

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 19, 2010

1:30 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Dennis Egan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 252

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 257

"An Act relating to funding for youth courts; and relating to accounting for criminal fines."

- HEARD AND HELD

SENATE BILL NO. 92

"An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 252

SHORT TITLE: FAILURE TO APPEAR; RELEASE PROCEDURES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/03/10 (S) READ THE FIRST TIME - REFERRALS  
02/03/10 (S) JUD  
02/12/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/12/10 (S) <Bill Hearing Postponed>  
02/15/10 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/15/10 (S) Scheduled But Not Heard

BILL: SB 257

SHORT TITLE: YOUTH COURTS AND CRIMINAL FINES

SPONSOR(s): SENATOR(s) EGAN

02/05/10 (S) READ THE FIRST TIME - REFERRALS  
02/05/10 (S) JUD, FIN

BILL: SB 92

SHORT TITLE: U.S. PRESIDENTIAL ELECTION COMPACT

SPONSOR(s): DAVIS

02/02/09 (S) READ THE FIRST TIME - REFERRALS  
02/02/09 (S) STA, JUD, FIN  
02/02/10 (S) STA AT 9:00 AM BELTZ 105 (TSBldg)  
02/02/10 (S) Moved SB 92 Out of Committee  
02/02/10 (S) MINUTE(STA)  
02/03/10 (S) STA RPT 3DP 2NR  
02/03/10 (S) DP: MENARD, FRENCH, KOOKESH  
02/03/10 (S) NR: MEYER, PASKVAN

**WITNESS REGISTER**

JESSE KIEHL, staff  
to Senator Dennis Egan  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented information on SB 257 on behalf of the sponsor.

SETH RICKY, Advocate  
Juneau Youth Court

**POSITION STATEMENT:** Testified in support of SB 257.

MEGAN STANGELAND, Advocate

Juneau Youth Court

**POSITION STATEMENT:** Testified in support of SB 257.

SUSAN MCLEAN, Director  
Criminal Division  
Department of Law (DOL)  
Anchorage, AK

**POSITION STATEMENT:** Provided a sectional analysis of SB 252.

SENATOR BETTYE DAVIS  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 92.

QUINN KENDALL, Intern  
to Senator Davis  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented SB 92 on behalf of the sponsor.

TRENT ENGLAND, Director  
Save our States (SOS) Project

**POSITION STATEMENT:** Testified in opposition to SB 92.

JOHN KOZA, Chair  
National Popular Vote

**POSITION STATEMENT:** Testified in support of SB 92.

ROBERT M. HARDAWAY, Professor of Law  
University of Denver  
Sturm College of Law

**POSITION STATEMENT:** Testified in opposition to SB 92.

JAMES GILLES, representing himself  
Bird Creek, AK

**POSITION STATEMENT:** Testified in support of SB 92.

JOSEPH F. ZIMMERMAN, Professor of Science  
Rockefeller College  
State University of New York  
Albany, N.Y.

**POSITION STATEMENT:** Testified in support of SB 92.

DEBBIE JOSLIN, President  
Eagle Forum Alaska  
Delta Junction, AK

**POSITION STATEMENT:** Testified in opposition to SB 92.

BARRY F. FADEM, President  
National Popular

**POSITION STATEMENT:** Testified in support of SB 92.

TARA ROSS, representing herself

**POSITION STATEMENT:** Testified in support of SB 92.

GINNY ESPENSHADE

Anchorage Youth Court

Homer, AK

**POSITION STATEMENT:** Available to answer question on SB 257.

#### **ACTION NARRATIVE**

[1:30:06 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Senators Coghill, Egan, and French were present at the call to order. Senator Wielechowski joined the meeting soon thereafter.

#### **SB 257-YOUTH COURTS AND CRIMINAL FINES**

[1:31:11 PM](#)

CHAIR FRENCH announced the consideration of SB 257.

SENATOR DENNIS EGAN, sponsor of SB 257, Alaska State Legislature, explained that SB 257 will provide a sustainable source of funding for Alaska youth courts. He explained that young people who are picked up for misdemeanor violations and alcohol offenses receive a trial by their peers. These courts work; less than 10 percent of juveniles that go through this program reoffend, he said. This saves money in the long run and is beneficial to young people because they receive real attention and real consequences when they might otherwise not get a hard look. He noted that highly trained youth corrections resources are available for hard cases. Another benefit is that youth volunteers receive training in the basics of criminal law, research, writing, and public speaking. He highlighted that a portion of the funding comes from criminal fines, which makes sense.

JESSE KIEHL, staff to Senator Dennis Egan, Alaska State Legislature noted that the sponsor statement understates the recidivism rate for youth court participants. It is 10.6 percent statewide.

[1:34:04 PM](#)

SENATOR WIELECHOWSKI joined the committee.

SENATOR COGHILL asked if youth court fines are limited to a certain level.

MR. KIEHL explained that youth courts don't levy fines, but they can assess restitution for offenses. The fines addressed in the bill are those that are assessed by judges against defendants in the traditional justice system.

CHAIR FRENCH asked Mr. Kiehl to remind the committee about where the fines will come from, who will assess the fines, and how much might be collected.

MR. KIEHL said that Alaska Court System judges assess fines against criminal defendants and the court system estimates that the total fines it collects each year amount to approximately \$5 million statewide. SB 257 would empower the Legislature to account for the fines with a designation and appropriate up to [25 percent] for youth courts. Mr. Kiehl noted that he looks forward to determining how much is actually needed as the bill moves through the committee process.

