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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, STAND TALL WITH MIKE, an independent expenditure group, Intervenor.	Case No. 3AN-19-10903 CI **STWM'S SUMMARY JUDGMENT OPPOSITION AND <u>CROSS-MOTION</u>**

Intervenor Stand Tall With Mike ("STWM") hereby opposes Plaintiff Recall Dunleavy ("RDC")'s Motion for Summary Judgment and cross moves for summary judgment.[1]

[1] Documents and difficult-to-access legal authority cited herein are attached as exhibits to the December 16, 2019 Affidavit of Brewster H. Jamieson.

I. INTRODUCTION

The Director of the Division of Elections ("Director") was correct to reject RDC's application because it does not state conduct sufficient to satisfy any of the statutory grounds for recall; rather, at their core, the charges in the application reflect policy disagreements, or disagreements with the governor's discretionary use of his constitutional powers. None demonstrates the kind of serious and weighty offense justifying the extraordinary remedy of a statewide recall election.

RDC invites this court to create a new playbook in Alaska politics, allowing any well-funded group to use an amorphous scattershot of allegations to satisfy an unidentified and watered-down set of grounds to force a distracting, destructive, and expensive statewide recall election of any Alaska governor with whom it disagrees. This is a very bad idea; fortunately, it is not the law. The Alaska Constitution and statutes reserve recall petitions for serious offenses by our elected officials. They are not tools to advance or express policy disagreements.

For the reasons outlined below, the decision of the Director to reject this application should be affirmed.

II. BACKGROUND

A. Governor Dunleavy's Campaign Promises and Budget Decisions

Governor Dunleavy ran on a platform of reducing state spending and protecting the Alaska Permanent Fund Dividend ("PFD"). He explained in the Official Election Pamphlet:

> Alaska has the nation's highest per capita government spending—double or triple the amount in many other states. This is unsustainable. As Governor, I will introduce significantly lower budgets, and use my veto pen to reduce the footprint of government.[2]

[2] Ex. A (State of Alaska, Official Election Pamphlet, Region 1 (November 6, 2018)).

Governor Dunleavy also promised to "Protect the PFD: Alaskans PFD should be paid in full using the formula that has worked for decades, and the PFD should be protected in the constitution."[3]

The Governor's platform inspired supporters like STWM member Leitoni Tupou to donate and "work[] hard" for his campaign.[4] Mr. Tupou served as the campaign's Southeast Alaska Deputy Treasurer.[5] He also recruited other volunteers, distributed leaflets, waived signs, and phone-banked for the Governor.[6] STWM member Bernie Karl switched his support from another candidate to Governor Dunleavy, attended his fundraisers, contributed to his campaign, and advertised his support on a lawn sign.[7]

The fiscal picture turned out to be worse than anybody envisioned during the campaign. The month before the election, average monthly oil prices surged to $80.03 per barrel, roughly $18 higher than any average monthly price in the preceding year.[8] The Department of Revenue forecast fiscal year 2020 oil prices at $74 per barrel.[9] It predicted an increase in unrestricted petroleum revenues from $1.647 billion to $2.426 billion.[10]

But a month after the election oil prices were already "experien[ing] the largest monthly price decline, in percentage terms, in a decade."[11] The Department of Revenue had to restate the Fall 2018 Revenue Forecast to anticipate unrestricted petroleum revenues

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[3] *Id.*

[4] Nov. 13, 2019 Aff. of Leitoni Tupou ("Tupou Aff.") ¶¶ 3–5.

[5] *Id.* ¶ 3.

[6] *Id.*

[7] Nov. 13, 2019 Aff. of Bernard Karl ("Karl Aff.") ¶¶ 4, 6–7.

[8] Ex. B (Alaska Dep't Revenue *ANS West Coast Average Spot Price*).

[9] Ex. C (Alaska Dep't Revenue Dec. 3, 2018 Press Release).

