

## Daniel George

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**From:** Alison Arians <alisonarians@gmail.com>  
**Sent:** Monday, March 23, 2015 11:32 AM  
**To:** Senate State Affairs  
**Subject:** SJR 3 testimony

Dear Members of the Senate State Affairs Committee:  
Senator Stoltz, Senator Coghill, Senator Huggins, Senator McGuire, and Senator Wielechowski,

My name is Alison Arians. Thank you for the opportunity to testify on SJR 3.

I was born and raised in Alaska, and I am a small business owner in Anchorage. My husband and I opened Rise & Shine Bakery 8 years ago. I'm not an attorney, and I'm testifying against SJR 3.

As a small business owner, I appreciate efficiency, a limited bureaucracy, and expert advice. I agree with the way our Judicial Council works now. Adding more people to the group will add significant expense to the travel budgets of this group.

I'm comfortable with asking people with law degrees to evaluate their peers. The combination seems efficient the way it is. I respect the Chief Justice's opinion, if necessary for her or him to vote, to know whether a judge is well qualified for a job. Also, I think the citizen members on the group deserve a little more credit for being able to make good recommendations to their group, and to back them up. It's only been 16 times out of 1,149 votes when the Chief Justice sided with the attorney group against the public members—and it looks to me like the group works very well, since 99% of the time, that's not happening!

For several years I volunteered as a Court-Appointed Special Advocate. I acted as a volunteer guardian *ad litem* for children, and that's the only experience I have in front of a judge. I was impressed by the caliber of our judges then, and want to retain that kind of high quality. It's important to me that the judges making decisions about the future of our citizens are evaluated by their merit—not by their political leanings.

When I vote for the judges, I want to be able to know that the judges I vote for are well-qualified, and I believe that the Judicial Council as it stands is effective and efficient.

Sincerely,  
Alison Arians  
12900 Badger Lane  
Anchorage, AK 99516  
(907) 748-3712  
[alison.arians@gmail.com](mailto:alison.arians@gmail.com)

## **PLEASE VOTE “NO “ON SJR 3**

Amending our Constitution is hard. It takes agreement of 2/3rds of the House and Senate just to get the process started. That difficulty, that barrier to amendment, was intentional on the part of the drafters of our Constitution because they did not want it amended unless there was a real problem to be solved.

The drafters did not believe in the notion of “just let the voters decide.” Instead, they charged the legislature with making a reasoned and informed and non-political decision as to whether the Constitution needs amendment. A vote for SJR3 would be an endorsement by you to the people that there is a serious problem with the Constitution. Can you honestly say that?

Nobody has identified any problem that SJR3 will solve. Why would we want to change the system that has worked so well? One answer I hear from a few is that the amendment will result in judges who will rule in ways more to their liking. That is problematic at best:

1. There is no way to know who will be in the legislature when judicial council members in the future are confirmed or even who they will be.
2. There I no way to know during the confirmation process how a judicial council member will vote when selecting judges to be appointed by the governor.
3. You cannot know who will apply to be a judge.
4. You cannot know who will be governor when it comes time to appoint a judge.
5. You cannot know who the governor will appoint when given a choice.
6. And you certainly cannot know how a judge will rule when ultimately appointed.

If you are inclined to vote for SJR3 because you believe that it will result in rulings more in line with your political philosophy, please remember that one of the most liberal judges in our history was the very conservative governor of California, Earl Warren, appointed to the US Supreme court by a very conservative Dwight Eisenhower.

Julian Mason      8101 White Drive    Anchorage 99507    [julian@ak.net](mailto:julian@ak.net)

## Daniel George

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**From:** Eric McCallum <ericmccallum5@gmail.com> on behalf of Eric Mccallum <mccallum@alaska.net>  
**Sent:** Monday, March 23, 2015 2:49 PM  
**To:** Senate State Affairs  
**Subject:** SJR 3

Dear Senate State Affairs Committee Members,

I own Arctic Wire Rope & Supply, an industrial supply company in Anchorage.

I am writing to encourage you to leave the Alaska Judicial Council format as is and reject SJR 3., In reading the news and talking to people who live in other states, I am constantly reminded what a model constitution Alaska has.

Our federal and state government is getting so politicized, we need to keep this one branch above the fray and for no other reason than it works amazingly well and does not need “fixing”.

