THE SUPREME COURT OF THE STATE OF ALASKA

LORA REINBOLD, Appellant, v. STATE OF ALASKA and ALASKA LEGISLATURE SELECT COMMITTEE ON LEGISLATIVE ETHICS, Appellees.	Supreme Court No. S-19143 Superior Court No. 3AN-22-06447 CI <u>O P I N I O N</u> No. 7822 – August 7, 2026

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Thomas A. Matthews, Judge.

Appearances: Lora Reinbold, pro se, Eagle River, Appellant. Jennifer Teitell, Assistant Attorney General, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for Appellee State of Alaska. Brent R. Cole, Law Office of Brent R. Cole, P.C., Anchorage, for Appellee Alaska Legislature Select Committee on Legislative Ethics.

Before: Borghesan, Henderson, Pate, and Oravec, Justices. [Carney, Chief Justice, not participating.]

BORGHESAN, Justice.

I. INTRODUCTION

In response to a citizen complaint, the Select Committee on Legislative Ethics, a body created by the Alaska Legislature, opened an investigation into a legislator's use of social media. The Ethics Committee found probable cause to believe the legislator had violated the Legislative Ethics Act by deleting public comments with which the legislator disagreed from her social media page. But beyond recommending that the legislator refrain from blocking public comments due to disagreement with the views expressed, the committee imposed no sanctions.

The legislator requested discovery and a public hearing regarding the Ethics Committee's determination. She later deactivated her social media page. After holding a meeting with the legislator to discuss its findings, the Ethics Committee decided that because the legislator had deactivated her social media page, no further proceedings were required.

The legislator then filed a legal action in superior court against both the Ethics Committee and the State. She sought a judicial declaration that the Ethics Committee had violated its own governing statutes and her right to due process. She also sought an injunction forcing the Committee to provide her its investigative materials and to hold a public hearing.

The superior court dismissed her complaint. It ruled that the claims against the Ethics Committee were barred by the doctrine of legislative immunity and that the legislator alleged no action by the State that could support the relief she sought. The superior court also twice denied the legislator's motion to amend her complaint to assert new claims because the court deemed the new claims futile.

We affirm the superior court's judgment. The doctrine of legislative immunity, enshrined in the Alaska Constitution,[1] protects members of the legislature from litigation over the exercise of their official duties. These duties include creating rules of conduct for legislators and sanctioning them for noncompliance. The

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[1] Alaska Const. art. II, § 6 ("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.").

legislator's claims that the Ethics Committee violated its governing statutes and her right to due process are subject to the doctrine of legislative immunity, and the court cannot adjudicate them. Therefore, the superior court did not err by dismissing these claims.

As for the claims against the State, we agree with the superior court that the legislator's original complaint failed to allege any actions taken by the executive branch that would support a viable claim for relief. Finally, we conclude that the superior court did not abuse its discretion in denying the legislator's motions to amend her complaint because the new claims she sought to add were either futile or untimely.

II. FACTS AND PROCEEDINGS

A. Facts

In February 2021 an individual filed an ethics complaint with the Ethics Committee against Senator Lora Reinbold.[2] The individual alleged that Reinbold had violated the Legislative Ethics Act by blocking him on her Facebook page and deleting his comments. The Ethics Committee determined that an investigation was warranted and informed Reinbold of its decision.

The Ethics Committee subsequently determined that there was probable cause to believe that Reinbold had violated two provisions of the Legislative Ethics Act: AS 24.60.010(2), which requires that legislators "conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest"; and AS 24.60.010(9), which requires that constituents "have unencumbered access to legislators about issues important to the state." The Ethics Committee directed Reinbold to "refrain from blocking members of the public from commenting on her legislative social media site(s)

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[2] We take judicial notice that Senator Reinbold did not seek reelection and is no longer a legislator.

solely for expressing opinions in disagreement with her own." It also determined that sanctions were not warranted.

