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**IN THE SUPREME COURT OF THE STATE OF ALASKA**

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

Appellants, )

v. )

Recall Dunleavy and Stand Tall With )  
Mike, )

Supreme Court No. **S-17706**

Appellees. )

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

**STATE’S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF**

Appellants State of Alaska Division of Elections and Director Gail Fenumiai (“the Division”) oppose the request of the American Civil Liberties Union of Alaska, Bonnie L Jack, and John D. Kauffman (“ACLU”) to file an amicus brief at the supplemental briefing stage of this appeal. The motion was filed without notice to the Division, one week before reply briefs must be filed, and the brief addresses a legal question that is outside the scope of this appeal and currently the subject of a different lawsuit. Because this appeal is not an appropriate forum for the ACLU to litigate its case, the Division asks the Court to deny the motion.

This Court’s April 2, 2020 order asked the parties to address a series of general questions regarding the governor’s line item veto power, whether a governor’s objections explaining a veto could be a basis for a recall, and whether a line item veto could violate the separation of powers doctrine. As the Division explained in its opening supplemental brief, the Court need not—indeed, should not—address the substance of

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the governor’s veto message—i.e. his objections—because the recall committee’s statement of grounds makes no reference to the veto message, but instead refers only to the line-item veto itself.

Despite this, the ACLU seeks leave to file a brief arguing distinct legal issues raised in a separate lawsuit currently before the Superior Court—issues that are not before this Court in this appeal. In doing so, the ACLU ignores a key limitation for amicus briefing, ironically one established in a case in which the ACLU was a party: “an amicus party may not seek relief beyond the scope of relief sought by the parties of record.”<sup>1</sup> And in this case, the relief requested by the committee is the certification of its recall application, not the declaration requested by the ACLU that the governor’s veto objections constitute a violation of the separation of powers.

An appeal of the Division’s certification decision, which by law was based only on the language of the recall committee’s statement of grounds, is not the proper forum for amici’s arguments. They have filed a separate lawsuit; and they will have an opportunity to appeal to this Court if they wish, once the superior court has issued a ruling. The ALCU’s attempt to leapfrog the superior court is a transparent subversion of the legal process and should not be permitted by this Court.

However, should this Court decide to accept this brief, the Division respectfully requests an additional week to file its reply brief so as to address amici’s arguments in full.

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<sup>1</sup> *State v. Alaska Civil Liberties Union*, 159 P.3d 513, 514 (Alaska 2006).

DATED April 14, 2020.

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ATTORNEY GENERAL

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