[10] *Id.*

[11] *Id.*

of only $1.689 billion.[12] Accordingly, Governor Dunleavy and the Legislature faced a larger-than-expected deficit of approximately $1.5 billion for fiscal year 2020.

Governor Dunleavy sought to fulfill his campaign promises despite the changed circumstances. The Governor explained, "The economic outlook Alaska faces today is dire. After burning through nearly every dollar in the state's savings account—more than $14 billion during the past four years—we are faced with another $1.5 billion deficit, and less than a year in reserves."[13] In February 2019, Governor Dunleavy proposed substantial spending cuts from the fiscal year 2020 budget.[14]

The Legislature failed to adopt the Governor's proposed budget, instead passing H.B. 39 (the fiscal year 2020 operating budget) and H.B. 40 (the fiscal year 2020 mental health operating and capital budget).[15] Governor Dunleavy used his constitutional line-item veto power to cut about $400 million from the Legislature's appropriations.[16] His line-item vetoes eliminated nearly 50 percent of the state's deficit.[17] Governor Dunleavy hoped a "two year process will put Alaska in a position of balancing the budget without new taxes or a reduction of the traditional [PFD]."[18]

The Governor then called the Legislature into special session to address the budget and restore the full PFD. The Legislature passed HB 2001 and SB 2002, restoring many of the funds the Governor had vetoed, but the Legislature declined to restore the full PFD.[19]

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[12] Alaska Dep't of Revenue, Fall 2018 Revenue Forecast Appendices A1 and A3 (Dec. 14, 2018) http://tax.alaska.gov/programs/documentviewer/viewer.aspx?1532r.

[13] Ex. D (*An Honest Budget: Sustainable, Predictable, Affordable* (Feb. 12, 2019)).

[14] *Id.*

[15] HB 39, 31st Leg. (Alaska 2019); HB 40, 31st Leg. (Alaska 2019).

[16] Ex. E (*Dunleavy Serious About Balancing Budget, Eliminates 50 Percent of State Deficit* (June 28, 2019)).

[17] *Id*

[18] *Id.*

[19] HB 2001, 31st Leg., Special Sess. (Alaska 2019); S. 2002, 31st Leg., Special Sess. (Alaska 2019).

The Governor again exercised his constitutional discretion to reduce some appropriations in these bills with a line item veto. Nonetheless, he stayed the veto pen to approve much of the funding for the University, the Alaska Housing Finance Corporation, and Medicaid Services.[20] After this round of budget bills, "approximately one third of the state's deficit "ha[d] been eliminated through the reduction of $650 million in total state spending."[21]

Governor Dunleavy's supporters respect his commitment to his campaign promises. In the words of Mr. Karl, "The Governor was elected by a majority of Alaskans to do exactly what he is trying to, to have a balanced budget."[22] Mr. Tupou "believe[s] he has worked hard to keep his campaign promises and do a good job as Governor" and is "proud of the job the Governor has done."[23] So too Jim Whitaker, who served as a legislator from 1999 to 2003 and as chief of staff for the previous governor.[24] Mr. Whittaker "believe[s] Governor Dunleavy should be given credit for his aggressive efforts to reduce the State of Alaska's fiscal deficit by cutting spending."[25] Even though he may disagree with some of Governor Dunleavy's specific choices, Mr. Whittaker thinks the Governor's "actions are responsible, and, given our political reality, . . . necessary for Alaska to deal with our economic situation."[26]

However, some disagree with the Governor's fiscal choices. RDC's website complains about the Governor's policy choices claiming, "Governor Dunleavy's sudden,

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[20] For example, the Governor vetoed $130,253,100, which HB 39 appropriated to the University of Alaska; in response, HB 2001 re-appropriated $110,253,100, which the Governor did not veto. *See* Ex. F (*University of Alaska and Governor Dunleavy Reach Budget Agreement*, (August 13, 2019).

[21] Ex. G (*Governor Dunleavy Signs Capital Budget* (Aug. 8, 2019)).

