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# Eagle Forum Alaska

TUESDAY, OCTOBER 31, 2006

## Retention of Judges *(posted by Don Haase)*

From the Eagle Forum Alaska Newsletter, October, 2006  
-By Debbie Joslin

Alaska voters will be asked to vote on whether to retain judges on November 7.

Two judges of particular interest on the ballot this year are Peter Michalski and Sen Tan.

Judge Michalski is interesting. His wife Jo was listed as a co-sponsor of a fundraiser for Tony Knowles in September. Judge Michalski is probably best known for his 1996 court decision finding that homosexual partners are entitled to be "married". Alaskan voters apparently disagreed as we voted overwhelmingly to uphold traditional one man-one woman marriage.

Judge Sen Tan ruled in 2000 that the state must pay for convenience abortions for poor women. His rationale was that if the state was going to pay for prenatal care for these women, they must also fund abortions.

Alaska's courts are some of the most liberal in the country. Our Alaska Supreme Court overturned parental consent for abortion and the partial birth abortion ban. They are now considering forcing the legislature to fund education at whatever level the court says is appropriate. That is a move that has been successful in other states and I don't expect our courts to disappoint the liberals. After all, Alaska Courts are consistent if nothing else.

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Don Haase  
Don

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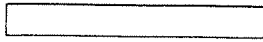
posted by Don Haase @ [7:55 AM](#)

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# Eagle Forum Alaska

FRIDAY, OCTOBER 20, 2006

## The Consequence of Judicial Activism

*(posted by Don Haase)*

Dear God:

Why didn't you save the school children at. ..

Moses Lake, Washington 02/02/1996

Bethel, Alaska 2/19/97

Pearl, Mississippi 10/01/1997

West Paducah, Kentucky 12/01/1997

Stamp, Arkansas 12/15/1997

Jonesboro, Arkansas 03/24/1998

Edinboro, Pennsylvania 04/24/1998

Fayetteville, Tennessee 05/19/1998

Springfield, Oregon 05/21/1998

Richmond, Virginia 06/15/1998

Littleton, Colorado 04/20/1999

Taber, Alberta, Canada 05/28/1999

Conyers, Georgia 05/20/1999

Deming, New Mexico 11/19/1999

Fort Gibson, Oklahoma 12/06/1999

Mt. Morris Twp., Michigan 02/29/2000

Savannah, Georgia 03/10/2000

Lake Worth, Florida 05/26/2000

New Orleans, Louisiana 09/26/2000

Baltimore, Maryland 01/17/2001

Santee, California 03/05/2001

Williamsport, Pennsylvania 03/07/2001

El Cajon, California 03/22/2001

Gary, Indiana 03/30/2001

Caro, Michigan 11/12/2001

New York, New York 01/15/2002

New Orleans, Louisiana 04/14/2003

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Red Lion, Pennsylvania 04/24/2003  
Cold Spring, Minnesota 09/24/2003  
Red Lake, Minnesota 03/21/2005  
Jacksboro, Tennessee 11/08/2005  
Essex, Vermont 08/24/2006  
Bailey, Colorado 09/26/2006  
Cazenovia, Wisconsin 09/29/2006  
Nickel Mines, Pennsylvania 10/03/2006?

Sincerely,

Concerned Student

-----

Reply:

Dear Concerned Student:

Sorry,

I am not allowed in schools!

Sincerely,

God

-----

How did this get started?...

-----

Perhaps when Madeline Murray O'Hare complained  
She didn't want any prayer in our schools.

And the courts said, OK.

-----

Then, someone said you better not

Read the Bible in school,  
the Bible that says  
"thou shalt not kill,  
Thou shalt not steal,  
And love your neighbors as yourself,"

And the courts said, OK...

-----

Dr. Benjamin Spock said  
We shouldn't spank our children  
When they misbehaved  
Because their little personalities  
Would be warped and we might damage their self-esteem.

And we said,  
An expert should know what he's talking about  
So we won't spank them anymore..

-----

Then someone said  
Teachers and principals better not  
Discipline our children when they misbehave.  
And the school administrators said  
No faculty member in this school  
Better touch a student when they misbehave  
Because we don't want any bad publicity,  
And we surely don't want to be sued.

And we accepted their reasoning...

-----

Then someone said,  
let's let our daughters have abortions if they want,  
And they won't even have to tell their parents.

And the courts said, that's a grand idea.

