

To The Honorable Members of The Senate State Affairs Committee,

Greetings.

I write in opposition to Senate Joint Resolution No. 13 and its counterpart, House Joint Resolution No. 12. Both of these resolutions propose the same state constitutional amendment regarding Alaska's judicial selection process.

The proposed amendment removes the Alaska Judicial Council's duty to nominate judicial candidates for the governor's consideration when filling judicial vacancies. In so doing, the currently shared constitutional responsibility of selecting judges is effectively consolidated into the executive branch, giving the governor sole discretionary authority to appoint any candidate who happens to meet the bare minimum constitutional and statutory requirements to hold judicial office.

As a born and raised Alaskan who has been practicing law for nearly twelve years, I have firsthand experience participating in our state's existing merit-based judicial selection process. The Judicial Council's constitutionally enshrined nomination duty serves as the backbone of that process. The Council's nominating role is neither broken nor deficient, and it does not warrant change.

Currently, Article IV, Sec. 5 of the Alaska Constitution vests the Judicial Council with authority to nominate candidates for a governor's consideration when filling judicial vacancies. The Council exercises this nomination duty by vetting candidates for any given judicial vacancy based upon defined criteria. Such criteria include a candidate's substantive and procedural knowledge of the law, organizational skills, written and oral communication skills, reputation for honesty, moral character and fitness, fairness, temperament, legal experience, dedication to public and community service, and a demonstrated commitment to both equal justice and the legal needs of Alaska's diverse communities.

The existing process serves to dilute the partisan preferences of a sitting governor, while ensuring that only the most qualified judicial candidates are nominated for any given judicial vacancy. The proposed amendment eliminates the Judicial Council's unique constitutional check-and-balance vetting function. Without this independent vetting function, the merit-based nature of our judicial selection process will be irreparably compromised. Judicial appointments will be inherently more susceptible to partisan-based motivations and interests.

It is reasonable for Alaskans to expect that those elevated to the bench should not only meet the bare minimum qualifications necessary to assume office, but that such persons should also exemplify the highest standards and best traditions of the legal profession. The existing judicial selection process has served Alaskans well in ensuring that only the most qualified candidates are nominated to serve as judges.

The Judicial Council's seven-member deliberative process is preferable to that of the proposed amendment's alternative. Alaskans deserve to have would-be judges substantively vetted and scrutinized by more than just one person. Similarly, it is far better to have the seven-member Judicial Council, whose members are free from election-based partisan pressures and for whom the constraints of party loyalty bear little consequence, vetting judicial candidates through a multi-member deliberative process than it is to have a single person, who is beholden to election promises and party expectations, making such substantive decisions unilaterally.

The existing merit-based process of selecting judges also serves to foster greater public trust in the judiciary, because the public has greater cause to trust those who have been elevated to the bench based upon legal aptitude and ability over and above mere partisan alignment, favoritism, or arbitrary whim. Furthermore, this affords greater independence to the judiciary, and fosters confidence to believe that judicial officers are actually able to perform their duties impartially, competently, and effectively.

The proposed amendment's blatant divestiture of the Judicial Council's constitutional nomination duty cannot be overemphasized. This is especially true when one remembers that the Judicial Council is itself a constitutional entity. It is neither a creature of statute nor the product of some ad hoc executive order. Rather, the Judicial Council is expressly created pursuant to Article IV, Sec. 8 of the Alaska Constitution. As such, the Judicial Council's existence enjoys equal footing with that of the Senate, the House of Representatives, the Supreme Court, and the Governor. Viewed in this light, the proposed amendment literally disenfranchises one constitutional entity in favor of maximizing the discretionary power of another constitutional entity. This runs contrary to the very notion of a constitutional system supported by meaningful checks and balances.

In this same vein, the governor's role within the existing judicial selection process is already considerable. Not only does the governor enjoy final appointment authority to fill judicial vacancies (which, unlike our federal system, is *not* subject to legislative confirmation), but the governor also enjoys appointment authority to fill the three non-attorney member seats on the Judicial Council (which, under our state constitution, *is* subject to legislative confirmation). Thus, the governor wields considerable authority in determining who will serve on the Judicial

Council (the constitutional entity responsible for nominating judicial candidates for the governor's consideration), and the governor literally has the final say when it comes to who will be appointed to fill judicial vacancies. The governor does not need, nor should the governor possess, additional authority when it comes to Alaska's judicial selection process.

It is also important to note that the proposed amendment negatively impacts the legislature. This is because the legislature itself plays a constitutional role in the judicial selection process, albeit indirectly. The Judicial Council's three non-attorney members are appointed by the governor, but subject to legislative confirmation. If the Judicial Council is divested of its constitutional nomination duty, then the importance of the legislature's confirmation authority regarding the Council's non-attorney appointees is all but lost, if not rendered virtually meaningless. Currently, the legislature's confirmation authority gives the legislature a meaningful opportunity to decide whether any given non-attorney Council appointee is the kind of person who deserves to be deliberating on the nomination of judicial candidates. To the extent that the proposed amendment divests the Judicial Council of its deliberation-based nominating function, it simultaneously divests the legislature of its existing role in having a meaningful say as to who should be participating in those deliberations.

For all these reasons, I oppose Senate Joint Resolution No. 13 and its counterpart, House Joint Resolution No. 12. I commend these comments to the Committee for its consideration, and with the hope that the Committee will see fit to oppose Senate Joint Resolution No. 13.

Sincerely,

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