

In the Supreme Court of the State of Alaska

**State of Alaska, Division of Elections
and Director Gail Fenumiai,**

Appellants,

v.

Recall Dunleavy,

Appellee.

Supreme Court No. **S-17706**

Order

File Supplemental Briefs

Date of Order: **4/2/2020**

Trial Court Case No. **3AN-19-10903CI**

Before: Winfree, Stowers, Maassen, and Carney, Justices, and Eastaugh, Senior Justice.* [Bolger, Chief Justice, not participating.]

Having considered the parties' briefing and oral arguments, the court requests supplemental briefing regarding the third ground set out in the recall petition: that "Governor Dunleavy violated separation-of-powers by improperly using the line-item veto to attack the judiciary and the rule of law." Supplemental briefs shall address the following issues:

1. The historical basis of state constitutional provisions, and particularly the Alaska Constitution, Article II, section 15, regarding a governor's discretionary authority to veto items in appropriation bills and the related requirement that the governor provide a statement of objections to the vetoed items;
2. The constitutional limits, if any, that exist on a governor's exercise of the authority to veto items in appropriation bills; and,

* Sitting by assignment made under Article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

3. In light of the foregoing, the legal framework this court should use for determining whether the third ground for recall is “legally sufficient” as required by our case law. How should the governor’s statement of his objections inform the analysis? Can the statement of objections itself demonstrate an “improper” use of the governor’s veto authority sufficient to support recall? Is an “improper” use of the governor’s veto authority a violation of the separation of powers doctrine? As used in the recall petition, is “separation of powers” a law — which the governor either violated or did not violate — or is it shorthand for something else? How should voters interpret the phrases “separation of powers” and “the rule of law”?

Simultaneous briefs of no more than 20 pages shall be filed no later than April 13, 2020. Simultaneous responses of no more than 10 pages shall be filed no later than April 20, 2020.

Entered at the direction of the court.

Clerk of the Appellate Courts

/s/ M. Montgomery

Meredith Montgomery

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