering the Alaska State Legislature to convene at a location other than the Capital without the Legislature's agreement;
 - (b) enjoins defendant Dunleavy from implementing the 182-line item vetoes in the FY 2020 state operating budget until such time as the Legislature has had its constitutionally guaranteed opportunity to meet following a lawfully proclaimed special session and determined as a body within

the five-day override window whether to override one or more of the Governor's 182 vetoes;

2. A declaratory judgment that:

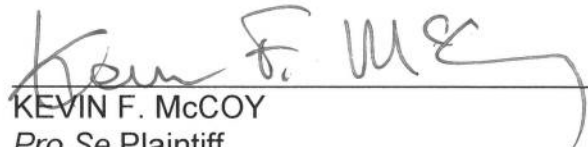
(a) holds that AS 24.05.100(b), as it pertains to the Governor's authority to call special sessions away from the Capital violates the Doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution unless construed to require legislative agreement to the location away from the Capital;

(b) holds that all proceedings conducted pursuant to defendant Dunleavy's June 13, 2019 Executive Proclamation are without effect because the initiating proclamation violated the Doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution.


3. For reasonable costs and attorney's fees incurred by plaintiffs as allowed by law; and

4. For any further relief the Court deems just, equitable, and appropriate.

Dated at Anchorage, Alaska this 15th day of July, 2019.



KEVIN F. McCOY
Pro Se Plaintiff
(Alaska Bar # 7705042 Retired)



MARY C. GEDDES
Pro Se Plaintiff
(Alaska Bar # 8511157 Inactive)

STATE OF ALASKA



Executive Proclamation

by

Governor Michael J. Dunleavy

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 call the Thirty-First Legislature of the State of Alaska into its second special session in Wasilla, Alaska, at 1:00 p.m., on July 8, 2019, at the recommended venue of Wasilla Middle School, to consider passage of bills on the following subject:

An appropriation bill that transfers the amount authorized under AS 37.13.145 (b) from the earning reserve account (AS 37.13.145) to the dividend fund (AS 43.23.045 (a)) for the payment of permanent fund dividends and for administrative and associated costs for the fiscal year ending June 30, 2020.

Dated this 13th day of June, 2019.

Time: 11:00 (a.m./p.m.).



A handwritten signature of Michael J. Dunleavy in black ink, written over a horizontal line.

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

EXHIBIT A

KEVIN F. McCOY
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KEVIN F. McCOY and MARY C. GEDDES,)

Plaintiffs,)

vs.)

MICHAEL J. DUNLEAVY, Governor of)
The State of Alaska,)

Defendant.)

Case No. 3AN _____ CI

**MOTION FOR EXPEDITED CONSIDERATION OF PLAINTIFFS'
REQUEST FOR A PRELIMINARY INJUNCTION**

Pursuant to Alaska Rule of Civil Rule 77(g), Plaintiffs Kevin F. McCoy and Mary C Geddes moves this Court for expedited consideration of their Motion for Preliminary Injunction.

In this declaratory judgment action, Plaintiffs argue that the Governor's Executive Proclamation setting the Second Special Session in Wasilla and not the capital, without the agreement of the Legislature, deprived the Legislature of its constitutionally-guaranteed but time-limited right to consider the Governor's

Motion for Expedited Consideration of Plaintiffs' Request for a Preliminary Injunction
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____CI

vetoed as a single body, in one assembly. Expedited consideration is requested because Plaintiff seeks to enjoin the Governor from implementing line-item vetoes to the state's FY2019 operating budget, which he had announced on June 28, 2019, and which absent this legal challenge would be expected to be implemented forthwith, as the relevant fiscal year has already commenced on July 1 and the Governor believes that the time for veto override has expired.

As set forth in the attached Affidavits, Plaintiffs as citizens of the State of Alaska, will suffer irreparable harm if the line-item vetoes cutting the state's FY2020 operating budget are implemented by the Administration. Due to the immediacy of the threatened budget cuts, and the projected on impacts on the Plaintiffs and thousands of other Alaskans, Plaintiffs respectfully request this court to expedite its consideration of the motion for injunctive relief. Plaintiffs urge this court to issue a scheduling order setting a deadline for Defendants' response and setting this matter for a hearing so that a ruling may issue prior to the expiration of a preliminary injunction. In the alternative, Plaintiffs respectfully request that the court grant the motion for expedited consideration and set a scheduling conference to allow the parties to be heard on these issues.