As a business owner I have found that merit based decisions have served me much better than popularity contests.

Please lets leave this one thing alone.

Thank you,

Eric McCallum

14100 Jarvi Dr.

Anchorage 99515

President  
Arctic Wire Rope & Supply  
6407 Arctic Spur Rd  
(907) 529-1218 cell

## Daniel George

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**From:** Barbara Hood <middlerockraven@gmail.com>  
**Sent:** Monday, March 23, 2015 4:03 PM  
**To:** Senate State Affairs  
**Subject:** Oppose SJR 3

Dear Senators,

I'm writing to urge you to oppose SJR3, which would change both the composition and confirmation requirements of the Alaska Judicial Council. This effort to amend the Alaska Constitution's Judiciary Article is unnecessary and ill-advised.

SJR3's sponsor suggests that Alaska is an outlier in its judicial selection process for the role it gives lawyers on the judicial council, which is charged with evaluating and nominating candidates for judgeships. Three members of the council are lawyers, three are members of the public, and the Chief Justice serves as the seventh member, ex officio.

The sponsor quotes a 60-year-old report by consultants to Alaska's Constitutional Convention for the notion that no other jurisdiction gives lawyers such a prominent role. Yet this view fails to acknowledge that Alaska's constitutional framers were among the first to adopt merit selection, which is widely viewed as "the best way to select the best judges." And in the many years since, a number of other jurisdictions have followed Alaska's lead. Now many states employ merit selection in some form, and several have judicial nominating commissions that are virtually identical to our own.

Under merit selection, lawyers play a vital role in ensuring that only the most competent and highly qualified members of the legal profession attain the bench. Alaskans have been well served for over a half century by the current system and efforts to change it should fail.

Thank you for your consideration.

Sincerely,

Barbara Hood  
10161 Middlerock Rd  
Anchorage, AK 99507  
907-301-5362

## Daniel George

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**From:** Sen. Bill Stoltze  
**Subject:** FW: SJR 3

**From:** Barbara L. Schuhmann [mailto:barbara@alaskalaw.com]  
**Sent:** Monday, March 23, 2015 4:44 PM  
**To:** Sen. John Coghill; Senate State Affairs  
**Cc:** Sen. Bill Stoltze; Sen. Charlie Huggins; Sen. Lesil McGuire; Sen. Bill Wielechowski  
**Subject:** SJR 3

March 23, 2015

Dear Senator Coghill:

I understand the Senate State Affairs Committee will hear testimony tomorrow morning. I am submitting this email as my testimony in opposition to SJR3.

SJR 3 proposes to amend the Alaska State Constitution's provisions on the make-up, selection and quorum requirements of the Alaska Judicial Council. Nothing needs to be fixed about the Alaska Judicial Council. And this proposal will do nothing but harm.

The Alaska Judicial Council is a unique agency. It seeks the most qualified of judicial candidates, sends nominations to the Governor, who then appoints from among those nominated.. It also undertakes to study the performance of sitting judges, to assist the electorate when it directly votes on whether or not to retain a state judge. The Judiciary is a separate branch of government. Only members of the Alaska Bar Association can represent clients before a state judge. The bar association undertakes background checks and testing of candidates before allowing a person to become a member of the bar. Members swear an oath, and must follow the rules of professional conduct.

The Constitution requires that there are 3 lawyer members of the AJC, appointed by the Alaska Bar Association, 3 public members appointed by the governor and confirmed by the legislature, and the chief justice of the Alaska Supreme Court, who only votes in case of a tie. SJR 3 seems to be aimed at the lawyer members, as it would double the number of public members, from 3 to 6, and it would require legislative confirmation of the lawyer members except for the chief justice.

I oppose expanding the number of members on the Council. Seven members is a good number for a council of this type. It is an odd number, so tie votes are less likely to occur than with SJR 3's proposed ten-member alternative. Seven is an efficient number. A council with ten members will have more problems finding a time and place to meet than a seven member council will have. Meetings will be longer, to allow all to have a voice in discussions. Meetings will be more expensive, as per diem reimbursements must be paid to more members. We need more efficiency in government, not less.

I oppose requiring legislative approval of the appointment of the Council's lawyer members. Adding a requirement of legislative approval could delay or even destroy the ability of the council to work with a full group of approved members. The legislature could hold up approval of some members. I fail to see how a legislative vote would improve the process, but I can see how it could delay and confuse it.

