

# ALASKA STATE LEGISLATURE

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### **SB 31 - Sponsor Statement** **SELECTION AND REVIEW OF JUDGES**

***"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct.***

Alaska's constitution is clear, there are two tiers of judges.

1. Constitutional Judges: Superior Court Judges and Supreme Court Justices must be vetted by the Judicial Council (Council) and the Governor can only select from a list of two or more names submitted by the Council. SB 31 holds constitutional judges harmless. The operating authority of this provision is: Art IV Sec 5. *"The Governor shall fill any vacancy in an office of the supreme court justice or superior court judge by appointing one of two or more persons nominated by the Judicial Council.*
2. Statutory Judges: District, Appellate and Magistrates. Existing statute currently follows the Judicial Council nomination process. However, judicial candidates are subject to the legislature's discretion on how they are selected, appointed and whether they are confirmed by the legislature. SB 31 exercises the legislature's delegated constitutional authority to set policy on how these statutory judges are selected to serve on the bench. The operating authority of the provision is: Art IV Sec 4. *"Judges of other courts shall be selected in a manner, for terms, and with qualifications as prescribed by law."*

Currently, magistrates serve at the pleasure of the presiding superior court judge. Appellate and District Court Judges are nominated in a statute defined process that mirrors the Art IV Sec 5 Judicial Council process.

The Council is structured to give a majority of the Alaska Bar (Bar) members the control of who gets to be a judge or justice. The deciding vote in a tie is given to the ex-officio seventh member, the Chief Justice. The Chief Justice has voted 79 times to break ties since 1984.

Additionally, all judicial candidate names are subject to a Bar member-controlled prescreening process. Bar members of the Council are appointed internally by the Bar with no legislative confirmation or administrative oversight. Virtually all the Judiciary Branch is, "beyond the reach of democratic controls." There is an old saying, "power corrupts, and absolute power corrupts absolutely." While the bill sponsor is not expressly alleging corruption within the Judiciary, it is undeniable that the Bar exercises tremendous power over the judiciary.

In a legislative briefing to a joint session of the legislature, Chief Justice Winfrey recently decried the legislature meddling in the Judiciary, claiming there are no politics in the Judiciary. If you disagree, he further implied that you are just a sore loser. He was adamant that the people's representatives should not influence the selections of judges.

However, the constitutional framers that sought to protect upper benches from political meddling, against their own convention consultant's warnings, yet left the lower benches up to legislative control. Up to this point, the legislature ceded 100% control, and it mirrors the "constitutional" Alaska Bar selection controls.

The Alaska Constitutional Convention Judiciary Committee Consultants wrote, as reported by Vic Fisher in his book, "Alaska's Constitutional Convention." - *"No state constitution has ever gone this far in placing one of the three branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is **necessary or safe** (emphasis added) in putting them in the hands of a private professional group, however, public-spirited its members may be.*

Senate Bill 31 strikes the "safe" constitutional balance envisioned by the framers by giving the governor and the people's representatives an appropriate say in who sits on certain statutory benches. It allows the governor to appoint and the legislature to confirm who fills magistrate, district court and appellate judges. It still allows the Council to screen and recommend all candidates, but the governor is not mandated to appoint only from the Bar submitted list. The governor can nominate and appoint Judicial Council screened magistrate, district, and appellate judges. Even then, the final "safety" cross check would be an up or down vote on each appointment to the lower courts by the legislature.

The sponsor respectfully suggests that lawyers may have a conflict of interest when they rate judges for retention. They all may appear before those judges and are all sworn officers of the court. Imagine if only legislators could nominate who could run for office! Do they gain favor with judges they helped get on the bench? Do they lose favor with those they rate poorly, or vote against? The Constitution is clear, all power is derived from the people, not the Bar or any other private or trade organization. It is well past time the "people's" branch, the legislature, take back its constitutional derived authority in selection of lower judicial appointments.

SB 31 exercises the authority expressly granted in the constitution, for the legislature and governor to prescribe how Magistrates, District Court judges and Appellant Court judges are nominated and confirmed. Thus, awakening the constitutional framers long dormant approach to judicial selections.