

Testimony of Robert B. Flint
to the Senate State Affairs Committee
on SJR3
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I am a retired attorney and member of the Alaska Bar for 51 years. I support the resolution and the need to reform the process of judicial selection in Alaska so that it conforms with the democratic system to which this country has been committed since its founding. Specifically, I concur with the consultant's report to the Constitutional Convention in 1955 that Alaska's Missouri Plan goes too far in separating the selection of one of the three branches of government from the democratic process.

Recently, the Kennedy School of Government at Harvard released a study of the ideological bent of the legal profession and judges. As reported in the February 1 *New York Times*, the lawyers are, in all categories of the profession, to the left of the general public, and, in some cases, such as government lawyers and public defenders, overwhelmingly so. Judges, on the other hand, though still to the left, are closer to the American profile than lawyers. This difference is attributed to the influence of selection through the political process of election or gubernatorial nomination and legislative confirmation which the Missouri Plan intended to eradicate. This raises the serious question of whether one branch of government, which operates without the checks and balances applicable to the other two branches, and the people as a whole, should be the preserve of, and represent the views of, one professional class. Since the US Constitution guarantees the states a republican form of government, I say the answer is a resounding "No."

The defense of the new advocacy group for the lawyers, Justice Not Politics, is simple. Everything is fine. The system isn't broken. The opponents are just religious people who don't like court decisions. In fact, objections to the grip of the lawyers in the selection process has come regularly from governors who want more nominees so they can meaningfully exercise the right of appointment. These objections have been ignored by the Judicial Council. These happen to be the more conservative governors, there having been no objections from the more liberal governors. Given the Harvard study, this is no surprise. The pieces fit together.

Here are some modest proposals for the lawyers on the Judicial Council to address the issues raised. First, recognize the validity of the complaints by past governors and send up more names. Second, the Judicial Council should be a nominating body, not a selection committee. Eliminate the "most qualified" requirement in the Council bylaws. That restriction isn't in the Constitution, and, in any event, qualifications are set by the Constitution itself and by statute, i.e., by the legislature, not the Judicial Council. In practice, "most qualified" isn't a standard anyway. Applicants have been nominated one time and not another even though their qualifications haven't changed, demonstrating that "most qualified" is meaningless. Third, the Chief Justice should not vote for Supreme Court nominees. That is a clear conflict. Finally, debate the issues. The attack on religious people is a straw man and demeaning. Lawyers, above all people, ought to know that religious people have the same constitutional rights to debate as they do.