I oppose changing the requirement of a vote of the majority of the Council, to a vote by a minority, for approval of an action. The Constitution states the Council may act upon a concurrence of four or more of its seven members (4/7). SJR 3 would change this requirement from action by the majority of members, to allow action by a minority

of members, since only a majority (4) of a quorum would be necessary, just four out of ten votes (4/10). If the legislature refused to vote on the confirmation of some members (i.e., the lawyer members), the six public members and chief justice could meet, vote and act with a vote of only 4 of the 10 members. Requiring only a majority of a quorum could allow a minority of members to act on an issue, even if the majority opposes it and just cannot attend a particular meeting, or has not been confirmed by the legislature.

Perhaps SJR 3 recognizes how difficult it will be to get ten members to attend all meetings. Or perhaps it recognizes that it could be difficult to obtain legislative confirmation for all Council members. But these do not supply a reason to allow a minority of members to act on behalf of the Council.

The framers of the Constitution thought that attorney input would be useful to the process of selecting judges. Lawyers who have litigated with other lawyers and before judges have a pretty good idea of how smart, fair and hard working that other lawyer is. Eliminating lawyer input will not help the process and likely would hurt it.

While no human-made institution is perfect, the Alaska Judicial Council has worked well over its lifetime. It seeks to nominate the most qualified candidates to judgeships. It studies the performance of sitting judges to help the electorate in its decision whether to retain a judge or not. Proposed SJR 3 seeks to insert politics into the process of selecting members of the Council, and into the Council's process of nomination and retention of Alaska judges.

Inserting politics into the process, and hurting the efficiency and fairness of the Alaska Judicial Council, will not improve the caliber of judges in Alaska. The current system has worked well, and more efficiently and fairly than it would under SJR 3. I oppose SJR 3 and ask that it be defeated.

Thank you.

Sincerely,

-barbara

Barbara L. Schuhmann, Esq.  
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## Daniel George

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**From:** Bob Groseclose <bob@alaskalaw.com>  
**Sent:** Monday, March 23, 2015 5:31 PM  
**To:** Sen. Bill Stoltze  
**Cc:** Sen. John Coghill; Sen. Charlie Huggins; Sen. Lesil McGuire; Sen. Bill Wielechowski  
**Subject:** Groseclose input re SJR 3

Dear Chair Stoltze and Senate State Affairs Committee members,

I had hoped to testify when SJR 3 was first scheduled before your committee last month. I just learned today of the rescheduled time of tomorrow. Because I will not be available at tomorrow's scheduled start time, please accept this email as my input for tomorrow's scheduled session to enable public input.

I am a past member of the Alaska Judicial Council (2000-2006). I am a current member of the Alaska Judicial Conduct Commission (2013 to present). I have practiced law in Fairbanks since 1976.

1. The current merit selection process (i.e Alaska Constitution Art. IV, sec. 8) works well and would not be improved by SJR 3.

To best assure an independent judiciary as a separate branch of government, the Alaska Constitution framers evaluated the multiple variations for selecting judges. They chose a system that rejected the election of judges and focused selection upon merit — free as much as reasonable from political considerations. For over 50 years, Alaska's merit selection process has met the framers' goals of appropriately insulating the selection of judges from partisan politics. SJR 3 threatens to politicize that process. Instead of the current 7 member composition (including 3 members appointed by the governor, subject to legislative confirmation), SJR 3 would double that number, enabling political appointees to dominate the council. SJR 3 would also require legislative confirmation of the lawyer members, who are already vetted through an Alaska Bar Association election process. This adds further politics. It also risks enabling a minority of the full council to make decisions based upon a quorum that authorizes 4 out of 10 to decide.

2. The goal is an independent judiciary insulated from political considerations.

The experiences of those states that require and enable the election of judges serve in stark contrast to Alaska's merit selection process. Alaska's selection process is touted as the model to follow, elsewhere in the country and world. While SJR 3 does not propose the election of judges, it ramps up political considerations to a level that is potentially worse. While purporting to enhance democratic principles, SJR3 instead would weaken the independence of the judiciary by enabling the state's executive (governor) greater control of judicial selection through a doubling of the council seats filled by gubernatorial appointment.