[22] Karl Aff. ¶ 10.

[23] Tupou Aff. ¶ 5.

[24] Nov. 13, 2019 Affidavit of Jim Whittaker ¶ 3–4.

[25] *Id.* at ¶ 9.

[26] *Id.* at ¶ 8; *see also id.* at ¶ 9.

severe, and sometimes illegal budget cuts have caused tremendous harm to Alaska and Alaskans."[27] RDC sees in the Governor's vetoes a statement that "we cannot afford access to medical care, access to a properly funded university, access to art and culture."[28] These are policy arguments and disagreements that were at issue and addressed during the 2018 general election, which RDC now seeks to re-litigate through its recall application.

B. Recall Application and Director's Determination

Alaska law, which is discussed further below, provides the following grounds for recall of a governor: "(1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption."[29] Applying for a recall petition is the first step in the recall process. An application must include "the grounds for recall described in particular in not more than 200 words," and must include signatures of "qualified voters equal in number to 10 percent of those who voted in the last state-wide general election."[30]

On September 5, 2019, RDC filed an application with the Director seeking certification of a recall petition. The application states:

> Statement of Grounds: Neglect of Duties, Incompetence, and/or Lack of Fitness, for the following actions:
>
> - Governor Dunleavy violated Alaska law by refusing to appoint a judge to the Palmer Superior Court within 45 days of receiving nominations.
> - 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.
> - Governor Dunleavy violated separation-of-powers by improperly using the line-item veto to: (a) attack the judiciary and the rule of law;

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[27] Ex. H (*Recall Dunleavy* webite). Plaintiff provides no details to support the conclusory statement about illegal conduct.

[28] *Id.*

[29] AS 15.45.510.

[30] AS. 15.45.500.

and (b) preclude the legislature from upholding its constitutional Health, Education and Welfare responsibilities.

- 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.

References: AS 22.10.100; Art. IX, sec. 6 of Alaska Constitution; AS 39.52; AS 15.13, including .050, .090, .135, and .145; Legislative Council (31-LS1006); ch.1-2, FSSLA19; OMB Change Record Detail (Appellate Courts, University, AHFC, Medicaid Services).[31]

The Director engaged the Department of Law to assess whether the application met the requirements of AS 15.45.550. In a November 4, 2019 letter, the Attorney General wrote:

> The application complies with the technical requirements of the recall statutes. The timely filed application names an elected official subject to recall and is accompanied by the required payment. But, because the statement of grounds for recall fails to satisfy the legal standards required for a recall, we recommended that certification of the application be denied.[32]

Following the Attorney General's recommendation, the Director declined to certify the application.[33]

C. RDC's Motion for Summary Judgment

On November 5, 2019, RDC initiated this action challenging the Director's determination, and on November 27, 2019, RDC filed its Motion for Summary Judgment. The Motion and its accompanying affidavit refer to material extraneous to RDC's recall application. As explained below and in STWM's contemporaneously-filed Motion to Strike, the Court should not consider this material. In the event that it does, STWM has

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[31] Nov. 26, 2019 Aff. of Scott Kendall ("Kendall Aff.") ¶ 1 & Ex. 1 at 1.

[32] Kendall Aff. ¶ 2 & Ex. 2 at 1.

[33] Kendall Aff. ¶ 3 & Ex. 3 at 1.

provided rebuttal arguments in clearly marked sections of this brief. These sections may be disregarded if the Court grants the Motion to Strike.

III. STANDARD FOR REVIEWING RECALL APPLICATION

The standard for reviewing a recall application is unsettled under Alaska law. Precedential cases address only the separate statutory scheme for municipal recalls. Therefore, the Court must give thoughtful consideration to the requirement that an application state "in particular" the statutory grounds justifying recall of a state officer.

A. Separate Schemes for Municipal and Statewide Recall.

The Alaska Constitution requires that recall of any elected official be based on prescribed "[p]rocedures and grounds."[34] The Alaska Legislature has established two separate statutory schemes for recall. Alaska Statutes Title 15 contains the recall process for the governor, the lieutenant governor, and the state legislators, and Title 29 pertains to recall of municipal officers.

