

**RESOLUTION  
of the  
JUNEAU BAR ASSOCIATION**

Whereas, the Alaska Constitution provides that “[a]ppointments [to the Judicial Council] shall be made with due consideration to area representation,” and

Whereas, with the expiration of the term of Loretta Bullard of Nome, the two remaining non-attorney members of the Alaska Judicial Council reside in Southcentral Alaska, (in the Third Judicial District), and

Whereas, Governor Dunleavy’s appointment of Kristie Babcock of Kenai, to take effect on March 1, 2021, will mean that all three of the non-attorney members of the Alaska Judicial Council will reside in Southcentral Alaska, and

Whereas, the Alaska Bar Association has always maintained equal area representation for the attorney members of the Judicial Council throughout the state’s history; and

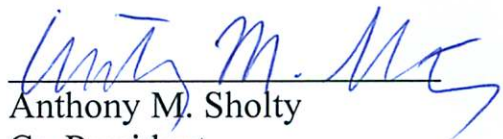
Whereas, Alaska governors have never made appointments to the Judicial Council such that all three non-attorney members were from the same judicial district,

Now therefore, BE IT RESOLVED that the Juneau Bar Association urges Governor Dunleavy to withdraw the appointment of Ms. Babcock and appoint instead a resident of the First, Second, or Fourth Judicial Districts.

Adopted this 19th day of February 2021.



Deborah A. Holbrook  
Co-President  
Juneau Bar Association



Anthony M. Sholty  
Co-President  
Juneau Bar Association

**RESOLUTION**  
**of**  
**KETCHIKAN-AREA MEMBERS OF THE ALASKA BAR ASSOCIATION**  
**(Current and Retired)**

Whereas, the Alaska Constitution provides that "[a]ppointments [to the Judicial Council] shall be made with due consideration to area representation," and

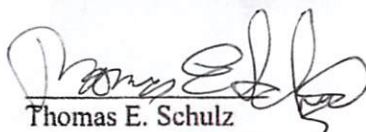
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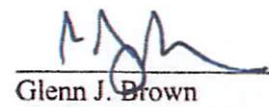
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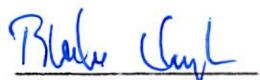
Whereas, Alaska governors have never made appointments to the Judicial Council such that all three non-attorney members were from the same judicial district,


Now therefore, BE IT RESOLVED, that we, the following current and retired Ketchikan-area members of the Alaska Bar Association, urge Governor Dunleavy to withdraw the appointment of Ms. Babcock and appoint instead a resident of the First, Second, or Fourth Judicial Districts.

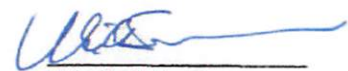
  
Thomas E. Schulz  
Superior Ct. Judge (Ret.)  
AK Bar No. 6503020

  
Margaret A. Bergerud  
AK Bar No. 1502006

  
Glenn J. Brown  
AK Bar No. 1112106

  
Blake M. Chupka  
AK Bar No. 0311083

  
Jay A. Hochberg  
AK Bar No. 1007045

  
Mitchell A. Seaver  
AK Bar No. 7906050



February 4, 2021

Sent Via Electronic Mail

The Honorable Michael Dunleavy  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811  
[janice.mason@alaska.gov](mailto:janice.mason@alaska.gov)

Re: Alaska Judicial Council

Dear Governor Dunleavy,

The Alaska Federation of Natives (AFN) writes to call your attention to a provision in the Alaska Constitution that is being frustrated by your naming Kristie Babcock to the Alaska Judicial Council (Council), and to respectfully ask you to withdraw her name from Legislative consideration to better comply with the mandate for 'area representation' outlined in Article 4, Section 8.