3. SJR 3 will cost the state more to implement, with less—not greater-- efficiency.

It is fundamental to all group dynamics that the greater the number of participants the greater the scheduling conflicts that need to be avoided. The greater the number, the more plane fares and per diem are required. Far from the glamour associated with such selection exercises as portrayed on “American Idol,” the work of judging judicial candidates involves work. Hours, days, and weeks of it. This is all volunteer effort. The judicial council has to screen, and evaluate multiple candidates (exceeding twenty candidates in some instances for one vacancy). This involves extensive preparatory reading of resumes, background checks, references, survey input, writing samples and more. This effort is then followed by lengthy meetings that enable each of the council members the opportunity to interview each candidate. Expanding that group from 7 to 10 necessarily expands the time and expense associated with the process.

I urge you to reject SJR 3. Examine carefully the purported reasons advanced in support of SJR 3. Those reasons ring hollow. They will add cost and detract from the goal of promoting a strong and independent judiciary.

Thank you for serving our state and for your consideration of this important issue.

Bob Groseclose

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OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPB

**FAX SHEET**

**TO:** Daniel George  
**FAX NO.:** (907) 465-4928  
**FROM:** Don McClintock  
**RE:** Justice Not Politics

**MESSAGE:** Daniel, The attached documents are being sent to you on behalf of Heather Arnett. They are to be included in the committee packets for tomorrow's hearing.

**DATE:** March 23, 2015

**NAME OF CLIENT:**

**CLIENT NUMBER:**

**NUMBER OF PAGES (including cover):** 8

**FAX OPERATOR:** Jennifer Witaschek

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February 24, 2015

Sent Via Electronic Mail

Members of the 29th Alaska State Legislators

Re: Senate Joint Resolution 3, Alaska Judicial Council

Dear Legislator:

The Alaska Federation of Natives' membership – which includes 165 federally recognized tribes, 146 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs – stands in strong opposition to Senate Joint Resolution 3, which proposes amending Alaska's Constitution to double the number of gubernatorial appointees on the Alaska Judicial Council and requiring all Council members to be confirmed by the Alaska State Legislature.

The founders of the Alaska Constitution structured the Council to insure the impartiality and independent nature of the Judiciary, a co-equal form of government with the Governor and the Legislature. The Council includes three members chosen by the Governor, three attorney members selected by the Board of Governors of the Alaska Bar Association, and the Chief Justice of the Alaska Supreme Court, who votes only to break ties. The Council conducts an exhaustive review of candidates for judgeships, receives public comment through a variety of venues and nominates the most highly qualified applicants to the Governor, who makes the final appointment.

This system has served Alaska well for over 50 years and has provided a state judiciary where Alaskans can feel confident that only the most qualified and most impartial individuals will ascend to a judgeship. Alaska has one of the least politicized state judicial selection and retention systems in the nation, one where judges are not beholden to political influence, but have a sole commitment to supporting the rule of law.

The changes proposed by SJR 3 would allow a Governor to appoint a majority of Council members and would allow the Legislature to approve all members; thus giving the Executive and Legislative branches undue influence over the Judicial branch and undermining the checks and balances that form the foundation of our democracy.

The system is not broken. It has served Alaskans well. It is for these reasons that the voting delegates to the 2014 Annual AFN Convention approved the enclosed Resolution 14-37, 'A Resolution Supporting Alaska's Current System of Selection and Retention of State Court Judges.' On behalf of AFN, I strongly urge you to oppose SJR 3.