Reinbold requested a public hearing, discovery, and a confidential meeting with the Ethics Committee to discuss the reasons for its decision. She claimed that the Ethics Committee was being politically weaponized, noting that the ethics complaint was filed around the same time Governor Mike Dunleavy sent the Senate a letter criticizing her for spreading misinformation about the State's response to the COVID-19 pandemic. But before the meeting took place, Reinbold informed the Ethics Committee that she had deactivated her social media page.

Reinbold attended a confidential meeting with the Ethics Committee in March 2022. The Ethics Committee explained its decision and advised Reinbold that no further proceedings were necessary because she had deactivated her social media page. The Ethics Committee denied her request for a public hearing, informing her that the complaint process was "complete" and reiterating that "further proceedings were not necessary or appropriate."

B. Proceedings

In June 2022 Reinbold sued the Ethics Committee and the State in superior court. She alleged that the denial of her request for discovery and a public hearing on the ethics complaint violated her due process rights. Reinbold requested that the court order both defendants to grant her request.

The Ethics Committee and the State each moved, separately, to dismiss the complaint. While the motions were pending, Reinbold's counsel moved to withdraw from representation. The superior court granted the motion to withdraw. Reinbold, representing herself, filed an amended complaint in January 2023.

The superior court granted the motions to dismiss Reinbold's original complaint. Regarding the claims against the State, the court explained that "no actions alleged in the Complaint [were] attributable to the State." Regarding the claims against the Ethics Committee, the court concluded that it lacked subject matter jurisdiction, that legislative immunity barred the claim, and that granting the relief sought would violate the principle of separation of powers. The court also denied Reinbold's amended complaint, explaining that the new claims she sought to add were futile.

Reinbold then moved for leave to file a second amended complaint, seeking to add several new counts. The superior court denied this motion, explaining that Reinbold had failed to cure the deficiencies with her previous complaints and raised new claims that were legally futile and untimely.

Reinbold appeals.

III. STANDARD OF REVIEW

"We review grants of motions to dismiss de novo."[3] "In conducting de novo review, we will 'adopt the rule of law that is most persuasive in light of precedent, reason, and policy.' "[4] When reviewing a motion to dismiss, "we generally do not consider matters outside the complaint, although we may consider attachments to the complaint."[5]

"We 'review the denial of a motion to amend a pleading for abuse of discretion.' "[6] "An abuse of discretion occurs 'when the decision on review is manifestly unreasonable,' . . . ."[7] It is within the court's discretion to deny a motion to amend a pleading "where amendment would be futile because it advances a claim or

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[3] *Alleva v. Mun. of Anchorage*, 467 P.3d 1083, 1087 (Alaska 2020).

[4] *Id.* (quoting *Haight v. City & Borough of Juneau*, 448 P.3d 254, 256 (Alaska 2019)).

[5] *Id.* (quoting *Larson v. State, Dep't of Corr.*, 284 P.3d 1, 7 (Alaska 2012)).

[6] *Smith v. State, Dep't of Corr.*, 447 P.3d 769, 776 (Alaska 2019) (quoting *Lingley v. Alaska Airlines, Inc.*, 373 P.3d 506, 511 (Alaska 2016)).

[7] *Id.* (quoting *Ranes & Shine, LLC v. MacDonald Miller Alaska, Inc.*, 355 P.3d 503, 508 (Alaska 2015)).

defense that is legally insufficient on its face."[8] "We use our independent judgment to determine whether such an amendment would be legally insufficient."[9] We also "review de novo whether an amendment satisfies [Alaska Civil] Rule 15(c)'s requirements for relation back."[10]

IV. DISCUSSION

A. The Superior Court Did Not Err By Dismissing Reinbold's Original Complaint.

1. The complaint did not allege conduct by the State supporting a claim for relief.

The superior court first dismissed Reinbold's claims against the State, concluding that it was "erroneously added as a party." The court reasoned that there were "no actions alleged in the Complaint that are attributable to the State" and that the "executive branch cannot remedy the legislative branch's alleged mistake." On appeal Reinbold argues that the superior court's conclusion was incorrect. We agree with the superior court.

