Mark Choate
Choate Law Firm LLC
Juneau, Alaska

May 2, 2026

To the Members of the Alaska Legislature:

WRITTEN COMMENTS IN OPPOSITION TO THE CONFIRMATION OF STEPHEN COX AS ATTORNEY GENERAL OF ALASKA

My name is Mark Choate. I have practiced law in Alaska for 46 years. In that time, I have represented Alaskans against their own government when that government overstepped its constitutional bounds — and I have won. I successfully challenged the 2005 pension changes that stripped Alaskans of their right to buy back into their original retirement tiers. I obtained a ruling that Governor Dunleavy acted illegally in firing a state employee for exercising her protected First Amendment activities. I successfully sued the Department of Law itself for wrongful termination of a senior and dedicated attorney. I tell you this not to boast, but because it is relevant to what I am about to say: I know what it looks like when the power of state government is used against the people it is supposed to serve. And I know what kind of Attorney General Alaska needs to prevent that from happening.

Alaska does not need Stephen Cox.

A Tradition Worth Defending

For most of Alaska's history as a state, the Attorney General's office was something to be proud of because they were Alaskans first. They had practiced law here for decades before their appointments. They knew our courts and our statutes and appreciated the unique complexities of the laws that govern the State's relationship with the indigenous peoples who have occupied Alaska for thousands of years. They knew and understood the state's complex land framework, and the challenges of being a resource-dependent state with a complicated relationship with the federal government. Whether appointed by a Democrat or a Republican, they functioned as Alaska's lawyers, not as extensions of a national political machine.

Consider: Jay Hammond, a Republican governor, appointed Avrum Gross — a Democrat — as Attorney General, and kept him for eight years. Hammond understood something important: Alaska needed a lawyer, not a loyalist. That tradition held, with occasional exceptions, for decades. Both parties honored it because Alaska's legal challenges are too important, and too distinctly Alaskan, to be left to political operatives who are here today and gone tomorrow.

Former Attorney General Bruce Botelho — who was first appointed by Governor Wally Hickel, a Republican, and then again by Governor Tony Knowles, a Democrat -- ~~and~~ built a career of genuine distinction in Alaska law — has raised concerns about this nomination. His voice carries weight not as a partisan critic, but as the embodiment of what the office is supposed to be. When someone like Botelho speaks up, the Legislature should listen.

How We Got Here

That tradition has been eroding for about twenty years. The warning signs came with appointments that focused on political alignment over Alaska legal experience. Attorneys General began cycling through the office with shorter tenures, national policy agendas, and fewer ties to the state's legal community. Some used the office as a springboard to higher political office elsewhere. Others arrived with pre-formed ideological commitments to a national legal agenda and departed when administrations changed.

Each step in this direction weakened the institution. But through all of it, the office retained one anchor: the people appointed, whatever their politics, had at least practiced law in Alaska. They had Alaska experience. They knew the terrain. Stephen Cox breaks that anchor entirely.

Stephen Cox Is Not Alaska's Lawyer

Stephen Cox's career was built in Washington, D.C., inside the United States Department of Justice under the Trump administration. He is a capable federal litigator — no one disputes his technical competence. But without Alaska legal experience and a commitment to protecting Alaskan's constitutional rights, it is more likely that his instincts and frame of reference, formed entirely within the priorities of a national conservative legal movement, do not meet the legal needs and traditions of the State of Alaska.

When Cox sits down to advise the Governor on Alaska Native subsistence rights, or the state's posture in a dispute over federal land management, or the proper constitutional limits on executive power over state employees — he will be drawing on a frame of reference built entirely outside of Alaska. He will be doing so as a temporary political appointee whose career trajectory does not depend on what Alaskans think of him, but on what national Republican legal networks think of him.

Alaska's legal challenges — ANCSA implementation, subsistence, oil and gas revenue, federal overreach on Alaska lands, tribal sovereignty, the Permanent Fund — are not generic conservative legal issues. They are Alaska issues, forged in Alaska's unique history, litigated in Alaska's courts, and understood best by attorneys who have spent careers here. An Attorney General parachuted in from the national political apparatus, cannot provide what Alaska needs in that office and instead threatens to turn his office into the Governor's lawyer rather than the People's lawyer.

Since his appointment, Cox has filed more than twice as many amicus briefs in national litigation as his predecessor. A review of them confirm that he has taken our reputation for independence, community, tolerance and resilience, and rubber-stamped Alaska's good name on Governor Dunleavy's and Cox's private political causes.

Elections: In January, the Attorney General filed an amicus brief in a U.S. Supreme Court case about Election Day rules, asking for 'clarity' on when ballots have to be received. He has publicly described this as a neutral brief, 'in support of neither party,' and said it was a 'strategic choice'

not to join the side that argued for counting ballots that are postmarked on time. What that means in plain English is this: in a case that could strip many Alaskans—especially rural residents who depend on the mail—of the right to have their on-time ballots counted, our Attorney General chose not to take their side. He chose not to say, 'Our law is sound, our geographic realities are real, and these votes should count.' He instead chose a posture of neutrality in a case where neutrality helps the national party apparatus that wants stricter receipt deadlines. For this committee, the question is simple: when the law that is at risk is Alaska's own ballot-counting rule, is the Attorney General's duty to be 'strategically neutral,' or is it to stand up for Alaskans' right to vote and have those votes counted?"

Climate "lawfare" and siding with oil majors over coastal communities: Next, look at how quickly Mr. Cox jumped into national climate-liability cases. On September 16, 2025, he announced that Alaska was joining a West-Virginia-led amicus brief in *Chevron v. Plaquemines Parish* to 'stop activists and courts engaged in climate lawfare.' In his own words, he said these climate lawsuits are 'an attack on American energy dominance' and that he wanted to 'land a blow' against suits seeking to hold oil companies accountable for decades of emissions. This is not a case about a single Alaska statute. It's about whether communities—coastal parishes in Louisiana today, but villages in western Alaska tomorrow—can use the courts to recover for damage from sea-level rise, storms, thawing, and erosion that are real to our constituents. Mr. Cox chose to put Alaska on the side of Chevron and against those communities, arguing that courts should not even entertain cases about 'retroactive' climate liability. So again, the question for this committee is not abstract. When Alaskans see their riverbanks disappearing and their roads washing out, is their Attorney General fighting for tools to hold polluters accountable—or fighting to take those tools away on behalf of the very companies that profited?"

DEI and school cases in Virginia and Kentucky, not in Alaska: In education. Mr. Cox has put Alaska's name on briefs in school-policy fights thousands of miles away. The Department of Law's own list shows that on November 25 and 26, 2025, Alaska joined briefs in *Fairfax County School Board v. McMahon* and *Wailes v. Jefferson County Public Schools*—cases over elite admissions and 'woke' or race-conscious policies in Virginia and Kentucky public schools. These cases are being championed by national groups that want to roll back DEI policies; they are not about Anchorage School District, not about Mat-Su, not about Y-K Delta school funding.

Meanwhile, we do not see the same energy going into amicus work on the issues that actually plague Alaska's classrooms: chronic underfunding, teacher retention, school safety, and the unique challenges of rural and Native education. The bandwidth is being spent on shaping what happens in Fairfax County, not Fairbanks. For legislators, this is a priorities question: when the Attorney General spends our legal capital on Virginia admissions policies, what does that tell Alaskan parents about where they rank on his list of concerns?"

Guns: fighting California's magazine laws, not Alaska's DV crisis: On September 18, 2025, Alaska joined amicus briefs in *Duncan v. Bonta* and a related case. *Gator's Custom Guns* and *Duncan v. Bonta*, attacking California's limits on high-capacity magazines. These briefs put Alaska on the side of loosening another state's restrictions on weapons that, in the wrong hands, can devastate families and communities. At the same time, we know that Alaska has among the

highest rates of domestic violence and sexual assault in the nation, often involving firearms or the threat of firearms. Yet there is no comparable amicus campaign from this Attorney General devoted to strengthening enforcement tools for victims, protecting DV survivors from armed abusers, or supporting tribes and local governments seeking to keep dangerous offenders disarmed.

So the story writes itself: our Attorney General finds time and energy to fight California's gun laws, but Alaskan survivors of violence waiting on protection orders and prosecutions do not see that same level of advocacy from his office."

Birthright citizenship: telling some Alaskans' kids they might not "really" be American: Finally, there is a brief that goes to the core of who counts as an American. Mr. Cox has joined a multi-state amicus effort arguing that not all children born in the United States to non-citizen parents are entitled to birthright citizenship under the Fourteenth Amendment. This position has been publicly reported and criticized because it would deny or cast doubt on citizenship for some U.S.-born children of immigrants, temporary workers, and even some overseas military families.

Think about what that means in Alaska. We have immigrant communities in Anchorage and Fairbanks, we have families where one parent works a visa job on the slope or in the fisheries, we have mixed-status households in nearly every region. The Attorney General used Alaska's name to tell some of those families that their U.S.-born kids might not fully count.

You do not need to be a constitutional scholar to understand the message that sends: instead of using his office to protect Alaskans' status and security, he is joining a national project to narrow who is considered American in the first place."

You can, of course, find a few briefs where Mr. Cox is focused directly on Alaska—for example, *Alaska v. United States* over state-federal disputes. But those are the exception, not the rule. The rule is 110-plus briefs in eight months, most of them about national ideological fights, most of them far from our statutes, our courthouses, and our clients.

So the decision in front of this committee is not about one case or one headline. It is about a sustained pattern of choices. These are not random blips. That is a worldview of a political operative who has parachuted into Alaska and will almost certainly leave Alaska the moment his position ends.

The question the Legislature must answer is: is that worldview, and that use of Alaska's name in court after court, consistent with the oath this Attorney General took to prioritize and defend the people and Constitution of Alaska?"

<u>What Is Really at Stake</u>

Alaska faces many sophisticated legal challenges. The most pressing at present is the protection of Alaska and Alaskans from federal government overreach and from a concerted national effort to undermine the rule of law. The Attorney General's office has some of the best lawyers in the

state. Those lawyers' allegiance, from the top-down, must be to the Alaska Constitution and to protecting Alaskan's constitutional rights. There is no evidence that Stephen Cox has those allegiances and every indicator from the non-stop joinder as Amicus in joining right wing cultural legal disputes in other states to his clumsy and illegal attempts to pressure Alaskan entities in favor of his cultural and political biases to know without question, he is not going to change.

There is little the Legislature can do to reorient the Governor so that he will focus on Alaska priorities rather than the national priorities set by extremist political groups. But the Legislature can use its power to decline to ratify the appointment of an Attorney General with no Alaska roots and whose personal and professional interests are overwhelmingly partisan.

The confirmation of Stephen Cox — a federal political operative with no Alaska roots, no Alaska legal career, and no independent standing in Alaska's legal community — would complete that slide from our long tradition of non-partisan Attorneys General to one who is entirely partisan. Stephen Cox's tenure to date confirms that his interests remain in the national culture wars that have divided the Lower 48 but largely been absent in Alaska. We don't need his brand of partisanship in a state-wide position exercising enormous power as to how the law will be enforced and interpreted.

The Legislature has the power — and I would argue the constitutional duty — to hold the line here. Confirmation is not a rubber stamp. It is the one check the Legislature has on the governor's power to staff the offices that serve all Alaskans. This is the moment to use it.

I urge you to reject this nomination. Alaska's legal interests, and the constitutional traditions that have protected Alaskans for generations, deserve an Attorney General who is, first and foremost, an Alaskan.

Respectfully submitted,

Mark Choate
Choate Law Firm LLC
Juneau, Alaska
May 4, 2026

Dylan Hitchcock-Lopez

From: Betty Jo Moore [redacted]
Sent: Monday, May 4, 2026 4:42 PM
To: House Judiciary
Cc: Sen. Jesse Bjorkman; Sen. Löki Tobin; Rep. Zack Fields; Sen. Scott Kawasaki; Sen. Matt Claman
Subject: Written Testimony Confirmation Hearing Stephen Cox

Chair/Representative Gray, Representative members of House Judiciary.

My name is Betty Jo Moore. I live in Anchorage. I represent myself. I am an Alaska Native. I was born in the Territory of Alaska. I have lived in villages and small cities in Southeast Alaska.

The attorney general's client is the State and his first allegiance is to the public interest. The laws must be followed by everyone in order for justice to prevail for all Alaskans. See legal opinion to Governor Hammond. 1982 WL 43801 (Alaska A.G.) Office of the **Attorney General** State of Alaska December 3, 1982

> ***…*3** The **Attorney General** is the chief legal officer of the state and 'the legal advisor of the governor and other state officers.' AS 44.23.020(a). As such, he is duty bound to assist the governor in 'the faithful execution of the laws.' Alaska Const., art. III, § 16. These laws include the common law of conflict of interest, see AS 01.10.010; the constitutional requirements that '[no] appropriation of public money [be] made . . . except for a public purpose,' and that '[n]o obligation for the payment of money shall be incurred except as authorized by law.' Alaska Const., art. IX, §§ 6, 13; and AS 39.50 concerning conflicts of interests.*
>
> *The **Attorney General** performs this function by prosecuting legal actions, AS 44.23.020(b)(1), and furnishing written legal **opinions**. AS 44.23.020(b)(4). The **Attorney General** is also empowered to bring an action to recover state funds which were illegally paid or paid to a person not authorized to receive them. AS 37.10.090..., the **Attorney General** is duty bound, in the service of the public interest, to give such advice, even in the face of objections from client agencies, officers, or legislators…The first allegiance of the **Attorney General** is to the public interest…*

Alaska became a mandatory P.L. 280 State in 1959, the only exception is the reservation of Metlakatla.