By the time of this filing, Plaintiffs will have contacted offices of the Attorney General in Juneau and Anchorage and alerted them to this request for expedited consideration. Plaintiffs will, in addition to regular (certified) service,

email all of the documents to the Attorney General in Juneau and the Deputy Attorney General in Anchorage as soon as possible after filing.

Dated at Anchorage, Alaska this 15th day of July, 2019.



KEVIN F. McCOY
Pro Se Plaintiff
(Alaska Bar # 77059042 Retired)



MARY C. GEDDES
(Alaska Bar # 851157 Inactive)

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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KEVIN F. McCOY and MARY C. GEDDES,)	
)	
Plaintiffs,)	
vs.)	
)	
MICHAEL J. DUNLEAVY, Governor of)	Case No 3AN _____ CI
The State of Alaska,)	
.)	
)	
Defendants.)	

**PROPOSED ORDER GRANTING MOTION FOR
EXPEDITED CONSIDERATION**

IT IS HEREBY ORDERED that plaintiffs' motion for expedited consideration of their motion for a preliminary injunction as follows:

1. This matter is set for a hearing on July ____, 2019 before the Honorable _____ at _____ m. in Courtroom _____;
2. The purpose of this hearing is to hear the parties' oral arguments for and against consideration plaintiffs' motion for

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Proposed Order Granting Motion for Expedited Consideration
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____CI

expedited consideration of their request for preliminary injunctive relief;

3. Should the Court elect to grant the motion for expedited consideration of the plaintiffs' motion for a preliminary injunction, the parties should be prepared to propose an expedited schedule for resolving the request for resolving plaintiffs' request for a preliminary injunction.

Dated at Anchorage, Alaska this _____ day of July, 2019.

JUDGE OF THE SUPERIOR COURT

JUL 15 2019

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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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KEVIN F. McCOY and MARY C. GEDDES,)
)
Plaintiffs,)

vs.)

MICHAEL J. DUNLEAVY, Governor of the)
State of Alaska ,)
Defendant.)

) Case. No. 3AN-19-___ CI
)
)
)
)
)
)
)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Kevin F. McCoy and Mary C. Geddes, proceeding *pro se*, ask the Court to issue a preliminary injunction seeking to:

1. Enjoin defendant Dunleavy from ordering the Alaska Legislature to convene at a location other than the Capital without the Legislature's agreement;
2. Enjoin defendant Dunleavy from implementing his 182 line-item vetoes of the FY2020 state operating budget (otherwise known as CCSS HB 39) until the next regular or other lawfully proclaimed special session of the Legislature;

Plaintiffs' Motion for Preliminary Injunction
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
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Plaintiffs seek preliminary injunctive relief only until such time as the court can render a decision on the merits on the lawfulness of defendant's June 13, 2019 Executive Proclamation ordering the legislature to convene its second special session in Wasilla, Alaska without agreement from the Legislature. Plaintiffs are entitled to the requested preliminary relief because defendant Dunleavy's venue directive was issued in violation of Article I, Section 9 of the Alaska Constitution and in contravention of the Separation of Powers Doctrine.

This motion is submitted pursuant to Alaska Rules of Civil Procedure 65(a) and 77 and is supported by Plaintiff's Memorandum of Law in Support of the Motion for Preliminary Injunction; Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief, and Plaintiff's Affidavit.

Dated at Anchorage, Alaska this 15th day of July, 2019.


KEVIN F. McCOY
Pro Se Plaintiff
(Alaska Bar # 77059042 Retired)


MARY C. GEDDES
(Alaska Bar # 851157 Inactive)

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

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Plaintiffs,)

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MICHAEL J. DUNLEAVY, Governor of)
The State of Alaska,)

Defendant.)

