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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAMEN AGUILA, MARIO LANZA DYER, and JAMIE SCARBOROUGH, Plaintiffs, vs. MUNICIPALITY OF ANCHORAGE, Defendant.	)	Case No. 3AN-25-04570CI

REPLY IN SUPPORT OF DISMISSAL

Defendant Municipality of Anchorage respectfully submits this reply in support of its motion to dismiss Plaintiffs' claims as moot.

As the Municipality explained in its motion to dismiss, there is no longer any live controversy between the parties for this Court to resolve. The abatement of Plaintiffs' former camp at Arctic and Fireweed was completed after this Court heard and denied Plaintiffs' request for injunctive relief, holding that Plaintiffs had failed to establish even a likelihood of success (much less actual success) on the merits of their constitutional

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claims. Because the noticed abatement that Plaintiffs sought to address with their requests for forward-looking relief has been completed (and Plaintiffs do not assert harm relating to that completed abatement or seek retrospective damages), there is no longer any concrete, live dispute among the parties regarding that abatement for this Court to resolve.

There is also no live controversy among the parties regarding any *other* abatement action. As Plaintiffs note, the Municipality has conducted case-by-case abatements of some other prohibited camps in recent weeks. But Plaintiffs do not claim to currently reside in a prohibited camp subject to a noticed abatement action. And they cannot challenge the lawfulness of abatements that do not actually involve them.

Nor is there a live controversy among the parties regarding speculative abatement actions that may or may not occur and may or may not affect Plaintiffs under unspecified circumstances in the future if they fail to obtain shelter.[1] Plaintiffs could not have challenged a then-speculative abatement at Arctic and Fireweed before the Municipality posted public notice of that abatement—a point that Plaintiffs do not dispute in their opposition. By the same token, Plaintiffs cannot now challenge the speculative possibility that they might fail to obtain shelter and might be affected by an unspecified abatement action at some unknown point under unknown circumstances in the future. Plaintiffs do not dispute that the Municipality makes case-specific decisions to abate based on the specific circumstances of a particular camp at a certain point in time compared to other camps at

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[1] Plaintiffs err in suggesting that there is a "direct conflict" between the fact that shelter beds turn over regularly and the fact that shelter vacancies are quickly filled. Opp. at 9 n.23. Plaintiffs do not deny that they could seek to fill such vacancies as they arise.

that point in time and in light of limited Municipal resources. As the Alaska Supreme Court has made clear, "[c]ourts should avoid becoming involved in premature adjudication of disputes that are uncertain to occur."[2]

This case should thus be dismissed. As the Alaska Supreme Court has long emphasized, courts should decide only "real, substantial controvers[ies]" and may not issue "advisory opinions" by reviewing "hypothetical question[s]" and "abstract disagreements," such as the constitutionality of statutes in the abstract where no concrete application of the statute to the plaintiff is at issue.[3] The power of judicial review over legislative enactments "is not a power that should be exercised unnecessarily, for doing so can undermine public trust and confidence in the courts and be interpreted as an indication of lack of respect for the legislative and executive branches of government," and "ruling on the constitutionality of a statute when the issues are not concretely framed increases the risk of erroneous decisions."[4] This case should thus be dismissed because it no longer presents a live, concrete controversy among the parties.

Plaintiffs' request for a declaratory judgment does not change that conclusion. Alaska's Declaratory Judgment Act, AS § 22.10.020(g), provides the Superior Court with jurisdiction to issue declaratory judgments only "[i]n case of an actual controversy." "The 'actual controversy' language in AS 22.10.020(g) reflects a general limitation on the power

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[2] *Ulmer v. Alaska Rest. & Beverage Ass'n*, 33 P.3d 773, 776 (Alaska 2001) (quotation marks omitted).

[3] *Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 359 (Alaska 2001) (quotation marks omitted).

[4] *Id.* at 360.

of courts to entertain cases" and "encompasses a number of more specific reasons for not deciding cases, including lack of standing, mootness, and lack of ripeness."[5] "[A] 'controversy' in this sense" must be "definite and concrete, touching the legal relations of parties having adverse legal interests," and "a real and substantial controversy admitting of specific relief through a decree of a conclusive character," not a "dispute of a hypothetical or abstract character," or "an opinion advising what the law would be upon a hypothetical state of facts."[6] "It follows that declaratory relief will be withheld when," as here, "declarations are sought concerning hypothetical or advisory questions or moot questions."[7] Indeed, "[m]ootness is particularly important in a case seeking a declaratory judgment" precisely because of the "added risk that the party is seeking an advisory opinion."[8] There is thus no basis for avoiding the application of clear mootness principles here simply because Plaintiffs seek an advisory declaration of their rights.