Working for the Department of Justice Mr. Cox knows about federal laws. My hope was that he would understand what the attorney general's duty was in relationship to Alaska being a mandatory **P.L. 280** state and concurrent jurisdictions. He took an oath, a binding pledge to uphold the constitutions of the United States of America and Alaska. The statute reads that the attorney general **shall** defend the Constitution of the State of Alaska and the Constitution of the United States of America. **AS 44.23.020 (b)(1)**

June 2020 the Justices released a letter to Fellow Alaskans. The Justices pledged to address systemic racial injustices within the judicial system and reaffirming their commitment to equal justice, equal

protection of the law, etc. When equal protection of the laws is not afforded to all Alaskans because the laws were not faithfully followed, the reality for many Alaskans is that the American legal system is not working in Alaska and the results are judicial corruption.

I have written AG Cox many times about major crimes injustices that plague many Alaska Natives. I have had meetings with former AG Taylor, the DOL Tribal Liaison attorneys, and to date the same old statements are go here, go there, DOL is not equipped, etc.

AS 44.03.100 formally recognizes the special, unique, and sovereign relationship between the United States government and the 229 federally recognized tribes in Alaska. **VAWA 2022** Reauthorization: Section-by-Section Summary in **Section 813** identifies concurrent jurisdiction with any jurisdiction also possessed by the State of Alaska or the United States. The Alaska Tribal Safety Advisory Committee focus on improving the justice systems, protect a citizen's Indian civil rights and increase coordination and communication among Federal, Tribal, State, and local law enforcement agencies.

Due process and equal protection of the laws are constitutional rights for all Alaskans. The federal government provides millions of dollars to many Alaska tribes to address violent crimes against Native people and restore justice to Native communities. See **VAWA 2022** U.S. Senate Committee on Indian Affairs Executive Summary. https://www.tribal-institute.org/VAWA22/Sec-by-Sec.pdf https://www.murkowski.senate.gov/imo/media/doc/2.9.22%20VAWA%20Senate%202022%20Section%20by%20Section.pdf

August 18, 2025 during the Kenai town hall meeting AG Taylor said, "I could sue the Supreme Court over that rule." AG Taylor did not sue, he resigned. August 28, 2025 Stephen Cox was appointed Attorney General. The State is responsible for *action* and *inaction*. See **AS 39.52.960 (14).**

Article IV Section 15. Rule-Making Power. The supreme court…shall make and promulgate rules governing practice and procedure in civil and criminal cases in all court…". Section 15 doesn't state that the attorney general has any authority to make a rule.

AS 44.23.020 (h). The statute states that the attorney general shall continue to review federal statutes, regulations, presidential executive orders and actions, etc., that may be in conflict with and that may preempt state law. SCO 1993 is not consistent with **AS 12.40.030** and **12.40.040**.

Did AG Cox report SCO 1993, an action making of a supreme rule that is unconstitutional to the Chairs of the House and Senate Committees that have jurisdiction over judicial matters by January 15, 2026?

> (h)…***action is unconstitutional*** *or was not properly adopted in accordance with federal statutory authority, the attorney general shall report the findings to the chairs of the house and senate committees having jurisdiction over judicial matters.* ***The report shall be submitted to the legislature on or before January 15th of each year*** *and must include. (1) a copy of the federal statute, regulation, presidential executive order or action, or secretarial* ***order or action that the attorney general finds was not properly adopted*** *in accordance with federal statutory authority or* ***is unconstitutional;…***

I do not recommend Mr. Cox as attorney general.

Betty Jo Moore

[redacted]
Homer, AK 99603
May 4, 2026

TO: AK House Judiciary Committee
Re: Confirmation hearing of Stephan Cox for Alaska AG

I am opposed to the confirmation of AG Designee Stephen Cox. His recent interviews by Senate Committees has only served to further reinforce my opposition.

Mr. Cox has little understanding/appreciation of the Alaskan Constitution. He responded to many questions saying how he had to make "strategic choices". Those choices often appear to be based more on his conservative politics, than Alaska's law or interests. While claiming to be excited to work on matters central to the State, he regularly fails AK. He regularly filed amicus briefs which were, at the least, irrelevant to, or at worst, actually counter to Alaskan's interests.

Mr. Cox seriously failed Alaskans by participating in sending confidential voter data to the federal government, after claiming AK would only send "non-confidential data". Time and again he has made a "strategic choice", that was often counter to Alaskan's interests. On the voter data he said, "I tend to support cooperating even when (fed) actions are …over-reaching". He claimed to be continuing a "procedure of cooperation" with the federal government that Alaska has practiced. That's never been AK's default position when it's counter to AK interests. He claimed to have "legally" sent the voter data "to insure (data) Integrity". It has been shown multiple times that the review process the Feds are using is not at all accurate, not to mention counter to US Constitution Article 1 states' rights to control voting. Mr. Cox is not standing up for AK.

He not only failed Alaskans by sending feds the voter data, but failed to stand up for Alaska's unique and challenging absentee ballot mailing system. He did not join a lawsuit to support counting ballots received after election day. His choice to actually further Alaskan's voting interests was squandered while he busily put his name to some detail of "clarity" about when a ballot is cast in that amicus brief, rather than constructively supporting discussion about receipt dates.

Cox says he's "learning" about Alaskan's right to privacy. Isn't understanding and enforcing the Alaska's constitution and rights the primary job of the AG? Mr. Cox, during his brief Alaska tenure, has signed on to at least 110 amicus briefs. Cox's decision to file those were, he said, based on State of AK interests. Looking at his record of amicus briefs, that is not the case. Mr. Cox multiple times referred to "large issues" that would need lots of consideration. Big issues. "I can't tell you what may come up in months to come". So far, he's put AK on record opposing birthright citizenship, opposing immunization for communicable diseases, failing Temporary Protected status, denying school funding based on DEI policy, requiring nursing home arbitration agreements, and other cases that clearly are not in Alaska's interests.

Senator Wieleskowski on Oct 9 2025 wrote the AG's office asking support for Feds to protect Alaska SNAP benefits. Cox didn't bother to assist with SNAP.

He proposes to start a Hillsdale religiously affiliated school here at the expense of Alaska's public schools. He claims to support "religious liberty" while taking consistent positions failing to support Alaskan's choices and freedoms, not to mention our public schools.

Further illustrating Cox's tone deafness to Alaska, he recruited and hired an Outsider to fill a new Solicitor General position he created. This appears to do little in Alaska's interests.

I am not at all reassured by Mr. Cox's answers. When asked "have you sought to overturn binding supreme court law?" He answered "Probably, yes". He appears willing to overturn precedence that doesn't meet his personal choices, while having little knowledge of Alaska or respect for Alaskans. A guy who isn't clear about Alaska's Constitution, voter sentiments, or our right to privacy is obviously not the correct choice for Alaska's Attorney General.

Please do not confirm.

Thank you,
Judy Miller

Dylan Hitchcock-Lopez

From:
Sent: Monday, May 4, 2026 1:47 PM
To: House Judiciary
Subject: AG Vote

Judiciary Committee Members,

It would be great for Alaska to have an Attorney General who was interested in and focused on the challenges and needs of our citizens rather than one who seems to be auditioning for the popular kids group. Amicus briefs and creating a position for yet another out-of-state individual are not good uses of our ever-shrinking state resources. Please think long and hard about what our state needs rather than how cool we look to outsiders before you vote on this candidate. His unwillingness to provide straight answers to legitimate questions makes me think this isn't the right person for the job. Do we not have any capable Alaskans for this position?

N.A. Hubert
Eagle River

Dylan Hitchcock-Lopez

From: Mary Farrell [redacted]
Sent: Monday, May 4, 2026 1:12 PM
To: House Judiciary
Subject: AG confirmation today

Please **DO NOT** confirm acting Attorney General Stephen Cox as Alaska's Attorney General. He does not represent Alaskans, as his track record has shown so far.

Thank you.
Mary Farrell
Fairbanks, Ak 99709

Statement in Opposition to the Appointment of Stephen Cox as AG
House Judiciary Committee

May 4, 2026

Chairman Gray, members of the Committee, I'm a thirty-year resident of Nikiski Alaska.

I oppose the confirmation of Stephen Cox as Attorney General; I will be direct about why.

Mr. Cox published an op-ed on April 2nd, 2026, in which he described how he handled one of the most constitutionally significant questions before his office — the right of Alaskan citizens to bring concerns directly to an investigative grand jury. He wrote plainly he "***called in a favor***." He contacted his friend, Professor Richard Garnett at Notre Dame Law School, who then co-authored an academic article — published in the Harvard Journal of Law and Public Policy — which Mr. Cox now cites as "***the best account we have***" of the grand jury clause. Professor Garnett did this work, in Mr. Cox's own words, "***for free***."

<u>This committee should ask</u>: who commissioned the legal analysis that is now guiding the Attorney General's policy? A personal contact. At no cost. With no competitive process and no public transparency. That is not how the chief law enforcement officer of this state should be forming constitutional interpretations that affect the rights of every Alaskan.

What does that analysis actually confirm? It confirms —unmistakably— that the grand jury was always understood as an intermediary between the people and their government. The Harvard article Mr. Cox relies upon states that "***neither the executive nor the courts should be permitted to decide what the people may protest about***" and that the government may not "***come between the citizen and the grand juror by screening out petitions.***" That is the original meaning. That is the constitutional command.

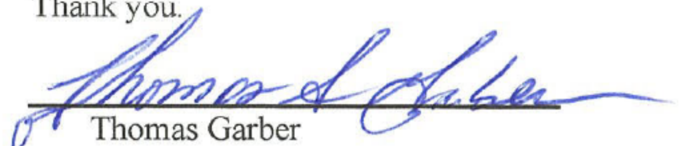
Yet what does Mr. Cox's own framework do? He tells us that when a request comes from a citizen outside the grand jury, the decision to pursue it is "***largely left to the Attorney General's discretion***." He is the gatekeeper. He decides what reaches the grand jury. The very document he commissioned argues that is constitutionally wrong — and he is proceeding anyway.

When citizens sought to speak with Mr. Cox directly about these concerns? Mr. Cox told us: "***I do not take many outside meetings in this job***." Alaskans who have spent years studying this issue, who arrived at his door before he was even sworn in, were turned away. Mr. Cox is in the position of upper-level management that sets the culture by example. Safety and welfare are culture driven, Mr. Cox told his subordinance that they don't have to communicate with disgruntle citizens to resolve safety and welfare concerns if it goes against the Department of Laws core agenda. To deny citizens right to investigate public officials through the grand jury mechanism.

The Alaska Constitution says the investigative power of the grand jury "***shall never be suspended.***" An Attorney General who controls the gate, commissions his own supporting scholarship, and does not make himself available to the citizens he serves is not honoring that command — he is undermining it.

I urge this committee to reject this appointment.

Thank you.



Thomas Garber

Kenai, Alaska 99611

THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Law

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April 2, 2026

Via Email

Stacy Steinberg
Court Rules Attorney
Alaska Court System
820 West 4th Avenue
Anchorage, AK 99501-2005
Email: RuleComments@akcourts.gov

Re: *Comments regarding the Proposed Rule Change to Alaska Criminal Rule 6.1.*

Dear Ms. Steinberg:

In my capacity as Alaska Attorney General, and on behalf of the Department of Law, I submit the following comments regarding the Alaska Supreme Court's consideration of proposed changes to Alaska Criminal Rule 6.1, which of course pertains to the role of the investigative grand jury to investigate matters of public welfare and safety and to issue reports and recommendations. This subject has generated significant public attention and has raised important questions about the investigative grand jury's proper role under the Alaska Constitution, the respective powers of the branches of government, and the administration of justice.

Within the current procedural framework, Alaska law recognizes two distinct grand jury functions. First, the grand jury serves its traditional role in determining whether sufficient evidence exists to return an indictment in criminal cases. Second, Article I, section 8 of the Alaska Constitution preserves the grand jury's separate constitutional authority to investigate matters of public welfare or safety and to issue reports and recommendations. Criminal Rule 6.1 implements that investigative and reporting function, as distinct from the grand jury's indictment function.

Under current Rule 6.1, there are two different paths by which a matter may be brought forward for possible investigative grand jury review. First, an empaneled grand juror may propose to the prosecuting attorney that the grand jury investigate a matter concerning public welfare or safety. In that setting, the rule directs the prosecuting attorney to evaluate whether there is a reasonable basis to believe the proposed matter falls within the grand jury's authority and is not patently groundless, made for delay or

harassment, or otherwise brought in bad faith. If those criteria are satisfied, the prosecuting attorney is required by the rule to describe the proposal to the grand jury for its consideration and, if the grand jury elects to proceed, facilitate the investigation.