Case No. 3AN _____ CI

**PROPOSED ORDER GRANTING PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

After evaluating plaintiffs' motion for a preliminary injunction, together with defendant's opposition, after consideration of all the pleadings filed to date, and after hearing any arguments by the parties;

This Court finds that plaintiffs will suffer irreparable harm if the preliminary injunction is not granted, that the defendant can be adequately protected if the preliminary injunction is granted, that plaintiffs' constitutional claims are serious and substantial, and that plaintiffs have demonstrated a very clear likelihood that they will prevail on their constitutional claims.

Proposed Order Granting Plaintiffs' Motion for Preliminary Injunction
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____CI

JUL 15 2019

In particular, without a preliminary injunction, plaintiffs and the citizens of Alaska will be irreparably harmed by the economic and social impact of defendant Dunleavy's 182 vetoes without first affording the Alaska Legislature the opportunity to determine whether any or all of the 182 vetoes should be overridden at a lawfully-declared special session. During the pendency of a preliminary injunction, defendant is adequately protected because he retains lawful authority to call special sessions in the capital of Juneau, or by agreement with the legislature, at other locations within Alaska. Finally, plaintiffs have demonstrated serious and substantial constitutional challenges suggesting the defendant violated the doctrine of Separation of Powers and Article II, Section 9 of the Alaska Constitution when he ordered the Legislature to convene the second special session in Wasilla, Alaska. Alternatively, the court concludes that plaintiffs have clearly demonstrated a high likelihood of success on the merits of their constitutional claims and thus are entitled to injunctive relief. Accordingly,

IT IS HERE BY ORDERED that plaintiffs' motion for a preliminary injunction is granted.

The defendant is hereby enjoined:

- (a) from ordering the Alaska Legislature to convene at a location other than the capital without the Legislature's agreement;
- (b) from implementing defendant's 182 line-item vetoes of the State's FY2020 operating budget until the expiration such time as is allowed by the Alaska Constitution for the legislature to

consider and vote on whether to override any of the Governor's appropriation vetoes; that is, until after the fifth day of the next regular or lawfully proclaimed special session of the legislature.

Dated at Anchorage, Alaska this ___ day of July, 2019.

JUDGE OF THE SUPERIOR COURT

JUL 15 2019

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the State of Alaska,)

Defendant.)

NO. 3AN-19-_____ CI

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF PRELIMINARY INJUNCTION REQUEST**

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

Plaintiffs Kevin F. McCoy and Mary C. Geddes, proceeding *pro se*, submit this memorandum of law in support of their motion for a preliminary injunction that seeks to:

1. Enjoin defendant Dunleavy from ordering the Alaska Legislature to convene at a location other than the Capital without the Legislature's agreement;

2. Enjoin defendant Dunleavy from implementing his 182 line-item vetoes of the FY2020 state operating budget until the expiration of such time as is allowed by the Alaska Constitution for the Legislature to consider and vote on whether to override any of the Governor's vetoes; that is, until after the fifth day of the next regular or lawfully proclaimed special session of the Legislature;

Plaintiffs seek a preliminary injunction only until such time as the court can render a decision on the merits as to the lawfulness of the Governor's June 13, 2019, Executive Proclamation.

II. STATEMENT OF FACTS

A. Defendant Dunleavy's June 13, 2019 Executive Proclamation to address the Permanent Fund Dividend.

On June 13, 2019, defendant Dunleavy issued an executive proclamation calling the Thirty-First Legislature of the State of Alaska into its second special session to address legislation related to the permanent fund dividend. The proclamation ordered that the second special session be convened in Wasilla, Alaska at 1:00 p.m. on July 8, 2019 and recommended Wasilla Middle School as an appropriate venue.

B. The Legislature's Lack of Agreement to Wasilla as the location for the Second Special Session.

The governor did not consult with the Speaker or the Senate President or the Legislature as a body before issuing the executive proclamation setting venue in Wasilla, and the Legislature as a separate branch of government never agreed to Wasilla as the location.

