

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

June 8, 2001
10:50 a.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator Dave Donley, Vice Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CONTINUATION OF HEARING ON CURRENT STATUS OF THE KATIE JOHN CASE

PREVIOUS COMMITTEE ACTION

See Senate Judiciary minutes dated 6/7/01.

WITNESS REGISTER

Mr. Bruce Botelho
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ACTION NARRATIVE

TAPE 01-36, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR: ... an hour ago and I want to thank him for his patience in abiding with us until we could establish a quorum. The record should reflect we have a quorum present, that being Senators Therriault, Cowdery and Chair Taylor and that we are joined by Representative John Coghill from the House. Mr. Botelho, the primary reason that I had asked to meet with you yesterday was just to get an update and a status report on where your good offices are on the Katie John case and basically to inquire of you how might we assist you if you need assistance further on this matter through the legislative process.

MR. BRUCE BOTELHO, ATTORNEY GENERAL, DEPARTMENT OF LAW: The status, Mr. Chairman, is, as you know, the state must file its petition for cert actually by August 6th. That will be the - running the 90 day period. The Governor has not yet reached a decision about whether that petition will be filed. We, of course, are preparing the appropriate paperwork so that if the decision is to file, it will be of a quality that we trust will get the attention of the Supreme Court. We are, again, making use of John Roberts, whom I think all of you are aware has been nominated by President Bush to serve as a member of the Circuit Court of Appeals for the District of Columbia. But, even before the change of leadership in the U.S. Senate, the sense was that Mr. Roberts would be available to us at least through the end of August. And, at this point he has indicated to us that it's much more ambiguous about whether his nomination will continue or when it will be brought to a vote. In any event, that's the status of our preparation. We believe we've got the adequate resources and we've got the right people to prepare the state's case to the Supreme Court if the Governor makes the decision to go ahead.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: Well, you know, in this article, it was dated - it seemed that he had made a decision. It says, in his own words, that no governor of any state would or should ever voluntarily relinquish their authority to back the federal government - authority back to the federal government. To me, I read that as a clear statement that he was going to - he wasn't going to relinquish our right. How - maybe I'm missing something in that statement. Can you tell me?

ATTORNEY GENERAL BOTELHO: I don't think that the statement is unambiguous. I think the Governor has been clear that he did not intend to, and I don't think that ...

SENATOR COWDERY: Did not intend to?

ATTORNEY GENERAL BOTELHO: ... intend to relinquish voluntarily state authority to the federal government. He's been consistent in his view that he has fought the federal management for the last seven years of this administration. He has, of course, taken that battle both in the district court - it's been to the Ninth Circuit, we petitioned the Supreme Court for cert before - that was denied. We went back to the district court and we appealed to the Ninth Circuit yet again, in a [indisc.] decision, so I think the Governor will be the first to say that he has stood up for state sovereignty, that he has in good faith

discharged his responsibilities. We have lost at every turn and he obviously, right now, is seeking public views. He is consulting with a wide range of persons on the question of whether the state should appeal - what is at stake - or not simply appeal or not appeal, what are the consequences of taking the appeal recognizing that for the first time, with the Ninth Circuit concurring opinion, we have three judges who have put a very compelling argument on the table that the Ninth Circuit decision didn't go far enough. The concurring decision bought many of the arguments we made about the rationale of the Ninth Circuit original panel being entirely misdirected, particularly in its reliance on the deference to agency. The concurring opinion says that's absolutely right - it's not a basis for a decision but, what we do find, and if we were the majority we would hold, that Title 8, read as a whole, is a clear expression of Congress's intent to entirely preempt state management on any navigable water of the state. So one of the issues the Governor's got to weigh here - and he is now and intends to be talking with lawyers, not just my staff, but outside of that framework, former attorneys general, as well as Mr. Roberts, about what the risks are to the state if the Supreme Court were to take the case and adopt the view of the concurring opinion. That is a clear risk that is out there. That is obviously one factor that is weighing on him. He obviously is very familiar with the current conflict between the Ninth Circuit and the Alaska Supreme Court in the Totemof case and has spoken quite eloquently about his views in upholding the dignity of the Alaska Supreme Court's decisions as well. I guess what I'm suggesting is that the statements he has made are not - have not in any way been repudiated but he is carefully reviewing what the consequences are of either taking appeal or not taking appeal and listening to Alaskans who universally have expressed to him that this is an important decision and he is getting, as you might imagine, those on one side who say that if he were to appeal it's a betrayal, and while others who would say if he doesn't appeal it is a betrayal of his duty as governor to bring the people of Alaska together.

