

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RECALL DUNLEAVY, an  
unincorporated association,

Plaintiff,

v.

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

Defendants.

Case No. 3AN-19-10903CI

2019AG-3 File # 25

~~Exhibit~~ EMERGENCY

MOTION FOR EXPEDITED SCHEDULING CONFERENCE TO ADDRESS  
BRIEFING AND DECISION SCHEDULE

Plaintiff Recall Dunleavy, by and through counsel, hereby moves for an expedited scheduling hearing this Friday, November 8, 2019, to address the briefing and decision schedule in this matter.

As outlined in an accompanying affidavit,<sup>1</sup> after filing and serving the complaint, counsel for Recall Dunleavy contacted the Attorney's General's office as counsel for Defendants State of Alaska, Division of Elections, and Gail Fenumiai, Director for the State of Alaska, Division of Elections (collectively "Defendants") about expediting this case. Unlike every other elections matter that has been litigated,

<sup>1</sup> Affidavit of Jahna M. Lindemuth (Nov. 5, 2019).

including recent initiative cases, the Attorney General's office indicated they see no reason to expedite this case.<sup>2</sup>

While the Administration may not see a reason to expedite this case, there is substantial reason to provide a prompt determination of whether the citizens of the state should be permitted to exercise their right of recall. 46,405 qualified Alaskans signed a valid recall petition that the Defendants unlawfully denied. The citizens have a right to begin collecting signatures for the next round, and have the recall election scheduled within 60 to 90 days of the next round of signatures being validated. If the petition had been lawfully certified on November 4, the day of the unlawful denial, Plaintiff expects it could have submitted sufficient signatures by the end of the year, causing a recall election to be scheduled in early spring. Alaskans could then have a different governor address the legislature's budget and other laws proposed during this upcoming session. This is still possible with an expedited schedule.

Because every day of delay denies the citizens of Alaska the opportunity to lawfully exercise their right to a recall the Governor as guaranteed by article XI, section 8 of the Alaska Constitution, this case should be expedited. This is especially true because an appeal to the Alaska Supreme Court is anticipated regardless of this court's decision. This case presents only legal issues which will be appropriately decided

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<sup>2</sup> See Exhibit 1 to Affidavit of Jahna M. Lindemuth.

HOLMES WEDDLE & BARCOTT, PC  
701 WEST EIGHTH AVENUE, SUITE 700  
ANCHORAGE, AK 99501-3408  
TELEPHONE (907) 274-0666  
FACSIMILE (907) 277-4857

through cross-motions for summary judgment. There is no legitimate reason for delay.

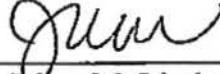
It should be in everyone's best interest to have certainty going forward.

Recall Dunleavy therefore respectfully requests an expedited briefing schedule that results in oral argument the week of December 2, 2019. Plaintiff requests that this court schedule a hearing for this Friday, November 8, 2019, to address a briefing schedule that accomplishes that goal.

RESPECTFULLY SUBMITTED at Anchorage, Alaska this 5th day of November 2019.

HOLMES WEDDLE & BARCOTT, PC

By:



Janna M. Lindemuth  
Alaska Bar No. 9711068  
Scott M. Kendall  
Alaska Bar No. 0405019  
Samuel G. Gottstein  
Alaska Bar No. 1511099

SUMMIT LAW GROUP

Jeffrey M. Feldman  
Alaska Bar No. 7605029

REEVES AMODIO

Susan Orlansky  
Alaska Bar No. 8106042

Attorneys for Plaintiff Recall Dunleavy

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of November 2019, a true and correct copy of the foregoing was sent to the following via hand delivery and e-mail:

Clyde "Ed" Sniffen  
Attorney General's Office  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501  
[ed.sniffen@alaska.gov](mailto:ed.sniffen@alaska.gov)

Margaret Paton-Walsh  
Attorney General's Office  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
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[margaret.paton-walsh@alaska.gov](mailto:margaret.paton-walsh@alaska.gov)

  
Mackenzie Milliken

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE *2019 NOV 5 PM 4:25*

RECALL DUNLEAVY, an  
unincorporated association,

Plaintiff,

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Case No. 3AN-19-10903CI

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

Defendants.