C. Defendant Dunleavy's 182 line-item state budget vetoes totalled \$444 Million.

On June 28, 2019, defendant Dunleavy vetoed 182 line-items from the FY2020 state operating budget passed by the Alaska State Legislature. The funds vetoed from the operating budget totaled 444 million dollars and included:

- \$130 million cut from the University of Alaska
- \$50 million cut from Medicaid
- 20.7 million cut from senior benefits
- \$48.9 million cut from School Bond Debt Reimbursement
- \$6.0 million cut from the Village Public Safety Officer Program
- \$3.4 million from the Ocean Ranger Program

D. Defendant Dunleavy's unprecedented unilateral venue directive confounded and confused the Legislature.

Defendant Dunleavy's unilateral proclamation ordering the legislature to convene in Wasilla caused great confusion among legislators and citizens. Some concluded the Governor's unprecedented venue directive violated the Separation of Powers Doctrine and Article II, Section 9 of the Alaska Constitution. These legislators and citizens believed only the legislature could effectively determine where and how it could most effectively fulfill its constitutional responsibilities. Others legislators and citizens believed defendant Dunleavy had the authority to unilaterally designate the location of the special session.

E. Defendant Dunleavy's unlawful proclamation adversely affected the Legislature's ability to meet its Constitutional obligations.

The ensuing confusion caused entirely by defendant Dunleavy's unlawful Executive Proclamation resulted in competing proceedings. Senate President Catherine Giessel and Speaker of the House Bryce Edgmon sought to commence a joint legislative session in the capital beginning on July 8, 2019. Slightly less than two thirds of the legislators (the Juneau group) attended proceedings in the capital. The Juneau group achieved a quorum and gavelled in to address defendant Dunleavy's 182 line-item vetoes. However, because the full legislature did not convene in Juneau, the Juneau group was wholly unable to meaningfully fulfill its constitutional responsibilities. It lacked the requisite of 45 members constitutionally necessary to override a governor's veto.

This was because approximately one-third of the legislators (the Wasilla group) appeared instead in Wasilla at the Wasilla Middle School Gymnasium, on July 8, 2019. The Wasilla group, because it lacked a quorum, could not gavel in to conduct business.

As a direct consequence of defendant Dunleavy's venue directive, the confusion over the lawfully correct location of the second special session kept the legislature, as a body, from meeting, debating, and evaluating whether or not the 182 line-item vetoes should be overridden by the fifth day of the second special session as required by Article II, Section 16 of the Alaska Constitution.

III. ARGUMENT

A. Plaintiffs have standing to challenge defendant Dunleavy's unlawful executive proclamation.

The Plaintiffs have standing to challenge the lawfulness of defendant Dunleavy's June 13, 2013 Executive Proclamation compelling the legislature to convene the second special session in Wasilla, Alaska because they are citizens and residents of Alaska, the case involves matters of great public interest, and their interests are adversely affected by the defendant's actions in this case. For example, the Plaintiffs own their own home and have received notice that municipal property taxes are likely to increase due to the state budget's failure to fund local school debt reimbursement. Their home community has seen a surge in drug addiction and homelessness and they are informed that the governor's

vetoed will drastically cut Medicaid funding for treatment and programs offering housing assistance.

Alaska Trial Courts are instructed to broadly construe standing particularly in public interest litigation, by adopting an approach “favoring increased accessibility to judicial forums.” *Trustees for Alaska v. State, Dep’t of Natural Resources*, 736 P.2d 324, 327-329 (Alaska 1987). *Coghill v. Boucher*, 511 P.2d 1297, 1299 (Alaska 1973) provides more direct authority. In *Coghill*, Alaska recognized that its citizens have standing to challenge voting regulations promulgated by a lieutenant governor prior to election. Cf. *Moore v. State*, 553 P.2d 8, 23-25 (Alaska 1976) in which the Court allowed private citizens to challenge the state’s failure to consult with local agencies prior to sale of oil leases.

Accordingly, Plaintiffs have the requisite standing necessary to challenge defendant’s unlawful Executive Proclamation.

B. The Court should grant the requested preliminary injunctive relief.

1. There are two alternative tests for issuance of a preliminary injunction.

This Court has jurisdiction under AS 22.10.020 to issue preliminary injunctions. See also Alaska Rule of Civil Procedure 65. A plaintiff may obtain a preliminary injunction by meeting either of two standards: the “balance of hardship” and the “probable success on the merits.” *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014). The Plaintiffs can satisfy both tests.