As you know, Article 4 establishes the Judiciary and adopts the Missouri Plan (Plan) for selecting and retaining state judges. Under the Plan, which Alaska follows in its original form, the Council screens and nominates at least two judicial candidates to the Governor when a vacancy occurs. See Art. IV, Sect. 5. The Governor then appoints one of the candidates to the judgeship. See Art. IV, Sect. 6. The judge then stands for retention by Alaska voters at regular intervals which coincide with general elections. See Art. IV, Sect. 8. The process is the preferred best practice because of the transparency and accountability it provides to the public, which is rooted in the membership of the Council.

Specifically, Article 4, Section 8 provides for a seven member, non-partisan Council, including three attorneys appointed by the Alaska Bar Association (ABA), three non-attorneys appointed by the Governor and confirmed by the Legislature, and the Chief Justice of the Alaska Supreme Court, who serves in an ex-officio capacity. That same provision mandates that Council appointments, whether by ABA or the Governor, ' . . . **shall** be made with due consideration to **area representation** . . . . ' (emphasis added). Area representation is achieved when all four Alaska judicial districts are represented on the Council.

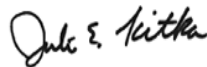
According to the Council's current membership roster, the 'area representation' mandate outlined in Article 4, Section 8 is presently satisfied. ABA appointments have resulted in attorney members from the first, third, and fourth judicial districts, while gubernatorial appointments have resulted in non-attorney members from the second and third judicial districts. Thus, all four Alaska judicial districts are represented on the Council.

Regrettably, the seat that is currently occupied by Lorretta Bullard of Nome—a non-attorney from the second judicial district—expires next month, and you have signaled your intent to replace her with Ms. Babcock of Soldotna, which is in the third judicial district. This presents a problem because for the first time in the state's history: (1) all four judicial districts will not be represented on the Council; and (2) all three non-attorney members will be from the same district, which in this case consolidates undue power and influence in the urban, non-Native third judicial district to the detriment of the more rural, Native second judicial district. Moreover, the unintended consequences of failing to provide fair 'area representation' could be devastating.

Council membership is balanced by design. It reduces the likelihood of politicizing the bench and increases the quality of judicial applicants. By choosing to appoint Ms. Babcock, instead of an equally qualified non-attorney from the second judicial district, the constitutional requirement for 'area representation' is being undermined, and the functionality of the Alaska Court System, which has a reputation for fairness and impartiality, is being called into question.

As such, on behalf of our membership, including 8 regional Native for-profit corporations, 12 regional Native not-for-profit organizations (or tribal consortia), 164 village Native for-profit corporations, and 165 federally recognized Alaska Native tribes—several of which are from the second judicial district—we respectfully ask you to reconsider appointing Ms. Babcock to the Council. We are confident that you can find a number of qualified second judicial district non-attorneys to fill Ms. Bullard's seat, or simply reappoint her, to better comply with the Council's mandate for 'area representation' set out in Article 4, Section 8. Please contact me directly if you have any questions regarding the content of this letter.

Sincerely,



Julie Kitka  
President

Cc: B. Stevens, Chief of Staff  
G. Ritacco, Boards and Commissions Director  
M. Baker, Legislative Director  
House and Senate Members, 32nd Alaska State Legislature  
AFN Co-Chairs and Board Members

# ALASKANS for FAIR and INDEPENDENT COURTS



1120 Huffman Road, Suite 24-603, Anchorage, AK 99515

February 19, 2021

TRANSMITTED VIA EMAIL

Honorable Matt Claman, Chair  
House Judiciary Committee  
Alaska State Legislature  
State Capitol Room 118  
Juneau, AK 99801

*Re: Appointment of Kristie Babcock to Alaska Judicial Council*

Dear Chairman Claman:

I write on behalf of Alaskans for Fair and Independent Courts to express opposition to Governor Dunleavy's appointment of Kristie Babcock of Soldotna to fill the vacancy on the Alaska Judicial Council created by the March 1, 2021 expiring term of Loretta Bullard of Nome. Should Ms. Babcock be confirmed, all lay members of the council will be from a single judicial district.<sup>1</sup> For that reason, we urge the legislature to reject the appointment.