Second, where the request comes not from an empaneled grand juror but from a citizen outside the grand jury, current Rule 6.1 takes a different approach. It provides that the citizen may direct the concern to the Attorney General for consideration and possible review and investigation by a grand jury. The rule and commentary indicate that a citizen has no right to present a matter directly to the grand jury or to obtain a court order requiring a grand jury investigation. In that respect, the current rule places citizen petitions within the Attorney General's complete prosecutorial discretion. It is this feature of the present system, in particular, that has drawn public concern, and those concerns deserve careful consideration.

In light of that controversy, my office has undertaken a comprehensive review of the issues. That review includes the Department's own experience administering investigative grand juries and legal research, the Alaska Supreme Court's precedents interpreting the grand jury's constitutional role, the viewpoints of Alaskans who have engaged with or petitioned the grand jury, and academic research addressing the original understanding of the grand jury's investigative power. Most notably, recent scholarship by Professor Richard Garnett and Savannah Shoffner, published in the *Harvard Journal of Law and Public Policy*,[1] provides perhaps the most detailed examination of the text, history, and traditional function of the investigative grand jury.

All of this confirms that the investigative grand jury was originally understood to serve as an intermediary between the people and the government—an institution through which citizens could raise concerns of public importance and through which the community could speak with some authority. Historically, this reporting function was not dependent on executive branch screening or prosecutorial discretion.

If the Supreme Court is interested in amending Rule 6.1 to align with this original understanding, I would recommend a simple path to doing so: the Court could adopt a framework in which the investigative grand jury operates completely within the judicial branch, supported by court-appointed counsel, without requiring the involvement of executive branch attorneys. Such an approach would preserve the grand jury's

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[1] Savannah Shoffner & Richard W. Garnett, *The Original Meaning and Understanding of the Investigative Power of the Grand Jury in the Constitution of Alaska,* Harv. J.L. & Pub. Pol'y *Per Curiam* No. 4, Spring 2026, at 1, https://journals.law.harvard.edu/jlpp/the-original-meaning-and-understanding-of-the-investigative-power-of-the-grand-jury-in-the-constitution-of-alaska-savannah-shoffner-richard-garnett/.

independence while avoiding separation of powers concerns. Such a change may also address some of the public concerns expressed about the current rule.

The current proposal, however, departs from the existing framework and is inconsistent with the original understanding. Instead, it removes the Attorney General's discretion to screen petitions while retaining the Attorney General's obligation to staff, advise, and facilitate grand jury investigations. This combination—removing prosecutorial discretion while preserving executive responsibility—creates a hybrid model that raises significant constitutional, legal, and practical concerns. In our system, the executive branch is charged with investigation and prosecution, and that responsibility carries with it the authority to decide what matters warrant the use of those tools. The proposed rule would sever that link—requiring the Department of Law to facilitate investigations it cannot define, limit, or decline, while remaining accountable for the legal consequences that may follow. If the Court wishes to return the investigative grand jury to its historical role as a reporting body, that can be done within the judicial branch. But this proposal, as drafted, places the executive in the middle without the authority necessary to carry out its constitutional responsibilities.

I now turn to the specific problems with the current proposal, and I am hopeful that the Supreme Court will modify the Committee's proposal to address these concerns.

A. The proposed changes violate the Separation of Powers Doctrine.

The Alaska Constitution vests legislative power with the legislature, executive power in the governor, and judicial power in the courts. One branch of government may not encroach upon or exercise the powers of another branch. *Bradner v. Hammond*, 553 P.2d 1, 7–8 (Alaska 1976). The doctrine "limits the authority of each branch to interfere in the powers that have been delegated to the other branches" with the purpose to "preclude the exercise of arbitrary power and to safeguard the independence of each branch of government." *Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 35 (Alaska 2007). The separation of powers doctrine limits the ability of the judicial branch to direct the activities or resources of another branch of government.

The Alaska Constitution vests in the Governor the responsibility of executing the laws of the state and the Office of the Attorney General is a part of the executive branch. AS 44.23.020. The grand jury, on the other hand, is an arm of the judicial branch. *O'Leary v. Superior Ct., Third Jud. Dist.*, 816 P.2d 163, 166 (Alaska 1991).

1. The Proposed Rule Authorizes the Judiciary to Direct Actions of Executive Branch Attorneys

Even though the grand jury is an arm of the judicial branch, the proposed rule vests the judiciary with the power to direct executive branch attorneys to "provide advice and assistance to the grand jury". Proposed rule 6.1(b)(2) mandates that "an attorney

assigned by the Attorney General shall provide advice and assistance to the grand jury on whether to investigate a matter concerning the public welfare or safety." If the grand jury chooses to investigate, the Attorney General designee "shall facilitate the grand jury's investigation and provide assistance and advice to the grand jury for preparation of any report." This goes beyond the requirements of AS 12.40.070, which only requires the prosecuting attorney to assist the grand jury in its criminal indictment functions.

The appointment of executive officers is an executive function, and the "blending of governmental powers" is not "inferred in the absence of an express constitutional provision." *Bradner*, 553 P.2d at 6–7. The Constitution does not grant the judicial branch the authority to compel work of executive branch attorneys as is envisioned by the proposed rule.

2. The Proposed Rule Authorizes the Judiciary to Direct Executive Branch Decisions

Proposed Rule 6.1(b)(3) similarly requires the Attorney General to "appoint independent counsel" when the Attorney General determines a conflict of interest exists.[2] The rule also authorizes a presiding judge to "enter an appropriate order" regarding potential conflicts of interest if a single juror raises an issue. *See* Proposed Rule 6.1(b)(3). Troublingly, this authority appears to empower the presiding judge to direct the Attorney General to prosecute a matter and to direct the executive branch to take particular action in a case. This is unconstitutional. *See e.g., Public Defender Agency v. Superior Court*, 534 P.2d 947, 951 (Alaska 1975) (holding that superior court usurped the executive branch by ordering the Attorney General's Office to prosecute a civil action for child support).

3. The Proposed Rule Authorizes the Judiciary to Direct Executive Branch Resources

In the same vein, proposed Rule 6.1(e) discusses the grand jury's ability to summon evidence for its presentations. Though it does not explicitly identify how this is to occur, the proposed rule appears to require the appointed attorney to facilitate the investigation. It is widely known that the Department of Law maintains limited investigative resources, such as collecting and analyzing evidence. The Department normally relies upon traditional law enforcement to facilitate such investigative operations. This current tension is managed through the exercise of prosecutorial discretion. The executive branch—through prosecutorial discretion—controls its own limited resources. The current rule recognizes this discretion. *See* current Rule 6.1(b)(1)

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[2] The proposed rule does not define the term "independent counsel", but presumably, it means the Attorney General's Office must hire outside counsel with its own funds.

and (c). The practical implications of this proposed change are not insignificant. The proposed rule amounts to an unfunded mandate that does not account for its financial implications to the executive branch. It also provides no mechanism for the Attorney General to evaluate necessary personnel, funding, or operational capacity to comply with the timelines or other obligations imposed by the court. It fails to recognize these additional responsibilities could wholly displace or overwhelm core executive responsibilities, including ongoing prosecutions. To illustrate this, prior investigative grand juries have required significant attorney time, the retention of costly outside counsel (a process that itself requires time and effort), and assistance from the Department of Public Safety (DPS) to serve subpoenas and collect evidence. These are not minor administrative tasks; they are resource-intensive endeavors.

This responsibility underscores the separation of powers doctrine's vital role in protecting one branch of government from imposing obligations that undermine the constitutional functions of another.

The proposed rule contemplates that the judicial branch is the appropriate body to refer a matter to the grand jury, and in that light, it should bear the entire responsibility—and the cost. Such an approach would be consistent with the original understanding of the grand jury's reporting power. The delegates to the Alaska Constitutional Convention sought to ensure that the grand jury could issue reports on matters of public concern free from governmental interference or screening. This original understanding can be honored by returning the responsibility of the grand jury to the judiciary.

The judiciary already possesses the authority to implement this framework through its own administrative rules. Alaska Administrative Rule 12(e) authorizes courts to appoint counsel when "the appointment is not authorized by AS 18.85.100(a) or AS 44.21.410 . . . but in the opinion of the court is required by law or rule." Appointment under Administrative Rule 12(e) would allow the court to proceed in the manner it believes is constitutionally appropriate without directing executive branch attorneys to serve the grand jury. Accordingly, we recommend that Rule 6.1 be amended to substitute "12(e) counsel" for the Attorney General in proposed Rule 6.1.

B. The proposed change to Rule 6.1 removes previous guidance for advising the grand jury as to what constitutes a matter involving public welfare or safety.

The proposed rule deletes language that defines what constitutes a matter that "concerns the public welfare or safety." *See* Proposed Rule 6.1(a). This problem is particularly acute in a system where the Department of Law would be required to facilitate investigations without the ability to define or screen their scope. Specifically, the proposed rule deletes current subsections (a)(1)–(a)(3) and the existing commentary, which provides examples as to what constitute "concerns of public welfare or safety." The current commentary provides an example of how "systemic issues or an ongoing,

recurring issue impacting the public could be within the scope of a grand jury. But purely private matters, such as, for example, an investigation into any individual court case, (whether open or closed)," generally fall outside the grand jury's investigative authority. *See* current Commentary to Rule 6.1(a).

The Committee's proposed deletions eliminate the analytical framework that guides the grand jury's work. Without precise language, there is no standard for evaluating the threshold question of scope, whether an investigation should be authorized, and under what circumstances the grand jury should issue a report. Under the current rule, for example, criminal defendants may not use the grand jury process to challenge or relitigate criminal convictions after direct appeals and post-conviction litigation. Such action may not be prohibited under the proposed rule. The potential consequences of removing these guardrails include risks of repetitive litigation, undermining finality, and potential infringement on victims' constitutional protections.

Also, the expectations of the assigned attorney—*i.e.*, 12(e) counsel, *see above*—should be clearly established and should include precise language regarding scope, standards, and any limitations imposed upon the grand jury investigation. Additionally, guidance should include whether such tasks as drafting subpoenas, coordinating witnesses, facilitating questioning, are the legal advisor's responsibility, in addition to providing guidance on the governing law.

Without clarity on what constitutes a matter of public welfare or safety, the investigative grand jury process has the potential to be weaponized by disgruntled citizens on issues that would be better handled by other agencies or courts. Rules or commentary as to what constitutes a matter that "concerns public welfare or safety" should be maintained.

C. The proposed rule does not limit successive petitions.

In the absence of screening authority, this lack of finality would expose grand juries—and the Department if it is involved—to repeated, resource-intensive proceedings over the same matters. For well-established reasons, the law does not permit parties to relitigate the same claim repeatedly. Whether in civil litigation or criminal proceedings, doctrines of finality apply. The doctrine of *res judicata* (claim preclusion) bars relitigating claims that have been resolved by final judgment and precludes parties from advancing legal theories or causes of action that could have been raised previously. This doctrine exists to promote finality, conserve judicial resources, and ensure litigation reaches conclusion. Similarly, principles of double jeopardy prohibit the government from reasserting charges that have been dismissed with prejudice or resolved by acquittal.

The proposed rule contains no comparable limitation. Whether by design or oversight, the absence of any mechanism for finality creates a serious risk that proceedings will

never reach closure—or that the Department will be forced into recurring litigation against those repeatedly seeking investigations. When coupled with the separation of powers issue in commandeering Department of Law resources discussed above, the proposed rule creates a never-ending financial obligation. The proposed rule must be modified to limit successive grand jury petitions.

D. The proposed rule eliminates the need for compliance with basic rules of evidence during a grand jury presentation.

Under current Rule 6.1(e)(2), the grand jury must comply with Criminal Rule 6(s), which requires that all evidence presented to the grand jury must be legally admissible at trial. The proposed rule eliminates this requirement. *See* proposed deletion of Rule 6.1(e)(2). In its place, the proposed rule states that "inadmissible evidence may be presented to the grand jury . . . ." Proposed Rule 6.1(e)(3). This change represents a significant departure from previously settled law. And it would take on added significance where executive branch attorneys are required to participate in and advise proceedings that may implicate future criminal prosecutions.

In *O'Leary v. Superior Court,* the Alaska Supreme Court rejected the argument that the grand jury operates free from legal constraint, holding that "[t]he anti-suspension clause does not prohibit reasonable procedural rules governing the issuance of grand jury reports." *Id.* at 170. The grand jury's authority is subject to legal controls, including compliance with procedural and evidentiary rules. *Id.* at 168–69. The grand jury does not operate in a legal vacuum. *Id.* at 170.

By expressly authorizing the presentation of inadmissible evidence to the grand jury without limitation, the proposed rule endorses what the Alaska Supreme Court previously rejected. And while the grand jury's factual findings under the proposed rule must be based on admissible evidence, any meaningful limit to the grand jury's report are, at best, implicit. *See* Proposed Rule 6(e)(3). Even if the grand jury adopts factual findings based upon admissible evidence, the ultimate report may still be based on hearsay layered upon hearsay—rumor and conjecture—without a mechanism to ensure the evidence was reliable upon its presentment.