-----  
Then some wise school board member said,  
Since boys will be boys  
And they're going to do it anyway,  
let's give our sons all the condoms they want,  
So they can have all the fun they desire,  
And we won't have to tell their parents they got them at  
school.

And the courts said, that's another great idea...

-----  
Then some of our top elected officials said  
It doesn't matter what we do in private as long as we do  
our jobs.

And we said,  
It doesn't matter what anybody, including the President,  
Does in private as long as we have jobs and the economy is  
good....

-----  
And someone else took that appreciation a step further  
And published pictures of nude children  
And then stepped further still by  
Making them available on the Internet.

And the courts said, everyone's entitled to free speech....

-----  
And the entertainment industry said,  
let's make TV shows and movies that promote  
Profanity, violence and illicit sex...  
And let's record music that encourages  
Rape, drugs, murder, suicide, and satanic themes...

And the courts said,

it's just entertainment  
And it has no adverse effect  
And nobody takes it seriously anyway,  
So go right ahead.

-----

Now we're asking ourselves  
Why our children have no conscience,  
Why they don't know right from wrong,  
And why it doesn't bother them to  
Kill strangers, classmates or even themselves.

-----

Undoubtedly,  
If we thought about it long and hard enough,  
We could figure it out.  
I'm sure it has a great deal to do with...

"WE REAP WHAT WE SOW"

posted by Don Haase @ [10:18 AM](#)

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# Eagle Forum Alaska

TUESDAY, OCTOBER 31, 2006

## Judicial Retention Information

- By Glen Biegel *(posted by Don Haase)*

### Why judicial retention matters.

First, what is it? Judicial retention is a periodic opportunity for the public to judge our judges. They are voted on, or 'retained', in our regular elections in what has traditionally been an elective 'non-event.'

Judicial retention matters because the misinterpretation of even a single word in our Constitution leads to overturning supermajorities of legislators and Governors. Our judicial branch was designed to be the least powerful, not the most important. That is no longer the case. Liberalism in all of its forms is not often implemented by our elected legislators. It comes almost exclusively through the courts.

In extreme cases, our judge's rulings can abuse the will of the people by ignoring even a Constitutional Amendment such as the Marriage act that was passed in 1998. The Marriage Act was disregarded in a recent 5 to 0 decision that recognized 'same-sex domestic partnerships' as having the same characteristics as married people, and therefore were eligible for benefits. Read their reasoning:

The Supreme Court Ruling: ACLU vs State of Alaska and Municipality of Anchorage (S-10459)

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to pay public employees who are in committed domestic relationships with same-sex partners less in terms of employee benefits than their coworkers who are married.”

Many same-sex couples are no doubt just as “truly closely related” and “closely connected” as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples, and would choose to get married if they were not prohibited by law from doing so.

There are no references to ‘committed domestic relationships’ or ‘same-sex couples’ in current Alaska law. They are constructs exclusively of the Alaska State Supreme court. This kind of judicial abuse directly contradicts the marriage amendment:

#### Section 1.25 - Marriage.

To be valid or recognized in this State, a marriage may exist only between one man and one woman.

The courts may not grant the benefits of marriage by equating another relationship to marriage. That is specifically rejected in the amendment. Whether you call another relationship a ‘same-sex couple’ or a ‘committed domestic relationship with same-sex partners,’ our Constitution does not allow the courts to equate them to marriage.

The following is the list of judges who are up for retention. While none of the Supreme Court justices are up, that does not mean that the great disparity between public opinion and judicial action cannot be addressed.

#### Relevant Opinions:

**Superior Court - First Judicial District**

**Judge Larry Weeks**

Juneau

09/03/90

Leniency

Court of Appeals Nos. A-8663/8664

Trial Court Nos. 1JU-02-1077 CR

1JU-02-1509 CR

O P I N I O N: [No. 1987 - June 17, 2005]

In this case, the sentencing judge did not specify during his remarks at sentencing whether the defendants sentences were concurrent or consecutive. We hold that, under former AS 12.55.025(e), when a sentencing judge does not specify whether a defendants sentences are concurrent or consecutive, the sentences must be deemed concurrent.