The grounds for recall of state officers and municipal officers are different. Under Title 15, the grounds for recall are "(1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption."[35] Under Title 29, the grounds for recall are "misconduct in office, incompetence, or failure to perform prescribed duties."[36]

The process for recall is also different. Title 15 involves a three-step process including an application stage, a petition stage, and an election stage. Through this process, the Director of the Division of Elections is the gatekeeper responsible for determining whether a recall effort satisfies the statutory criteria to proceed to the next step. This case concerns the first step—the application phase.[37]

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[34] Alaska Const. Art XI, § 8.

[35] AS 15.45.500.

[36] AS 29.26.250.

[37] At the second step, following application certification, the Director must prepare petitions for circulation by the sponsors. Among other things, the petition must include a statement of the grounds for recall included in the application. AS 15.45.560. To proceed to the election phase, the sponsors must obtain signatures of qualified voters equal in

During the application phase, persons seeking to recall a state officer must file an application that includes:

> (1) name of the official subject to recall;
>
> (2) the ground for recall described in particular in not more than 200 words;
>
> (3) the signatures and identifying information of qualified voters equal in number to 10 percent of those who voided in the preceding in the state or the district of the official sought to be recalled;
>
> (4) identity and commitment by 100 of subscribers who will serve as sponsors of the recall effort;
>
> (5) identity of three subscribers designated as a recall committee representing all sponsors and subscribers.[38]

The Director must review the application and "either certify it or notify the recall committee of the grounds for refusal."[39] The Director must deny certification if *inter alia* "the application is not substantially in the required form;" this includes denial if the application does not describe with particularity factually and legally sufficient grounds for recall.[40]

Under Title 29, the municipal clerk handles recall of municipal officers at a local level, in a more informal manner.[41] The application must include "a statement in 200 words or less of the ground for recall stated with particularity,"[42] but signatures of only 10

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number to 25 percent of those who voted in the preceding elections. At the third step, if the Director determines the petition is properly filed, then the Director must call a special election to be held within 60 to 90 days. AS 15.45.650. A statement of the grounds for recall will be posted at the polling place, along with a 200-word rebuttal statement from the official subject to recall. AS 15.45.680. However, the ballot contains no information about the recall, and only asks whether the official should be recalled. AS 15.45.660.

[38] AS 15.45.480-.550.

[39] AS 15.45.540.

[40] AS 15.45.550(1).

[41] AS 29.26.240-.360.

[42] AS 29.26.260(a)(3).

municipal voters as sponsors are required. The municipal clerk is tasked with determining whether an application is sufficient and whether to proceed to the petition phase.[43] Following application approval, the municipal clerk issues petitions that contain, among other things, the statement grounds for recall. AS 29.26.270. To proceed with a special election, the sponsors must obtain signatures from a registered voters equal to 25 percent of the number of votes cast in the previous municipal election. AS 29.26.280. Unlike recall of state officials, a recall ballot of a municipal officer includes the statement of ground along with a 200-word rebuttal statement from the recall subject along with the question of whether that person should be recalled. AS 29.26.330.

B. Sparse Law Regarding Municipal Recall

Alaska case law on recall is sparse. The Alaska Supreme Court has never addressed recall of a state official under Title 15. The court has twice addressed municipal recall.

Meiners v. Bering Strait School District[44] involved efforts to recall members of a rural school board. After briefly reviewing the origins of Alaska's constitutional recall provision, the court devised a judicial review standard and philosophy for local recall in rural Alaska, based upon a different statutory scheme than that for statewide recalls.

