

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RECALL DUNLEAVY, an  
unincorporated association,

Plaintiff,

v.

Case No. 3AN-19-10903 CI

STATE OF ALASKA, DIVISION OF  
ELECTIONS, and GAIL FENUMIAI,  
DIRECTOR, STATE OF ALASKA,  
DIVISION OF ELECTIONS

Defendant.

COMPLAINT

Plaintiff Recall Dunleavy, an unincorporated association, by and through counsel, hereby files this complaint against Gail Fenumiai, Director for the State of Alaska, Division of Elections (“Director”), and the State of Alaska, Division of Elections (together “Defendants”), by stating and alleging the following:

I. INTRODUCTION

1. This case is a challenge to the Director’s November 4, 2019 decision to deny certification of Recall Dunleavy’s recall application.
2. By refusing to certify the recall application, the Director has denied the citizens of Alaska the opportunity to lawfully exercise their right to a recall petition guaranteed by article XI, section 8 of the Alaska Constitution.

Complaint

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## II. PARTIES

3. Plaintiff Recall Dunleavy is a recall committee—comprised of a broad, non-partisan, grassroots-driven group of Alaskans—seeking to recall Governor Michael J. Dunleavy. Recall Dunleavy is represented by a three-person recall committee: Vic Fischer, Arliss Sturgulewski, and Joe Usibelli.

4. Defendant Division of Elections is an agency of the State of Alaska, Office of the Lieutenant Governor.

5. Defendant Gail Fenumiai is being sued in her official capacity as the Director for the State of Alaska, Division of Elections.

## III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this dispute under AS 22.10.020 and AS 15.45.720.

7. Alaska Statute 15.45.720 provides that “[a]ny person aggrieved by a determination made by the director under AS 15.45.470 — 15.45.710 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given.”

8. Recall Dunleavy is an aggrieved person under AS 15.45.720, and can sue under Alaska Rule of Civil Procedure 17(b).

9. Venue is proper under Alaska Rule of Civil Procedure 3(c)(2) because Defendants may be personally served in the Third Judicial District, and Recall Dunleavy is based in Anchorage.

10. The Director's determination was sent to the sponsors on November 4, 2019, one day ago. This Complaint is filed within the required 30 days.

#### IV. FACTUAL ALLEGATIONS

11. Recall Dunleavy filed its recall application, which included over 49,000 signatures, with the Director on September 5, 2019. Under AS 15.45.540, the Director had to either certify the application or notify the recall committee of the grounds for denial.

12. The Director must certify a recall application under AS 15.45.550 unless it is determined that: (1) "the application is not substantially in the required form;" (2) the application is filed either too early or too late in an elected-official's term; (3) the person named is not subject to recall; or (4) there are an insufficient number of signers included in the application.

13. The Director properly determined that the application was timely filed, Governor Dunleavy is subject to recall, and there are 46,405 verified signers for the recall application, almost 18,000 more than required by law.

14. The recall application includes three grounds for recall under AS 15.45.510—neglect of duties, incompetence, and lack of fitness—which apply to four separate actions taken by Governor Dunleavy.

15. The first allegation in the recall application states that "Governor Dunleavy violated Alaska law by refusing to appoint a judge to the Palmer Superior Court within 45 days of receiving nominations."

16. The second allegation in the recall application states that "Governor Dunleavy violated Alaska Law and the Constitution, and misused state funds by unlawfully and without proper disclosure, authorizing and allowing the use of state funds for partisan purposes to purchase electronic advertisements and direct mailers making partisan statements about political opponents and supporters."

17. The third allegation in the recall application states that "Governor Dunleavy violated separation-of-powers by improperly using the line-item veto to: (a) attack the judiciary and the rule of law; and (b) preclude the legislature from upholding its constitutional Health, Education and Welfare responsibilities."

18. The fourth allegation in the recall application states that "Governor Dunleavy acted incompetently when he mistakenly vetoed approximately \$18 million more than he told the legislature in official communications he intended to strike. Uncorrected, the error would cause the state to lose over \$40 million in additional federal Medicaid funds."

19. When determining whether a recall application is substantially in the required form, the Director must look at whether the allegations listed in the application fall under one of the enumerated grounds (in this case, neglect of duties, incompetence, and lack of fitness) for recall. The Director must assume the factual allegations listed in the application are true for purposes of this determination.

20. The Director, relying on the advice of Alaska Attorney General Kevin Clarkson, nevertheless denied certification of Recall Dunleavy's recall application because, in his opinion, none of the actions qualifies as a valid ground for recall.

## V. CAUSE OF ACTION

21. This lawsuit is brought in the interest of the public to enforce the provisions of article XI, section 8 of the Alaska Constitution and AS 15.45.470-.720, which provide for citizens' right to recall the state's elected officials.

22. The Director has unlawfully denied Recall Dunleavy and the citizens of Alaska the opportunity to exercise their constitutional and statutory right to recall public officials by refusing to certify the recall application.

23. The Director's refusal to certify the recall application is incorrect as a matter of law.

24. The Director's refusal to certify the recall application violates provisions of the Alaska Constitution and other provisions of law related to the recall process.

## VI. PRAYER FOR RELIEF

25. Recall Dunleavy requests that the Court grant the following relief:

A. Declare that the Director's determination that Recall Dunleavy's recall application is not substantially in the required form is incorrect as a matter of law;

B. Declare that Recall Dunleavy's recall application is in the proper form;


C. Issue an injunction certifying the recall application and requiring the Director to print and make immediately available petition booklets to protect the ability of Recall Dunleavy and the citizens of the State of Alaska to timely file a full recall petition;

D. Award Recall Dunleavy its reasonable costs and attorneys' fees under AS 09.60.010; and

E. Grant Recall Dunleavy such other relief as the Court deems necessary and proper.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 5<sup>th</sup> day of November 2019.

HOLMES WEDDLE & BARCOTT, PC

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