\* AFFIDAVIT OF JAHNA M. LINDEMUTH

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, Jahna M. Lindemuth, being first duly sworn and deposed, hereby state as follows:

- 1) I am counsel for Plaintiff Recall Dunleavy in this case.
- 2) Recall Dunleavy's motion for an emergency expedited scheduling conference seeks a hearing this Friday, November 8, 2019, to address an expedited briefing schedule for this case. Plaintiff requests a schedule that results in oral argument the week of December 2, 2019, with a decision the following week.
- 3) I attempted to resolve this issue with opposing counsel. After filing the complaint earlier today, I emailed the Attorney General's office to confirm the attorney

Affidavit of Counsel

*Recall Dunleavy v. State of Alaska, Division of Elections, et al.*  
Case No. 3AN-19-10903CI

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assigned to the case and set a telephone conference to discuss an expedited schedule. As expected, Special Litigation Chief Margaret Paton-Walsh is assigned, but she confirmed that Defendants see no reason to expedite this case. A true and correct copy of our email exchange is attached as Exhibit 1.

4) Every other elections case that I am aware of has had an expedited schedule, including the initiative ballot case, *Alaskans for Better Elections v. Kevin Meyer, Lieutenant Governor of the State of Alaska, and the State of Alaska, Division of Elections*, case no. 3AN-19-09704CI, that we just litigated against Ms. Paton-Walsh.

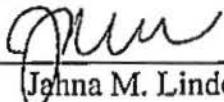
5) 46,405 qualified Alaskans signed a valid recall petition that the Defendants unlawfully denied. The citizens have a right to begin collecting signatures for the next round, and to have the recall election scheduled 60 to 90 days of the next round of signatures being validated. Plaintiff expects it could have submitted sufficient signatures by the end of this year if the petition had not been unlawfully denied. This would have resulted in a recall election in early spring, during the legislative session. Alaskans have a right to have a different governor address the legislature's budget and other legislation proposed during this upcoming session. This is still possible with an expedited schedule.

6) Every day that goes by denies 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.

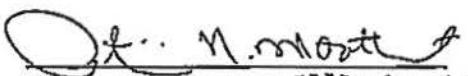
7) There are only legal issues for this court to resolve, and cross-motions for summary judgment are anticipated.

8) There is no legitimate reason for delay.

FURTHER AFFIANT SAYETH NAUGHT.

  
Janna M. Lindemuth

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of November 2019.

  
Notary Public in and for the State of Alaska  
My Commission Expires December 2021  
E-184781

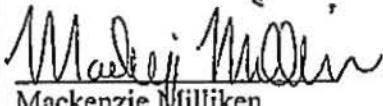


CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November 2019, a true and correct copy of the foregoing was sent to the following via hand delivery and e-mail:

Clyde "Ed" Sniffen  
Attorney General's Office  
1031 W. 4th Avenue, Suite 200  
Anchorage, AK 99501  
[ed.sniffen@alaska.gov](mailto:ed.sniffen@alaska.gov)

Margaret Paton-Walsh  
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Mackenzie Milliken

**Jahna Lindemuth**

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**From:** Paton-Walsh, Margaret A (LAW) <margaret.paton-walsh@alaska.gov>  
**Sent:** Tuesday, November 5, 2019 1:27 PM  
**To:** Jahna Lindemuth; Sniffen, Clyde E (LAW); Grace, Joanne M (LAW); Mills, Cori M (LAW)  
**Cc:** Scott Kendall  
**Subject:** RE: Recall Case

Jahna,

Thanks for providing a copy of the complaint. We do not see the need to expedite this matter, so you will need to move the court for expedited consideration.

Mags Paton Walsh  
Chief Assistant Attorney General  
Special Litigation Section

**From:** Jahna Lindemuth <JLindemuth@hwb-law.com>  
**Sent:** Tuesday, November 05, 2019 11:41 AM  
**To:** Sniffen, Clyde E (LAW) <ed.sniffen@alaska.gov>; Grace, Joanne M (LAW) <joanne.grace@alaska.gov>; Paton-Walsh, Margaret A (LAW) <margaret.paton-walsh@alaska.gov>; Mills, Cori M (LAW) <cori.mills@alaska.gov>  
**Cc:** Scott Kendall <SMKendall@hwb-law.com>  
**Subject:** Recall Case

All-

We filed the attached complaint this morning. We'd like to confer this afternoon about expediting this case. I understand Cori is out of town. Is Mags the appropriate person with whom to discuss scheduling? If we can't reach an agreed schedule this afternoon, we do intend to move for expedited consideration in the morning.

Thanks in advance.

**Jahna Lindemuth**  
Holmes Weddle & Bartott, PC  
701 W. 8<sup>th</sup> Avenue, #700  
Anchorage, AK 99501  
Direct: (907) 222-8412  
Firm: (907) 274-0666

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