The Alaska Constitution (art. IV, sec. 8) establishes the appointment process. It reads in pertinent part:

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to

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<sup>1</sup> Ms. Babcock would join Lynne Gallant and Dave Parker, all of whom would be from urban areas on the road system within Southcentral Alaska, part of the Third Judicial District. There are three other judicial districts, however, that deserve representation: the First District (Yakutat south including all of southeast Alaska), the Second District (northern and western Alaska from Unalakleet north and west, including Nome, Kotzebue and Utqiagvik), and the Fourth District (from Tok west to Nunivak Island, including Fairbanks and Bethel and north to Fort Yukon).



confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. **Appointments shall be made with due consideration to area representation and without regard to political affiliation.** [emphasis added]

The judicial council provisions were based on the so-called “Missouri Plan”. In Missouri, which pioneered the merit selection process, one attorney and one non-attorney member are required to be selected from each of the three judicial districts in the state. At Alaska’s constitutional convention, the committee on the judiciary opted not to use language requiring selection from specific districts.<sup>2</sup> Nevertheless, delegate George McLaughlin, chair of the committee on the judiciary, first noted, with respect to the attorney members: “It was intended to have the representation from all areas of the Territory.” *Proceedings of the Constitutional Convention*, p. 685.<sup>3</sup> Later he noted that the principles regarding geographical representation among the judicial districts applied equally to attorney and non-attorney members of the council. He then reiterated: “It is the desire of the committee to have a general geographical representation on the judicial council and that includes all areas.” *Proceedings of the Constitutional Convention*, p. 689.

The founders’ intent is clear. The underlying policy is also sound. Having a non- attorney member from each major geographic region of the state helps ensure that the council has a “pulse” on local sentiment in the region. A council member from the region will often have personal familiarity with candidates and will invariably know others who do. The council member can best ascertain the public’s attitudes toward the judiciary.

The legislature can rectify the governor’s proposed imbalance in representation on the council by declining to confirm Ms. Babcock, thus adhering to strict constitutional interpretation and permitting the governor to make a more geographically appropriate appointment.<sup>4</sup>

Sincerely yours,

Donna Goldsmith, Chair  
Alaskans for Fair and Independent Courts

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<sup>2</sup> Though there is no record of discussion, the most plausible explanation for the deviation from the Missouri model was that the Territory of Alaska consisted of four, not three judicial districts. Were each of the districts to be represented, council membership would have had to increase by two.

<sup>3</sup> This principle was most recently reaffirmed when Doug Baily, an attorney representative from Southeast Alaska, voluntarily relinquished his seat on the council in 2007 because he had relocated outside the district.

<sup>4</sup> In early 2011 Governor Parnell initially appointed Donald Haase, a resident of Valdez, to fill the vacancy on the Alaska Judicial Council created by the March 1, 2011 expiring term of Tena Williams of Ketchikan. His appointment created a similar imbalance in regional representation. After Mr. Haase withdrew his name from consideration, Governor Parnell appointed Kenneth Kreitzer of Juneau.

**From:** [REDACTED]  
**To:** [Rep. Matt Claman](#)  
**Subject:** Please vote NOT to confirm Kristie Babcock for the AK Judicial Council  
**Date:** Wednesday, March 03, 2021 10:59:06 PM

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Dear Representative Claman,

Currently with the vice chair, Loretta Bullard, not being reappointed the Alaska Judicial Council consists of a chair and 5 other members: 2 from Anchorage; one from Wasilla; and one from Fairbanks. The sixth, Galen Paine is from Sitka, which is far to the southeast. If the current appointee Kristie Babcock were to be confirmed from Soldotna, that would make all but one of the Council with homes on the road system. Being from Nome, and a past president of the Native Non-Profit, Kawerak, Loretta offered a representation from the large Northern Bush area. She helped balance the Council in terms of areas represented by the council (please see Red Underlined portion of the Constitutional Provisions Concerning the Judicial Council, below). Loretta also championed the plight of sexual violence and missing persons in Rural Alaska. While reappointing Loretta may not be feasible anymore, the Council needs the representation and the focus she had. There are many other viable candidates who could be appointed that would broaden the scope and the representation of the Council. I hope the Legislature compels our Governor to make a pick that is in accordance with the wishes of the AK State Constitution.

