SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID NEES, DUSTIN DADEN

 PLAINTIFFS, NO. 3AN-20-\_\_\_\_\_\_\_\_\_CI

v.

MUNICIPALITY OF ANCHORAGE (MOA) and

MUNICIPAL CLERK VERIFIED COMPLAINT FOR DECLARITORY AND

BARBARA A, JONES. INJUNCTIVE RELEIF

 DEFENDANT.

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 INTRODUCTION

1. Plaintiffs David Nees and Dustin Darden, bring this action to challenge the denial of certification of a Recall Petition  for Assembly Member Austin Quinn-Davidson. The conduct alleged as the grounds for recall are: failure to exercise duties of office, including the use of Federal COVID funds in a federally prohibited manner and the failure to use those same funds for projects within the Assembly District they represent.

2. Defendants sent the Recall Petition to the Municipal Attorney for review. The Municipal attorney returned an Opinion that the Petition for Recall was not legally sufficient, however the Recall Petition meet both the 10 signatures requirement and the 200 word limit.

3. The courts have numerous times stated review of the complaint is to be construed Liberally, and in State of Alaska, Division of Elections and Director Gail Fenumiai v, Recall Dunleavy , 3AN-19-10903CI, (see exhibit 1)

Judge Aarseth went a step further. Concluding that;

“… noting that the recall is a political process and that prior recall cases show that the current claims are sufficient to get the issue in front of voters. As for the damage done by the governor’s actions, Aarseth said that’s something for the voters to weigh if the recall reaches a vote.

“This is a political process. Neither side, as you would be at trial, is limited to a particular day or a certain number of hours or even limited to evidentiary rules as to what they can present when they campaign, if the recall ballot is eventually issued. In that campaign, they have the ability to explain to the public what the allegations and defenses mean, and what the evidence is or the lack thereof to support each sides’ position,” he said. “The point is, is that it really only takes a single sentence with a few words to adequately put a person on notice of the conduct that is being alleged.”

 Failure to include the implications from SOA v. Recall Dunleavy in their review is a fatal flaw in the advice given to the Clerk.

 The attorney also relied on the current, and probably unconstitutional review process for the MOA.

The Recall Dunleavy team changed the base rules with it’s successful argument in both Superior and Supreme courts.

 “The grounds are not defined in statute, and the Alaska Supreme Court has said in the absence of a statutory definition you must construe according to the common meaning, and the dictionaries are a useful starting point,” Former AG Lindemuth

4. The Municipal attorney, Karen Vogel, had advised the Anchorage Municipal Assembly how to change the COVID Ordinance 2020-066 they had previously passed on August 12 2020 (See Exhibit 2 ) to include a workaround of federal prohibition on spending Covid funds for Homeless housing buildings. The Inspector General was very specific on how the money could be spent, and it had to be spent according to the guidelines (See exhibit 3). Assembly member Quinn-Davidson in conjunction with other members decided to reallocate the funds to skirt the prohibition. They revised the Ordinance to funnel the funds into the Police and Fireman Reserve and use the reserve money to purchase the buildings. (See exhibit 4)

5. Contrary to the Defendant’s conclusions, the recall petition application does state significant failure to perform fiduciary duties a fundamental duty of the office of Assembly member (Legislative branch of local Government). The actions (votes) taken by Austin Quinn-Davidson are far and above discretionary powers allocated to elected officials. The Superior Courts and the Alaska Supreme Court have confirmed numerous times that Clerks have to Liberally interpret the recall charges, (assume they are true) and that the Legal merits must meet the statutory requirements set forth in the manner provided by AS 29.26.240—29.26.360. The State of Alaska v. Recall Dunleavy Decision has moved the peculiarity standard to a Liberal Construction, or in the words of Former AG Kevin Clarkson.

“"The Court ignored Alaska’s constitutional history and has effectively rewritten our Constitution and statutes to adopt no-cause political recall," Attorney General Kevin Clarkson said in the statement. "By the Court’s decision, from this point forward any elected official will be subject to recall for virtually any reason."

6. The charges made in Petition are clearly a duty of a member of the office of Assembly, and are easily answered in a 200 word response on the ballot. Unfortunately the MOA and the Clerk relied on a fundamentally flawed interpretation that the fiduciary responsibility is completely discretionary. (See Exhibit 5 page 4 and 5) .

By narrowly interpreting the failure to perform duties rather than Liberally interpreting as required in Recall Dunleavy.. Thus the Recall Petition application was denied in error, because recall petition clearly stated (See exhibit 6 page 1) and provided precise information of the failure to protect the public from a possible future liability for $50,000,000. The public is well informed of this allocation of Covid Funds due to the intense press coverage of the process.

7. The Municipality of Anchorage has amended and erected many barriers to recall within Title 2 Chapter 3.50 of their Municipal Codes of Ordinances making it the most difficult places in the state to exercise our constitutional rights to recall. These changes have included among other things lengthening the legal review from 10 to 30 days, limiting who can gather signatures, and charging for copies of “official” signature sheets far in excess of the standard FOIA fees.

 Plaintiffs David Nees and Dustin Darden, request this Honorable Court issue and Order:

1.  The Clerk to approve the Recall Petition as written;

2.  To hold the charge of failure to perform duties of office as legally sufficient in Compliance with Recall Dunleavy decision;

3.   To allow the Plaintiffs to begin collecting signatures for their Recall Petition;

4.  For the Clerk to provide the master signature sheet, if additional sheets are necessary to collect signatures the Clerk is to provide them free of cost;

5. the MOA be required to review the changes made to Title 2 Chapter 2.50 by ordinance (AO 2017-41) so that it conforms to Recall Dunleavy

Parties

1. The Plaintiffs are both registered voters in the area represented by the Assembly member Austin Quinn Davidson.
2. Defendant Barbara Jones is the Municipal clerk

Jurisdiction and Venue

1. This is a complaint for declaratory and injunctive relief brought pursuant to AS 22.10.020 (c) and (g) and Alaska Rule of Civil Procedure 57(a).
2. This court has jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015 and AS 22.10.020
3. Venue in this court is proper pursuant to Alaska Rule of civil Procedure 3(c) because the acts complained of occurred within Third judicial district.