The court then evaluated the precise situation before it—recall of school board members governing students in villages in and around Norton Sound and the Bering Strait. The court rightly observed that such recall petitions "will frequently be initiated by voters of limited means in districts of small population in remote parts of the state."[45] The court reasoned that such petitioners should not need the advice of a lawyer to succeed, nor should the municipal officer who certifies the petition, somebody who might be "a part-time

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[43] AS 29.26.270. At the time of the petition in *Meiners,* the statutory scheme (then AS 29.28.130 – 250) did not provide for pre-circulation review by the municipal clerk.

[44] 687 P.2d 287 (Alaska 1984).

[45] *Id.* at 295.

employee with little or no legal training" working in a town "hundreds of miles away" from the nearest lawyer.[46]

The court then incorrectly likened recall to initiative and referendum,[47] and concluded that recall statutes "should be liberally construed so that 'the people [are] permitted to vote and express their will . . .'"[48] In light of this, the *Meiners* court stated, "The purposes of recall are . . . not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute" and expressed a reluctance to hold recall petitions to such a high standard as to "virtually . . . negate the recall process for citizens of small communities and school districts in rural Alaska."[49]

In *von Stauffenberg v. Committee For an Honest and Ethical School Board*,[50] the court again addressed a recall attempt against several local school board members under the Title 29 provisions. Relying on *Meiners*, the court explained, "In reviewing the legal sufficiency of allegations in recall petitions, this court is in a position similar to a court ruling on a motion to dismiss for failure to state a claim . . . [and] we must [therefore] take the allegations as true . . . ."[51] And the court reiterated that it would not evaluate the truth or falsity of allegations in a recall petition.[52]

But the *von Stauffenberg* court omitted *Meiners*'s discussion of the needs of rural Alaskans. Indeed, in reversing the superior court's grant of summary judgment to recall proponents, it noted that the superior court had relied on the principle that "recall statutes

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[46] *Id.* at 296.

[47] Initiative and referendum elections are generally held in at regularly scheduled general elections, while recall elections are generally special elections.

[48] *Id.* at 296 (citation omitted).

[49] *Id.*

[50] 903 P.2d 1055 (Alaska 1995)

[51] *Id.* at 1059 (quoting *Meiners*, 687 P.2d at 300–01 n.18).

[52] *Id.* at 1060.

are to be 'liberally construed.'"[53] Rather, the *von Stauffenberg* court looked to Washington law and observed, "[W]here recall is required to be for cause, elected officials cannot be recalled for legally exercising the discretion granted to them by law."[54] It rejected conclusory assertions that school board members had violated the law, noting that the statement must contain a *prima facie* showing of a recall ground and would fail for lack of particularity if it did not "state why [an action] was violative of Alaska law."[55] Thus the Alaska Supreme Court, in only its second case to address recall, created a significant exception to the permissive philosophy of *Meiners*, holding even in the informal realm of municipal recall applications, recall cannot be based on actions within an official's discretion.

C. A More Restrictive Approach for Gubernatorial Recall

RDC seeks to extend *Meiners* from Title 29 and a rural school board recall to Title 15 and a governor and leans heavily on its permissive framing of the municipal recall process.[56] It argues that it was entitled to rely on cases construing the municipal recall statute in crafting its loosely worded allegations.[57] Not so. *Meiners* is inapposite in this context—the circumstances, the statute, and the stakes are different. A more discerning approach to recall is required to accord with (1) the constitutional delegates' intent, (2) the legislature's intent in adopting AS 15.45.510, (3) the differences between recalls and initiatives and referenda, and (4) the due process rights of office holders.

1. The Constitution. *Meiners's* permissive approach is contrary to both the Constitutional Convention's deliberation on the issue and the legislature's framework for recall of statewide officials. The Alaska Statehood Committee commissioned a study by the Public Administration Service to advise Constitutional Convention delegates' efforts

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[53] *Id.* at 1058 (quoting *Meiners*, 687 P.2d at 296).

[54] *Id.* at 1060.

[55] *Id.*

[56] *See* Plt. Mot. at 6, 53.