The proposed rule should clarify what evidentiary rules are applicable when presentations are made to the grand jury, and what rules are not. Otherwise, the proposed rule places the legal advisor in an untenable position. The legal advisor becomes the gatekeeper between competing constitutional interests: on one hand, the grand jury's investigative authority; on the other, the due process and privilege rights of witnesses and named individuals who are the subject of the investigation. If the grand jury is not subject to any evidentiary limitations—including the privilege against self-incrimination, the clergy privilege, the marital privilege, and other recognized protections—then the legal

advisor would have no principled basis to intervene, regardless of the constitutional implications.

Consider a practical example. Suppose a grand jury independently initiates an investigation into a cold-case homicide. It could subpoena a suspect to testify. Under the proposed language, there is no clear limitation on compelling that testimony, nor any safeguard preventing the possibility that the witness could be immunized in a manner that compromises future prosecution. *See e.g., Pinkerton v. State*, 784 P.2d 671 (Alaska App. 1989) (holding that the government is required to give target warnings to potential criminal defendants appearing before the grand jury). The absence of more clearly defined evidentiary limits creates real and foreseeable risk to both witnesses and subjects of an investigation.

I appreciate the Court's efforts in grappling with this important area of constitutional law that has long eluded a lasting and manageable solution. However, the Court's currently proposed framework—aside from departing from the original understanding of the clause—raises the problems I discuss above as to separation of powers, public welfare and safety, successive petitions, and evidentiary compliance. For those reasons, the court should reconsider the proposed changes to Criminal Rule 6.1. Thank you for taking into consideration these comments. If you have any questions, please feel free to contact my office.

Sincerely,

Stephen J. Cox
Attorney General

THE ORIGINAL MEANING AND UNDERSTANDING OF THE INVESTIGATIVE POWER OF THE GRAND JURY IN THE CONSTITUTION OF ALASKA

SAVANNAH SHOFFNER* & RICHARD W. GARNETT**

INTRODUCTION

The investigatory, or reporting, power of grand juries refers to the body's ability to issue statements on wide-ranging matters of public policy, generally aimed at exposing "inefficiency, neglect, or criminal or quasi-criminal conduct" by government officials.[1] Grand jurors may propose an investigation themselves or respond to a request from a citizen.[2] The reports produced by these investigations need not be tied to a specific indictment to be released.[3]

Text, history, and tradition reveal that the grand jury has been understood as an intermediary between the government and the people, empowered to make public statements on the people's behalf and entrusted with assisting the government in doing justice. Since the early days of the Common Law, grand juries had the power to make reports on all matters of public policy, even when it reflected poorly on a specific government official.[4] The grand jury provided an organized, official channel for the people to make their voice heard, which also helped their leaders know how to respond. Today, whenever the government breaks the direct connection between the grand jury and the people, it violates the historical understanding of what a grand jury is and how it exercises its reporting power.

I. ORIGINALISM FOR STATE CONSTITUTIONS AND FOR ALASKA'S

Legal commentators have hotly debated how similar originalist constitutional interpretation is, or should be, at the state and federal levels. There are at least three possibilities: (1) correct interpretation is always originalist because originalism is what "interpretation 'just is'";[5] (2) originalist interpretation is always incorrect (or at least incomplete), and so as independent

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[1] Richard H. Kuh, *The Grand Jury "Presentment": Foul Blow or Fair Play?*, 55 COLUM. L. REV. 1103, 1104 (1955).
[2] 4 WILLIAM BLACKSTONE, COMMENTARIES, *298-300.
[3] George H. Dession & Isadore H. Cohen, *The Inquisitorial Functions of Grand Juries*, 41 YALE L.J. 687, 706 (1932).
[4] *Id.*
[5] *See* Cass R. Sunstein, *There Is Nothing That Interpretation Just Is*, 30 CONST. COMMENT. 193, 193 (2015).

sovereigns, state courts can and should apply some other methodology;[6] or (3) originalism mandates following not only the text, but also the framers' approved methodologies for interpreting that text.[7] William Baude advocates the last approach in his article, *Is Originalism Our Law?*[8] If Baude is correct, then originalism will look different, and proceed differently, from state to state, and between state and federal governments, based on the interpretive methods anticipated and approved by their framers.[9] For present purposes, these possibilities and differences are relevant because the ratification debates suggest that at least some of the Alaska framers did not intend for their constitution to be interpreted according to the rules of modern originalism.[10] They did, however, enact a legal text, and—for originalists, anyway—that text must govern.[11] This paper will apply the ordinary originalist tools of text, history, and tradition, recognizing the written Constitution of Alaska as law, but will also explore state-specific concerns of territorial common law, the quest for statehood, and the particular mischief targeted by Alaska's grand jury provision.

Unlike states along the East Coast, and even in the Midwest and South, Alaska's founding constitutional convention took place within living memory, and even more importantly, within the heyday of living constitutionalism. Alaska ratified its Constitution on April 24, 1956,[12] a time when legal conversations reflected the progressive influence of the Warren Court. Only fourteen of the fifty-five Alaskan framers were lawyers,[13] but those who were spoke in ways that reflected the modernizing impulse of that day.[14] The variety of conceptions held by the founders as to their task and how their work should be interpreted is well demonstrated by the debate over when the constitution should permit the writ of habeas corpus to be suspended. Their debates over how to interpret an earlier legal text reveal divided and different intentions and understandings as to what a single provision would mean and suggest disagreement about how to interpret their own work properly.

The proposed text permitted a suspension in case of "rebellion," "invasion," or "imminent peril," where the latter phrase had been taken from the Supreme Court's 1866 decision in *Ex Parte Milligan* and subsequent federal cases.[15] Representative Hellenthal, a prominent lawyer at the convention, was willing to borrow *Milligan*'s exception, but thought that "imminent peril" should

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[6] *See* Helen Hershkoff & Adam Littlestone-Luria, *'History and Tradition' in State Courts*, STATE CT. REP. (Sept. 30, 2024), https://statecourtreport.org/our-work/analysis-opinion/history-and-tradition-state-courts [https://perma.cc/E4Y8-2XAR].

[7] *See* William Baude, *Is Originalism Our Law?*, 115 COLUM. L. REV. 2349, 2538 (2015).

[8] *See id.*

[9] *See id.* at 2362 ("Remember, the point in each case is that the choices embodied in the original meaning are authoritative. So to the extent that the original Constitution unambiguously foreclosed the use of precedent or any other source, that choice would be authoritative.") (footnote omitted).

[10] *See, e.g.*, ALASKA LEGIS. COUNCIL, CONSTITUTIONAL CONVENTION PROCEEDINGS PART I 1361 (1955) (statement of Delegate Hellenthal); *id.* at 1358–59 (statement of Delegate Awes).

[11] *See infra* notes 18–23.

[12] *The Constitution of the State of Alaska*, OFF. OF THE LIEUTENANT GOVERNOR, https://ltgov.alaska.gov/information/alaskas-constitution/ [https://perma.cc/ZFL5-XXBL] (last visited Nov. 26, 2025).

[13] John S. Hellenthal, *Alaska's Heralded Constitution: The Forty-Ninth Sets an Example*, UNIV. OF ALASKA, https://www.alaska.edu/uajourney/history-and-trivia/alaska-history/creating-alaska/statehood-files/49th-state-sets-example/ [https://perma.cc/EH4N-TCXT] (last visited Nov. 28, 2025).

[14] *See, e.g.*, ALASKA LEGIS. COUNCIL, *supra* note 10, at 1361 (statement of Delegate Hellenthal).

[15] *See* ALASKA LEGIS. COUNCIL, *supra* note 10, at 1358–59 (statement of Delegate V. Rivers); *id.* (statement of Delegate Awes); Ex Parte Milligan, 71 U.S. (4 Wall.) 2, 125 (1866).

be construed broadly to reflect evolving military tactics. "Let's adapt ourselves to the modern situation," he said.[16] "[W]e are leaving ourselves wide open if we adopt an old-fashioned cave man notion of the suspension of the writ of habeas corpus in this modern age."[17]

Representative Buckalew countered with a more originalist reading. After explaining the factual circumstances of *Ex Parte Milligan,* in which Confederate troops endangered an Indiana courthouse, he interpreted the Court's opinion narrowly: "Now the Supreme Court held that imminent peril is such a situation where that [sic] ground troops . . . of an armed enemy are so close to the court house that it is unsafe for the court and his officials to sit, now that is what they mean by 'imminent peril.'"[18] He continued, "That is what it means and I don't think it means anything like Mr. Hellenthal is talking about, saboteurs, submarines and all this other stuff."[19]

Still others at the Convention simply lacked a specific intention with respect to the provision. For example, Representative Awes, Chair of the Bill of Rights Committee, was asked, "What scope are [the words 'imminent peril'] intended to extend?"[20] She answered, "As I say, the words 'imminent peril' were taken from a Supreme Court decision and in that particular case, I think Mr. Hellenthal is more familiar with the case than I am, so I will let him speak on that."[21] She thought that the interpretation of the language should be tied to what they meant in *Ex Parte Milligan,* but did not appear to personally understand what that case said. Subsequently, she offered her own hypothesis, not drawn from *Ex Parte Milligan,* about how the language might be applied, suggesting that she lacked a fully developed view on the subject.[22] Those who would look to the ratification debates to inform a reading of the habeas corpus provision would be hard-pressed to identify a well-defined intent where one of the primary sponsors of the amendment lacked a specific understanding of what it did.

Given such divergence of views among the framers, original intent or purposive approaches would be as difficult to apply at the state as at the federal level. But given the paucity of public debate on the grand jury provisions, the framers' words at the ratification convention provide some of the best evidence of what the language they used meant at the time and will be discussed below.

One major question unique to state constitutional interpretation, especially in Western states, is the fate of territorial common law. Lawyers, judges, and other interpreters in younger states must consider the role of court decisions made before they achieved statehood. Alaska generally carries over common law from the territorial period, though there are some federalism-related wrinkles. Alaska recognizes its common law as a source of law,[23] and like statutory law, it was carried over into statehood except where superseded by the new State legislature.[24] However,

[16] ALASKA LEGIS. COUNCIL, *supra* note 10, at 1361 (statement of Delegate Hellenthal).
[17] *Id.* at 1362 (statement of Delegate Hellenthal).
[18] *Id.* at 1362 (statement of Delegate Buckalew).
[19] *Id.*
[20] *Id.* at 1359 (statement of Delegate V. Rivers).
[21] *Id.* (statement of Delegate Awes).
[22] *Id.*
[23] *Sources of Law*, ALASKA CT. SYS.: SUP. CT. LIVE, https://courts.alaska.gov/media/outreach/docs/scl-i.pdf [https://perma.cc/XQ6S-7P34] (last visited Nov. 29, 2025).
[24] Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339; ALASKA STAT. § 01.10.010 (2025).

this may not have been well understood at the time of the convention. Delegate Taylor confidently stated (and was not contradicted) that "[c]ommon law, unless preserved by statute, is abolished in the Territory of Alaska."[25] This tension likely has to do with the fact that territorial courts were run by the federal government,[26] so the new state courts would have power to interpret matters of *new* (not carried-over) state laws for themselves, independently of federal common law doctrines. This arrangement is intimately tied to historical circumstances—here, federal administration of Alaska as a territory, combined with a specific statute granting statehood—that vary from state to state. For Alaska, the fact that it had once been directly administered by the national government likely contributed to the expectation by some constitutional delegates that the scope of the state grand jury right would match the federal one.[27]

A second distinction from federal interpretation is the presumption of legislative authority. The federal government was intended to be one of enumerated powers, while the Alaska framers were conscious of states' general police power.[28] This awareness served, for some, as a deterrent from constitutionalizing, since most matters "could just as well be handled by the legislature" and "would only cause confusion" if they were put in the constitution.[29] This heightens the importance of state bills of rights relative to the federal one. The Federalists at the American founding argued that a Bill of Rights was unnecessary because it was never to be presumed that the government had any power to infringe those liberties in the first place. But states' bills of rights draw meaningful bounds to the otherwise presumed police power, so special notice should be taken of the rights they protect—including Alaska's protection for a grand jury's reporting function.

Lastly, states may have traditions different from those of the United States as a whole, and each level of generality may cut a different way in text-history-tradition analysis. The perspectives of two delegates expressed this tension in the debate over whether the constitution should permit the imprisonment of debtors. Delegate Barr argued that under the suggested provision, a person "should not be imprisoned for something [other than fraud], and it is *traditional in our country* that he not be imprisoned for debt."[30] But on the other side, Delegate MetCalf was adamant that "[I]f we adopt this amendment . . . you are going to wreck one of the old-time *traditions up here in Alaska*."[31] Perhaps unsurprisingly, the frontier territory had a tradition of stricter punishments for debt than the rest of the United States, and there is no supremacy clause for traditions, so long as they do not contravene federal law. Ultimately, the amendment was passed,[32] but if it had not been, tradition might have created ambiguity rather than resolving it.

