

Alaska State Legislature

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Sponsor Statement – SJR 3

“Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council; relating to the initial terms of new members appointed to the judicial council; and relating to the confirmation of members of the judicial council.”

Senate Joint Resolution 3 places a constitutional amendment on the next general election ballot that would allow the voters to decide whether the membership of the Alaska Judicial Council should require legislative confirmation of all members, and be expanded to include three additional public (non-attorney) members.

SJR 3 would increase the public’s voice on the Judicial Council through the addition of more members who are selected by democratically accountable officials, i.e., the Governor and the Legislature. In contrast, the attorney members are selected by the Board of Governors of the Bar Association, and are not currently subject to legislative confirmation, as they are in many other states. The lack of legislative confirmation is a stark glaring oversight when all members of every other Alaskan regulatory or quasi-judicial agency are subject to confirmation according to Article 3 Section 26 of the Alaska Constitution.

Expanding the council to six public members would allow for regional diversity on the council, which is called for in the Constitution. Historically, the three attorney members have come from four cities: Fairbanks, Anchorage, Juneau, and Ketchikan. While the three public members hail from more diverse locations, overall the majority are still from the same four cities. When the Constitution’s framers created the Judicial Council, they could not have anticipated how much the state and regions would grow and change. Three public members and three attorney cannot adequately represent the diversity of a state with such complex regional and demographic differences. Considering the small number of attorneys residing in rural Alaska, offering three more public members is the surest way to see a more diverse body, and the ability to allocate representation to more than just traditional urban centers.

SJR 3 will correct a flaw that puts the Chief Justice in a perceived and sometimes actual conflict of interest. The Judicial Council must act by a concurrence of 4 members, as required by Article IV of the constitution. According to the Judicial Council Bylaws (Article V, Section 1), the Chief Justice normally does not vote on any matter coming before the council – except in those instances, quoting the Bylaws, *“when to do so could change the result.”* Because of this

provision in the Council's bylaws, on those occasions when the six regular voting members split 3-3, the Chief Justice suddenly morphs from a non-voting member of the Council into the crucial deciding vote on whether an applicant will be forwarded to the Governor or not. Inevitably, this empowers the Chief Justice to use inclusion or exclusion of an applicant as a means of influencing who will be among his or her peers on the bench. It is even more alarming when this occurs during a Supreme Court nominating vote – and in fact, these tie-breaking votes actually occurred on *each* of the last two Supreme Court vacancies. The Chief Justice, like the rest of us, is only human – and should not be placed in a position where he or she can be accused of allowing personal biases and ideology to influence the decision regarding who sits next to them on the bench.

The tie votes on the Council are especially troubling when it involves a split of all three public (non-attorney) members voting one way, and all the attorney members voting the opposite way. Though rare over the course of the Council's history, these attorney / non-attorney vote splits have happened much more frequently in the past few years. From June 22, 2012 – Oct 10, 2013, there were five attorney / non-attorney split votes, in which all three public members voted to send an applicant's name to the Governor, but the Chief Justice sided with the attorney members and turned down the applicant. The addition of three more public members on the Council will create an odd number (9) of regular voting members instead of the current even number (6). This will make tie votes exceptionally rare – and in the unlikely event the Chief Justice must break a tie, they will always be on the side of some of the public members.

SJR 3 will expand the number of highly qualified Alaskans who are involved in vetting an ever-growing number of judicial applicants for a court system that is much larger than at the time of statehood, while retaining the professional insight attorney members bring to the council.

I urge your support for SJR 3 and the strengthening it would provide to the Judicial Council.