**Judge Larry C. Zervos**

Sitka

09/14/90

Sexual Assault of Children - Lenient

ALASKA MAN SENTENCED TO JAIL FOR MOLESTING TWO GIRLS

A deaf man in Juneau, Alaska was sentenced to eight years in prison after admitting to molesting two girls when they were children. Arley Dominguez, 48, "hugged his wife, smiled and waved his shackled hands at other family members" as he was led out of court last Friday, reported the Juneau Empire. Assistant Public Defender Eric Hedland said his client accepted guilt in the case ever since he was charged in November with eight felonies. "He was willing to take his lumps," said Hedland. Sitka Superior Court Judge Larry Zervos placed Dominguez on probation for 10 years after his release and ordered him to register as a sex-offender and participate in sex-offender treatment arranged by the Department of Corrections.

**Superior Court - Second Judicial District**

**Judge Richard H. Erlich**

Kotzebue

03/08/91

**Judge Ben Esch**

Nome

02/16/96

Bad Judgement - Sexual abuse of a minor

Judge reinstates civil suit against diocese

FAIRBANKS - A judge in Nome reversed himself and now will allow a civil case involving allegations of abuse by a priest to go forward. Superior Court Judge Ben Esch in February dismissed the suit against the Fairbanks Catholic Diocese and the Society of Jesus brought by a woman identified in court documents as Jane Doe 2.

**Superior Court - Third Judicial District**

**Judge Joel Bolger**

Kodiak

09/02/03

**Judge Harold M. Brown**

Kenai 04/08/96

Bad Judgment

Court of Appeals No. A-8809

Appellant, ) Trial Court No. 3KN-03-478 CR

) [No. 5114 – September 13, 2006]

Superior Court Judge Harold M. Brown granted a motion to suppress McCurdy's statements, including evidence of McCurdy's conduct pointing out the location of the single packet of heroin. However, citing *Smith v. State*,<sup>5</sup> Judge Brown concluded that the heroin would have been "inevitably discovered based solely on information known to the police[,] and [the heroin was] not subject to suppression."

**Judge Charles T. Huguelet**

Kenai

09/02/03

**Judge Peter A. Michalski**

Anchorage

01/31/85

Marriage

Judge Michalski is probably bestknown for his 1996 court decision finding that homosexual partners areentitled to be "married". Alaskan voters apparently disagreed as we votedoverwhelmingly to uphold traditional one man- one woman marriage. Judge Sen Tan ruled in 2000 that the state must pay for convenienceabortions for poor women. His rationale was that if the state was going to pay for prenatal (well-baby) care for these women, they must also fund abortions.

**Judge William F. Morse**

Anchorage

02/27/02

Judicial Elitism

On July 28 Superior Court Judge William Morse determined that Superior Court Judge Michael Jeffery (Barrow) and District Court Judge Nancy Nolan (Anchorage) had timely filed their notices of intention to run for retention on the November 2004 ballot despite the undisputed fact that both judges submitted their declaration of candidacy forms to the Division of Elections over two weeks after the filing deadline, with the request that the Division accept them late. Under Alaska law the notice to file must be made by August 1st before the general election. In addition, the Alaska Supreme Court has held that the Division of Elections has no discretion to accept a late-filed declaration of candidacy, and that the Division must strictly construe the statute requiring this filing. However, in Jeffrey v. Glaiser and Nolan v. Glaiser the court said that the Division of Elections abused its discretion by refusing to put the names of judges on the ballot.

Even though the Division of Elections provides a declaration of candidacy form, Judge Morse determined that Judges Jeffrey and Nolan fulfilled the filing requirement when a Judicial Council employee sent an

email containing the addresses of the judges eligible for retention, without their knowledge, to a temporary employee at the Division of Elections whose job was to coordinate the ballot pamphlet sent to Alaska voters. This Elections employee then mailed the judges information about how to submit ballot pamphlet materials, along with a reminder that they were required to file their declarations of candidacy by August 1. The Judicial Council employee also later sent a reminder to the candidates, stating that if they failed to file a declaration of candidacy with the Division of Elections by August 1, their names would not appear on the ballot.

“The Division of Elections is charged with running a fair election, and this requires clear rules that the public understands,” said Márquez. “The superior court decision recognizes that there are concrete deadlines for filing declarations of candidacy for any office, but establishes ambiguous standards for what constitutes a declaration by a judicial candidate. The burden that this decision places on the Division combined with the importance of the legal issue compels us to seek review by the Alaska Supreme Court.”