SENATOR COWDERY: Well, he says, right in his own words, that it remains - and this is say a month - I don't know - two months ago, March, - it remains my firm stand today that as I appeal the same case to the Ninth Circuit Court of Appeals and to the Supreme Court if necessary. It seems to me, maybe I'm wrong or missing something, but I don't know what has changed since March and today but we were in - with a new political make-up - with a new President and this and that and with our entire Department of Interior and I know that that's not court, and to a certain extent our attorney general there, that we'll never be in a

better position to pursue this case. I think that Senator Taylor said that we want to work with you to do this and I would hope - I - is there something changed that I'm missing since his statement of May the 3rd 'til today? What facts are changed?

ATTORNEY GENERAL BOTELHO: Mr. Chairman, I believe the article is actually of the year 2000 so it's not a matter of a couple of months so what has changed significantly from a legal standpoint is we have a decision of the Ninth Circuit, not only of the majority panel but again, as the concurring and dissenting opinions. And, as I said, one of the factors, it is not the only factor, but one that is certainly part of the calculation here, is what is the risk of the Supreme Court adopting the view of the concurring opinion, not that of the majority, which again, both they and we reject. So that's clearly one factor. I think there are other policy concerns that the Governor has publicly expressed, not just in the context of Katie John but understanding that Katie John, however it's decided, will not ultimately resolve the question of dual management in the state. It is in many respects an interim solution, as it were, it is simply trying to draw the line, allocate the power between the federal government, how much geographically it gets to manage versus the state and if we win it's cut back dramatically. It's largely a game issue and not a fish issue. But, if we lose, it means the federal government and the entrenchment that it has today stays in place or the worst case scenario - under the concurring opinion is that they will control all navigable waters of the state for subsistence fishing. So, whatever is decided there, we're still going to be facing the question of dual management and the Governor's solution has been, and I understand respectfully that people disagree with the view that it's a resolution, is a constitutional amendment which would be consistent with ANILCA - provide for the priority and the participation and the consequence of that would be that the state gets to manage on all waters of the state, whether they're navigable or not, and the federal government is out of the business of day-to-day management.

Number 748

SENATOR COWDERY: Well he said that basically, excuse me - he said this last week in his radio - you know - but the votes are not there. He should realize the votes on the subsistence issue are not there and he can - he seems to bring that up, which I think he's entitled to of course, but the fact is, we don't want to lose this. He should appeal this to keep this going. Maybe in the next legislature the votes would be there but if he doesn't appeal this, as I understand, we're set back 10 or 15

years and through a new process.

ATTORNEY GENERAL BOTELHO: Mr. Chairman, I think part of the discussion as well, and maybe this is one that you would be prepared to advise, is the consequence of the Governor taking appeal and the petition for cert being denied. What steps then should we be prepared to take, either as an administration or as a legislature, as a state. Again, recognizing that the court is getting between eight [thousand] and 10,000 petitions a year. This last term, they took 75 or 76 cases out of that bunch. We recognize - and I will tell you personally, I think we have a compelling story to tell if we decided to take an appeal. But, I think it is far from a sure thing that the court would take it. What do we do then? And, I think the Governor is strategically thinking about what the consequences of all these alternatives are and he's wanting to hear solutions on all of these tracks.

SENATOR COWDERY: But - excuse me -[indisc.] - I don't want to belabor this but we all know - I mean - that the Supreme Court probably has a hundred appeals to them and they don't take one or two. But we also know that the Ninth Circuit Court of Appeals on the Supreme Court's - their track record is not very good on the cases.

ATTORNEY GENERAL BOTELHO: Absolutely right, you're absolutely right.

SENATOR COWDERY: Anyway, I'm sorry.

CHAIRMAN TAYLOR: No, no, John, thank you. Those were all very good questions. Let me, if I could, just ask a couple of things Bruce, and I really appreciate the candor with which you've addressed these issues before the committee. When the Governor wrote this article that many of us have been referring to, did you consult with him or did he talk with you before he wrote it?

