

# LEGAL SERVICES

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June 2, 2016

Senator Gary Stevens  
Chairman, Legislative Council  
State Capitol Room 429  
Juneau, AK 99801

Dear Senator Stevens:

Attached is a copy of an order we received today dismissing the legislature from the litigation in *Patterson v. Walker*, No. 1JU-15-692 CI. In the motion we filed last November asking the court to dismiss the case against the legislature and former Senator Hollis French, we argued that the legislature and former Senator French are entitled to immunity for their legislative acts under the Constitution of the State of Alaska. The judge agreed, and granted the motion late last week.

Although this resolves the litigation for the legislature and former Senator French, there are still claims pending against several other non-legislative state actors. The plaintiff in the case, Mr. Patterson, probably cannot appeal the order dismissing the legislature and former Senator French from the case until after the superior court issues a final judgment that resolves the remaining claims. Mr. Patterson is a pro se litigant, however, and it is possible that he will attempt to appeal the order. We will keep you updated if there are further developments in the case that relate to the legislature.

In the meantime, please feel free to contact me if you have any questions.

Sincerely,



Kate S. Glover  
Legislative Counsel

KSG:lem  
16-440.lem

Attachment

cc: Pam Varni

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

KEVIN PATTERSON,  Plaintiff,  v.  GOVERNOR BILL WALKER, et al.,  Defendant.	<div>FILED IN CHAMBERS STATE OF ALASKA FIRST JUDICIAL DISTRICT AT JUNEAU BY: GLE ON: <u>5/26/16</u></div> Case No. 1JU-15-692 CI
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**ORDER**

**I. INTRODUCTION**

This order addresses two pending motions in the above-captioned matter.

On November 10, 2015, Defendants Alaska State Legislature and Former Senator Hollis French in his professional capacity (hereinafter collectively referred to as "the Legislature") filed a motion to dismiss the above-captioned matter, arguing that legislative immunity barred the suit. On November 24, 2015, Plaintiff filed an opposition to the Legislature's motion.

On November 19, 2015, Defendant Hollis French filed a separate motion to dismiss in his individual capacity. Plaintiff filed an opposition on November 25, 2015, and on December 3, 2015, the Legislature and Mr. French filed a joint reply in support of their two separate motions to dismiss.

After reviewing the pleadings and argument by the parties, for the reasons set forth below, Defendants Alaska State Legislature and Senator French's motion to dismiss is GRANTED. Furthermore, Defendant Hollis French's individual motion to dismiss is GRANTED. Following this order, the only remaining Defendants in this matter are the State of Alaska, Governor Bill Walker, Attorney General Craig Richards, Former Attorney General

Michael Geraghty, Former Attorney General David S. Sullivan, Former Governor Sean Parnell,

Assistant Attorney General Marika Athens, and Beth Goldstein of the Office of Public Advocacy.

## II. DISCUSSION

### a. Defendants Alaska State Legislature and Senator French's motion to dismiss

The Legislature argues that legislative immunity supports a motion to dismiss for lack of subject matter jurisdiction over the action,<sup>1</sup> lack of personal jurisdiction over the Legislature,<sup>2</sup> and Plaintiff's failure to state a claim upon which relief may be granted.<sup>3</sup> The concept of legislative immunity is central to all three of the Legislature's arguments.

Article II, Section 6 of the Alaska Constitution provides in relevant part: Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session.<sup>4</sup> Alaska Statute 23.40.010 echoes this grant of immunity to legislators. One of the broad policy reasons underlying this grant of legislative immunity is protecting legislators from the burdens of forced participation in private litigation.<sup>5</sup> This policy furthers legislative effectiveness.<sup>6</sup>

Not all actions taken by legislators are considered part of their legislative duties or are protected by this grant of immunity. "In determining whether the acts of legislators are legislative . . . the federal courts have distinguished between acts which have general

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<sup>1</sup> Alaska Civil Procedure Rule 12(b)(1).

<sup>2</sup> Alaska Civil Procedure Rule 12(b)(2).