2. Plaintiffs are entitled to the requested preliminary injunction under the balance of hardships test.

Plaintiffs may obtain a preliminary injunction by balancing the harm plaintiffs will suffer without the injunction against the harm the injunction will impose on the defendant. A preliminary injunction is warranted when the following three factors are present. First, the plaintiff must be faced with irreparable harm. Second, the opposing parties must be adequately protected. And finally, plaintiffs must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit. *Alsworth*, 323 P.3d at 54 (quotation omitted).

a. Plaintiffs confront irreparable harm without injunctive relief.

Plaintiffs will be irreparably harmed if the preliminary injunctive relief is not granted. First, the confusion sown by defendant Dunleavy's unlawful venue proclamation interfered with, intruded upon, and wholly frustrated the Alaska State Legislature from meeting, debating, and voting as a body in a single location on whether or not defendant Dunleavy's 182 line -tem vetoes should be overridden within the five-day limit imposed by Article 11, Section 16 of the Constitution.

Without a preliminary injunction and as a direct consequence of the unlawful venue proclamation, defendant Dunleavy will implement and effectuate the 182 line-item vetoes totaling 444 million dollars. These cuts will include:

- \$130 million cut from the University of Alaska
- \$50 million cut from Medicaid
- 20.7 million cut from senior benefits
- \$48.9 million cut from School Bond Debt Reimbursement
- \$6.0 million cut from the Village Public Safety Officer Program
- \$3.4 million from the Ocean Ranger Program

These cuts to the state operating budget are devastating to the continued viability of the University of Alaska, will greatly restrict access to lifesaving medical care, end or severely restrict school bond debt reimbursement, and make rural Alaska Villages less safe. Homelessness in Alaska's urban centers will increase and become more problematic. Municipal property taxes will increase and property values will decline and Alaska will lose access to Federal matching funds.

Plaintiffs respectfully submit that their interests as citizens of Alaska will be irreparably harmed if defendant Dunleavy's June 13, 2010 Executive Proclamation is allowed to stand and the requested preliminary injunctive relief is not granted.

b. The defendant can be adequately protected if preliminary injunctive relief is granted.

Plaintiffs respectfully submit that the defendant will be adequately protected if the requested preliminary injunctive relief is granted. Defendant Dunleavy remains fully empowered to issue at any time an Executive

Proclamation convening special session in Juneau and affording the Alaska Legislature, as a body, the full and fair opportunity to assess whether to override the 182 line-item vetoes under Article II, Section 16 of the Constitution, all without the venue cloud. See Alaska Const., art. II, sec. 9, and AS 24.05.100(b). Preliminary injunctive relief will set aside the venue question for alternate locations only temporarily without disabling defendant Dunleavy or the Legislature from expeditiously continuing to perform their constitutional duties for the citizens of Alaska.

c. Plaintiffs' Complaint presents serious and substantial questions that go to the merits of the case and that are not obviously frivolous or meritless.

The gravamen of plaintiffs' complaint is that defendant Dunleavy's June 13, 2019 Executive Proclamation violated the doctrine of Separation of Powers and exceeded the scope of his authority under Article II, Section 9 of the Constitution. Plaintiff's lawsuit raises serious and substantial questions about the power of a governor to compel the legislature to convene at a location hundreds of miles from the capital without the Legislature's agreement. The question presented is not obviously frivolous or meritless.

- i. The Governor and the Legislature have some shared powers under the Constitution.

The Governor and the Legislature have shared Constitutional power when it comes to convening the legislature into special session. Article II, Section 9 provides:

Plaintiffs' Memorandum of Law in Support of Preliminary Injunction Request
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____ CI

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 30 days.

- ii. Courts narrowly construe shared Executive and Legislative powers.

However, Alaska Courts have previously construed shared executive and legislative powers narrowly to insure the independence of each branch and to prevent arbitrary interference in the functioning of a co-equal branch of government.

In *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976), the court addressed a dispute between the Alaska Legislature and the Executive Branch. The Alaska Constitution authorizes the governor to appoint the “head of each principal department . . . subject to confirmation by a majority of the members of the legislature in joint session.” Alaska Const., art. II, sec. 25. During Governor Hammond’s term and over his veto, the Legislature enacted a law requiring legislative confirmation of subcabinet officials. A declaratory judgment action followed. The Supreme Court determined that the statute purporting to authorize legislative confirmation of subcabinet officials violated the doctrine of Separation of Powers. The Court also determined that the Legislature unconstitutionally exceeded its authority under the Constitution when it tried to assert confirmation

authority over Executive Branch officials when that authority was not expressly identified in the Constitution.