ATTORNEY GENERAL BOTELHO: I don't have any specific recollection but I'm sure he did.

CHAIRMAN TAYLOR: On a legal matter [indisc.], I'm just assuming that either you or someone in your office participated and probably assisted in writing it to help him out on what the issues were.

ATTORNEY GENERAL BOTELHO: Yes, I would have been involved in the editing.

CHAIRMAN TAYLOR: Yea, and how to handle it and - I mean - this

was a Metro article where it wasn't some reporter just interviewing somebody and maybe taking statements out of context or misstating them. These are things the Governor actually said himself. I was particularly taken, when I first read this article, by the strong sense of concern expressed about the sovereignty of the state. In fact, the title of it is 'Katie John Appeal is all about Sovereignty' - state sovereignty. I can't imagine a more important issue for any governor to address than the very essence of statehood, and that is whether or not we are sovereign. So I guess my question to you is that certainly none of your advice on that issue has changed, has it Bruce, on the overall question of sovereignty?

ATTORNEY GENERAL BOTELHO: My advice has been consistent in terms of trying to give him the best views that I can about the merits of the case and likelihood of prevailing.

CHAIRMAN TAYLOR: Has your view on that changed any, because I know we have talked about that a lot?

ATTORNEY GENERAL BOTELHO: My view about our likelihood and the correct legal position has not changed.

CHAIRMAN TAYLOR: Good, good. So you agree then that we have a strong stance of prevailing in this case if it gets to the Supreme Court?

ATTORNEY GENERAL BOTELHO: If the matter gets to the Supreme Court, I think the State of Alaska has a fairly strong chance - again, the caveat on the recurring opinion.

Number 1022

CHAIRMAN TAYLOR: I'm pleased to hear that because that's been consistent throughout. I mean even when this matter was first started under the Hickel Administration and we were bringing these issues up, you remained consistent in that throughout, and that's nine years almost now, or eight years. My concerns, I guess, are that why would we want to amend a constitution that the Governor may very well not defend?

ATTORNEY GENERAL BOTELHO: I'm not sure I follow the

CHAIRMAN TAYLOR: You were talking with Senator Cowdery about how it plays into a bigger picture, how Katie John relates to a bigger picture of subsistence and that shouldn't we move away from the dual management - we're actually into triple management because several Native corporations, through their sovereignty

aspects, are now seriously discussing and, to some extent, managing fish and game opportunities on their own lands. So you've got three different management schemes going on: federal, state, and privately-owned Native corporations licensing and doing other things. But you were saying we wanted to move away from that and move back to state management and yet to do so you would amend the very constitution that we are asking that he defend - and some of the very same provisions would have to be amended that we're asking that he defend in the Katie John case.

ATTORNEY GENERAL BOTELHO: I don't see any inconsistency with the Governor calling for an amendment to the Constitution of the State of Alaska, even as he has taken the challenge to the federal courts over the extent of federal jurisdiction. I do not think that's inconsistent at all.

CHAIRMAN TAYLOR: What about the odds - you were talking also in your response to John about the odds of getting before the U.S. Supreme Court. Are those odds any different than what we cased in the Venetie case?

ATTORNEY GENERAL BOTELHO: I don't think, in general terms, they are. The odds were long there. As I look at them, certainly to our advantage are - the fact that it is a Ninth Circuit decision. Again, looking at the statistics. The issue of statutory construction may be intriguing in the context of navigable waters that - and in a broader sense the issue of the Clear Statement Doctrine, in terms of the allocation of powers between a state and the federal government I think are attractive, in a court that is obviously - is primarily focused on constitutional, as opposed to statutory, construction cases. On the other hand ...

CHAIRMAN TAYLOR: The record should reflect that Senator Ellis has joined us.