Sincerely,

Low Tobin Democratic party Vic president District 39 (Nome Regions)

## General Constitutional Provisions Concerning the Judicial Council

### Alaska Const. Article IV, Section 8. Judicial Council

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner.

Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

### Alaska Const. Article IV, Section 9. Additional Duties

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

### Alaska Const. Article IV, Section 13. Compensation

Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

### Alaska Const. Article XV, Section 16. First Judicial Council

The first members of the judicial council shall, notwithstanding Section 8 of Article IV, be appointed for terms as follows: three attorney members for one, three, and five years respectively, and three non-attorney members for two, four, and six years respectively. The six members so appointed shall, in accordance with Section 5 of Article IV, submit to the governor nominations to fill the initial vacancies on the superior court and the supreme court, including the office of chief justice. After the initial vacancies on the superior and supreme courts are filled, the chief justice shall assume his seat on the judicial council.



**From:** [REDACTED]  
**To:** [Rep. Matt Claman](#)  
**Subject:** Oppose Kristie Babcock appointment to the Judicial Council  
**Date:** Monday, March 29, 2021 9:13:29 AM

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My name is Ray Funk. I am a retired state district court judge from Fairbanks, Alaska and have lived here for over forty years. We have talked at times over the years at bar conventions.

I care deeply about the integrity of the Alaska justice system. I am writing to ask that you consider opposing the confirmation of Kristie Babcock to the Alaska Judicial Council because her appointment undermines the Alaska constitutional mandate for geographic diversity.

The Alaska Constitution provides for the appointment of members as follows: "Appointments shall be made with due consideration to area representation and without regard to political affiliation." Article Four, Section 8.

There are seven members of the council. The chief justice serves but only votes if there is a tie.

Three are appointed by the Alaska Bar. Since statehood and the creation of the four judicial districts, the Bar Association has set up for their appointments to be by four judicial districts, one each from the Third (the Anchorage bowl), the First (Southeast), and a combined Second and Fourth (the northern half of the state).

Here is a link on the geographic representation of all past members of the council that shows the history of this matter.

<http://www.ajc.state.ak.us/about/docs/PastCouncilLog.pdf>

Please review this document to see the Bar Association's ongoing commitment to the constitutional mandate.

Three members are appointed by the Governor and confirmed by the legislature. In large part, governors have followed the same practice as this document linked above shows.

However, the appointment by Governor Dunleavy of Ms. Babcock means that all three of the gubernatorial appointments currently serving will be from the Anchorage bowl. Instead, the Governor should have appointed someone from one of the other three judicial districts, someone outside of South Central Alaska.

His action is in violation of this provision of the Alaska Constitution. Please vote to oppose her confirmation. You will be fulfilling your constitutional duty if you do.

Thank you for your consideration.

Sincerely, Ray Funk

**From:** [REDACTED]  
**To:** [Rep. Matt Claman](#)  
**Subject:** Fwd: alaska judicial council  
**Date:** Monday, March 29, 2021 11:40:07 AM

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I neglected to sign my name to this message sent a few minutes ago.

Mark Andrews  
Fairbanks

Begin forwarded message:

**From:** Mark Andrews <[REDACTED]>  
**Subject:** alaska judicial council  
**Date:** March 29, 2021 at 11:19:59 AM AKDT  
**To:** [Representative.Matt.Claman@akleg.gov](mailto:Representative.Matt.Claman@akleg.gov)

I oppose the confirmation of Kristie Babcock for a seat as a public member of the Alaska Judicial Council. If MS. Babcock is confirmed, all three public members will reside in a single judicial district. The Alaska Constitution disfavors this arrangement.