- iii. Defendant Dunleavy does not have the authority to compel the Legislature to meet at any location away from the capital.

Bradner represents persuasive authority for the proposition that defendant Dunleavy's purported authority for directing the Alaska Legislature to convene at locations away from the capital without the Legislature's agreement violates the doctrine of Separation of Powers. Likewise, *Bradner* is persuasive authority for the proposition that Article II Section 9 of the Constitution does not empower defendant Dunleavy to compel the legislature to convene at locations away from the capital.

Just as the Legislature cannot legislate that it has confirmation authority over Executive branch officials not identified in the Constitution, defendant Dunleavy cannot compel the Legislature to convene at locations away from the capital in the absence of express constitutional authorization.

Stated simply, the authority to designate is wholly different from the authority to compel. Accordingly, AS 24.05.100(b) violates the doctrine of Separation of Powers, and Article II, Section 9 of the Alaska Constitution unless construed to require the legislature's agreement whenever a governor designates special sessions at locations away from the capital.

- iv. Under the doctrine of Separation of Powers, the location of a special session outside the capital requires agreement by the Legislature.

While a governor may be authorized by AS 24.05.100(b) to designate the location of a special session if it is to be held outside the capital, his authority to compel the Legislature to meet there presents a separate legal question.

If the doctrine of Separation of Powers generally prevents the courts from interfering in matters of legislative procedure, *see Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987), then it should likewise prevent the governor from interfering with matters of legislative procedure. Apart from constitutional jurisprudence, the prohibition against interfering with matters of legislative procedure makes common sense. It is the legislature, and not the governor, that is best equipped to determine the location where it can best serve the citizens of Alaska when it discharges its constitutional responsibilities.

Indeed, the legislature must provide for and pay for infrastructure and staff necessary for it to accomplish its business, which may be easier to accomplish at some locations than others. The legislature's administrative power – its power to provide for chambers, meeting rooms, staff, offices, telephones, voting machines, networking, security and other necessary services – is essential to its functioning as an independent branch of government.

Furthermore, upon a careful reading of the statute, it seems wholly unlikely that the Legislature intended to cede unilateral authority to the Governor

with respect to the convening of a special session away from the capital. AS 24.05.100(a)(2) says that the Legislature may call itself into a special session outside the capital only after its members are polled and 2/3 of the members agree to it. Why would the legislature require that level of agreement among its membership as to a choice of location but not expect any deference from the Governor?

For all these reasons, Plaintiffs respectfully submits that his request for preliminary injunctive relief raises serious and substantial questions going to the merits of the case – issues that cannot be dismissed as frivolous or obviously without merit.

3. Plaintiffs are also entitled to the requested preliminary injunction under the probable success on the merits test.

A preliminary injunction should issue whenever the proponent makes a “clear showing of probable success on the merits.”¹ Plaintiffs incorporate by reference the merits arguments set forth above in sections c – iii and c – iv above in support of their clear showing of probable success on the merits.

Defendant Dunleavy’s unilateral venue directive in his June 13, 2019 Executive Proclamation was unconstitutional as a matter of law. It violated the doctrine of Separation of Powers because only the legislature is equipped, as a

¹ *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978-79 (Alaska 2005), citing *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272 (Alaska 1992), quoting *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970), modified in other respects, 483 P.2d 198 (Alaska 1971).

co-equal branch of government, to determine where it can best fulfill its constitutional responsibilities to the citizens of Alaska. Article II, Section 9 does not authorize the governor to compel the legislature to convene at locations away from the capital. Without such express authorization, the governor cannot compel the legislature to meet away from the Capital.

AS 24.05.100(b) does not impact the constitutional analysis. The power to designate is different than the power to compel. AS 24.05.100(b) can only withstand constitutional scrutiny if it is narrowly construed, allowing the governor to designate a location for a special session away from the capital only when he has the Legislature's agreement.