Although motions to dismiss are generally disfavored, a complaint should be dismissed for failure to state a claim if "it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him or her to relief."[11] Reinbold's allegations, which largely pertain to the actions of a legislative committee, do not entitle her to relief against the State.

Reinbold's original complaint focused almost entirely on actions taken by the Ethics Committee. Reinbold made only two factual allegations against the State. She alleged that the State "admitted that social media websites are private entities and

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[8] *Lingley*, 373 P.3d at 511 (quoting *Patterson v. GEICO Gen. Ins. Co.*, 347 P.3d 562, 568 (Alaska 2015)).

[9] *Id.*

[10] *Sellers v. Kurdilla*, 377 P.3d 1, 7 (Alaska 2016).

[11] *Cath. Bishop of N. Alaska v. Does 1-6*, 141 P.3d 719, 722 (Alaska 2006).

not government actors, and are entitled to free speech protections." She also alleged that the State took "the position that a legislator's title is not a government resource, and its use by the legislator is not restricted, except in very limited activities."

These factual allegations, even if true, do not establish that the State — that is, the executive branch — violated Reinbold's constitutional rights. They do not allege any act by the State to harm Reinbold in her personal or legislative capacity. Rather, the substance of Reinbold's original complaint concerns actions taken by the legislature.

And there was no way the superior court could have ordered the State to give Reinbold the relief she sought. She sought an order granting "discovery and a public hearing on the allegations" of the ethics complaint against her and then an order dismissing the ethics complaint. The State could not provide Reinbold discovery of the Ethics Committee's materials or a public hearing on the Committee's allegations. Those actions were entirely within the Committee's authority.[12] The superior court therefore did not err in dismissing Reinbold's claims against the State.

2. Reinbold's claims against the Ethics Committee are barred by the doctrine of legislative immunity.

The superior court dismissed Reinbold's claims against the Ethics Committee for multiple reasons. One ground for dismissal was the court's conclusion that the actions challenged in Reinbold's complaint were protected by the doctrine of legislative immunity. On appeal Reinbold challenges the superior court's immunity ruling, arguing among other things that legislative immunity cannot shield the Ethics Committee from claims of procedural or ethical violations. But we see no error in the court's conclusion that Reinbold's claims are barred.

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[12] *See* AS 24.60.150(b)(2) ("The committee may . . . subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee.").

Legislative immunity derives from article II, section 6 of the Alaska Constitution: "Legislators may not be held to answer before any other tribunal for any statement made in exercise of their legislative duties while the legislature is in session." The framers of the Alaska Constitution "acknowledged the general similarity of the Alaska provision to the federal speech or debate clause."[13] The sole difference they identified was the Alaska provision's "in-session" limitation.[14] We therefore follow the United States Supreme Court's view of legislative immunity: We interpret legislative immunity "broadly for actions properly within the legislative sphere."[15]

Legislative immunity extends to "activities internal to the legislature such as voting, speaking on the floor of the House or in committee, authoring committee reports, introducing legislation, and questioning witnesses in legislative hearings."[16] In

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[13] *Kerttula v. Abood*, 686 P.2d 1197, 1201 (Alaska 1984) (citing Alaska Const. Convention Comm. Proposal No. 5, Commentary on the Legislative Article II, § 6 at 2 (Dec. 14, 1955); Alaska Const. Convention, Style and Drafting Workfile, Art. II).

[14] *Id.* at 1201-02. The Ethics Committee conducted part of its investigation and adopted its recommendation while the legislature was out of session. But the ultimate acts Reinbold complains of — the Ethics Committee's denial of discovery and a public hearing — occurred during session. Reinbold does not raise an argument based on the in-session limitation in her opening brief. She briefly suggests in her reply brief that she was entitled to legislative or qualified immunity because her actions occurred during session. "We do not consider arguments raised for the first time in a reply brief," so we do not address the in-session limitation in this decision. *Lewis v. State, Dep't of Corr.*, 139 P.3d 1266, 1272 n.27 (Alaska 2006).