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[25] ALASKA LEGIS. COUNCIL, *supra* note 10, at 1351 (statement of Delegate Taylor).

[26] *The Alaska Court System: Celebrating 50 Years*, ALASKA CT. SYS., https://courts.alaska.gov/media/outreach/docs/50yrs-exhibit.pdf, [https://perma.cc/T46Z-H9ZE] (last visited Nov. 29, 2025).

[27] *See infra* note 76 and accompanying text.

[28] ALASKA LEGIS. COUNCIL, *supra* note 10, at 1346-47 (statement of Delegate Johnson).

[29] *Id.* at 1347.

[30] *Id.* at 1374 (statement of Delegate Barr) (emphasis added).

[31] *Id.* at 1375 (statement of Delegate Metcalf) (emphasis added).

[32] *Id.* at 1379 (statement of President Egan).

II. HISTORY OF THE GRAND JURY AND THE INVESTIGATORY FUNCTION

Applying these tools to Alaska's protection for the investigatory grand jury function, it may be useful to restate the text of the provision: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."[33] History provides context as to what "the power" recognized here is.

The grand jury has its roots in the early medieval period, and its earliest functions were more investigative than indictment-driven.[34] The Carolingian kings used to summon bodies of citizens to swear to the truth of a statement.[35] Their sworn attestations served as a basis for the government to administer a sentence or take legislative action.[36] The affirmations were not necessarily tied to specific, ongoing prosecutions.

The general scholarly consensus is that juries were introduced to England during the Norman Conquest and thereafter became an integral part of the developing common law.[37] William the Conqueror relied heavily on juries to determine land ownership throughout Britain during his extensive Domesday Inquests.[38] The Domesday juries consisted of respected men from the community who conducted in-depth hearings on property disputes.[39] Juries took an even more central role in day-to-day governance during the reign of Henry II, William the Conqueror's great-grandson. Henry took an active approach to systematizing and centralizing courts across England.[40] Through a series of assizes throughout his reign, he made grand juries a central part of criminal proceedings in county courts.[41] The bodies looked different in different contexts, but the throughline remained the same from the days of the Carolingians: "a group of neighbors who were called upon by a public officer to answer, on oath, some question."[42]

Grand juries remained a distinctive aspect of the English common law system until the time of Blackstone. The legal system in his day relied heavily on the grand jury, which could act through presentment, indictment, or information.[43] The institution was treated with great respect by both the executive and the judiciary (though it should be noted that the separation of powers was murkier in that period than in the American context). The king's courts lacked power to convict before an indictment or information had been passed.[44] Blackstone identified a threefold commission for the courts: "to enquire, hear, and determine."[45] For the fulfillment of this commission, courts depended on the grand jury: "[B]y virtue of this commission they can only

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[33] ALASKA CONST. art. I, § 8.

[34] *See* Wayne L. Morse, *A Survey of the Grand Jury System – Part I*, 10 OR. L. REV. 101, 103–04 (1931).

[35] *Id.*

[36] *Id.*

[37] *Id.* at 104; Kuh, *supra* note 1, at 1106–07.

[38] Morse, *supra* note 34, at 106–07.

[39] *Id.* at 107 n.26.

[40] *Id.* at 107–08; Kuh, *supra* note 1, at 1106.

[41] Morse, *supra* note 34, at 108.

[42] *Id.* at 116.

[43] 4 BLACKSTONE, *supra* note 2, at *301, *307.

[44] *Id.* at *307. Note that "presentment" functioned in the same manner as an indictment, so it is treated as a subset of indictment here. The difference is that the grand jury itself initiated a presentment, and a bill for indictment was brought before the grand jury by an officer of the king.

[45] 4 BLACKSTONE, *supra* note 2, at *270.

proceed upon an indictment found at the same assizes; for they must first enquire, by means of the grand jury or inquest, *before they are empowered* to hear and determine by the help of the petit jury."[46] And once the grand jury "informed him upon their oaths that there was a sufficient ground for instituting a criminal suit," then "the king was bound to prosecute, or at least to lend the sanction of his name to a prosecutor."[47] There was no prosecutorial discretion once the bill had been returned.

In addition to this function, juries also served more broadly as the voice of the community. From at least the time of Richard I, grand jury membership was restricted to knights and freeholders—men with significant local power.[48] Blackstone observed that grand jurors were "usually gentlemen of the best figure in the county."[49] Their opinion was valued, and not only when a specific charge was at issue. Grand juries could act as a sort of intermediary between the people and their government. In Blackstone's time, "tumultuous petitioning" (bringing a petition for a change in law that has been signed by more than twenty people before the king or parliament) was outlawed, but if a county's grand jury approved the petition, it could be brought.[50] This was seen as a way to prevent the violence that once accompanied popular petitions to the crown.[51] If a petition had to pass through a deliberative body of citizens (specifically a body of higher-class citizens), cooler heads might prevail.

Whether as an outgrowth of this practice or simply because of the stature of the jury members, seventeenth-century grand juries regularly gave statements of opinion on policy.[52] This was useful to both the community and to Parliament. The reports "concerning some condition in the county" were "taken . . . seriously."[53] They provided a straightforward, filtered avenue for Parliament to hear the concerns of the counties; "Considered the official exponent of county opinion, 'the "Gentlemen of the Grand Jury" usually figured first' in petitions to Parliament."[54]

In all these accounts, it has been observed that the grand jurors represented the *county*. There was a hard-and-fast rule that crimes could be brought before the grand jury only in the county where the crime occurred.[55] This accords well with the repeated characterization of grand juror as neighbor. As Blackstone writes, "so tender is the law of England of the lives of the subjects, that no man can be convicted at the suit of the king of any capital offence, unless by the unanimous voice of twenty four [sic] of his equals and *neighbours*."[56] The government could not get at the English citizen without going through his neighbor-intermediaries, and of course, neither could he get at his government without first going through them.

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[46] *Id.* (emphasis added).

[47] *Id.* at *309.

[48] *Id.* at *302–03.

[49] *Id.* at *302.

[50] *Id.* at *147–48.

[51] *See id.* at *147 ("Nearly related to this head of riots is the offence of *tumultuous petitioning*; which was carried to an enormous height in the times preceding the grand rebellion.").

[52] Dession & Cohen, *supra* note 3, at 706.

[53] *Id.*

[54] *Id.* (quoting SIDNEY WEBB & BEATRICE WEBB, ENGLISH LOCAL GOVERNMENT FROM THE REVOLUTION TO THE MUNICIPAL CORPORATIONS ACT: THE PARISH AND THE COUNTY 455 (1906)).

[55] 4 BLACKSTONE, *supra* note 2, at *303–04.

[56] *Id.* at *305 (emphasis added).

This common law understanding of the grand jury contemplates a broader role than merely "rubber-stamping" the indictments presented by the prosecutor.[57] It is this robust conception of the grand juror that was imported into the colonies, and later constitutionally preserved in the Fifth Amendment.[58] The American colonists continued the practice of petitioning the government through the grand jurors. For example, in the colony of Virginia, "[i]t appears to have been a common practice for grand juries gathered at the capital to express their opinions on things in general, and on the administration of the royal governor in particular."[59] The grand jurors spoke "as a respectable collection of the people of the county,"[60] whose "authority is founded ... on use and . . . public convenience."[61]

Aside from this reporting function, colonial grand juries issued indictments for serious (but not all) crimes.[62] The earliest state constitutions required a grand jury indictment for all felonies.[63] Later ones permitted indictment by information in some or all felony cases.[64] As time passed, the grand jury's function in issuing indictments became by far its dominant role. The young states were worried about reports that "point[ed] out individuals as subjects of public criticism and opprobrium" without indicting them.[65] Grand jury reports about public officials could appear political rather than judicial. And the political process in nineteenth-century America was a far cry from Blackstone's England. There were other channels for Americans to express their concerns about policies and public officials—channels that did not feel quite so close to the judicial process.[66]

As a matter of originalism at the federal level, it does not matter whether the public eventually became uncomfortable with the investigatory function of the grand jury. It is constitutionalized in the Fifth Amendment.[67] But state constitutions began to reflect the shift. More and more states relied primarily on information instead of indictment, and few made constitutional provision for the investigative power of the grand jury. But Alaska did make such provision: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."[68] With this text, Alaska hearkened back to the fuller understanding of grand juror as neighbor-intermediary—not merely a rubber stamp or a tool in the political process, but a representative of the community with a unique power to petition for change.

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[57] Dession & Cohen, *supra* note 3, at 688.

[58] *See* Blair v. United States, 250 U.S. 273, 282 (1919) ("The Fifth Amendment and the statutes relative to the organization of grand juries recognize such a jury as being possessed of the same powers that pertained to its British prototype . . . .").

[59] Dession & Cohen, *supra* note 3, at 706 (quoting ARTHUR P. SCOTT, CRIMINAL LAW IN COLONIAL VIRGINIA 70 (1930)).

[60] *Id.*

[61] *Id.* (quoting Alexander Addison, *Observations on the Duty of a Grand Jury (1793)*, *in* REPORTS OF CASES IN THE COUNTY COURTS OF THE FIFTH CIRCUIT, AND IN THE HIGH COURTS OF ERRORS AND APPEALS, OF THE STATE OF PENNSYLVANIA, AND CHARGES TO GRAND JURIES, ETC. 70, 73 (2d ed. 1883) 70, 73).

[62] Morse, *supra* note 34, at 120–21.

[63] *See id.* at 121–22.

[64] *See id.*

[65] Dession & Cohen, *supra* note 3, at 709 (quoting *In re* Report of Grand Jury of Baltimore City, 137 A. 370, 373 (Md. 1927)).

[66] *See id.* at 707 ("Partaking in the public eye, as such reports well might, of the sanction and authority associated with grand jury accusation in the form of indictment, they would carry a quite disproportionate weight.").

[67] *See* Blair v. United States, 250 U.S. 273, 282 (1919) ("The Fifth Amendment and the statutes relative to the organization of grand juries recognize such a jury as being possessed of the same powers that pertained to its British prototype, and in our system examination of witnesses by a grand jury need not be preceded by a formal charge against a particular individual.").

[68] ALASKA CONST. art. 1, § 8.

III. ALASKA'S CONSTITUTIONAL CONVENTION AND OUTSIDE INFLUENCES

At the Alaska constitutional convention, the provision about the investigative function of the grand jury was suggested by Delegate Barr:

> The new amendment does not make any mention of the investigating powers of the grand jury, and I have been told they would still have those powers under the Federal Constitution, but I believe it should be mentioned in our constitution because I think that is one of the most important duties of the grand jury.[69]

As explained above, Delegate Barr was correct in his belief that the United States Constitution reserved an investigative role for grand juries, and it appears that he wanted to enshrine a right with the same scope as the federal right in the state constitution.

Delegate Buckalew, somewhat brusquely, responded by sharing a common concern that had led legislators in other states to undermine the grand jury's investigative powers. He worried that when a grand jury was investigating a public official, they might not "have enough evidence to return an indictment but this would give them the power to blast him good and hard."[70] Even without an indictment, the political consequences of a negative grand jury report could be severe, and the grand jury could "more or less defame somebody if they did not have quite enough action for a bill."[71]

Delegate Ralph Rivers tried to explain away the concern by saying that the investigative function's goal is only to "investigate public offices and institutions, not just to investigate anything involving the public welfare" (which he thought was the status quo in the territory).[72] But Delegate Barr doubled down. The grand jury would "investigate and make recommendations concerning things that endangered [the] public welfare's safety, and . . . that is what the grand jury is for[:] to protect the rights of its citizens."[73]

Delegate Hellenthal came to his aid, embracing an "extremely broad" investigatory power for the grand jury.[74] In fact, federal grand juries seated in Alaska issued "extremely broad" reports during the very same period that the convention was taking place. On December 19, 1995, the *Fairbanks Daily News-Miner* reported that, "'Deplorable' conditions in the federal jail have been blasted by a federal grand jury in Fairbanks."[75] The context was a broad report rather than a by-the-wayside remark in an indictment. Like the English and colonial grand juries, the federal grand jury in Alaska was reporting "on things in general."[76] The grand jury in Alaska threw in recommendations that the "United States commissioners' salaries be increased; that the district attorney's office be accorded overtime pay; and that [C]ongress pass the Alaska mental health

[69] ALASKA LEGIS. COUNCIL, *supra* note 10, at 1344 (statement of Delegate Barr).
[70] *Id.* at 1405 (statement of Delegate Buckalew).
[71] *Id.*
[72] *Id.* (statement of Delegate Ralph Rivers).
[73] *Id.* at 1405–06 (statement of Delegate Barr).
[74] *Id.* at 1406 (statement of Delegate Hellenthal).
[75] *On the Inside*, FAIRBANKS DAILY NEWS-MINER (Alaska) (Dec. 19, 1955) at 4, https://www.newspapers.com/image/18237603/ [https://perma.cc/6GZD-ZSHC].
[76] Dession & Cohen, *supra* note 3, at 706 (quoting ARTHUR P. SCOTT, CRIMINAL LAW IN COLONIAL VIRGINIA 70 (1930)).

bill."[77] Delegate Hellenthal seems to have been correct about the scope of the federal right when he said, "I think a grand jury can investigate anything."[78] And not only did they have a right, but according to the territorial law, it was their *duty* to investigate and report.[79] These reports were usually made public, including in a high-profile incident involving the Ketchikan Police Department only two years before the constitutional convention.[80]

Other states at the time appeared to assume the scope of a grand jury's power, rather than define it. For context, the Alaska framers were provided with a handbook that contained the constitutions of the states then in existence, along with Hawaii.[81] Delegates took inspiration from other constitutions.[82] None of these states uses language as clear as Alaska's, and an argument from silence might be made against the investigative function of the grand jury. But as will be demonstrated, the contrary is true—the power so inundated historical and contemporary practice that the ordinary meaning of the grand jury power already included the investigative function.

