

In the Supreme Court of the State of Alaska

**State of Alaska, Division of Elections,
Director Gail Fenumiai, and Stand
Tall With Mike,**

Appellants,

v.

Recall Dunleavy,

Appellee.

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

Supreme Court No. **S-17706/S-17715**

Order

Motion to Lift Stay Pending Appeal

Date of Order: **February 14, 2020**

Before: Bolger, Chief Justice, Winfree, Stowers, Maassen, and
Carney, Justices

On February 3, 2020, Appellee Recall Dunleavy filed an Emergency Motion to Lift Stay Pending Appeal, asking us to lift the superior court's January 29 Order Granting Stay Pending Expedited Appeal. Appellants State of Alaska, Division of Elections, Gail Fenumiai, Director, State of Alaska, Division of Elections, and Stand Tall with Mike filed responses on February 7.

The superior court, in its order granting the stay, concluded that to allow signature-gathering to proceed pending appeal could result in voter confusion if this court reverses or modifies its judgment; that this confusion could not easily be remedied and therefore constituted irreparable harm; and that the State and Stand Tall with Mike raise a serious issue on appeal. However, the superior court did not expressly consider the harm to Recall Dunleavy resulting from a stay, and as a result it appears to have applied an incorrect analysis.

“Where the injury which will result from the [stay] is not inconsiderable and may not be adequately indemnified by a bond, a showing of probable success on the

merits is required.”¹ When assessing the harm to the non-moving party we assume that it will prevail on appeal.² The statutes governing recall elections impose certain deadlines apparently intended to ensure an expedited process. The loss of several months of signature-gathering in this process is at least a “not inconsiderable” injury. In order to obtain a stay, therefore, Stand Tall with Mike was required to show not just the existence of serious issues on appeal, but probable success on the merits. Having granted summary judgment to Recall Dunleavy, the superior court implicitly rejected the argument that Stand Tall with Mike will probably succeed on the merits of its appeal. We conclude that it has not made that showing here, either, in its response to Recall Dunleavy’s Motion to Lift Stay.

Therefore, on consideration of the Motion to Lift Stay and the responses:

IT IS ORDERED that the Motion to Lift Stay Pending Appeal is **GRANTED**. The Division of Elections is directed to prepare the petition booklets forthwith for issuance to Recall Dunleavy. Requests related to the execution of this order shall be directed in the first instance to the superior court.

A separate notice regarding the briefing scheduling in this appeal will be issued after the Clerk’s scheduling conference with the parties.

Entered at the direction of the court.

¹ *Alsworth v. Seybert*, 323 P.3d 47, 54-55 (Alaska 2014).

² *Id.* at 54.

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