ATTORNEY GENERAL BOTELHO: ... on the other hand, this is a case that directly applies only to the State of Alaska, although again, we have argued that it has implications and interpretations of navigable waters in other parts of the country. And then I think the sheer number of cases that go to the court - if I were to balance generally, that's what I would say are the factors [indisc.] in favor or in opposition to taking it. I guess there's one other factor that is, in essence, a prerequisite to any case that goes to the Supreme Court on a petition for cert is that there has to be a conflict of jurisprudence and that is usually a situation where you have conflicting circuit court opinions on the same subject - that there's been an opportunity for full development on the issues, a

situation where the Ninth Circuit conflicts with an Eighth Circuit or [indisc.] case. We don't have that but we do have a conflict between the highest court of the State of Alaska and the Ninth Circuit - two competing highest authorities that are of equal stature, interpreting a federal law that applies to the State of Alaska and that provides the analogous situation to a conflict in circuits so - I'm not sure that that is a factor that favors. I would simply say it's a threshold consideration that gets us and 9,000 other cases over the first hurdle.

CHAIRMAN TAYLOR: I wanted to note that Senator Ellis had arrived. Senator, we've been discussing with Mr. Botelho the concerns we had about - does he have sufficient funding, does he need additional support or assistance financially from us? He said he did not, he had adequate funding and that was there anything else we could do to assist with him in preparing this appeal so that it is ready to go when the Governor makes his decision about what he's going to do. He's assured us that he has that well in hand and - is that a fair statement?

ATTORNEY GENERAL BOTELHO: Yes it is.

CHAIRMAN TAYLOR: Moving along. Well and then Senator Cowdery asked several questions, I asked a couple and that's about where we're at right now. And I'm sorry about - we've been chasing people all over the building right now trying to find folks. Senator Therriault.

SENATOR THERRIAULT: Thank you. From the people that contact me that have followed this case and the general population, the general public, they really don't know much about this case but the ones that have followed it and give me a call because they hear things out on the street that causes them concern, to them it's clearly sovereignty. It's a sovereignty issue and that's what the op ed piece sort of indicated and [indisc.] the way the administration looked at it too...

CHAIRMAN TAYLOR: Senator Donley has also joined us, the record should reflect that.

SENATOR THERRIAULT: With the Ninth Circuit's track record, with other states filing - is it amicus?

ATTORNEY GENERAL BOTELHO: Amicus briefs.

SENATOR THERRIAULT: ... supporting us, saying that they also see implications in their states based on the decision that would be reached. The conflict with our Supreme Court - we heard some

testimony, I think yesterday, that there are other U.S. Supreme Court cases similar that the Ninth Circuit sort of runs counter to. It just seems like we're certainly not assured of a victory but there's a lot of issues here that we need to take that next step to get a final answer from and to weigh that with the possibility and that the Supreme Court might go with a minority opinion in the Ninth Circuit just doesn't seem to be that much of a risk. I guess the concern that I'm hearing is that people think that because the Governor appears to have backed off of his fervor for taking this to a final decision, that politics has come into play here and that politics may dictate the decision, really. That's the concern that we're hearing and I do believe that it is a case that we need to take to a final decision. If we don't appeal and we end up with the Ninth Circuit, it doesn't seem like that's any worse than the Supreme Court affirming the Ninth Circuit or turning down the cert. You said well, they might turn down the cert and leave us with the Ninth Circuit. Well, one is not any worse than the other but we wouldn't be left knowing or wondering whether we could have gotten it considered by the court and potentially overturned.

Number 1442

ATTORNEY GENERAL BOTELHO: Mr. Chairman, I understand the concerns that you've heard because I think they've in one way or another surfaced in other contexts and, in fact I think surfaced, as I understand it, yesterday in the testimony of some of the persons who appeared before you. I truly do not know at this point - the Governor has not made a decision other than to say that he is in a consultative mode right now. He clearly is weighing what the risks are. I'm not in a position to share with you directly more than I've said - how I evaluate those risks - but it is not simply a situation of if the Supreme Court and, unlikely but, if the Supreme Court both took the case and decided that it would go with a concurring opinion, a minority opinion, we're asking - we would be asking the court to go with another minority opinion that Title 8 meant preemption by Congress of state management over all navigable waters, we would be appreciably worse off than where we are today and where the Ninth Circuit Court opinion where it is. How great a risk of that scenario is one that's going to be evaluated by people who are more scholarly than I. I trust that the Governor intends to consult with people like John Roberts about that risk as part of the [indisc. - coughing] here. But, again, working through the steps of if we appeal, cert is denied, what is that state's stance towards the status quo? Are we going to say well, we're satisfied with dual management where the feds will handle subsistence on six percent of the waters of the state or what's