Missouri's grand jury provision is most like the one Alaska adopted during the convention. It states that a "grand jury shall have power to investigate and return indictments for all character and grades of crime; and that the power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended."[83] This text is not as clear as Alaska's own, and on its face, it leaves somewhat ambiguous whether grand jury reports can be issued without accompanying an indictment. History provides more insight. The final phrase, about "the power of grand juries to inquire into the willful misconduct in office of public officers," was introduced for the first time in Missouri's 1945 constitution.[84] Scholars Noah Weinstein and William J. Shaw argue that, given how well-established the jury's indicting power was, context would suggest that it was the reporting function that this provision had in view.[85] The anti-surplusage canon further supports this hypothesis, since the right to come before a grand jury for indictment or information was already protected by the state and federal bills of rights and due process clauses.[86] Still further support is found in the debates over ratifying the Missouri amendment. One of the delegates, Judge Stevens, articulated a very specific mischief to be cured by the provision: "You don't particularly need a grand jury to file information or indictments anymore against individuals who commit crimes, because the . . . Attorney General[] can do that, but you need to maintain the

[77] FAIRBANKS DAILY NEWS-MINER, *supra* note 77.

[78] ALASKA LEGIS. COUNCIL, *supra* note 10, at 1406 (statement of Delegate Hellenthal).

[79] ALASKA PENAL CODE, 30 Stat. 1253, Title II, Ch. 5, §§ 20–22 (March 3, 1899).

[80] PAMELA CRAVEZ, THE BIGGEST DAMN HAT: TALES FROM ALASKA'S TERRITORIAL LAWYERS AND JUDGES, 123 (Alaska Univ. Press 2017)

[81] *See* Hellenthal, *supra* note 13.

[82] *See generally* G. Alan Tarr, *Of Time, Place, and the Alaska Constitution*, 35 ALASKA L. REV. 155 (2018).

[83] MO. CONST. of 1945, art. I, § 16.

[84] Noah Weinstein & William J. Shaw, *Grand Jury Reports—A Safeguard of Democracy*, 1962 WASH. U.L.Q. 191, 194 (1962).

[85] *Id.* at 195.

[86] U.S. CONST. amend. V; ALASKA CONST. art. I, § 8 (The first half of the provision reads "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused. In that case the prosecution shall be by information. The grand jury shall consist of at least twelve citizens, a majority of whom concurring may return an indictment."). *See also* Weinstein & Shaw, *supra* note 84, at 194.

grand jury to curb the corrupt act[s] of officials."[87] Though Judge Stevens may not have spoken for the entire body, his perspective does suggest a reading consistent with the anti-surplusage rule.

The Alaska delegates knowingly drew inspiration from the Missouri constitution and made reference to it in their debates.[88] They did not discuss New York's then-latest constitution, but that work contains another analogous grand jury protection. The New York provision is longer than either Alaska's or Missouri's, but provides in relevant part, "The power of grand juries to inquire into the wilful [sic] misconduct of public officers, and to find indictments or to direct the filing of informations in connection with such inquiries, shall never be suspended or impaired by law."[89] Additionally, earlier in the same section, the New York Constitution says that a public official can be removed from office if, "upon being called before a grand jury to testify concerning the conduct of his office or the performance of his official duties, [he] refuses to sign a waiver of immunity against subsequent criminal prosecution, or to answer any relevant question concerning such matter before such grand jury."[90] These statements seem to reference a grand jury power to inquire into government corruption even when an indictment is not directly in view.

In fact, grand jury reports apart from indictments (sometimes called "presentments," despite the technical inaccuracy of that term[91]) were commonplace, though somewhat controversial, in New York at the time that the Alaska constitution was drafted.[92] As an indication of how common they were, there was one nine-week period in 1954 in which four grand juries in the state issued seven reports.[93] In greater or lesser volume, they issued steadily from other states as well, from Utah to New Jersey.[94] In some states, like New Jersey, the sheer number of grand jury reports being issued without explicit state constitutional protection is evidence that the public meaning of the grand jury power included the authority to issue reports. In other cases, there was also statutory authorization for reporting, including in many Western states.[95] If the reporting function was inconsistent with the public understanding of the grand jury's power, it is inconceivable that nearly half the states would have protected it through legislation. And because this understanding was so widespread, there would have been little need to protect the reporting function specifically (as opposed to the grand jury power as a whole) at the constitutional level. Being rooted so firmly in history, practice, and legislation, it seemed unlikely to come under serious fire.

But a countercurrent had begun in the early twentieth century. The New York case *Jones v. People*, decided in 1905, proved a watershed.[96] The majority held that grand jury reports were supported by a state criminal statute authorizing inquiry into misconduct by government

[87] Weinstein & Shaw, *supra* note 84, at 197 (quoting MISSOURI CONSTITUTIONAL CONVENTION 1433–37 (1944)).
[88] *See* ALASKA LEGIS. COUNCIL, *supra* note 10, at 1325, 1400 (statements of Delegate Hellenthal).
[89] N.Y. Const. of 1938, art. 1, § 6.
[90] *Id.*
[91] *See supra* note 44.
[92] Kuh, *supra* note 1, at 1104.
[93] *Id.*
[94] *See id.* at 1104, 1111.
[95] *See id.* at 1111 n.31.
[96] Jones v. People, 101 A.D. 55 (N.Y. App. Div. 1905).

officials.[97] They observed that "official inquiry intends either official action or official report,"[98] and since "a grand jury lacks authority to take executive or administrative action, it must therefore have reportorial power."[99] But Justice Woodward thought that reports (or as he called them, "presentments") were inconsistent with the state constitution since the parties implicated were not given ordinary process to rebut the reports' contents.[100] His dissent caught on, and it was cited in decisions against grand jury reports in Hawaii, Alabama, Arkansas, Louisiana, Maryland, New Jersey, and Utah, as well as in subsequent New York decisions.[101]

In 1928, Louisiana banned jury reports entirely,[102] and this did not escape the notice of Missouri politicians. That was the year the infamously corrupt Louisiana governor Huey Long came into office.[103] Missouri delegate Judge Stevens warned, "[S]uppose we had a Huey Long in the state of Missouri, . . . and Huey Long of Missouri controlled the legislature. He might call the legislature in here to curb the power of grand juries to investigate official acts of all his hirelings."[104] Apparently there had also been a Huey Long of Pennsylvania, who had likewise banned jury reports.[105] Seeing the threat begin to spread, New York had constitutionalized the grand jury's power to report—the language discussed above.[106] Explicitly referencing the New York provision, Missouri followed suit in 1945.[107]

It is unclear how much of this context Delegate Barr knew when he made his proposal at the Alaska constitutional convention. It is enough that it was on his mind. It was no longer safe to assume that the public meaning of the grand jury power included the reporting power. If it were possible to constitutionalize a grand jury right but ban grand jury reports, a new constitution would need to be more specific.

CONCLUSION

The Alaska Constitution, correctly interpreted, would seem to protect the right of the grand jury to use its reporting power free of government interference in its role as public intermediary, the "official organ of public protest."[108] Neither the executive nor the courts should be permitted to decide what the people may protest about. The executive may assist the grand jury by bringing evidence to form the basis for an indictment. The judiciary may assist the grand jury by explaining the law and matters of procedure. But they may nowhere come between the citizen and the grand juror by screening out petitions.

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[97] *Kuh, supra* note 1, at 1111 (citing *Jones*, 101 A.D. at 57).
[98] *Id.* (quoting *Jones*, 101 A.D. at 57).
[99] *Id.*
[100] *Id.* at 1112 (citing *Jones*, 101 A.D. at 63).
[101] *Id.* at 1110–11 n.29.
[102] *Id.* at 1114 n.51.
[103] *Id.*
[104] Weinstein & Shaw, *supra* note 84, at 197 n.28 (quoting MISSOURI CONSTITUTIONAL CONVENTION 1433–37 (1944)).
[105] *Id.* (quoting MISSOURI CONSTITUTIONAL CONVENTION 1433–37 (1944)).
[106] *Id.* (quoting MISSOURI CONSTITUTIONAL CONVENTION 1433–37 (1944)) ("The same thing happened in Pennsylvania and that is why the New York Constitution in 1939 put a similar clause in their Constitution whereby a grand jury's investigation of the official acts of public officials will never be abridged.").
[107] *Id.* at 195.
[108] Weinstein & Shaw, *supra* note 84, at 203 (quoting State v. Fary, 117 A.2d 499, 503 (N.J. 1955)).

The reporting function of the grand jury is an essential tool for holding the government accountable, one that developed in the early days of the Anglo-American legal system. To preserve its historic function and prevent its suspension through government capture, the grand jury must remain an intermediary: helping the people to speak to the government and aiding the government in doing justice for the community.

Attorney General Stephen Cox: On Alaska's investigative grand jury

https://thealaskastory.com/attorney-general-stephen-cox-on-alaskas-investigative-grand-jury/

By STEPHEN J. COX | ALASKA ATTORNEY GENERAL

April 2, 2026

If you have followed the debate over Alaska's investigative grand jury, you know it has stirred real concern among many Alaskans. Some believe the grand jury is the people's last line of defense against government misconduct. Some believe that line has been obstructed by the government itself—by prosecutors, by judges, or by the court rules themselves. Those views are strongly held. They are not going away.

I know that because this issue was on my desk before I ever took office. Before I was even sworn in, I began receiving meeting requests from Alaskans who wanted to talk about the investigative grand jury. Many of those requests came from people who have spent years studying, writing, and advocating on this issue. They were serious. Persistent. And convinced something fundamental had gone wrong.

I do not take many outside meetings in this job. The Department of Law is large, and I believe it works best when decisions are made at the right level, with the understanding that anything can be elevated when necessary. But I understood the concern and the interest in a fresh take on it. Not because I accepted every premise—some I did not—but because the concern itself was real, and it raised a question I needed to answer before doing anything else: what does the law actually require?

Attorney General Stephen Cox: On Alaska's investigative grand jury

The Alaska Constitution preserves the grand jury's authority to investigate matters of public welfare and safety and to issue reports and recommendations. That authority is distinct from the grand jury's familiar role in deciding whether to indict someone for a crime. Alaska Criminal Rule 6.1 purports to implement that investigative function, and it does so in a particular way. It draws a distinction between matters raised from within the grand jury and those brought from outside it.

If a sitting grand juror proposes an investigation, the rule does not leave the matter to the Attorney General's unfettered discretion. The prosecutor must evaluate the proposal against the rule's defined criteria. If those criteria are met, the matter must go to the grand jury for its consideration, and if the grand jury elects to proceed, the Department of Law facilitates the investigation.

But when a request comes from outside—from a citizen who is not serving on the grand jury—the rule takes a different approach. The citizen may bring the concern to the Attorney General, and the decision whether to pursue it is largely left to the Attorney General's discretion. The rule and its commentary indicate that a citizen does not have the right to appear personally and present a matter directly to the grand jury or to compel an investigation. It is this feature of the current framework that has drawn the most criticism, and I understand why.

Before taking any action on the petitions that have been submitted to the Department—there have been several—I believed it was important to study the issue carefully. I reviewed the Department's prior work and the Alaska Supreme Court's decisions interpreting the grand jury clause. I read what citizens had written, including pieces that were sharply critical of both the Department and the judiciary. I looked at commentary, op-eds, and historical materials. What I found wasn't one or two interpretations. It was a range—some narrow, some expansive, and some deeply skeptical of the very government actors giving their interpretations.

Attorney General Stephen Cox: On Alaska's investigative grand jury

I needed some objective help so that I could be confident about the original understanding of the provision. So I called in a favor. I reached out to Professor Rick Garnett at Notre Dame Law School. He was the best person I could ask because of his deep expertise in criminal law, constitutional interpretation, and originalism. Not only is he an expert in originalist methodology for the Federal constitution, but he has taught courses on how it works for state constitutions. He also has a personal connection to Alaska. He grew up in Anchorage. His father served as Municipal Attorney for Anchorage. His great-uncle helped launch the Alaska Law Review. He understands both the law and the state.

I asked him to take a fresh look at the history and meaning of Alaska's investigative grand jury clause. He agreed. He did the work independently. And he did it for free. His article, co-authored by Savannah Shoffner, is now published, and it provides what I regard as the best account we have of the text, history, and traditional function of the investigative grand jury.