<sup>3</sup> Alaska Civil Procedure Rule 12(b)(6).

<sup>4</sup> See also AS 23.40.010.

<sup>5</sup> *Kerttula v. Abood*, 686 P.2d 1197, 1202 (Alaska 1984), citing *Eastland v. United States Servicemen's Fund*, 421 U.S. 606, 617 (1975).

<sup>6</sup> *Id.*



applicability or involve policymaking ('legislative') as opposed to those which represent a specific application of a particular policy ('administrative')."<sup>7</sup>

Alaska's legislative immunity clause protects legislators from statements made 'in the exercise of their *legislative duties* . . . .'. The emphasized words, and their counterpart in federal jurisprudence, 'legislative acts,' have a core meaning which is clear. It necessarily includes activities internal to the legislature such as voting, speaking on the floor of the House or in committee, authorizing committee reports, introducing legislation, and questioning witnesses in legislative hearings.<sup>8</sup>

Importantly, "Legislative immunity, when it applies, is absolute, and not merely qualified."<sup>9,10</sup> If an act is determined legislative, the legislator is entitled to absolute immunity. In way of example by analogy, "Courts hold prosecutors absolutely immune for acts 'intimately associated with the judicial phase of the criminal process.' Thus, an accused person has no tort remedy against a prosecutor, even if the prosecutor uses false evidence, suborns perjury or coerces witnesses."<sup>11</sup> However, a prosecutor is not entitled to absolute immunity for work performed in an administrative or investigative role.<sup>12</sup> In the same way, an individual has no tort remedy against a legislator for his legislative actions.

Federal immunity can be examined as a model for determining the scope of Alaska's grant of legislative immunity as well.<sup>13</sup> "The Supreme Court interprets federal legislative

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<sup>7</sup> *Breck v. Ulmer*, 745 P.2d 66 (Alaska 1987).

<sup>8</sup> *Kerttula*, 686 P.2d at 1202 [internal citations omitted].

<sup>9</sup> *Whalen v. Hanley*, 63 P.3d 254, 258 (Alaska 2003).

<sup>10</sup> Plaintiff discusses qualified immunity in his complaint and opposition to motion to dismiss, but qualified immunity simply is not at issue in this case. The Court finds that both the Alaska State Legislature and Senator French are entitled to absolute immunity for the issues Plaintiff raises.

<sup>11</sup> *J & L Diversified Enterprises, Inc. v. Municipality of Anchorage*, 736 P.2d 349, 352 (Alaska 1987) (quoting *Taylor v. Kavanagh*, 640 F.2d 450, 452 (2d Cir. 1981)).

<sup>12</sup> *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976).

<sup>13</sup> *Whalen*, 63 P.3d at 258.

immunity broadly for actions properly within the legislative sphere and declines to impose liability regardless of whether the Court considers the legislative acts useful or necessary. 'We have no authority to oversee the judgment of the Committee . . . or to impose liability on its Members if we disagree with their legislative judgment.'"<sup>14</sup> "[O]nce it is determined that Members are acting within the 'legitimate legislative sphere' the Speech or Debate Clause is an absolute bar to interference."<sup>15</sup>

Under the doctrine of absolute immunity, a plaintiff's claims against an official are barred at the outset if the official's actions were within the scope of his immunity.<sup>16</sup> Absolute immunity protection extends to actions for damages,<sup>17</sup> injunctions,<sup>18</sup> and for declaratory judgment.<sup>19</sup> In regard to the issues at hand, taking all permissible factual inferences in favor of Mr. Patterson, it cannot reasonably be said that these legislators acted outside the legislative sphere. The Alaska State Legislature and Senator French were carrying out legislative duties.

While Mr. Patterson's complaint consists of 121 pages, it is not very clear what precise allegations he is making and against which individual actors. The vast majority of Plaintiff's extensive pleadings are directed at the constitutionality of his convictions under the Title 11 criminal provisions governing felonious sexual offenses against children and the treatment and consequences that have followed that conviction. Mr. Patterson appears to seek damages from the Legislature and Mr. French for their roles in enacting three bills: SB 85, SB 218, and SB 22. Plaintiff's allegations point to the introduction of these bills, statements made in support of these

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<sup>14</sup> *Id.*, quoting *Doe v. McMillan*, 412 U.S. 306, 313 (1973).