our other alternative? Are we going to then look at a constitutional amendment? We're going to continue to hear discussions about changing ANILCA. Under the present climate, certainly that has changed - I would suggest for the worst - given the leadership in the Senate change. Certs is granted and we have either of three alternatives, there are probably others, one of which is that the court conclude ultimately that it improvidently granted cert in the first place, but it could be affirmation of the original Ninth Circuit decision. It could be buying into the concurring opinion or it could adopt the views of the minority, which we espoused, which is that the federal government, Congress, did not have the power - had the power but did not exercise it in making a clear and unequivocal statement that it intended to trump the traditional allocation of powers between the state and federal governments. Those are all consequences, a couple of which would be unacceptable to the State of Alaska. What is our game plan?

CHAIRMAN TAYLOR: Bruce, first, let me make something real clear. This is not a game to this committee. This is not a game to the people of this state and for anybody to suggest - I don't care who it is, I don't care who it is - for anyone to ever suggest that the Governor has exhausted his constitutional responsibilities should he fail to appeal because he took it to the Ninth Circuit or someplace else, that would be a complete and flagrant disregard of your good advice and I would sincerely hope he does not do that based on some other motivating factor because I know sincerely, Bruce, how hard you have worked on this and how strongly you believe and each of your staff believes that this is a good case and a strong case and that there's nothing more important pending before the State of Alaska right now than the sovereignty of the state itself in this conflict between the federal government and the state. And to forfeit that, to have one man unilaterally forfeit that, and then say, well, it's because we may have run into something or that may have been a game plan out here of others to do various things, that would not be acceptable. It just wouldn't be and I know that wouldn't be acceptable to you either as an attorney and as a person who has defended this state and, in fact, vigorously asserted to the Governor, the very words used in this article.

ATTORNEY GENERAL BOTELHO: Mr. Chairman, let me respond. First of all, this is not a game - [you're] absolutely right. There's a lot at stake here. We all appreciate that and one of the possible outcomes is what does this state do in the event that the state is unsuccessful in making its case. What is the alternative that you, the Legislature, along with the Governor, are prepared to contemplate to solve this dilemma that's been

facing the state for the last 11 years - dual management or unitary management of fish and game under the State of Alaska.

CHAIRMAN TAYLOR: But you see, Bruce, that begs the question of are we going to have a decision. You and I and everybody in the room could make a guess about what would the state do if any one of the three alternatives that you very graciously have outlined for us, if any one of those happened, what would we do? Well, we may make that decision. Others following us in these offices may make that decision but that is a decision that they would only have the opportunity to face if, in fact, the appeal is taken. And once the appeal is taken, the state has then exhausted all of its alternatives and the Supreme Court has then rendered a decision if it gets that far, and we will have their direction. But to speculate at this point and then to base our action upon that speculation, would seem to do a disservice both to the people of the state and to the Supreme Court itself, who may very well wish to resolve the question. It's a huge question involving not only the State of Alaska, at least 14 other states have seen fit to file amicus, so I think there is significant concern about the issue of who controls our navigable waters. I don't mean to belittle it but - because I think it is a serious matter that we're here upon today and that is pollution in these very same waters. The Governor was so concerned about jurisdiction in these waters that he called us back for a special session and that's just jurisdiction over who's going to poop in them. I think the more important question is jurisdiction over who owns them. If we yield to the federal government on the Katie John case, do we even have the ability to enforce regulations against the tour ships if the true ownership and jurisdiction of those waters is reserved to the federal government? I mean, this becomes a secondary issue, doesn't it?

ATTORNEY GENERAL BOTELHO: There is much meat to talk about in the comments you've made but let me start out - we do agree on a couple issues, one of which is the Governor does get to make this decision and he's the only one who does get to make the decision about whether an appeal is taken. Second, there is no doubt that in my mind, perhaps in yours, about the Governor's ongoing commitment to the role - his role, in protecting state sovereignty - and I think he has a great record in doing so and you alluded yourself to the navigable waters, the cruiseship issue is absolutely battling the issue of ownership in submerged lands in the Tongass and Glacier Bay. It was not a question of ownership. Katie John will not decide the ownership of the navigable waters of the state. That has long since been resolved in the Submerged Lands Act of 1953. The question is whether Congress has the ability to preempt and did it in fact do so in

passing ANILCA. If they, in fact, did so, we're going to see federal management wherever they decide to exercise it. That, I think, is also clear. We wouldn't be faced with Katie John today. This litigation wouldn't be happening if we had a constitutional amendment that provided for the same priority that ANILCA provides and

CHAIRMAN TAYLOR: But we would have already forfeited that portion of our Constitution to a federal takeover so that kind of begs that issue.