[57] *See id.* at 54.

to draft the Alaska Constitution.[58] The Public Administration Service suggested that providing for recall of elected officials would likely be desirable "as long as the requirements are sufficiently high that it is only likely to be invoked in a real emergency."[59] With that in mind and consistent with territorial law, the delegates initially considered "malfeasance, misfeasance, nonfeasance, or conviction of a crime involving moral turpitude" as grounds for recall.[60] Some delegates nonetheless believed that the voters should be able to recall for any reason that the voters deemed proper.[61] However, concerns about impact of recall efforts on governance won the day. The Convention rejected the recall-at-will approach, and instead adopted for-cause recall, leaving it to the legislature to establish the grounds. [62]

To implement this constitutional compromise, the legislature selected restrictive grounds. For state office holders, including the governor, the grounds for recall are "(1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption."[63] The legislature chose these from a list of grounds set forth in a Library of Congress reference book on state government. It excluded

> grounds such as 'favoritism,' 'carelessness,' 'extravagance,' 'inability,' 'selfishness,' and 'no benefit to public,' from the four statutory grounds for recall ultimately chosen—implying that only true and manifest malfeasance should subject a legislator to recall.[64]

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[58] Ex. I (Public Administrative Services, *Constitutional Studies*, vol. 3 (1955) (Convention Files Folder 180.3))

[59] Ex. I at 26.

[60] *See* 2005 Inf. Op. Att'y Gen., 2005 WL 2300397, at 2 (Sept. 7; 663-06-0036) (discussing constitutional convention consideration of recall); *see also Meiners*, 687 P.2d at 294.

[61] *Id.* at 2-3.

[62] *Id.* Excerpts from the Alaska Constitution Convention Proceeds regarding recall, which took place of days 43 and day 44 of the Convention, are attached as Exhibits J and K.

[63] AS 15.45.510.

[64] 2013 Inf. Op. Att'y Gen., 2013 WL 6593253, at 9 (Dec. 6; 1JU2013200362) (citing 2005 Inf. Op. Att'y Gen., 2005 WL 2300397, at 4-5 (Sept. 7; 663-06-0036) (citing Legislative Council, *Suggested "Alaska Election Code"* at 66-67 (Jan. 20, 1960))).

The constitutional and legislative history simply does not support a permissive approach to recall petitions involving state officers.

The constitutional delegates provided for a strong executive.[65] They vested "[t]he executive power of the State . . . in the governor,"[66] charging him with sweeping powers to supervise each principal department in the executive branch,[67] and command the "armed forces of the State."[68] Among other powers, the Alaska Constitution grants the governor "broad power to sue in the name of the state,"[69] "broad authority to grant executive clemency,"[70] "the power and duty to reapportion the state legislature every ten years,"[71] and "broad powers to designate state monuments or historic sites on public lands."[72] Most significant here, the constitution provides the governor control over state spending through the line-item veto.[73]

These powers and responsibilities make the governorship the most important political office in the state. Involvement in a recall election would distract any governor from the important duties Alaskans have vested in the office. Accordingly, "[t]he right to recall [the governor] is limited to recall for cause so as to free [the governor] from the harassment of recall elections grounded on frivolous charges."[74] Given the governor's

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[65] *Bradner v. Hammond*, 553 P.2d 1, 3 (Alaska 1976)

[66] Alaska Const. Art. III § 1.

[67] Alaska Const. Art. III § 24.

[68] Alaska Const. Art. III § 19.

[69] *Legislative Council v. Knowles*, 988 P.2d, 604, 607 (Alaska 1999).

[70] *Lewis v. Dep't of Corr.*, 139 P.3d 1266, 1272 (Alaska 2006).

[71] *Hickel v. Se. Conference*, 846 P.2d 38, 42 (1992).

[72] *Eyak Traditional Elders Council v. Sherstone, Inc.*, 904 P.2d 420, 423 (Alaska 1995).

[73] Alaska Const. art. II, § 15.