The Original Meaning and Understanding of the Investigative Power of the Grand Jury in the Constitution of Alaska – Savannah Shoffner & Richard Garnett
https://journals.law.harvard.edu/jlpp/the-original-meaning-and-understanding-of-the-investigative-power-of-the-grand-jury-in-the-constitution-of-alaska-savannah-shoffner-richard-garnett/

That history confirms that the grand jury was understood as an intermediary between the people and the governmental a body that could hear concerns of public importance and issue reports, not merely indictments. It also suggests that this reporting function was not originally conceived as something subject to executive screening or prosecutorial discretion.

Attorney General Stephen Cox: On Alaska's investigative grand jury

Serendipitously, the Alaska Supreme Court is reconsidering Rule 6.1. And it is why I recently submitted formal comments to the Court. In that letter, I explained that if the Court wishes to align the rule more closely with that original understanding, there is a simple way to do so: place the investigative grand jury process fully within the judicial branch, supported by court-appointed counsel, rather than requiring the Department of Law to serve as both gatekeeper and facilitator.

Letter to Stacey Steinberg regarding Rule 6.1 dated 4-2-2026
https://thealaskastory.com/wp-content/uploads/2026/04/Ltr-to-S.Steinberg-re-Rule-6.1-4.2.2026.pdf

But that is not the rule we have today. And it is not, at least yet, the rule the Court is proposing. What Alaskans should know is that my obligation is to the law as it exists. That includes the Constitution and State statutes but it also includes the Alaska Supreme Court's binding interpretation of Alaska law and the rules the Court has promulgated. That is what my oath requires. It does not mean substituting my own reading of the Constitution for the one that governs.

So Here Is What I Will Do.

The Department of Law has received several citizen petitions seeking investigative grand jury review. Some of those petitions are related to one another. Some raise overlapping issues. Some revisit concerns that have been presented in different forms before. That is part of what makes this area difficult. Without clear limits, there is a risk that the process becomes cyclical—that if one effort does not produce the desired result, another follows, and then another.

In my view, each petition ought to be taken seriously under the law we have. For each pending petition, I will assign a prosecutor to review it as a general rule. That prosecutor will be responsible for understanding the facts, the allegations, and the

applicable law. Where necessary, they will consult with civil attorneys on issues that fall outside the criminal sphere. Our prosecutors carry heavy caseloads—often well over 150 cases at a time—and I am mindful that this work cannot come at the expense of their core responsibilities. But they will take these petitions up in due course and present them to the grand jury consistent with the rule.

If the Legislature makes a statutory change or the Alaska Supreme Court amends Rule 6.1—particularly if this process is placed within the judicial branch—we will work with the Court to transfer any pending matters that have not yet been presented.

I recognize that this approach will not satisfy everyone. Some will believe the system remains flawed. Others will want faster answers or different outcomes. Some may even believe the Department should not be spending time on this at all. I respect all this potential frustration. But my responsibility is not to deliver a particular result. It is to apply the law faithfully and to exercise sound judgment where the law gives me discretion. That's what I have tried to do and what I intend to do.

Stephen J. Cox
Attorney General of Alaska

Thomas A. Garber
Anchorage, AK 99518

April 3, 2026

Criminal Rules Committee
c/o Criminal Rules Attorney Stacy Steinberg
Alaska Court System
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Anchorage, AK 99501
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Re: Response to AG Cox's April 2, 2026, Comments on Proposed Rule 6.1

Why the Attorney General's Proposed Alternative Is Itself Unconstitutional and Unworkable

Attorney General Stephen Cox submitted comments to this Committee on April 2, 2026, opposing the proposed amendments to Criminal Rule 6.1 and offering what he called "a simple path" to constitutional reform: place the investigative grand jury process "completely within the judicial branch, supported by court-appointed counsel" under Administrative Rule 12(e), without any involvement of executive branch attorneys. The Attorney General's proposal is not simple. It is constitutionally defective, practically unworkable, and — most remarkably — self-refuting: the same historical authority the Attorney General cited to condemn the current rule condemns his proposed alternative in equal measure. This letter explains why, point by point, with legal citations.

I. The Attorney General Cites an Authority That Defeats His Own Proposal

The Attorney General states that a Harvard Law article by Professor Richard Garnett and Savannah Shoffner provides

> "*Perhaps the most detailed examination of the text, history, and traditional function of the investigative grand jury*" and that it "*confirms that the investigative grand jury was*

originally understood to serve as an intermediary between the people and the government... [and] this reporting function was not dependent on executive branch screening or prosecutorial discretion."

The Attorney General then cites this authority to argue against the CRC's proposal — but reads only half of what it says. The Shoffner/Garnett article does not stop at condemning executive screening. It concludes explicitly: "*Neither* the executive *nor the courts* should be permitted to decide what the people may protest about. The executive may assist the grand jury by bringing evidence to form the basis for an indictment. The judiciary may assist the grand jury by explaining the law and matters of procedure. **But they may nowhere come between the citizen and the grand juror by screening out petitions."**

Shoffner & Garnett, *The Original Meaning and Understanding of the Investigative Power of the Grand Jury in the Constitution of Alaska*, Harv. J.L. & Pub. Pol'y Per Curiam No. 4, Spring 2026, at 12 (emphasis added).

The Attorney General's proposed solution — routing citizen petitions through court-appointed counsel under judicial branch supervision — is precisely what this sentence prohibits. The judiciary "*coming between the citizen and the grand juror*" through judicial screening and judicially appointed gatekeepers is constitutionally identical to executive screening, except it wears a robe instead of a suit. The authority the Attorney General treats as his strongest endorsement is a direct rebuttal of his own proposal. This Committee should note that carefully.

II. Administrative Rule 12(e) Does Not Authorize What the Attorney General Proposes: It Is a Circular Bootstrap

The Attorney General recommends that the Court "*substitute* '12(e) counsel' *for the Attorney General in proposed Rule 6.1*," relying on Administrative Rule 12(e), which authorizes courts to appoint counsel when the appointment "*is not authorized by AS 18.85.100(a) or AS 44.21.410... but in the opinion of the court is required by law or rule.*"

This argument is circular in its structure and invalid on its face for three independent reasons.

First:

AR 12(e) authorizes appointments when required by existing law or rule it does not create the law or rule that does the requiring.

The Attorney General is proposing to use AR 12(e) as the basis for creating a new substantive framework for citizen grand jury petitions. But AR 12(e) is a procedural appointment mechanism, not a grant of substantive authority. Before AR 12(e) can be invoked to appoint counsel, there must be an independent source of law or rule requiring the appointment. The Attorney General proposes to use AR 12(e) to bootstrap itself — the rule becomes the basis for invoking the rule. This is circular reasoning that no properly constructed legal framework permits. *See generally Whitman v. American Trucking Ass'ns*, **531 U.S. 457, 468 (2001)** (agencies cannot use a provision to extend its own authority beyond what the provision independently authorizes).

Second:

Constitutional rights cannot be implemented through an administrative rule.

The grand jury's investigative and reporting power is protected by Alaska Const. art. I, § 8, which declares that this power "*shall never be suspended.*" The Alaska Supreme Court has itself held that this provision is a constitutional guarantee that operates independently of legislative and administrative action. *O'Leary v. Superior Court*, **816 P.2d 163, 166 (Alaska 1991)**. Using a procedural court administration rule — AR 12(e) as the implementing mechanism for a constitutional right of this magnitude is a category error. Administrative rules exist to manage the internal operations of the court system. They do not establish the contours of constitutional rights. The proper vehicle is a Criminal Rule promulgated through the processes the Alaska Supreme Court uses for rule changes of constitutional significance — which, as the CRC's two-year review demonstrates, requires substantive deliberation, not an administrative shortcut.

Third:

The Attorney General's reliance on AR 12(e) would itself constitute the kind of expedited, process-bypassing rulemaking he criticizes.

Cox's letter argues that SCO 1993 was valid because it used Administrative Rule 44(i)'s expedited procedure. This Committee has already recognized that SCO 1993's use of that expedited process — bypassing normal CRC reviews produced rules that required two years and twelve meetings to correct. Now the Attorney General proposes to implement the entire citizen petition framework through AR 12(e), an even thinner procedural basis than AR 44(i). If expedited promulgation via AR 44(i) was constitutionally problematic enough to require comprehensive corrective rulemaking, a framework built on AR 12(e) is worse, not better.'

III. The AG's Proposal Does Not Actually Provide Citizens Access. It Creates Judicial Gatekeeping in Place of Executive Gatekeeping

The constitutional defect in SCO 1993 that the CRC's proposed amendments address is not merely that the *Attorney General* was the gatekeeper. The defect is that *any governmental gatekeeper* stands between the citizen and the grand jury in violation of the anti-suspension clause. The Attorney General's letter never grapples with this distinction. He simply proposes replacing one gatekeeper (**the AG**) with another (**court-appointed judicial branch counsel and the presiding judge**).

Under the Attorney General's proposed framework:

- A citizen with a public welfare or safety concern would still need to navigate a judicially managed process rather than speaking directly to the grand jury.
- Court-appointed counsel would still advise the grand jury on "*whether to investigate*" exercising the same screening function currently exercised by the AG.
- The presiding judge would still oversee and structure the entire process — exercising the same filtering role that, under SCO 1993, allowed presiding judges to block reports before discharge under former Rule 6.1(f) and (g).

The Alaska Supreme Court's own CRC recognized this problem when it replaced automatic judicial pre-review of grand jury reports with an objection-driven process in the proposed amendments. The CRC understood that presiding judges having pre-screening authority over grand jury reports was itself a mechanism of suppression. The Attorney General proposes to restore and expand judicial filtering authority under the guise of removing executive authority.

This is not a constitutional improvement. It is a lateral transfer of unconstitutional gatekeeping power from one branch to another. The anti-suspension clause of art. I, § 8 protects the grand jury's investigative authority from governmental interference in all its forms. *See O'Leary*, **816 P.2d at 168** ("*The anti-suspension clause does not limit the type of investigation the grand jury may conduct nor does it require that a grand jury investigation be tied to the indictment function*").

IV. The AG's Scope Retention Argument Is a Continuation of the Constitutional Violation He Acknowledges

The Attorney General argues that the CRC's proposed amendments are defective because they remove the three-part definitional framework from Rule 6.1(a) the test requiring that an issue:

(1) could further a public policy of the state,

(2) could reasonably be expected to benefit a large number of people rather than individuals, and

(3) involves a matter of general importance to a large number of people.

This three-part test is not neutral guidance. It is the specific mechanism that was used to characterize Garber's OCS petition — concerning the systemic relationship between the Department of Law and the Office of Children's Services and its effects on families across Alaska — as a matter involving individual cases rather than systemic public concern. The existing commentary to Rule 6.1(a) explicitly excluded

investigations into "*the Department of Law's decision not to prosecute a particular incident as a crime*" language that is directly relevant to citizen petitions about OCS-related prosecutorial decisions.

The Attorney General now argues for retaining this language under whatever new framework the Court adopts. But that language was not part of Alaska's constitutional tradition. The Alaska Supreme Court has confirmed that the grand jury's investigative authority under art. I, § 8 extends to investigations of "*matters of public welfare or safety*" without the three-part limitation. *O'Leary*, **816 P.2d at 167**. The three-part test was created by SCO 1993 — the same order whose constitutional validity is now contested — and the CRC's proposed deletion of it reflects the Committee's conclusion that it improperly narrows a constitutional right.

The Attorney General's insistence on retaining this framework, under whatever procedural structure, would preserve the operational effect of SCO 1993 even if its nominal gatekeeping authority were transferred from the AG to the courts. A constitutional right that is nominally restored but substantively narrowed through definitional exclusions designed to eliminate the very investigations citizens seek to pursue is not restored at all. The anti-suspension clause does not permit this. *McCulloch v. Maryland*, **17 U.S. (4 Wheat.) 316, 421 (1819)** ("*we must never forget that it is a constitution we are expounding*" — a document of governance whose provisions must be read to achieve their structural purposes, not to be neutralized by procedural cleverness).

V. AR 12(e) Counsel Cannot Perform the Investigative Functions That the Grand Jury's Constitutional Authority Requires

The Attorney General correctly observes that prior investigative grand juries have required "*significant attorney time, the retention of costly outside counsel... and assistance from the Department of Public Safety (DPS) to serve subpoenas and collect evidence.*" He cites this to argue against the CRC proposal. But the same observation fatally undermines his own AR 12(e) alternative.

Administrative Rule 12(e) authorizes courts to appoint counsel in defined circumstances. It does not authorize counsel appointed under AR 12(e) to direct law enforcement investigations, command DPS resources, coordinate complex multi-witness proceedings, or exercise the investigative tools that a functional grand jury investigation requires. Court-appointed civil counsel under AR 12(e) is a legal advisor — analogous to the advisory role the CRC proposal assigns to an AG-designated attorney, but without even that attorney's law enforcement connections, institutional knowledge, investigative resources, or subpoena-support infrastructure.