ATTORNEY GENERAL BOTELHO: It is not a forfeiting of the Constitution, Mr. Chairman, it is the Constitution. An amendment, once enacted, is part of that basic document and it can say whatever it wishes and to the extent that it isn't preempted by federal law, the federal Constitution, it is entitled to the same weight as any other part of that document and I, again,

CHAIRMAN TAYLOR: No - I understand the amending process, Bruce. I'm not saying that. But to suggest that the Constitution - we wouldn't have to take up a case before the Supreme Court if we would have forfeited our equal protection rights in this state by amending our Constitution so we no longer have them, that seems to be begging that issue a bit. We could also amend our Constitution to take away the freedom of speech and I wouldn't have to worry about these reporters in the room, would I? And it would be constitutional because we would have amended the Constitution. I don't think we want to go there, do we?

ATTORNEY GENERAL BOTELHO: Certainly not under the framework I provided, which is consistent with the U.S. Constitution. I think you would have some difficulty with that, Mr. Chairman.

CHAIRMAN TAYLOR: Well we just have to convince them to do the same thing. I could get rid of those pesky fellows too, see?

ATTORNEY GENERAL BOTELHO: Right. I leave that - leave that campaign to you, Mr. Chairman.

CHAIRMAN TAYLOR: Let me just say this. We agreed Bruce, the Governor has stood up and defended this Constitution in Venetie, when there was extreme pressure, against him not to do so, and in fact the same arguments were used with him on that issue - 10,000 cases get filed, only one or two get heard. The odds are terrible. Shouldn't we all roll over and give away the sovereignty of this state and call it Indian Country and let them issue license plates and call themselves a nation and do the rest

of it. He stood up against that and he actually brought the suit and we won the suit, 9 - zero. That was again, an overturning, of the very same Ninth Circuit. Now I know that you are concerned, other states are certainly concerned, about the minority opinion - concurring opinion. I share that concern with you. My God, do we dare leave that opinion sitting on the books unchallenged? Will it not then become the argument for every advocate for federal mandate and control to cite to us? I think leaving it there is much more dangerous to us Bruce than challenging it.

ATTORNEY GENERAL BOTELHO: I understand your view, Mr. Chairman, and I will share it with the Governor.

CHAIRMAN TAYLOR: And I would hope you would share that with the Governor and I hope you agree with me on that because I'm concerned about the very sovereignty of our state and I don't think that issue can get resolved without us making that final effort and I believe the Governor's words when he said, if necessary to take it to the United States Supreme Court. I believe that was based on your good advice at the time and you tell me your advice has not changed. You're certainly cautioning him about what happened in the Ninth Circuit but I applaud that and I support you and I want you to know I support him in that effort. If there are any detractors out there telling him he should not appeal, the Governor can say Robin Taylor wants me to appeal, he's a supporter of mine on this issue. And I know of many others in this same room who feel the same way. I mean if he would appreciate or feel assisted by a sense of the Senate, or a sense of the House and Senate, there's a joint session here. We could accomplish that for him very quickly if he feels he needs that or if he would like a sense of this committee to support him in that effort. That's what we're here for.

ATTORNEY GENERAL BOTELHO: Mr. Chairman, I'm sure that if the Legislature cared to express its views, he would be very interested in receiving that.

CHAIRMAN TAYLOR: Senator Donley.

SENATOR DONLEY: I think we should do a sense of this committee. I mean, it's timely. We're not going to get another chance at it. Special session is coming to a close rapidly here, I think. I think we should have a sense of the Senate Judiciary Committee that the Governor should appeal to the Supreme Court.

CHAIRMAN TAYLOR: That's an excellent idea. I appreciate that, and thank you for those comments Bruce. I appreciate them. The

Chair would entertain a motion. Senator Donley?

SENATOR THERRIAULT: Before you make the motion -

CHAIRMAN TAYLOR: Yes.

