



Alaska Public Media – Juneau, Alaska – November 6, 2019

Alaska courts must choose between a liberal or strict interpretation of recall law

By ANDREW KITCHENMAN

A national expert in recalls of elected officials said the legal fight over the proposed recall of Gov. Mike Dunleavy highlights how unusual Alaska’s law on the issue is.

Joshua Spivak has been following recalls of politicians for more than 20 years. He’s based at Wagner College in New York City and blogs about recalls, writes legal papers about recalls, is quoted in news stories on recalls. And he said there’s something different about what’s happening in Alaska.

“Alaska has ... perhaps the most unique recall law in the country,” Spivak said.

Most states that have recalls allow them for any reason — it’s up to voters to decide. Spivak said Alaska is one of eight states that defines, in law, the grounds for recalls. In these states, people proposing recalls must give a reason that complies with these grounds.

But Alaska is unique among these states in that it requires recall organizers to gather many signatures — 28,501 in the case of Dunleavy — before state officials can certify a recall application. Once that happens, an even larger effort gathering 71,252 signatures must happen to force a recall election.

“What makes Alaska doubly strange is that there was a change in the law in some ways by a few [state] Supreme Court decisions,” he said.

For example, in the *Meiners v. Bering Strait School District* case in 1984, the court held that the recall law “should be liberally construed so that ‘the people [are] permitted to vote and express their will.’”

Across the country, the vast majority of recalls have happened in states that allow recalls for any reason — what Spivak calls “political recall” states. And he said Alaska courts have interpreted its recall law to be more like those states than states that require organizers to give a reason that matches state law.

“In fact the state has had a number of recalls over the years on the local level — not on the state level — and those have occurred because the [state] supreme court has adopted a much more liberal approach to the recall, one that makes it almost a political recall state,” Spivak said.

He means “liberal” in the legal sense of “not strict”; he doesn’t mean liberal politically.

On Monday, Division of Elections Director Gail Fenumiai rejected the group Recall Dunleavy's application. The group sued on Tuesday.

Spivak said that if the case gets to Alaska's Supreme Court and the court were to follow the principles it applied in 1984, the ruling would likely go well for the recall group.

"But that's a different Supreme Court" than in 1984, Spivak noted. "And Supreme Courts are made up very much of whoever is serving on the court itself. So, it's a real question of what will happen."

Fenumiai drew on advice from Attorney General Kevin Clarkson, who said the law should be interpreted strictly.

Clarkson said the recall application failed to show Dunleavy committed neglect of duty, and that mere procedural or technical failures are not enough to meet the grounds for recall.

So Spivak said the court will have to choose between the two approaches — the liberal approach it took in the past, or the strict approach Clarkson is urging.

Recall Dunleavy is asking the courts to hold hearings on the case on a sped-up schedule, with a goal of having the recall election in the spring. The case has been assigned to Anchorage Superior Court Judge Una Gandhir.

And as the case unfolds, Spivak will be keeping an eye on it.

<https://www.ktoo.org/2019/11/06/alaska-courts-must-choose-between-a-liberal-or-strict-interpretation-of-recall-law/>