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## Research Brief

TO: Representative Max Gruenberg  
FROM: Chuck Burnham, Legislative Analyst  
DATE: November 6, 2012  
RE: Legislative Attempts to Defund or Disempower the Alaska Judicial Council  
*LRS Report 13.081*

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*You asked if legislators have attempted to defund or disempower the Alaska Judicial Council. You were particularly interested in such attempts made through sub-committees of the House Finance Committee.*

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As you know, the Alaska Judicial Council (AJC) is an independent citizens' commission created by Article IV, Section 8, of the Alaska Constitution.<sup>1</sup> Six members of the Council serve staggered, six-year terms and are comprised of three attorneys selected by the Alaska Bar Association and three non-attorneys appointed by the governor and approved by the legislature. The Chief Justice of the Alaska Supreme Court serves as the seventh member and chair of the AJC. The group serves two primary functions: screening applicants for judicial vacancies and forwarding the names of the most qualified individuals to the governor for selection; and evaluating the performance of sitting judges and recommending to voters whether they should be retained.<sup>2</sup> This system of appointment and retention—commonly known as the "Missouri Plan"—was crafted by delegates to the Alaska Constitutional Convention after significant deliberation and debate in order to avoid the politicization of the judiciary that was expected to occur should judges be subject to election by popular vote.<sup>3</sup>

Because the AJC recommends judges for appointment and retention, its decisions periodically come into question when a given judge's decision in a case is unpopular with a portion of the population. On a few occasions, despite the AJC's constitutional authority, this criticism has gone beyond the general public as a number of governors and legislators have challenged the role of the Council and sought to weaken it through executive action or by cutting its budget.

In 1993, Governor Hickel unsuccessfully requested that the council reconsider nine applicants passed over in favor of the four individuals it recommended to fill a vacancy. Although there was concern that a constitutional crisis would erupt over the executive's desire to appoint more politically conservative judges, the issue was settled when the governor chose from the AJC recommendations. The incident prompted the AJC to change its by-laws, adding a sentence reading "The Council will not reconsider the names submitted to the Governor after the nominees are submitted to the Governor."<sup>4</sup>

In 1998, following court decisions striking down anti-abortion laws and another challenging a gay-marriage ban, a number of conservative legislators sought constitutional amendments through HJR 47 and SJR 34 to make appellate judges and all members of the Judicial Council subject to legislative approval.<sup>5</sup> Neither measure received a floor vote. In following years, however, conservatives were encouraged by strong majorities in the legislature and the 2002 election of a governor who mentioned reform of the Council during his campaign to again attempt changes to the AJC.

In August 2004, Governor Murkowski responded to recommendations from the Council with a letter stating, "After careful consideration I have decided to reject the three candidates you have proposed." This response—the first outright rejection by

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<sup>1</sup> Three other sections of Article IV detail aspects of the Council: Section 9 directs the Council to conduct studies and make recommendations to the Legislature and Supreme Court for improving administration of justice; Section 13 requires that Council members, as well as justices and judges, be compensated "as prescribed by law"; and Section 16 delineates the nomination process and terms of service of the first Judicial Council. A catalog of all laws pertaining to the Council is available at <http://www.ajc.state.ak.us/about/aklaw.html>.

<sup>2</sup> More information on the AJC is available on the Commission's website at <http://www.ajc.state.ak.us/index.html>.

<sup>3</sup> Constitutional Convention minutes on this topic are available online at <http://www.ajc.state.ak.us/about/convmin.html>.

<sup>4</sup> Sheila Toomey, "It's Official: No Substitutions on Judicial Menu: By-Law Changes Says Governor Can't Ask for More 'Qualified Nominees' for Judgeships," *Anchorage Daily News*, November 4, 1993, p. E1.

