

ALASKA STATE LEGISLATURE

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Sponsor Statement – SJR 3

Proposing an amendment to the Constitution of the State of Alaska relating to the membership of the Judicial Council.

Alaska's Constitution Art 1 Sec 2 states, "*All power is inherent with the people. All government originates with the people, is founded on their will only, and is instituted solely for the good of the people as a whole.*" Passage of SJR 3 will help restore this aforementioned principle, as noted by the Constitutional Convention's professional consultants, "These sections in particular go a long way toward withdrawing the judicial branch from the control of the people of the state and placing it under that of the organized bar." The constitutional convention professional consultants also said, "the convention has gone farther than is necessary, or safe, in putting them (Judicial Council) in the hands of a private professional group, however public spirited its members may be."ⁱ

Senate Joint Resolution 3 places a constitutional amendment on the next general election ballot that would allow the voters to decide whether the membership of the Alaska Judicial Council Bar members should require legislative confirmation of all members. Currently, only public members are subject to legislative confirmation. Alaska is one of a handful of states that does not require legislative confirmation of member of the Bar to serve on Judicial Council.

SJR 3 would increase the public's voice on the Judicial Council through legislative confirmation of the members of the Bar. Currently, the attorney members are selected by the Board of Governors of the Bar Association, and are not currently subject to legislative confirmation as they are in many other states. The lack of legislative confirmation is a stark glaring oversight when all members of every other Alaskan regulatory or quasi-judicial agency are subject to confirmation according to Article 3 Section 26 of the Alaska Constitution.

The Sponsor of this legislation believes that the Bar has too much unilateral influence on who is ultimately submitted to the Governor for consideration of becoming a Judge or Justice. Alaska's current crime wave requires a wholistic approach in considering all aspects of the criminal justice system. In some states, judges run for popular election, with "hang em high" judges often winning by popular affirmation. This measure will still protect the integrity of judicial temperament and impartiality with greater accountability by the people's representatives.

SJR 3 will still put the Chief Justice in a perceived and sometimes actual conflict of interest. The Judicial Council must act by a concurrence of 4 members, as required by Article IV of the constitution. According to the Judicial Council Bylaws (Article V, Section 1), the Chief Justice normally does not vote on any matter coming before the council – except in those instances, quoting the Bylaws, "*when to do so could change the result.*" Because of this provision in the

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Council's bylaws, on those occasions when the six regular voting members split 3-3, the Chief Justice suddenly morphs from a non-voting member of the Council into the crucial deciding vote on whether an applicant will be forwarded to the Governor or not. Inevitably, this empowers the Chief Justice to use inclusion or exclusion of an applicant as a means of influencing who will be among his or her peers on the bench. It is even more alarming when this occurs during a Supreme Court nominating vote – and in fact, these tie-breaking votes actually occurred on *each* of the last two Supreme Court vacancies. SJR 3 provides a cursory level of legislative oversight to members of the Bar that serve on the Council. The Bar having unilateral power to appoint who selects judges that the Governor can consider, is an inherent conflict of interest to the profession, and casts doubt on their objectivity with the judicial temperament and philosophy of the candidate.

The tie votes on the Council are especially troubling when it involves a split of all three public (non-attorney) members voting one way, and all the attorney members voting the opposite way. Though rare over the course of the Council's history, these attorney / non-attorney vote splits have happened much more frequently in the past few years. From June 22, 2012 – Oct 10, 2013, there were five attorney / non-attorney split votes, in which all three public members voted to send an applicant's name to the Governor, but the Chief Justice sided with the attorney members and turned down the applicant.

I urge your support for SJR 3 and the additional legislative oversight it would provide to the members of the Bar on Judicial Council.

ⁱ Vic Fisher 1975 University of Alaska Press, Page 116, Professional consultants memorandum reviewing the Alaska Constitutional Convention.