

James Sullivan

From: Carolyn Kuckertz
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To: pressreleasedistribution
Subject: Transcript and Links from Senator Paskvan's Speech this morning on the Senate Floor

Good Afternoon Everyone!

Following is a transcript of Senator Paskvan's speech this morning on the constitutionality of the contingency language included right now in the proposed Capital Budget-

If you would rather listen or watch: http://gavelalaska.org/media/?media_id=SFLS110428A (go to about 9:20 in)

Here are the links to the Alaska Supreme Court Opinions that Senator Paskvan references during his speech:

2001 Opinion: <http://www.touchngo.com/sp/html/sp-5395.htm>

2004 Opinion: <http://www.touchngo.com/sp/html/sp-5768.htm>

Thank you, Mr. President. In the last several days, there's been discussion about the building and I think probably about the state of Alaska as to the constitutionality of the Senate's efforts to advance an energy package. As someone who has worked in the legal system myself for about 30 years and have a tremendous respect for Alaska's constitution, I would hope to be able to offer a few comments about that.

Kind of as an introduction to that- We have three separate branches of government. The Legislative Branch- its function is to adopt policy and appropriate money to advance its policies. The Executive function is to implement that legislative policy and enforce those policies. The Judicial Branch, in this context, may be called upon to determine the constitutional boundaries between the Executive Branch and the Legislative Branch. This is where the independence of the judiciary is absolutely critical when it comes to its constitutional obligation of clarifying the application of the Alaska constitution.

As part of that, the Senate is advancing an energy policy and this plan is a statewide energy policy that brings, I believe, all Alaskans forward. The thought is that the public's highest priority right now is the cost of energy in Alaska and how, across this entire state, the Legislature can address the high of cost of energy. The Senate is advancing in its statewide energy plan, as an item, the generation and distribution of energy all across this state.

Then the question arises and has been discussed, how do we protect all Alaskans? We do not want to leave any region out. We want to protect Alaskans by saying we are all in this together. We want to work towards a solution of the problem of the high cost of energy with the recognition that all Alaskans across the state should be part of that solution. To advance this worthy goal of keeping Alaskans together, there is language which manifests the intent, at least on the Senate side, of keeping all Alaskans together.

Are there constitutional issues which are raised? Unquestionably the answer to that is: yes, there are constitutional issues which are raised. And I say in that regard that Alaska is a very young state. There are not cases. In other words, there's a not case law in Alaska that applies to every circumstance that may apply when there may be tensions between the Executive Branch and the Legislative Branch.

We do not know exactly who shall prevail in a circumstance such as this. But I emphatically state, the question is not about who is right or who is wrong, who should win or who should be the loser, the question is, What is the constitutional answer to these questions? That is what I believe is the goal of what we need to address. What is constitutional answer? Again, the three branches of government are set up exactly for these types of circumstances.

There are standards that can be found in some of our case law that addresses some of the points that the court system may be called upon to analyze when they look at the circumstance of the language that is currently in an appropriation bill. Mr. President, if I could read from select portions of this? (Senate President Stevens: "Without objection, Please Proceed.")

Again, Mr. President, there's a 2001 case that's advanced by, or an opinion of, the Alaska Supreme Court. It sets apart a standard which the courts would look to in determining whether the language within this appropriation bill should prevail or not prevail in the end. And it indicates quote, "The qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent." I do not think we violate that test Mr. President. Next, it says "It must not administer the program of expenditures." Mr. President, the language in this appropriations bill does not administer any of the monies in this program. Next is says, "It must not enact law or amend existing law." This language does neither of those. In other words, it complies with at third component of the test. And, it must not enact or amend existing law. This language does not do that whatsoever. Finally in this five part test, "It must not extend beyond the life of the appropriation and the language must be germane. " That is appropriate to an appropriations bill. I submit that it does satisfy all of this test that is set forth in the 2001 opinion.

So looking to that test, the question is, is what standard will the Alaska Supreme Court apply when looking at the tension between the Executive and the Legislative Branch. In addressing these particular types of cases, the Alaska Supreme Court says, and I again I quote, "We assume that an act of the Legislature is constitutional. The burden of showing unconstitutionality is on the party challenging the enactment. Doubtful cases should be resolved in favor of constitutionality."

The Supreme Court several years after that 2001 opinion issued another opinion and it included in there a very interesting sentence that I would like to read to the body today. In addressing again the tensions between the Executive Branch and the Legislative Branch, the Supreme Court in 2004 looked at the language used by the drafters of the Constitution, looked to the minutes of the discussions as to what was being discussed at that time. This is what in 2004 the Alaska Supreme Court said: "The minutes indicate that the delegates never intended the governor's article 2 appropriations veto power to apply to anything other than monetary appropriations." End quote.

Mr. President, in conclusion, I think that there is a solid foundation for the Senate to advance this language as part of a statewide energy plan. It is part of a cohesive package to not only bring all Alaskans together, but to

keep all Alaskans together. The question is, is the extent of the constitutionality of the governor's veto power? It is not well established. In other words, the governor does have risk of constitutional significance and I believe that it's likely that the veto power will be strictly construed in these circumstances. Second, the Senate as a separate branch of government is legitimately asserting its policy and appropriations power. But it also has risk. Again, because we do not have case law to say precisely what the parameters of the Legislative power of policy making and appropriations is in the precise circumstance. So both the Executive Branch and the Legislative Branch do have some risk in this circumstance. But again we are under the standard that in doubtful cases, the Supreme Court will look at that and say 'even under doubtful cases the presumption shall be constitutionality as to the Legislative activity.'

I think the public should understand that there is no risk to Alaska's constitution itself. There is no changing of the constitution that is sought here whatsoever. I do stand in awe to think of the drafters of the Constitution, now more than 50 years ago, that set up the three branches of government at that time to address exactly the circumstances such as this. I think we have a wonderful system that we work within. As a legislator, one of the 60 that are elected from around this state, I believe it is my constitutional job to advance the policy making and appropriation power that this separate branch of government has and I thank the body for listening.

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