[15] *Whalen v. Hanley*, 63 P.3d 254, 258 (Alaska 2003).

[16] *Kerttula*, 686 P.2d at 1202; *see also State v. Haley*, 687 P.2d 305, 319 (Alaska 1984); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503-04 (1975) (explaining that actions within "legitimate legislative sphere" must be "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House" (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972))).

Kerttula v. Abood, for example, we applied the doctrine of legislative immunity to hold that a legislator could not be compelled by subpoena to testify about conversations connected with an upcoming vote.[17]

Just as legislative speech and voting are core functions protected by absolute immunity, so too is the legislature's power to discipline its own members.[18] The power to punish members "is the primary power by which legislative bodies preserve their 'institutional integrity' without compromising the principle that citizens may choose their representatives."[19] Accordingly, the Fourth Circuit has held that a legislative body "acted in a legislative capacity" when it voted to censure one of its legislative members and strip him of his committee assignments as a sanction for privately confronting other members with abusive language.[20] And the Sixth Circuit has held that a legislative caucus "performed a legislative act when it expelled a representative from its ranks and barred her from accessing party resources."[21] In both cases, the courts ruled that legislative immunity barred legal actions by the disciplined lawmakers.[22]

In Alaska, the Ethics Committee performs this core legislative function of self-discipline.[23] The Alaska Constitution provides that each house of the legislature

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[17] 686 P.2d at 1199, 1201-05.

[18] *Whitener v. McWatters*, 112 F.3d 740, 744 (4th Cir. 1997).

[19] *Id.*; *see also Tenney v. Brandhove*, 341 U.S. 367, 378 (1951) ("Self-discipline and the voters must be the ultimate reliance for discouraging or correcting [legislative] abuses.").

[20] *Whitener*, 112 F.3d at 741, 745.

[21] *Kent v. Ohio House of Representatives Democratic Caucus*, 33 F.4th 359, 360 (6th Cir. 2022).

[22] *Whitener*, 112 F.3d at 744; *Kent*, 33 F.4th at 367.

[23] *See* AS 24.60.170; AS 24.60.174 (establishing Ethics Committee proceedings and requiring that any recommendations be forwarded to legislature for potential disciplinary action).

"is the judge of the election and qualifications of its members."[24] The legislature has accordingly enacted standards of conduct for state legislators and legislative employees.[25] It has also established the Ethics Committee to investigate allegations that these standards have been violated and to render advisory opinions.[26]

To carry out these functions, the Ethics Committee is authorized to "subpoena witnesses, administer oaths, and take testimony relating to matters before the committee, and may require the production for examination of any books or papers relating to any matter under investigation before the committee."[27] If the Ethics Committee determines that there is probable cause that a violation has occurred, it may issue an opinion recommending corrective action.[28] If the subject of the investigation is or was a legislative member, the recommendations "shall be forwarded by the chair of the committee to the presiding officer of the appropriate house of the legislature."[29] "If the legislature is in session, the appropriate house shall determine the sanctions, if

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[24] Alaska Const. art. II, § 12.

[25] AS 24.60.010–.995.

[26] AS 24.60.010(8). The Ethics Committee is comprised of two senators, two house representatives, and five members of the public. AS 24.60.130(b). Reinbold argued in her reply brief and at oral argument that the Ethics Committee is not entitled to legislative immunity because a majority of its members are not legislators. Because Reinbold did not raise this issue in her opening brief, we do not address it. *Oels v. Anchorage Police Dep't Emps. Ass'n*, 279 P.3d 589, 598 (Alaska 2012) ("[I]ssues not argued in opening appellate briefs are waived." (quoting *Hymes v. DeRamus*, 222 P.3d 874, 887 (Alaska 2010))); *Braun v. Alaska Com. Fishing & Agric. Bank*, 816 P.2d 140, 145 (Alaska 1991) ("Attention to [an insufficiently briefed] issue in a reply brief does not resuscitate it." (citing *Hitt v. J.B. Coghill, Inc.*, 641 P.2d 211, 213 n.4 (Alaska 1982))).

