

SUPREME COURT FOR THE STATE OF ALASKA

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

Appellants,

v.

**Recall Dunleavy, an  
unincorporated association,**

Appellee.

Case No. S-17706

Superior Ct. No.: 3AN-19-10903CI

**Motion for Leave to File an Amici Curiae Brief by  
American Civil Liberties Union of Alaska, Bonnie L. Jack, and  
John D. Kauffman**

The appeal addresses the question of whether the form and substance of certain grounds for recall are sufficient in a petition to recall Governor Dunleavy from office. One of the grounds for recall asserts that “Governor Dunleavy violated separation-of-powers by improperly using the line-item veto to attack the judiciary and the rule of law.” On April 2, 2020, the Court ordered the parties to submit supplemental briefs answering questions related to whether Governor Dunleavy’s June 28, 2019, veto of appellate court funds violated the separation of powers.

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Amici take no position on whether appellee Recall Dunleavy has asserted adequate grounds to allow a recall vote on Governor Dunleavy, nor do they take a position on whether Alaskans should recall the governor. But Amici have a strong interest in how this Court resolves its supplemental questions on whether the governor's veto violates the separation of powers. Amici are currently plaintiffs in a lawsuit challenging the constitutionality of the June 28, 2019, veto as a violation of the separation of powers. *ACLU of Alaska et al. v. Dunleavy et al.*, Case No. 3AN-19-08349CI (filed July 17, 2019). That matter is currently pending before superior court Judge Jennifer S. Henderson and is now ripe for decision.

Plaintiffs in the superior court, Amici here, have asked that court to issue an injunction ordering the State to refund the vetoed sum to the appellate courts' fiscal year 2020 budget as soon as practicable, so that the appellate courts have a meaningful opportunity before June 30 to use that money. Should the superior court hold that the veto unconstitutionally violates the separation of powers, ordering a return of the vetoed funding after the June 30 close of the 2020 fiscal year would have no monetary impact, since there would be no budget to which the funds could be restored.

This Court's answers to the questions posed in its April 2 Order could resolve the constitutional issues before the superior court, or, at the very least, are likely to provide guidance to the court in its summary judgment ruling. Because they have fully researched and briefed the question of whether the veto violates the separation of powers before the superior court, Amici's insight may help this Court's inquiry.

Amici therefore ask permission to file an amici curiae brief, which they conditionally filed with this motion.

Dated: April 13, 2020

Respectfully submitted,

s/ Stephen Koteff /  
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### **Certificate of Typeface**

I certify that the text of this motion's font is 13-point (proportionally spaced) Century Schoolbook. Alaska R. App. P. 513.5(c).

s/ Stephen Koteff /  
Stephen Koteff

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