

JUSTICE NOT POLITICS ALASKA



RE: SJR 13

Dear Senator Kawasaki and members of the State Affairs Committee,

Justice Not Politics Alaska is a not for profit organized for advocacy and education of the Alaska public about how our merit selection and retention system works. We have reviewed SJR 13 and recommend that it not advance from committee for 3 reasons we will discuss below: (i) the need for a change in judicial appointments does not exist for state courts; (ii) the proposed change will result in less confidence in the judiciary; and (iii) the combination of merit selection, which de-politicizes the process of judicial section, and retention elections, which subjects judges to the will of the electorate, has worked very well since statehood. It has resulted in a judiciary that is free from political bias and works effectively for the people of Alaska on the smallest budget of the three branches of government.

- SJR 13 is not needed to address dissatisfaction with the judiciary.

- Although critiques of the federal process of appointing judges are well known, they focus on the highly politicized process of judicial nomination and Senate confirmation. That combined with the

dissatisfaction with the perceived ethical conflicts and the unwillingness of the highest court to submit to a set of ethical rules has led to a public perception that the court's rulings are politically motivated to serve the executive and party who appointed the justices to office. It is ironic that SJR 13 will push our state into the direction of this highly unpopular process, when in fact, state courts enjoy a much better reputation than the federal courts.

Satisfaction with state courts is much higher than the federal judiciary. A recent survey by the National Center on State Courts (https://www.ncsc.org/data/assets/pdf_file/0026/106397/State-of-the-State-Courts-2024-poll-presentation.pdf) found that 63% of people have a great deal of confidence or some confidence in state courts, and this is the second year in a row that percentage has increased. Those results are above their confidence in their state legislature (59%), federal courts (57%), and the US Supreme Court (54%).

Those trends hold in Alaska as well. The mean “yes” vote percentages for appellate judges and trial judges in the 1st, 2nd, and 4th Judicial Districts are consistently above 60%, with many judges polling above 65%. The 3rd Judicial District is more volatile, but still positive. The mean “yes” vote percentages for trial court judges in the 3rd Judicial District were above 60% in 2020, fell below 60% in 2022, but then rose again in 2024 to just below 60%.

We have also found that when we have presented our educational talks on how merit selection and judicial retention work, our presentations are well received. This is true even in the districts with the lowest judicial “yes” retention votes. More than a few participants have said that they would reconsider their

practice of not voting at all, or voting “no” to all of the judges in favor of a judge by judge approach.

Finally, while there is a criticism that lawyers and judges are too liberal and the candidates presented for appointment are not satisfactory to the political leaning of a governor, anyone who associates with a broad swath of lawyers knows that they do represent a wide political spectrum. Because judges are not ethically permitted to espouse political views, the fact that our current bench is diverse is not readily apparent. However, several sitting judges are currently being considered for appointment to the federal bench, which is a process that currently favors more conservative candidates. The one common denominator is our state process produces smart hard-working judges, who get appointed on merit, not political orientation.

In summary, SJR 13 is a solution in search of a problem.

- SJR 13 will increase dissatisfaction with the judiciary.

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As proposed, SJR 13 will allow the governor to appoint any Alaskan who is a member of the bar and meets the minimum statutory residency requirements in state statute. The Judicial Council’s role is limited to that review. This movement towards the federal model will reduce the perception of an independent third branch of government. Like the federal judicial appointment process, the public will see each judicial appointment as an extension of the governor’s policies, regardless of merit. The fact that a governor wants a more compliant judiciary is not a reason to undermine our well-functioning systems of checks and balances. Our constitutional convention set both the legislature and the courts as a balance against what is a very powerful executive branch, which can wield the power of line-item veto that even our U.S. President does not enjoy. It defies experience that

confidence in the courts will be increased by the appointment of judges who are beholden to the political vision of their patron governor, regardless of merit and independence.

- Merit selection and retention elections work.

Our founders considered all possibilities when they established the Judiciary Article of the Alaska Constitution. As noted by Tom Stewart, secretary to the Alaska Constitutional Convention, “The opportunity is rare because Alaska not having as a Territory its own judicial system, is free to choose from the best modern concepts of a judiciary without being hampered by that resistance to change which so often characterizes long-established systems.” Direct gubernatorial appointment is the least frequent model of judicial selection and there are far more states that instead require merit selection of judges than favor the federal model.

Merit selection as applied by the constitutionally mandated Alaska Judicial Council means every judicial candidate is carefully vetted by information garnered from a wide swath of the public to focus on the characteristics that define a good judge: competence, integrity, legal experience, fairness, life experiences, and public service. Compared to the almost zero standards required by SJR 13, it must be asked how SJR 13 will provide for a better judiciary. The public also is allowed to weigh in on the process when judges are put up for retention.

In conclusion, we ask the Committee not to refer SJR 13 from committee. Among the many pressing needs facing our state, we should not spend time to change how this independent branch of government is selected.

