

STOEL RIVES LLP  
510 L Street, Suite 500, Anchorage, AK 99501  
Main 907.277.1900 Fax 907.277.1920

James E. Torgerson (Bar No. 8509120)  
Kevin Cuddy (Bar No. 0810062)  
Connor R. Smith (Bar No. 1905046)  
STOEL RIVES LLP  
510 L Street, Suite 500  
Anchorage, AK 99501  
Telephone: 907.277.1900  
Facsimile: 907.277.1920  
[jim.torgerson@stoel.com](mailto:jim.torgerson@stoel.com)  
[kevin.cuddy@stoel.com](mailto:kevin.cuddy@stoel.com)  
[connor.smith@stoel.com](mailto:connor.smith@stoel.com)

Attorneys for Defendant  
Alaska Legislative Affairs Agency

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

TREG R. TAYLOR, in his official capacity  
as ATTORNEY GENERAL for the STATE  
OF ALASKA,

Plaintiff,

v.

ALASKA LEGISLATIVE AFFAIRS  
AGENCY,

Defendant.

Case No.: 3AN-21-06391 CI

**ALASKA LEGISLATIVE AFFAIRS AGENCY'S**  
**SUPPLEMENTAL BRIEFING RE DISMISSAL**

The Alaska Legislative Affairs Agency (LAA) submits this response to the Court's June 28, 2021 Order inviting the parties to provide an explanation "why the Court should not dismiss this case as moot and vacate the hearing."

LAA agrees that the Court should immediately dismiss this case. But LAA asks the Court to do so because it violates the Alaska Constitution as explained in LAA’s Motion to Dismiss (MTD) rather than for mootness. Specifically, LAA asks the Court to dismiss the case because it is in reality a suit brought in the name of the State<sup>1</sup> against the Legislature in violation of article III, section 16, of the Alaska Constitution and controlling Alaska Supreme Court case law.<sup>2</sup>

In *Legislative Council v. Knowles*, the Alaska Supreme Court recognized that the issue in dispute there was moot.<sup>3</sup> The court concluded that the public interest exception to the mootness doctrine applied to allow the court to resolve the “constitutional issue presented []—whether article III, section 16 forbids the governor’s suit against the Council.”<sup>4</sup> The court was persuaded that it did because “the express harm that the constitution protects against in barring the governor from bringing actions ‘in the name of the State . . . against the legislature’ occurs when the action is brought, not when it is concluded.”<sup>5</sup> Despite the merits of the governor’s claims being moot, the court decided to

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<sup>1</sup> The Plaintiff does not dispute that this lawsuit was brought at the explicit direction of the Governor. *See* Plaintiff’s Opposition to Motion to Dismiss at 5 (“The fact that the governor asked the attorney general to seek judicial input . . .”).

<sup>2</sup> *See Legislative Council v. Knowles*, 988 P.2d 604, 607 (Alaska 1999).

<sup>3</sup> *See Legislative Council*, 988 P.2d 606 (“At the outset, we confront the issue of mootness. In 1997, the year after this controversy arose, the legislature enacted and the governor signed into law a bill covering essentially the same subject matter as C.S.S.B. 162.6 Thus the question of whether C.S.S.B. 162 was validly enacted is technically moot.”).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 606–07.

resolve the threshold constitutional issue “[c]onsidering the importance and unique nature of the protection embodied in article III, section 16.”

Alternatively, if the Court does not conclude that the suit violates article III, section 16, the Court should dismiss it because it is missing the indispensable parties—including the Legislature, the Legislative Council, the Governor, and the State of Alaska—under Civil Rule 19.

Of course, the case also should be dismissed because it is moot.<sup>6</sup> The Alaska House of Representatives’ passage of a July 1, 2021 effective date for CCS HB 69 moots the declaratory relief Plaintiff seeks. The Plaintiff may invoke the public interest doctrine to argue against mootness on the grounds that he has raised a matter of grave public concern that is both recurrent and capable of evading review.<sup>7</sup> But the Plaintiff’s prior briefing belies the application of that doctrine here. He has argued in this case that the Legislature has consistently adopted “a July 1 or immediate effective date provision almost without exception since 1959.”<sup>8</sup> And should the effective date issue arise in the future in a case where unlike here there is an actual case and controversy between appropriate parties, it seems highly unlikely it would evade review. The lawsuit is now moot and should be dismissed for that reason.

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<sup>6</sup> In addition, the suit should be dismissed because there never was and is not now a case or controversy, especially as between these parties.

<sup>7</sup> See *Hayes v. Charney*, 693 P.2d 831, 834 (Alaska 1985).

<sup>8</sup> See Plaintiff’s Reply ISO Mot. for Summ. J. at 5–6 (“And that is clear from the history of operating budget effective dates, which reflects the legislature’s consistent adoption of a July 1 or immediate effective date provision almost without exception since 1959.” (citing to Ex. 6 to Reply)).

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But LAA asks the Court to find that the article III, section 16 issue that LAA raised in its Motion to Dismiss raises a threshold question that can and should be decided before considering whether the merits of Plaintiff's case are justiciable. The Governor (through his Attorney General) sued the Legislature in blatant violation of the Alaska Constitution and Alaska Supreme Court case law. His lawsuit is improper on its face.

Accordingly, the Court should dismiss this case for the reasons stated in Plaintiff's Motion to Dismiss, and for the additional reason that Plaintiff's claims are now moot due to the House passing an effective date.

DATED: June 29, 2021

STOEL RIVES LLP

By: /s/ James E. Torgerson

JAMES E. TORGERSON (Bar No. 8509120)

KEVIN CUDDY (Bar No. 0810062)

CONNOR R. SMITH (Bar No. 1905046)

Attorneys for Defendant

Alaska Legislative Affairs Agency

**STOEL RIVES LLP**  
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Main 907.277.1900 Fax 907.277.1920

CERTIFICATE OF SERVICE

This certifies that on June 29, 2021, a true and correct copy of the foregoing was served via email on:

Margaret Paton-Walsh  
William E. Milks  
Jessica M. Alloway  
Assistant Attorneys General  
Department of Law  
Office of the Attorney General  
[margaret.paton-walsh@alaska.gov](mailto:margaret.paton-walsh@alaska.gov)  
[bill.milks@alaska.gov](mailto:bill.milks@alaska.gov)  
[jessie.alloway@alaska.gov](mailto:jessie.alloway@alaska.gov)

/s/ Karen P. Warne  
Practice Assistant