[27] AS 24.60.150(b)(2).

[28] AS 24.60.170(g).

[29] AS 24.60.174(a).

any, that are to be imposed."[30] If the legislature is not in session, the appropriate house must either convene a special session or consider the recommendations during the next regular session.[31] Sanctions must be determined by a majority vote, except for expulsion, which requires a two-thirds vote.[32]

The actions Reinbold complains of were part of this process. The Ethics Committee opened an investigation into allegations that Reinbold violated the Legislative Ethics Act.[33] It interviewed legislative employees and reviewed an investigative summary report, the Alaska Legislature Social Media Guidelines, and the social media pages Reinbold provided. Based on these materials, it determined that there was probable cause to believe that Reinbold had violated the Legislative Ethics Act and issued an opinion instructing her to "refrain from blocking members of the public from commenting on her legislative social media site(s) solely for expressing opinions in disagreement with her own." The Ethics Committee subsequently denied Reinbold's requests for discovery and a public hearing, informing her that further proceedings were not necessary because she had deactivated her social media page. At no point did the Ethics Committee act outside the statutorily defined investigative process. Therefore, its actions are protected by legislative immunity.

Reinbold argues that legislative immunity should not apply because the Ethics Committee violated her due process rights. But legislative immunity applies

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[30] AS 24.60.174(b).

[31] AS 24.60.174(c).

[32] AS 24.60.174(d). The standard for expulsion mirrors article II, § 12 of the Alaska Constitution, which states: "Each [house] . . . may expel a member with the concurrence of two-thirds of its members."

[33] *See* AS 24.60.170(a) ("The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within five years before the date that the complaint is filed with the committee.").

even to claims that a legislative body has violated the right to due process.[34] "The question of whether absolute immunity attaches focuses on whether a power is a core legislative act, not on the motives of the individual legislators."[35] This focus permits legislators to carry out their legislative duties without fear of intimidation by a hostile executive or forced participation in private litigation.[36] For instance, in *Rangel v. Boehner*, the D.C. Circuit rejected a U.S. Representative's argument that the House Committee of Ethics's conduct could not be "legislative" because it was illegal.[37] The court reasoned that the conduct was legislative in nature because the representative had asked the court to review a congressional disciplinary proceeding, which was within the jurisdiction of the House.[38] Therefore, the court held that the lawmaker's complaint, which challenged his censure as a violation of House Rules and due process, was barred by legislative immunity.[39] While the United States Supreme Court has acknowledged that the "broad protection" afforded by legislative immunity "creates a potential for abuse," the Court has also explained that the "risk of such abuse was 'the conscious choice of the Framers' buttressed and justified by history."[40]

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[34] *Rangel v. Boehner*, 785 F.3d 19, 24 (D.C. Cir. 2015).

[35] *Chase v. Senate of Va.*, 539 F. Supp. 3d 562, 570 (E.D. Va. 2021) (holding legislative immunity barred state senator's claims that she was being censured for her political views and that her First and Fourteenth Amendment rights were violated); *see also Tenney v. Brandhove*, 341 U.S. 367, 377 (1951) ("The claim of an unworthy purpose does not destroy the privilege.").

[36] *Kerttula v. Abood*, 686 P.2d 1197, 1202 (Alaska 1984); *Tenney*, 341 U.S. at 377 ("Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good.").

[37] 785 F.3d at 24.

[38] *Id.* at 23-24.

[39] *Id.* at 22, 25.

[40] *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 510 (1975) (quoting *United States v. Brewster*, 408 U.S. 501, 516 (1972)).