Sincerely,

ALASKA FEDERATION OF NATIVES

Julie Kitka  
President



Alaska Federation of Natives  
2014 Annual Convention  
Resolution 14 - 37

- TITLE:** A RESOLUTION SUPPORTING ALASKA'S CURRENT SYSTEM OF SELECTION AND RETENTION OF STATE COURT JUDGES
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 165 federally-recognized tribes, 146 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** The Alaska Judicial Council (AJC) is an independent citizens' commission established by the Alaska Constitution to screen applicants for judicial vacancies, nominate the most qualified applicants for appointment by the governor, evaluate the performance of sitting judges, recommend to voters whether judges should be retained, and conduct research related to the administration of justice in Alaska; and
- WHEREAS:** The Alaska Constitution provides that the AJC shall have seven members, including three attorneys appointed by the Alaska Bar Association, three non-attorneys appointed by the governor and confirmed by the legislature, and the Chief Justice of the Alaska Supreme Court, who acts as the chairperson; and
- WHEREAS:** Through the AJC process the Alaska Constitution created a merit-based system for appointing judges while retaining accountability to the voters, and this Alaska system is widely considered to be one of the best state judicial selection processes in the United States; and
- WHEREAS:** AFN does not support any amendments that would change Alaska's merit-based system for selecting judges into a partisan political process controlled by the governor and in the long term would inevitably diminish the quality and fairness of the state judiciary; and
- WHEREAS:** Alaska Native Tribes, tribal organizations, and individual Alaska Natives subjected to Alaska's civil or criminal judicial system are best served by an independent state judiciary, selected on merit.
- NOW THEREFORE BE IT RESOLVED** that the delegates of the 2014 Annual Convention of the Alaska Federation of Natives support Alaska's current system of selection and retention of state court judges; and
- BE IT FURTHER RESOLVED** that the Alaska Federation of Natives opposes any attempt to amend the Alaska Constitution to alter the composition of the Alaska Judicial Council to politicize the judicial selection process; and

BE IT FURTHER RESOLVED that this resolution shall be the policy of AFN until it is withdrawn or modified by subsequent resolution.

SUBMITTED BY: Bristol Bay Native Corporation, Bristol Bay Native Association, Aleut Corporation, CIRI  
COMMITTEE ACTION: DO PASS  
CONVENTION ACTION: ADOPT



Judicial change likely to backfire: Interior senator's measure would...are partisanship, not less - Fairbanks Daily News-Miner: Editorials

2/23/15, 9:10 AM

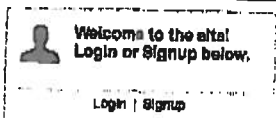
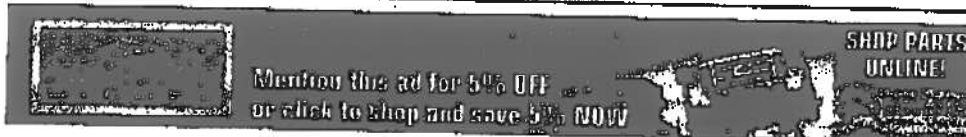


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## Judicial change likely to backfire: Interior senator's measure would lead to more partisanship, not less

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Posted: Sunday, February 22, 2015 12:01 am

Fairbanks Daily News-Miner Editorial

For the second session in a row, Fairbanks Sen. Pete Kelly has introduced a resolution that would fundamentally alter the Alaska Judicial Council. The low-profile council is in charge of recommending candidates for judgeships within the state, as well as making recommendations to voters about whether judges up for retention should stay in their posts. Sen. Kelly's resolution would change the way Judicial Council nominees are picked in a manner he says would make the process more democratic and accountable. Realistically, however, the likely outcome of Sen. Kelly's resolution would be a politicization of the branch of government still largely unaffected by partisanship. Alaska neither needs nor can afford that outcome.

Currently, the Alaska Judicial Council is made up of three members appointed by the governor, three members selected by the Alaska Bar Association and — as a tiebreaker — the Chief Justice of the Alaska Supreme Court. Sen. Kelly's resolution would double the number of gubernatorial appointees, meaning two-thirds of the members of the council would be appointed and confirmed by those holding elected office. In Sen. Kelly's view, this would correct potential abuses of power by council members nominated by the Alaska Bar Association, as those members could always be outvoted by those appointed and confirmed by the governor and Legislature.

In practice, however, it is the elected members of our government and not the bar association who have been far more apt to consider nominees through a partisan lens.



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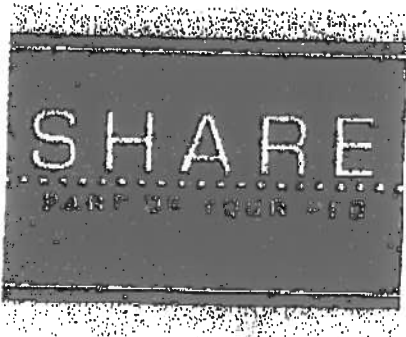
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Page 1 of 8

Judicial change likely to backfire: Interior senator's measure would...ore partisanship, not less - Fairbanks Daily News-Miner: Editorials

2/23/15, 9:10 AM



Legislators at the state and national level complain of "activist judges," but it is they who are most prone to consider — even demand to know — how judicial candidates would vote on hot-button political topics rather than finding candidates who would rule according to judicial precedent and existing law. That's judicial activism of the worst sort. And increasing the sway of those partisan considerations would only erode the impartiality of the judicial branch of government.