IV. CONCLUSION

For all these reasons, plaintiffs respectfully request the court to issue a preliminary injunction:

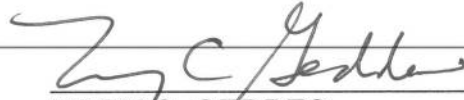
1. Enjoining defendant Dunleavy from ordering the Alaska Legislature to convene at a location other than the Capital without the legislature's assent;
2. Enjoining defendant Dunleavy from implementing his 182 line-item vetoes of the FY 2020 state operating budget until the expiration of such time as is allowed by the Alaska Constitution for the legislature to consider and vote on whether to override any of the Governor's vetoes; that is,

until after the fifth day of the next regular or lawfully
proclaimed special session of the legislature;

Dated at Anchorage, Alaska this 15th day of July, 2019



KEVIN F. McCOY
Pro Se Plaintiff
(Alaska Bar #7705042 Retired)



MARY C. GEDDES
Pro Se Plaintiff
(Alaska Bar # 8511157 Inactive)

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FILED
STATE OF ALASKA
THIRD DISTRICT
2019 JUL 15 PM 3:52
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BY _____
DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KEVIN F. McCOY and MARY C. GEDDES,)
)
 Plaintiffs,)
 vs.)
)
 MICHAEL J. DUNLEAVY, Governor of) Case No 3AN _____ CI
 The State of Alaska,)
)
 Defendants.)
)
 _____)

AFFIDAVIT OF KEVIN F. McCOY

Kevin F. McCoy, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the plaintiffs proceeding *pro se* in the above-styled matter.
2. I submit this affidavit in support of the Complaint for Declaratory Judgment and Injunctive relief and accompanying motions asking for preliminary injunctive relief and expedited consideration.

Affidavit of Kevin F. McCoy
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____ CI


3. On information and belief all of the factual allegations contained in plaintiffs' complaint for declaratory judgment and injunctive relief and plaintiffs' memorandum of law supporting plaintiffs' motion for a preliminary injunction are true and correct.
4. On information and belief the citizens of Alaska will suffer significant, substantial and irreparable social and economic harm if the legislature is not afforded a full and fair opportunity consistent with the Alaska Constitution to evaluate at a lawfully convened special session the advisability of defendant Dunleavy's 182 state budget vetoes. This harm will come in the form of reduced educational opportunities, increased medical costs, reduced public safety, and increasing property taxes.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



KEVIN F. McCOY

Subscribed and sworn to before me this 15th day of July, 2019.



NOTARY PUBLIC IN AND FOR ALASKA
My commission expires: 7/11/2023



KEVIN F. McCOY
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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KEVIN F. McCOY and MARY C. GEDDES,)	
)	
Plaintiffs,)	
vs.)	
)	
MICHAEL J. DUNLEAVY, Governor of)	Case No 3AN _____ CI
The State of Alaska,)	
)	
)	
Defendants.)	

AFFIDAVIT OF MARY C. GEDDES

Mary C. Geddes, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the plaintiffs proceeding *pro se* in the above-styled matter.
2. I submit this affidavit in support of the Complaint for Declaratory Judgment and Injunctive relief and accompanying motions asking for preliminary injunctive relief and expedited consideration.

Affidavit of Mary C. Geddes
Kevin F. McCoy & Mary C. Geddes v. Michael J. Dunleavy, Governor
NO. 3AN-19-_____ CI


3. On information and belief all of the factual allegations contained in plaintiffs' complaint for declaratory judgment and injunctive relief and plaintiffs' memorandum of law supporting plaintiffs' motion for a preliminary injunction are true and correct.
4. On information and belief the citizens of Alaska will suffer significant, substantial and irreparable social and economic harm if the legislature is not afforded a full and fair opportunity consistent with the Alaska Constitution to evaluate at a lawfully convened special session the advisability of defendant Dunleavy's 182 state budget vetoes. This harm will come in the form of reduced educational opportunities, increased medical costs, reduced public safety, and increasing property taxes.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



MARY C. GEDDES

Subscribed and sworn to before me this 15th day of July, 2019.



NOTARY PUBLIC IN AND FOR ALASKA
My commission expires: 7/11/2023