The doctrine of legislative immunity may not shield all claims challenging legislative action.[41] A committee's investigation may exceed the bounds of legislative power if it is "obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive."[42]

We are also mindful that the parties have not addressed the interplay between the doctrine of legislative immunity and the Alaska Constitution's guarantee that "the right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."[43] This provision, commonly called the "fair and just treatment" clause, "was written to 'avoid the excesses which [the delegates] felt were characterized by the conduct of Senator Joseph McCarthy,' including 'vilification, character assassination, and an intimation of guilt by association.' "[44] "The delegates hoped that this clause would prompt the legislature to make rules of procedure to safeguard the reputational interests of individuals."[45] But the delegates themselves offered competing views on the scope of the right and how it might be enforced.[46]

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[41] Our discussion addresses only the legislature's discipline of its own members. The legislature's actions towards staff may not be protected by immunity. *See State v. Haley*, 687 P.2d 305, 309-10, 319 (Alaska 1984) (holding that legislative research assistant's termination following her alleged violation of informal public neutrality requirement was "an administrative rather than a legislative act" and "therefore not within the scope of legislative immunity").

[42] *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951).

[43] Alaska Const. art. I, § 7.

[44] *Keller v. French*, 205 P.3d 299, 303-04 (Alaska 2009) (alteration in original) (quoting *O'Leary v. Superior Ct., Third Jud. Dist.*, 816 P.2d 163, 172 (Alaska 1991)).

[45] *O'Leary*, 816 P.2d at 172.

[46] *Compare* Proceedings of Alaska Constitutional Convention (PACC) 1467 (Jan. 7, 1956) (statement of Del. Seaborn Buckalew) ("In my opinion this article is

Reinbold briefly asserts that the Ethics Committee's "refusal to follow its own rules of procedure" violated her right to fair and just treatment. But she does not explain what the right entails or how to reconcile its enforcement with the doctrine of legislative immunity. She offers no legal authority to help us to interpret this constitutional provision. Although we are more lenient with self-represented litigants when attempting to discern their legal arguments, "[e]ven a pro se litigant . . . must cite authority and provide a legal theory" to avoid waiving an argument.[47] Because Reinbold's assertion that the Ethics Committee violated her right to fair and just treatment was not adequately briefed, we do not consider it.

We affirm the superior court's ruling that Reinbold's claims against the Ethics Committee are barred by the doctrine of legislative immunity.

B. The Superior Court Did Not Err By Denying Leave To File The First Amended Complaint Because The New Claims Were Futile.

Reinbold's first amended complaint incorporated all of the allegations in her original complaint and raised new claims. The superior court concluded that these new claims were legally insufficient and denied the complaint.

"A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ."[48] However, a court can "deny a

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completely unenforceable and it has no meaning in law."), *with* PACC 1467 (Jan. 7, 1956) (statement of Del. W. O. Smith) (asserting that once legislature "sets up the rules" courts may "take[] the matter in hand and ma[k]e a ruling"), *with* PACC 1468 (Jan. 7, 1956) (statement of Del. Victor Rivers) ("I imagine that in due time there would be a body of precedence set up by which succeeding legislatures would learn from the other the best method in which these matters had been handled before and how they could be improved in future handling.").

[47] *Wright v. Anding*, 390 P.3d 1162, 1169 (Alaska 2017) (alteration in original) (quoting *Casciola v. F.S. Air Serv., Inc.*, 120 P.3d 1059, 1063 (Alaska 2005)).