**Judge Eric Smith**

Palmer

04/18/96

**Judge John Suddock**

Anchorage

11/14/02

Fathers Rights

Supreme Court No. S-11269

Superior Court No. 3AN-92-2426CI

[No. 5918 - July 1, 2005]

On May 13, 2003, James Ray filed a pro se superior court motion seeking a change of custody, support, and visitation, a combined affidavit and memorandum, and a proposed order. His motion asked the court to stop all child support for C.R. retroactive to the date of the

divorce and stated that C.R. was not his biological or adopted son. James alleged in his motion that he had not been given visitation rights as court-ordered and that he had been allowed to see C.R. only three times since the divorce. His supporting affidavit and memorandum alleged that C.R. was included in the divorce order because it had been determined that there was an existing father-son relationship. James' affidavit also stated that the father-son relationship was stopped when [C.R.'s mother] left the state within a week of divorce and never allowed me visitation with [C.R.].

**Judge Sen K. Tan**

Anchorage

12/04/96

Abortion, public funding, parental consent  
Planned Parenthood of Alaska et al. vs. State of Alaska. In 2003, Judge Sen Tan struck down a law that required young women under the age of 17 to obtain the consent of a parent or a judge before having an abortion. Tan ruled that the law violated teens' rights to equal protection under the state's constitution because it requires them to involve a parent only in their decision to have an abortion, not in other medical decisions such as carrying a pregnancy to term.

**Judge Fred Torrisi**

Dillingham

11/27/96

English Language

**Judge Philip R. Volland**

Anchorage

11/14/02

Judgement Ralph Inga convicted of sexual assault on incapacitated woman. Ralph Inga was tried for sexual assault in the second degree with an incapacitated person and was found guilty by a jury before Judge Michael L. Wolverton Anchorage 12/04/96 Leniency

Judge Volland did not admit the evidence that the

defendant had previously engaged in sexual abuse of the same person and did not even admit evidence that the defendant was on probation and was not supposed to have any contact with the victim.

**Judge Michael L. Wolverton**

Anchorage

12/04/96

Leniency

Downtown shooting, known gang member charged with first-degree assault and misconduct involving weapons. Wolverton approved a known gang-related third-party custodian over the state's objections. Police later could not reach the defendant, and surprise, the custodian was absent. He was later spotted and ran until he was tackled by an officer. He was carrying a stolen .40-caliber Glock.

In another case, Mark Elkins cut off another car in fit of road rage, causing that other vehicle to rollover, killing the driver and fracturing the skull of her son. Wolverton's sentenced Elkins to 12 weeks in jail after pleading no contest to leaving the scene of the accident.

**Superior Court - Fourth Judicial District**

**Judge Leonard R. Devaney, III**

Bethel

02/27/02

**Judge Randy M. Olsen**

Fairbanks

04/28/03

**Judge Mark I. Wood**

Fairbanks

08/30/02

**District Court - First Judicial District**

**Judge Kevin G. Miller**

Ketchikan

08/30/99

**District Court - Third Judicial District**

**Judge Brian K. Clark**

Anchorage

06/11/03

**Judge William L. Estelle**

Palmer

06/11/03

**Judge Gregory Louis Heath**

Palmer

10/11/03

**Judge David S. Landry**

Kenai

11/01/04

**Judge John R. Lohff**

Anchorage

03/08/91

**Judge Gregory Motyka**

Anchorage

07/26/91

**Judge Sigurd E. Murphy**

Anchorage

07/08/92

**Judge Stephanie Rhoades**

Anchorage

07/30/92

Leniency, See Wolverton

**Judge Jack W. Smith**

Anchorage

06/11/03



**Judge John W. Wolfe**

Palmer

11/01/04

**District Court - Fourth Judicial District**

**Judge Winston S. Burbank**

Fairbanks

04/28/03

**Judge Jane F. Kauvar**

Fairbanks

02/18/81

Drug Leniency

DAVID S. NOY, )

) Court of Appeals No. A-

8327

Trial Court No. 4FA-01-3003 CR 1897 August 29, 2003

The question presented in this case is whether AS 11.71.060(a) is constitutional to the extent that it prohibits possession of marijuana by adults in their homes for personal use.

On one level, the answer is straightforward. The Alaska Supreme Court ruled in *Ravin* that the right of privacy codified in article I, section 22 of our state constitution protects the right of adults to possess marijuana in their homes for personal use. When a statute conflicts with a provision of our state constitution, the statute must give way. Thus, a statute which purports to attach criminal penalties to constitutionally protected conduct is void.

posted by Don Haase at [10:01 AM](#)

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