<sup>5</sup> Text of the measures, which are identical, is available at [http://www.legis.state.ak.us/basis/get\\_bill.asp?bill=HJR%2047&session=20](http://www.legis.state.ak.us/basis/get_bill.asp?bill=HJR%2047&session=20).

a governor of AJC recommendations and an apparent violation of the state constitution—brought swift criticism, the seeking of an injunction on the governor from the legislature, and a lawsuit from the Alaska Public Interest Research Group, but approval from conservative critics of the state's judiciary and the Council. Governor Murkowski stated that nothing barred the Council from sending him an expanded list of nominees and in fact the AJC should forward all qualified nominees rather than the select few it deemed most qualified.<sup>6</sup> Ultimately the governor relented, selecting a nominee from the Council's recommendations; however, the incident increased resentment of the Council's protected status, stoking interest among conservatives in changing the appointment process, and prompting a joint meeting of House and Senate Judiciary Committees in September 2004.<sup>7</sup>

Following Governor Murkowski's election, the budget of the AJC began coming under pressure. In fiscal year (FY) 2003, the Council was allocated roughly \$839,000; by FY 2005, that figure had dropped to about \$753,000. During the budget process for FY 2006, which occurred a few months following the Governor's conflict with the AJC, the House Finance Sub-Committee with oversight of the Council's budget recommended a net decrease of \$83,000 from the previous year's budget, indicating that two of the AJC's seven staff positions were unnecessary.<sup>8</sup> Around the same time, Finance Chair Rep. Mike Chenault suggested that the Council was overstaffed compared with similar organizations in other states, and proposed cutting six positions and \$318,200.<sup>9</sup> Ultimately, the legislature approved a budget of approximately \$705,000 for FY2006. In subsequent years the Council's budget has steadily increased, reaching roughly \$1.1 million in FY 2013.

We hope this is helpful. If you have questions or need additional information, please let us know.

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<sup>6</sup> Sheila Toomey, "Rejection of Judge List is 'No Crisis'—Murkowski Aide: The Governor Wants to Change the Judiciary Selection Process," *Anchorage Daily News*, September 3, 2004, p. B1.

<sup>7</sup> Minutes from that meeting can be accessed at <http://www.legis.state.ak.us/pdf/23/M/HJUD2004-09-300912.PDF>.

<sup>8</sup> As you may know, subcommittee meetings are not typically recorded as a matter of course and minutes are not systematically kept or published. As a result, it is impossible to know the extent to which cuts to the AJC budget have been introduced or discussed in those bodies over the years. The information we cite in this report is taken from news media and budget documents.

<sup>9</sup> We include two *Anchorage Daily News* articles on this topic as Attachment A.

### **Attachment A**

Sean Cockerham, "Lawmakers Seek to Ax Judicial Council Budget—Tensions: Agency would be Out \$318,200 and Six Staff Positions," *Anchorage Daily News*, March 4, 2005, p. B1

Matt Voltz, "House Panel Recommends Judicial Council Cuts—Budget: Subcommittee Advises \$83,000 Reduction," *Anchorage Daily News*, March 8, 2005, p. B7



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### Lawmakers seek to ax judicial council budget - TENSIONS: Agency would be out \$318,200 and six staff positions.

Anchorage Daily News (AK) - Friday, March 4, 2005

Author: SEAN COCKERHAM Anchorage Daily News ; Staff

The Alaska Judicial Council faces a massive budget cut from the Legislature just months after it battled with Gov. Frank Murkowski over an Anchorage judgeship.

Kenai Republican Rep. Mike Chenault, in charge of the court system budget, said the judicial agency is overstaffed. He has proposed to cut its budget almost in half and drop six staff positions. That would leave the council, whose duties include screening applicants for state judgeships, with just an executive director and secretary.

Larry Cohn, the executive director, said the council would be able to do "practically none" of its work without the staff.

"It would reduce the quality of our judiciary," he said.

The council, in addition to interviewing and screening applicants for judgeships, evaluates judges and gives recommendations to the public on whether they should keep their jobs. It also conducts studies on justice issues in Alaska. One, for example, explored the fairness of felony prosecutions.

The staff provides support for the council's volunteer public members.

Democrats in the Legislature claimed the cut was at least partly political revenge after the council's fight with the governor last fall. Murkowski balked at filling a vacant Anchorage judgeship from a list of three nominees forwarded by the council. Murkowski said he wanted to be able to choose from all qualified applicants and not just the short list provided by the council.

The Alaska Constitution tells the independent council to review the judge applicants and forward two or more names to the governor. The framers said they wanted to make the selection of judges as nonpolitical as possible.

Murkowski ended up appointing a judge nominated by the council but not before a political uproar.

There's often tension between the Republican-controlled Legislature and judges -- over abortion, for example.