[48] Alaska R. Civ. P. 15(a).

motion to amend a complaint 'where amendment would be futile because it advances a claim . . . that is legally insufficient on its face.' "[49]

1. The separation of powers claim against the Governor is moot.

Reinbold's first new claim was that Governor Dunleavy violated the separation of powers doctrine by sending the Senate a letter critical of her conduct. She alleged that the Governor "usurped undelegated powers" by writing the letter, describing it as "clearly an attempt by the head of the Executive Branch of government to harass, intimidate, and retaliate against [her] in her position as a Senator in the Legislative Branch of government." The superior court ruled that the Governor's act of writing a letter to a sitting legislator expressing disagreement with her actions was a lawful exercise of his authority to administer the executive branch and did not violate the separation of powers.[50]

On appeal Reinbold maintains this was error. She focuses on the following statement in the Governor's letter: "This letter serves as notice that all officials and staff, employed and serving the State of Alaska's Executive Branch of government, will not be responding, or participating, in any matter that pertains to yourself, your office, or, currently, in your capacity as the chair of a committee."

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[49] *Manning v. State*, *Dep't of Fish & Game*, 420 P.3d 1270, 1278 (Alaska 2018) (alteration in original) (quoting *Patterson v. GEICO Gen. Ins. Co.*, 347 P.3d 562, 568 (Alaska 2015)).

[50] The Governor's letter was not attached to Reinbold's complaint and instead was attached to the Ethics Committee's motion to dismiss. But there is no indication that the superior court relied on the contents of the letter in granting the motion. Nor do we rely on the contents of the letter, beyond the portion that Reinbold herself has quoted in her brief, in resolving this appeal.

This claim is clearly moot.[51] "Under ordinary circumstances, we will refrain from deciding questions where events have rendered the legal issue moot."[52] "A claim is moot if it has lost its character as a present, live controversy."[53] "Mootness is particularly important in a case seeking a declaratory judgment because there is an added risk that the party is seeking an advisory opinion."[54]

Even if we agreed with Reinbold's legal position, we could grant no effective relief. Reinbold is no longer a legislator, so we could not order the executive branch to work with her.

Nor does the public interest exception to mootness apply. We consider three main factors in deciding whether to apply the exception: "(1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine, if applied, may cause review of the issues to be repeatedly circumvented, and (3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine."[55] No individual factor is dispositive.[56] We instead "use our discretion to

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[51] The State does not raise this argument in its brief. But for the reasons we explain, the mootness doctrine clearly applies and we can raise mootness issues sua sponte. *Native Vill. of Chignik Lagoon v. State, Dep't of Health & Soc. Servs., Off. of Childs.'s Servs.*, 518 P.3d 708, 717 (Alaska 2022). We do not apply the mootness doctrine to Reinbold's other claims, since there may be colorable arguments that those claims are not moot.

[52] *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995) (quoting *Brandon v. State, Dep't of Corr.*, 865 P.2d 87, 92 n.6 (Alaska 1993)).

[53] *Id.*

[54] *Sitkans for Responsible Gov't v. City & Borough of Sitka*, 274 P.3d 486, 491 (Alaska 2012) (quoting *Kodiak Seafood Processors Ass'n*, 900 P.2d at 1195).

[55] *Kodiak Seafood Processors Ass'n*, 900 P.2d at 1196.

[56] *Id.*

determine whether the public interest dictates that immediate review of a moot issue is appropriate."[57]

It is conceivable that a governor may again publish a statement critical of a legislator or direct executive branch staff not to cooperate with the legislator. But the issue may present itself in a different or more concrete factual setting. Should such a dispute occur in the future, a timely challenge would also be possible. We have previously heard separation of powers disputes on an expedited basis when necessary, so such issues are not likely to circumvent review.[58] Therefore, the public interest exception to the mootness doctrine does not apply, and we decline to address this issue.

2. The Communications Decency Act protects individuals from civil liability, not from nonmonetary legislative sanctions.

Reinbold brought a separate new claim against the legislature under the Communications Decency Act.[59] The Act provides that no "user of an interactive computer service shall be held liable on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the . . . user considers to be . . . harassing, or otherwise objectionable, whether or not such material is constitutionally protected."[60] Reinbold maintains that she cannot be held liable for restricting access to her social media page because the material was "harassing, or otherwise objectionable." But the Act protects individuals from civil liability, not from nonmonetary legislative sanctions.[61] Therefore, the Act does not bar the Ethics Committee's actions. We affirm the superior court's ruling that this claim was futile.