SENATOR THERRIAULT: There's something we could also accomplish which is a letter signed by members of the committee.

CHAIRMAN TAYLOR: Well that's what would be my intent that if it passes, that we'll put it in letter form and make it available for signatures for the members.

SENATOR THERRIAULT: I think that would be the motion. I personally am leery of the sense of anything.

CHAIRMAN TAYLOR: I can understand.

SENATOR THERRIAULT: That that becomes then a tool that we just have one motion after another whereas a letter from the committee is something - controlled a little bit more by the chairman and that'd be my preference.

SENATOR DONLEY: We've got a motion that the committee - the chairman be authorized to send a letter on behalf of the committee expressing the committee's position.

SENATOR THERRIAULT: With our signatures.

CHAIRMAN TAYLOR: Yes. Is there objection? There being no objection, that passes. Bruce, again, I want to thank you for taking the time to come down. Were there other questions of committee members?

SENATOR WARD: I have one - and I'm not a committee member.

CHAIRMAN TAYLOR: Okay. Go ahead, Senator.

SENATOR WARD: Thank you for the courtesy and I know the session's about to come forth. Mr. Attorney General - and you have brought up constitutional amendments several times at least while - and I apologize, I was up in Finance - but I wanted to ask you a question and I know that the Governor, when he was in Anchorage, he spoke to a very large group of Alaska Natives that happened to be my relatives that live in urban areas and this is a lot of people, and they're concerned about passing a constitutional amendment that makes it to where they don't get subsistence, even though when my Mom was born there were more

Natives in Alaska than there were white people, and my Mom is an Athabaskan and because she lives in a different zip code, she won't have a subsistence preference but the dentist that just moved 35 days ago to rural Alaska, he will have it, not even taking in the fact that he's making the money of a dentist. The Governor said he's concerned about that and would address that to a group of people and - so what have you done as far as the thought process about urban Natives according to this zip code criteria because I've heard nothing back on it at all?

ATTORNEY GENERAL BOTELHO: Mr. Chairman, this is the first I've heard of this particular speech. Obviously there - in our earlier versions - not in the Constitution itself, but in terms of the statutory scheme, we had looked at a couple of different measures, the educational permitting, which is done in some form today, to make sure that urban Natives have the ability - but not just urban Natives - to learn traditional ways of hunting and fishing.

SENATOR WARD: I won't belabor it. Maybe if you could just look at it a little bit because we do have an education on that down on the Kenai Peninsula but, you see, we really already know how to fish. We don't need to be educated. We need to be able to go get some meat and put it in there and we want to be able to get the meat as much as the dentist that just happened to move right across the line in the other zip code. It just doesn't seem fair.

ATTORNEY GENERAL BOTELHO: [Indisc.] as long as it's on the Kenai you're in.

SENATOR WARD: Yea. They're not all on the Kenai. Also, the village of Eklutna is what I'm talking about. That's an original Athabaskan village, as Anchorage was an original Athabaskan village until everybody moved in on top of us and that's what happened. But, because they did, some reason or another, we don't get to have the luxury of living off the land any longer but the dentist in Soldotna that's been there for 34 days does get to. It just doesn't seem right to my Athabaskan Mom or my aunt or any of the other relatives that I have.

ATTORNEY GENERAL BOTELHO: Mr. Chairman, I'll look forward to engaging in discussions about what a constitutional amendment should look like.

SENATOR WARD: Thank you.

CHAIRMAN TAYLOR: And I want to thank you again for your patience

and your courtesy today to come down and visit with us. I really do appreciate that Bruce, and I also appreciate the answers you've given us and the fact that - and I think this is very important - that as attorney general, and as the often - would indicate that you have been advising the Governor on this consistently and that your advice has not changed. And I appreciate hearing that. We still have a strong case. It's a case that needs to be resolved for all the people of Alaska and I sincerely hope that he will - as he gave us his word a year ago, and as you have given us your advice today, I sincerely hope you'll continue to follow that same pattern and I'm pleased to hear you'll be prepared to file whatever documents are necessary by August 6th, and that you feel comfortable that that - and competent that that will be a good document and something that the supremes hopefully will take a look at. Thank you very much for that Bruce, appreciate it. We are adjourned [11:30 a.m.].