The Council has three attorney and three non-attorney members. All appointments are to be made "with due consideration to area representation". Alaska Constitution, Art. IV, sec. 8.

The two other public members are from Anchorage (Lynne Gallant) and Wasilla (Dave Parker). Ms. Babcock is from Soldotna. All three locations are within the Third Judicial District.

I do not question Ms. Babcock's qualifications. Without the Due Consideration clause, I would not be writing.

I ask for the appointment of someone from the First, Second, or Fourth judicial district.

# JUSTICE NOT POLITICS ALASKA



## BOARD MEMBERS:

**Bill Gordon**  
Board President,  
Fairbanks

**Walter (Bud)  
Carpeneti**  
Board Vice-President  
Juneau

**David L. Landry**  
Board Secretary-  
Treasurer, Anchorage

**Paul Dillon**  
Director, Juneau

**Lloyd Miller**  
Director, Anchorage

## EXECUTIVE DIRECTOR:

**Heather Arnett**

The Honorable Michael J. Dunleavy

RE: Appointment to the Alaska Judicial Council

Dear Governor Dunleavy:

Justice Not Politics Alaska and its sister organization, Justice Not Politics Alaska Civics Education Fund, work to educate Alaskans on the unique qualities of our merit-based judicial selection and retention system, as created by the Alaska Constitution. We believe that Alaskans got it right in approving our sterling Constitution in 1956, including Article IV, the Judiciary Article.

As you know, the Alaska Judicial Council, the state's judicial nominating commission, established in Alaska's Constitution, consists of three non-attorney members, appointed by the governor and confirmed by the legislature, and three attorney members, appointed by the board of governors of the Alaska Bar Association. The chief justice of the Alaska Supreme Court chairs the Council ex-officio, but rarely votes - only to break ties or if a Council member is absent and a 4<sup>th</sup> vote is needed to take action on an applicant.

With regard to appointment of the members of the Judicial Council, the Alaska Constitution provides: *"Appointments shall be made with due consideration to area representation and without regard to political affiliation."*

The Alaska Bar Association follows this constitutional mandate. As outlined in the standing policies of the board of governors of the Alaska Bar, the three attorney members represent specified seats - one represents the 1<sup>st</sup> Judicial District, one represents the 3<sup>rd</sup> Judicial District, and one represents the combined 2<sup>nd</sup> and 4<sup>th</sup> Judicial Districts – and are filled by members who are elected by attorneys in the respective districts.

With regard to the constitutional mandate of area representation on the council, we are concerned that your recent announcement of intention to appoint Ms. Kristie Babcock to the Alaska Judicial Council will mean that all three of the non-attorney seats on the Council will be filled by individuals who live in the 3<sup>rd</sup> Judicial District (southcentral Alaska).

The Alaska Judicial Council members play a critical role in comprehensively evaluating applicants for judgeships on characteristics such as professional competence, fairness and public service and then forwarding a list of the most highly qualified applicants to you for consideration for judicial appointment. The constitutional framers knew that because Council members evaluate judicial applicants for all of Alaska, it is essential that non-attorney and attorney members of the Council come from diverse regions of the state.

Therefore, to satisfy the Alaska Constitution's provision regarding area representation, we ask you to withdraw your current appointment to the Alaska Judicial Council and to appoint a qualified Alaskan from outside Southcentral Alaska to the council.

Thank you for your consideration of this important issue. We would be happy to discuss this with you.

Sincerely,



Walter (Bud) Carpeneti  
Former Chief Justice, Alaska Supreme Court (Ret.)  
Board Chair  
Justice Not Politics Alaska Civics Education Fund  
(907) 500-2347



Bill Gordon  
Retired Utility Executive  
Board Chair  
Justice Not Politics Alaska  
(206) 819-7811

c:

Mr. Ben Stevens, Chief of Staff  
Ms. Gina Ritacco, Director, Boards and Commissions  
Ms. Angela Hull, Director of Constituent Relations