"Punishing the judicial council because they don't like what the judicial council does is, in my mind, an abuse of the budget process," said Rep. Ethan Berkowitz, D-Anchorage.

But Chenault, chairman of the House court budget subcommittee, said it has nothing to do with punishment.

"The issue is that, in our minds, they can't justify the amount of employees for the amount of work that they have," the Kenai Republican said.

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He said the council has done just seven research reports in the past five years. Now that much of its work can be done over the Internet, the council ought to be more efficient, he said.

Cohn, the council's executive director, disagreed with Chenault's criticism.

"I think it reflects a real misunderstanding of what the judicial council does and why it is we do it," he said.

Cohn said the reports, requested by the courts, the Legislature or the governor, are based on original research and can be more than 400 pages long. He said the council's workload has gone up in recent years as the rate of vacancies in judgeships doubled.

He said the proposed cut from \$750,000 to \$431,800 blindsided him; the Legislature hadn't discussed it with the council, he said.

Chenault, the main House architect of the state operating budget, said his cut is far from final. The Legislature is going to talk about it, he said. He also said he supports the council's mission.

"It's simply a matter of making them accountable for the employees and the amount of money we spend ... in my position I'm charged with counting dollars," he said.

Anchorage Republican Rep. Lesil McGuire, the chair of the House Judiciary Committee, said she didn't know the details of the proposed cut. But she said it troubled her.

"Instinctively, I would tell you that is a dangerous move, considering all the (judicial) vacancies we've had and all those that are predicted," McGuire said.

Daily News reporter Sean Cockerham can be reached in Juneau at [scockerham@adn.com](mailto:scockerham@adn.com)

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## House panel recommends Judicial Council cuts - BUDGET: Subcommittee advises \$83,000 reduction.

Anchorage Daily News (AK) - Tuesday, March 8, 2005

Author: MATT VOLZ The Associated Press ; WIRE

A House subcommittee has recommended cutting the budget of the Alaska Judicial Council by more than \$83,000, which would be the second consecutive year the council's budget has been reduced.

The council had requested an \$81,600 incremental increase of its \$753,200 budget for the next fiscal year. The House Finance subcommittee on Monday approved that increase, but then turned around and deleted \$165,300 from the council's budget

The cuts are meant to delete two staff positions that should streamline the council, said House Finance Co-Chairman Mike Chenault, R-Nikiski.

"I don't believe there is any other council anywhere that has that amount of staff associated with it," Chenault said.

The council nominates people to fill judicial vacancies, evaluates judges' performances and researches ways to improve Alaska's justice system. The council has three members and a staff of seven.

The cuts would immediately affect the council's operations, said executive director Larry Cohn.

"It would have a significant impact on our ability to fulfill our constitutional and statutory responsibilities," Cohn said. "The timing of a cut like this is compounded by the fact that our workload has increased."

Chenault and fellow Republican Reps. John Harris of Valdez, Pete Kott and Nancy Dahlstrom, both from Eagle River, voted for the budget cut.

Democratic Reps. Sharon Cissna and Max Gruenberg, both from Anchorage, voted against it.

Chenault said the cut was not retribution for a dispute between Republican Gov. Frank Murkowski and the Judicial Council on filling a judicial vacancy.

Last September, Murkowski rejected the council's three recommendations to fill an Anchorage Superior Court judgeship, only to back down after a lawsuit was filed and Murkowski was accused of challenging the council's constitutional authority.

Chenault said he has had no communication with the governor's office about the council's budget.

"The retaliation issue is the issue that probably upsets me the most," he said.

Kott said he voted for the cut, but only to prevent holding up the budget process. He said he would like to see the council's budget restored to what it was.

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"I hope the Judicial Council comes forward and makes their case," Kott said.

Gruenberg said that the council does important work and that its studies are objective and scholarly.

"These are people who are totally independent; they have no ax to grind," he said.

The recommendation goes before the full House Finance Committee.

Last year, the Legislature cut \$50,000 from the council's budget and did not fund employee benefit increases of \$30,000, Cohn said.

Over the past three years, Cohn said, the number of judicial vacancies has doubled over the historical average. As the population grows and the judiciary continues to age, that trend is likely to continue, Cohn said.

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