<sup>15</sup> *Eastland*, 421 U.S. at 503.

<sup>16</sup> *Imbler*, 424 U.S. at 418 n. 13.

<sup>17</sup> *Eastland*, 421 U.S. at 503.

<sup>18</sup> *Id.*

<sup>19</sup> *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 732 (1980).



bills, committee hearings on these bills. As the Legislature points out in its motion, "These allegations [against the Legislature] appear to center on Plaintiff's contention that the legislature passed laws Plaintiff believes were unconstitutional or that they unfairly targeted sex offenders." There is absolutely no question that introducing, debating, and passing legislation is within the scope of the Legislature's legislative duties. In fact, it is their central legislative duty.

In order to survive a challenge under Civil Rule 12(b)(6), "the complaint [must] set forth allegations of fact consistent with and appropriate to some enforceable cause of action."<sup>20</sup> However, all allegations Plaintiff has made against the Alaska State Legislature and Senator French in his professional capacity are part of actions taken by the Legislature in the scope of their legislative duties. Therefore, this cause of action is barred by absolute legislative immunity. As such, it is hereby ordered that the Legislature's Motion to Dismiss is GRANTED because the Plaintiff has failed to state any claim upon which relief may be granted.

**b. Defendant Hollis French's motion to dismiss in his individual capacity**

While the Legislature represents Senator French in his professional capacity, there still remains the fact that Plaintiff included Mr. French in his individual capacity as well. In way of argument against Mr. French in his individual capacity, Plaintiff writes in his complaint:

Mr. French allowed his personal prejudices to affect and dictate his actions as a senator regarding the unconstitutional bills he sponsored and fought for. . . . Based on these intentional, unremorseful and unscrupulous actions, done knowingly in violation of his professional oath and moral obligations, Senator French's actions of harm should be acknowledged as done in both his official capacity as an Alaskan Senator and his personal capacity. . . . He based many of his statements on his personal opinions, in his personal capacity, especially when no empirical data was submitted to support any of his claims or justify his unconstitutional

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<sup>20</sup> *Kollodge v. State*, 757 P.2d 1024, 1025-26 (Alaska 1988).

actions to deny Mr. Patterson and thousands of other Alaskans of their Constitutional Rights.

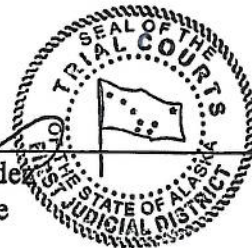
On November 19, 2015, Defendant Hollis French, representing himself, filed a motion to dismiss Plaintiff's complaint against him in his individual capacity pursuant to Civil Rule 12(b)(6). Defendant French writes in his motion and memorandum "Plaintiff's suit makes no claim that Defendant took any action in his personal capacity. All of Plaintiff's claims mentioning 'Hollis French' relate to the actions taken by Senator Hollis French. Absent any claim of wrongdoing against Hollis French in his personal capacity, the Court should dismiss Plaintiff's suit against the Defendant." Finding Mr. French's argument that Plaintiff specified absolutely no conduct taken by Mr. French in his individual capacity well-taken, the Court hereby GRANTS his request and dismisses the action against Mr. French in his individual capacity.

### III. CONCLUSION

For the reasons set forth herein, the Alaska State Legislature and Former Senator Hollis French's motion to dismiss is GRANTED. Furthermore, Hollis French's individual motion to dismiss is also GRANTED.

Entered at Juneau, Alaska this 23 day of May, 2016.

  
Louis James Menendez  
Superior Court Judge



### CERTIFICATION

Copies Distributed

Date 6/1/16

To Kevin Patterson - mail  
Elizabeth Bakalar - email  
Kathleen Glover - email  
Gerold Luckhaupt - email

By EWK