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[57] *Fairbanks Fire Fighters Ass'n, Loc. 1324 v. City of Fairbanks*, 48 P.3d 1165, 1168 (Alaska 2002).

[58] *See, e.g.*, *Short v. State, Off. of Mgmt. & Budget*, 520 P.3d 142, 144 n.1, 154-55 (Alaska 2022); *Malone v. Meekins*, 650 P.2d 351, 353, 356-57 (Alaska 1982).

[59] *See* 47 U.S.C. § 230.

[60] 47 U.S.C. § 230(c)(2)(A).

[61] *Id.*

C. The Superior Court Did Not Err By Denying Leave To File The Second Amended Complaint Because The Claims Were Not Timely Pleaded.

Reinbold raised several new claims against Governor Dunleavy in her second amended complaint, including one for defamation and one for intentional infliction of emotional distress.[62] The superior court dismissed these claims, explaining that they were barred by the statute of limitations because they were brought more than two years after the letter was published and did not relate back to a timely original pleading.[63]

Reinbold's causes of action accrued in February 2021, when Governor Dunleavy sent his letter to Reinbold. The general statute of limitations for tort claims under Alaska law is two years.[64] Reinbold did not file her tort claims within that two-year period, so they would not be timely unless they related back to her original pleading.[65]

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[62] Reinbold also brought a claim against the Governor for violating the Executive Branch Ethics Act. AS 39.52.010–.965. The superior court ruled that this claim was both untimely and not enforceable through a private right of action. AS 39.52.310(h) (providing that violation of Ethics Act "may be investigated within two years after discovery of the alleged violation"). Reinbold does not address these points on appeal, so any argument about this act is waived.

[63] AS 09.10.070(a).

[64] *Id.*

[65] Alaska R. Civ. P. 15(c) ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."). Reinbold's opening brief does not argue that her first amended complaint, which was never accepted for filing, should qualify as the "original pleading" for purposes of relation back. Although her reply brief has a cursory mention of the first amended complaint, she does not provide any argument or citation to authority for why that should count as the "original pleading." Because she waived this argument, we analyze the relation back question by examining her original

But Reinbold's tort claims do not relate back to her original complaint. When claims in an amended pleading are against a new party, they do not relate back unless the new party "(1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party."[66] Governor Dunleavy would not have known, based on the original complaint, that the action would have been brought against him but for a mistake of identity. Reinbold argues that her references to the executive branch in her original complaint and the State's reference to the Governor's letter in its response to her complaint were sufficient to satisfy the relation back doctrine. But the original complaint named only "the State" in the caption and did not mention Governor Dunleavy by name or reference any acts by him in its allegations. The allegations of the original complaint were squarely focused on the actions taken by the Ethics Committee, an arm of the legislature. For this reason, Reinbold's defamation and emotional distress claims, based on the Governor's letter, do not relate back to her original complaint. The superior court did not abuse its discretion in denying Reinbold leave to file her second amended complaint.

V. CONCLUSION

We AFFIRM the judgment of the superior court.

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complaint. *Oels v. Anchorage Police Dep't Emps. Ass'n*, 279 P.3d 589, 598 (Alaska 2012) ("[I]ssues not argued in opening appellate briefs are waived." (quoting *Hymes v. DeRamus*, 222 P.3d 874, 887 (Alaska 2010))); *Windel v. Carnahan*, 379 P.3d 971, 980 (Alaska 2016) ("[W]aiver due to inadequate briefing 'is not correctable by arguing the issue in a reply brief.' " (quoting *Adamson v. Univ. of Alaska*, 819 P.2d 886, 899 n.3 (Alaska 1991))).

[66] Alaska R. Civ. P. 15(c).