[74] *von Stauffenberg*, 903 P.2d at 1059 n.11 (quoting *In re Recall of Call*, 749 P.2d 674, 676 (Wash. 1988)); *see also In re Recall of Burnham*, 448 P.3d 747, 753 (Wash. 2019) (describing legislative intent "to prevent recall elections from reflecting on the popularity of the political decisions made by elected officers"); *CAPS v. Bd. Members*, 832 P.2d 790, 791 (N.M. 1992) (stating "the standard applied to justify recall should be sufficiently

unique constitutional role, the constraints on recall must be greater than those applicable to recall of a part-time volunteer.

2. The legislature's intent. The legislature made a statewide recall petition is manifestly different from a school board recall. The Director of the Division of Elections reviews recall petitions[75] using a staff composed of "full time members."[76] In practice, the Director relies on opinions of the Attorney General. There should not be concern about the availability of legal resources for a gubernatorial recall effort. Here, the sponsors are not laypeople but highly sophisticated and experienced lawyers. RDC has demonstrated its ability to collect some 50,000 signatures in a well-funded, organized statewide effort. With such resources, RDC can afford, and should be required, to get the law right. All this makes *Meiners*'s relatively permissive approach to recall inapplicable to RDC's recall application.[77]

Meiners is also inapplicable because it construes a fundamentally different statutory scheme. The *Meiners* court itself noted distinctions between the two processes and grounds for recall.[78] The legislature intended procedural hurdles to recalling a holder of statewide office that it did not intend for recalling a municipal officer. In the state officer context, an application for a recall petition requires more sponsors and more voter signatures.[79] The

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limited to avoid employing recall as a means of harassment or for purely political or personal purposes").

[75] AS 15.45.540.

[76] AS 15.10.105.

[77] *See McAlpine v. Univ. of Alaska*, 762 P.2d 81, 94 n.23 ("The analogy of *Meiners* to the present case is not exact. The record in this case does not disclose whether the community college initiative was prepared without the assistance of counsel. Nor are the proponents of the community college initiative handicapped by financial inability to pursue this litigation . . . .").

[78] *Meiners*, 687 P.2d at 295 n.6.

79 Compare AS 15.45.500(3) (requiring 100 sponsors and signatures of 10% of voters in the preceding general election), with AS 29.26.260(1) (requiring 10 sponsors and no additional voter signatures).

state officer statute anticipates sophisticated proceedings by requiring designation of a committee of three to represent the 100 sponsors and providing for service of notices on this committee.[80] The municipal statute contains no such provision.[81] There are qualification requirements for petition circulators in state-officer recall efforts[82] and rules governing the collection and certification of signatures on those petitions.[83] No such hurdles stand in the way of municipal recall efforts. In light of the procedural requirements, the state-officer recall statute provides for judicial review of "a determination made by the director under" the statute.[84]

These differences were at least as stark—if not starker—when the Alaska Supreme Court decided *Meiners*. The municipal recall statute did not provide for pre-circulation review of petitions, while the state-officer recall statute did. *Meiners* noted the differences.[85] It should not be as easy to remove a governor from office as a school board member. The legislature understood this, and provided for a more stringent procedure. In light of the statutory and practical differences between recalling state and municipal officers, the Alaska Supreme Court recognized the limits of its reasoning in *Meiners* and the narrow application of that decision to municipal recall elections.

3. Differences between recall and initiative and referendum. In adopting the permissible standard for municipal offices, the *Meiners* court overlooked a significant distinction between the initiative and referendum process and the recall process. Initiative and referendum permit the electorate to participate directly in the law-making process. Through the initiative, the voters may act as the legislature and enact legislation, and through the referendum, they may act as the governor and veto laws passed by a recent

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[80] *See* AS 15.45.500(4), 15.45.520.

[81] *See* AS 29.26.260.

[82] *See* AS 15.45.575.

[83] AS 15.45.580–600.

[84] AS 15.45.720.

[85] *See Meiners*, 687 P.2d at 295 n.6.