The investigative grand jury's constitutional function under art. I, § 8 is not merely to hear evidence and write a report. It includes the power to compel witness testimony, subpoena documents, and conduct genuine investigations into government conduct. *See* AS 12.40.030 (*grand jury has power to subpoena witnesses*); AS 12.40.060 (*grand jury shall inquire into crimes committed within the district*). These functions require institutional backing that AR 12(e) counsel cannot provide.

Under the Attorney General's proposal, a citizen petitioning to investigate systemic failures in a state agency would be represented before the grand jury by an attorney with no investigative authority, no law enforcement contacts, no subpoena-support mechanism, and no institutional standing to compel cooperation from the very agency under investigation. This is not a functional remedy. It is the appearance of access without its substance — a process designed to fail quietly rather than to succeed loudly.

This Committee should also note that the Attorney General's letter raises the burden on DOL resources as a reason to oppose the CRC proposal, then proposes an alternative that would require the Court to fund an entirely new category of counsel through AR 12(e). The Attorney General does not address where this funding comes from, how it is appropriated, or whether shifting the financial burden from the executive branch to the judiciary solves the resource problem or merely relocates it. *See* Alaska Const. art. IX, § 13 (*no money shall be drawn from the treasury except pursuant to appropriation made by law*). A framework that requires ongoing court-funded

independent counsel for an open-ended category of grand jury investigations has significant appropriations implications that AR 12(e) does not address.

VI. The AG's "Successive Petitions" Concern Proves the Citizens' Point, Not His Own

The Attorney General argues that the CRC's proposed rule is defective because it contains no mechanism for finality — that without a screening authority, citizens could file successive petitions over the same matters indefinitely.

This argument proves too much, and in precisely the wrong direction. The reason successive petitions exist in this case — the reason Garber has been filing since 2018, Haeg since 2016, and Ignell in 2022 — is not that there is no finality mechanism. It is that no petition has ever been properly presented to a grand jury so that the grand jury could make an independent determination about it. **Finality requires a decision**. Citizens cannot be bound by a "no" they never received from the constitutionally designated decision-maker.

Under SCO 1993, the AG's unfettered discretion to decline petitions produced no grand jury decision and no finality — only administrative non-action. If the grand jury had been presented with Garber's OCS petition in 2018 and had voted to decline to investigate, or had investigated and issued a report, that determination would create something approaching finality. The problem the Attorney General identifies — cyclical petitioning — is a direct consequence of the constitutional violation he seeks to preserve in new form. Garber presented his petition in 2018 and the DOL declined to bring it forward. He presented it again in 2022 and Judge Morse was preparing to schedule a hearing when SCO 1993 intervened. He has presented it again under the new AG. None of these constitute a grand jury decision that could generate the finality the Attorney General now demands.

The solution to the successive petition problem is not to create additional pre-screening barriers. It is to allow the grand jury to exercise its constitutional authority to

make the decision it is constitutionally empowered to make. Once a properly constituted grand jury has considered and decided a petition, finality follows naturally. The Attorney General has the causation exactly backwards.

VII. The AG's Separation of Powers Argument, If Correct, Condemns SCO 1993 More Than It Condemns the CRC Proposal

The Attorney General argues that the CRC's proposal violates the separation of powers by directing executive branch attorneys to facilitate grand jury investigations. He cites *Bradner v. Hammond*, **553 P.2d 1, 7-8 (Alaska 1976)**, and *Alaska Public Interest Research Group v. State*, **167 P.3d 27, 35 (Alaska 2007)**, for the proposition that one branch may not direct the activities or resources of another.

The Attorney General is correct that the grand jury "*is an arm of the judicial branch.*" *O'Leary*, **816 P.2d at 166**. And he is correct that the judiciary directing executive attorneys to perform work raises separation of powers concerns. But if this argument is correct, it condemns SCO 1993 even more directly than it condemns the CRC proposal.

Under SCO 1993, the Chief Justice of the Alaska Supreme Court — the head of the judicial branch — initiated secret meetings with the Attorney General — the head of the executive branch — to design a rule that assigned the executive branch mandatory obligations to screen citizen petitions, advise grand juries, and facilitate investigations. The August 16, 2022, letter from Chief Justice Winfree to AG Taylor, which initiated this coordination, was not public rulemaking. It was inter-branch negotiation over a rule that would govern the relationship between branches. If directing executive branch resources through judicial rules violates the separation of powers, the judicial branch secretly designing that directional relationship with executive branch cooperation is precisely that violation at its genesis.

The Attorney General's separation of powers argument, applied consistently, does not merely undermine the CRC proposal. It provides one of the most compelling legal

bases for the conclusion that SCO 1993 itself was constitutionally defective from its inception — which is the argument this commenter has advanced since December 2022. The Attorney General has now provided an institutional legal citation framework that validates, rather than refutes, that argument.

VIII. The True Constitutional Standard And why the CRC Proposal, Modified, Is the Closest to It

The Shoffner/Garnett article the Attorney General adopted as authoritative reaches a clear conclusion about what Alaska's Constitution requires: the grand jury must be free to serve as an "*intermediary between the people and the government,*" and neither the executive nor the judiciary may "*come between the citizen and the grand juror by screening out petitions.*" Shoffner & Garnett, *supra,* at 12. The CRC's proposed amendments move closer to this standard than any prior rule because they:

(1) give citizens direct filing access to superior courts without AG veto power

(2) require mandatory transmission to the grand jury within 30 days

(3) preserve the AG's advisory role without gatekeeping authority and

(4) allow grand jurors to propose investigations directly to fellow jurors without prosecutorial filtering.

These provisions are not perfect. The three-part scope test, as the CRC's proposal retained it, remains a subject of legitimate debate. The evidentiary standards warrant clarification. The conflict-of-interest provisions could be strengthened. These are appropriate subjects for this Committee's deliberations and for public comments including the comment your committee has invited and is now receiving.

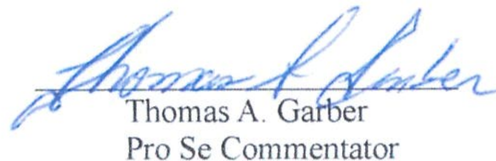
But the answer to imperfection in a rule that moves toward constitutional compliance is not to reject it in favor of a framework that, under the very authority the Attorney General cites, reproduces the constitutional violation in new institutional clothing. If the CRC's proposed rule needs improvement, this Committee should improve it. The alternative the Attorney General proposes — AR 12(e) judicial branch counsel

with retained scope exclusions and no clear citizen filing pathway — does not restore the constitutional right that art. I, § 8 guarantees. It renames the gatekeeper.

Alaska's Constitution says the grand jury's investigative power "*SHALL NEVER BE SUSPENDED.*" That provision is not satisfied by replacing an executive suspension with a judicial one, or by substituting an AR 12(e) workaround for a constitutionally grounded rule. It is satisfying only when a citizen with a legitimate public welfare or safety concern can reach the grand jury — the people's institution — without governmental interference from any branch.

That is the standard this Committee should hold in view!

Thank you for this opportunity to respond. Respectfully submitted,



Thomas A. Garber
Pro Se Commentator

Dated this April 3 2026, in Anchorage Alaska.

Dylan Hitchcock-Lopez

From:
Sent: Monday, May 4, 2026 9:34 AM
To: House Judiciary
Subject: Oppose Stephen Cox as AG

Dear members of the House Judiciary Committee,

I urge you to oppose the confirmation of Stephen Cox as Attorney General. His extreme views, including on birthright citizenship and his handling of our confidential voter information, have no place in Alaska, and most certainly not as Attorney General.

Thank you,
Sally Schlichting
Juneau, AK

Dylan Hitchcock-Lopez

From: Mary Corcoran [redacted]
Sent: Monday, May 4, 2026 8:31 AM
To: House Judiciary
Subject: Public Testimony: AG designee Cox confirmation

Dear Chair Gray and House Judiciary Committee Members,
Thank you for this opportunity to offer public testimony as you consider the appointment of Stephen Cox, Alaska Attorney General. Please do NOT SUPPORT Mr. Cox for this position. My main reasons follow.

Mr. Cox has filed multiple amicus briefs that are either irrelevant to the lives of Alaskans or conflict with our best interests and/or the state constitution. I question why Mr. Cox did not file a strong amicus brief for the State as the US Supreme Court considered mail-in ballots. It appears he passed this off to the Solicitor General. His signature would have clearly addressed many of our voting rights challenges and the possibility of disenfranchising major segments of our citizens.

I question why Mr. Cox did not step forward to protect our right to privacy when the US DOJ requested confidential voter data. We entrusted that data to the State and did not authorize its transmission.

I do not understand his decision to create the new Solicitor General position. An adequate case was not made showing that the previous structure within the Department of Law was insufficient.

Frankly, the choices Mr. Cox has made are alarming as the AG should be protecting our rights and general welfare. I strongly urge you to vote against the confirmation of Stephen Cox as Alaska's Attorney General. He acts as though he represents interests other than those of Alaska.

Thank you for your work and consideration.

Sincerely,
Mary Corcoran
Delta Junction, Alaska

Dylan Hitchcock-Lopez

From:
Sent: Monday, May 4, 2026 8:01 AM
To: House Judiciary
Subject: Please vote NO re: confirmation of Stephen Cox

I urge you to vote no regarding the confirmation of Stephen Cox as Attorney General. He violated our basic right to privacy as guaranteed under State Constitution. When questioned about his decision to release voter information to the Federal government, he stated"I will concede, I am learning about the right to privacy." There should not be a learning curve to understanding our State Constitution.

Please do not confirm him.

Sincerely,
Karen Murdock

Homer, AK 99603

Dylan Hitchcock-Lopez

From: Therese Lewandowski [redacted]
Sent: Monday, May 4, 2026 7:22 AM
To: House Judiciary
Subject: Stephen Cox not good choice

House Judicial Members,

Please do not confirm Stephen Cox, the governor's appointment for attorney general.

As temporary AG his actions appear to be rather right wing, noting the many lawsuits he has signed our state on with such as the one taking natural birthright citizenship away - a right imbedded in the US Constitution as we all know. Temp AG Cox does not seem to speak for all Alaskans.

He allowed our voter data to go on to the federal DoJ. Something everyone, I believe just about every legislator and person in this state, was shocked at.

Mr. Cox should not be confirmed. Our state needs an AG who is not partisan and speaks for citizens interests, not the Republican party interests.

Therese Lewandowski
Homer

Alaska is no longer safe for Jews.

05/04/26

First they came for the Communists. And I did not speak out. Because I was not a Communist.

Then they came for the Socialists. And I did not speak out. Because I was not a Communist.

Then they came for the trade unionists. And I did not speak out. Because I was not a trade unionist.

And then they came for the Jews. And I did not speak out. Because I was not a Jew.

And then they came for me. And there was no one left to speak out for me.

Governor Dunleavy's candidate as Attorney General, Stephen Cox, has made it unsafe for Jews in Alaska in the nine short months he has been in office, due to either gross incompetence, or prejudice. He is guilty of allowing his courts to approve more than a hundred million dollars being stolen from my father's Alaska and Jewish intended charity right under his nose. In my attempts to recover my father's missing one hundred million dollars of intended charity, the acting Attorney General, whilst he is professionally personally responsible for investigating the alleged organized crimes taking place, has been repeatedly notified of ongoing massive theft from what was supposed to be the second largest Alaska based charity behind the Rasmuson Foundation; the Gottstein Family Foundation,. It was supposed to receive one hundred and fifty million dollars, but received nothing as a result of elder fraud. Yet a formal Investigative Grand Jury Investigation has been blocked by Mr. Cox. Even though he has irrefutable evidence in the form of under oath admissions, along with all the evidence needed to secure justice that I am also providing Members with today, he still does nothing, as required by the law. Ultimately, this Cox incompetency could result in the loss of nearly half a billion dollars in charitable donations to Alaska and Jewish causes in the decades ahead.

Mr. Cox is obligated by law to review my formal Petition of criminality filed with the State's Investigative Grand Jury. He is totally AWOL on protecting the Jewish community. Shame, shame, shame. Like the Jews in London under attack, do we Jews of Alaska have to start thinking about leaving for safe refuge, even from our own government?

I can categorically say without hesitation, as a decades long Alaskan leader in protecting Jews and Jewish charities around the world, that if the State of Alaska, within the Dunleavy administration, under the AG's direct supervision, doesn't take this matter as seriously as it deserves, the tragic consequences will be massive, and the reputation of Alaska's judicial system will likely be tarnished for decades to come. Silence, or looking the other way, is complicity.

Respectfully

David Gottstein

* "I have been seeing him frequently and find him mentally impaired to make financial and business decisions...he has fluctuating mentation and is not competent." It is my opinion as of 10/14/15 he should be deemed impaired for business/financial decisions." And "I am concerned in his current state, his waxing and waning mentation puts him at risk for poor decisions – lacking insight about his own impairment. This also increases his risk of coercion by others." Per Barney Gottstein's primary care physician for many years, official medical notes on 10/14/15, produced into the arbitration evidence record by the opposing side.