Nor does the narrow public-interest exception provide for adjudication of Plaintiffs' abstract claims. Because the Municipality makes its abatement decisions on a case-by-case basis, and each abatement is founded on a distinct set of facts (as reflected in the preliminary-injunction record in this very case), speculation about other abatement actions in other locations at other times under other circumstances is insufficient to satisfy the requirement that the specific circumstances of this abatement action will recur.

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5 *Brause*, 21 P.3d at 358 (footnotes omitted).

6 *Jefferson v. Asplund*, 458 P.2d 995, 998-99 (Alaska 1969) (quotation marks omitted).

7 *Id.* at 999 (footnotes omitted).

8 *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995).

Moreover, Plaintiffs' claims would not evade review even if the circumstances of this particular abatement were to be repeated. This very case demonstrates the point. Alaska's courts are well-positioned to hear claims like Plaintiffs' and determine whether to issue injunctive relief against an impending abatement. Having actually presented their arguments for judicial review here, and having failed to establish even a likelihood of success on those arguments, Plaintiffs cannot now claim such cases will evade judicial review in the future. Plaintiffs received review and lost. The fact that Plaintiffs were unsuccessful in obtaining relief does not mean judicial review was unavailable. This case is thus unlike other cases in which overly tight timelines for judicial review have led to the application of the public-interest exception, such as *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1194 (Alaska 1995), where the state withdrew a fishing permit the day after it was first challenged in court (before any judicial ruling on that challenge) and then sought dismissal for mootness. As the history of Plaintiffs' own case demonstrates, and as Plaintiffs do not meaningfully dispute, "[t]he deadlines of the [abatement] process are not inherently so restrictive as to thwart judicial review, especially given our courts' practice of dealing with [abatement] issues expeditiously."[9]

[9] *Young v. State*, 502 P.3d 964, 970 (Alaska 2022).

Plaintiffs speculate that *unrepresented* litigants in some future abatement action may have difficulty seeking judicial review. But they identify no precedent holding that ably represented litigants such as themselves may invoke the speculative circumstances of others to avoid application of well-settled principles like mootness and ripeness. And, of course, unrepresented litigants in the future will not only have the benefit of relatively lenient application of court rules to pro se litigants, they will also have the benefit of drawing on the complaint and motions prepared by Plaintiffs' able counsel in this case.

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Plaintiffs incorrectly assert that the Municipality's arguments in cases arising from administrative appeals of posted abatement notices are inconsistent with the Municipality's arguments regarding mootness in this original action. Superior Courts hearing administrative appeals of posted abatement notices lack subject-matter jurisdiction to hear constitutional challenges to the abatement code, and such challenges can and should be brought in original actions such as this one. As this case demonstrates, such original actions can and will be heard by the Superior Court. But traditional principles like standing, mootness, and ripeness prevent the Superior Court from permitting such a case to continue once there is no longer any live, concrete controversy among the parties.[10]

Respectfully submitted this 20th day of March, 2025.

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[10] Plaintiffs err in suggesting that there is any inconsistency between dismissing this case as moot and the 30-day window for appealing an abatement notice provided in code. AMC 15.20.020B.15.e and f allow a camper to, within the 10-day pre-abatement notice period, provide the Municipality with notice of an intent to appeal or to actually file an appeal, either of which then gives the Municipality the option to postpone the abatement of such campers' property or to store such property during the pendency of an appeal. The code then gives the camper a 30-day period to effectuate an appeal (if the camper merely filed an intent to appeal) and take advantage of continued postponement of abatement or property storage even after an abatement is otherwise completed. The 30-day appeal window is not a legislative promise that no possible legal challenge to any abatement could become moot within the 30-day window for filing an appeal. As this case demonstrates, there is no longer any live controversy among the parties to this case regarding the constitutionality of any particular abatement action affecting Plaintiffs.

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The Municipality consents to service via e-mail to courtdocs@muni.org, with courtesy copies to the individual attorney addresses listed above.

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