As to the notion that the bar association's nominees could somehow thwart the will of the people, there is no reason to believe that has been the case in the past or will be in the future. Bar association nominees are chosen through a detailed and thoroughly nonpartisan survey process of Alaska's lawyers. The state's legal professionals have little stake in partisan political outcomes; in choosing council members, they opt for those who will manage the court's business well, consistently and impartially.

And though Sen. Kelly argues that splits between the governor's and the bar association's appointees on the council have increased in recent years, such splits are rare — and when they have happened, it has been on alternate candidates for posts when the council's members had already selected one or more candidates that had stronger support.

Simply put, Sen. Kelly's resolution — though the intent of its author may well be noble in seeking more public accountability for members of government — is looking to fix a problem that doesn't exist, in a way that likely would create the issue it seeks to address. As it stands, the Alaska Judicial Council has done excellent work selecting candidates for a well-qualified, impartial judiciary that serves the state well. There is no need for the state to make that process more partisan by doubling the number of political appointees on the council.

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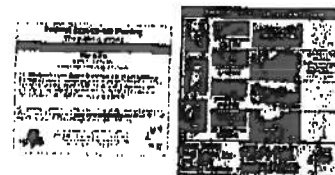
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### Letters to the editor

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## EDITORIAL

### Preserve separation of powers

The separation of powers sounds like a dusty old concept. The first time any of us read about it is in history or government class, usually in the context of the writing of the Constitution, something that happened more than two centuries ago.

But it's a very real, living idea. It comes up when we debate whether the president should continue waging war in foreign countries despite Congress never having voted on the question. Separation of powers, as we know it, bestows Congress with the authority to declare war, after all. The president is tasked with waging it.

The separation of powers also has been rolling social media lately as various wags debate whether, or to what degree, Congress should be doing things like inviting foreign heads of state to speak, or sending letters to countries with whom the president and other international heads of state are actively negotiating.

Separation of powers is neither an archaic nor arcane concept.

And its implications are seen on a much more local level, too. We listened with interest to a presentation at the Greater Wasilla Chamber of Commerce meeting Tuesday from a group of people opposed to Senate Joint Resolution 3, which is currently making its way through the Alaska Senate, that would drastically change the way judges are appointed in Alaska.

To read a full account, see the story on page A1 of today's Frontierman.

Here's a quick recap: The Alaska Judicial Council, a body made up of three attorneys appointed by the Alaska Bar Association and three non-attorneys appointed by the governor, vet judge applicants and forward a list of candidates for the governor to appoint to vacancies.

This has been the process for as long as Alaska has been a state. It's in the state constitution. That's why the resolution in the Senate doesn't change law so much as call for a vote of the people on whether to change it.

Those changes include adding three more non-lawyers and requiring that the attorneys the bar association picks be confirmed by the Legislature.

We oppose this move for two reasons.

First, we want our judiciary to be free of politics. Stacking the council with three more political appointees, to our mind, would whittle away at an independent judiciary.

One need only look to states where judges are elected to see why politics and the

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enforcement of criminal law don't make good bedfellows. Elected judges run on a platform of being tough on crime, and have gone to extreme measures to back up those claims. The fallout in the lives of real people is heartbreaking.

Our second reason relates to the aforementioned concept, the separation of powers.

Forcing legislative confirmation on those nominees and adding more political appointees would, we think, give the legislative and executive branches too much power over the judicial branch. The powers would no longer be separate.

We urge the Legislature to reject this resolution. The current system is not broken. So there is no need to fix it.

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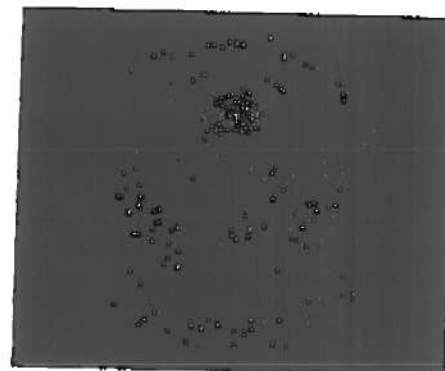
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