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SETH RICKY, Advocate, Juneau Youth Court, said he's been a participant in the court program since last year. He attributes the program to helping him become a better public speaker and feels it has prepared him to pursue a career path within the American justice system. It's also been a valuable experience to see the change students undergo when they've gone through the system. I truly believe that youth court gives kids a second chance after they've made a bad decision, he said. Peer administered justice is similar to receiving counseling. The program shows what teenagers are capable of doing, Mr. Ricky concluded.

CHAIR FRENCH asked if he intends to continue with the program.

MR. RICKY said yes.

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MEGAN STANGELAND, Advocate, Juneau Youth Court, described the youth court program as important, strong, and effective. The basis is peers helping peers navigate difficult situations. She agreed with Mr. Ricky about the importance of having students look to other students as advocates who have taken different

paths and made better decisions. She related that youth courts are sentencing hearings rather than trial hearings so the advocates are able to personalize the sentencing to focus on a youth's interests and strengths to the benefit of the community. It's a way of giving back to the community that also helps the youth, she concluded.

CHAIR FRENCH asked which roles she's taken in youth court.

MR. STANGELAND replied she's taken about all the roles including the bailiff, the judge, the prosecuting attorney, and the defense attorney.

SENATOR COGHILL asked what instruction advocates receive with regard to sentencing.

MS. STANGLAND explained that advocates listen to the defendant's side of the story and to what the defense says about him or her. After that the defendant is queried about what he or she likes to do and how this could give back to the community. The advocates then convene and try to give the defendant meaningful and relevant community service hours or a creative project that will help them reflect and make better decisions in the future.

SENATOR COGHILL commented that it sounds like the defendant has significant input.

MS. STANGLAND replied advocates want their peers to be successful and to complete their community service hours; assessing meaningless community service hours benefits no one.

GINNY ESPENSHADE said she is substituting for Sharon Leon, the Executive Director of the Anchorage Youth Court and is available to answer questions.

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CHAIR FRENCH closed public testimony and held SB 257 in committee.

At ease from 1:44 p.m. to 1:46 p.m.

**SB 252-FAILURE TO APPEAR; RELEASE PROCEDURES**

[1:46:15 PM](#)

CHAIR FRENCH announced the consideration of SB 252.

SUSAN MCLEAN, Director, Criminal Division, Department of Law (DOL), said that SB 252 revises the bail statute. Over the past 40 some years it has been added to and has become somewhat unwieldy and difficult to reference quickly during court arraignments. The intent is to revise the statutes and enhance public safety in Alaska and to give voice to the constitutional amendment giving rights to crime victims.

SB 252 incorporates concepts from federal bail law and adapts them to Alaska conditions. The bill generally would do the following:

- Require the person charged with a serious sex offense to prove that the release conditions before trial will protect the victim and the public.
- Adopt standards for persons who may be appointed as third-party custodians for persons who are released on bail.
- Prohibit a person who is found guilty of a serious sex offense from being released before sentencing or during an appeal of a conviction.
- Protect victims of domestic violence by setting standards that the court must find before allowing a perpetrator of domestic violence to return to the victim's residence.
- Change the time for arraignment from 24 hours to 48 hours.

MS. MCLEAN asked if the committee would like her to do a sectional analysis.

[1:50:01 PM](#)

CHAIR FRENCH replied it would be helpful.

MS. MCLEAN said Section 1 addresses two issues with failure to appear. First, it moves the crime of failure to appear from Title 12 to Title 11. It also addresses the problem that was raised when a second culpable mental state was added to the crime of failure to appear. This would provide an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing that he or she was unable to appear. The penalties would be the same as under the current law, except that the bill adds a violation for failure to appear if the crime charged was a violation.

Section 2 includes a conforming amendment to AS 12.25.030(b), which changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable

cause" to "probable cause" to clarify that the standard in all cases is probable cause. It also allows an officer to arrest a person for violations of conditions of release if they have probable cause to believe that the person has violated conditions of release. This allows the officer to arrest a person without a warrant if the violation of conditions of release is occurring in the officer's presence.

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Section 3 adopts a new section, AS 12.20.006, that describes release procedures for a person charged with a crime. The procedures are similar to sections of existing law, but the bill also includes the following:

- Before a third or subsequent bail hearing, the bill requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

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CHAIR FRENCH reviewed page 4, lines 14-16, and asked what the provision is getting after.

MS. MCLEAN replied it gets at persons who ask for repeated subsequent bail interview hearings. It requires the person to articulate what conditions have changed, other than the inability to make bail, since his or her last bail interview hearing. This puts a written record before the court of the person's prior record and what should be considered before the court determines whether or not a bail hearing should be set.

CHAIR FRENCH noted that the next provision requires at least seven days notice for a new request and asked if there's a provision in current law that keeps a person from coming back to court every day asking for a new bail review.

MS. MCLEAN replied there's very little, but current law does require the person to state what has changed in their situation such that their bail should be changed. What typically happens is that on a daily basis a person says they have a different third-party custodian. This makes the prosecutors scramble to find the victim who has a right to be informed of every bail hearing. Likewise, the court has to schedule a bail hearing on short notice when it probably already has all the information it needs to set bail. It's not unreasonable to ask that a person give seven days notice, she said.

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CHAIR FRENCH said the committee will at some point ask Mr. Wooliver how demanding bail requests are on the court's time.

MS. MCLEAN continued to explain the changes to existing law in Section 3.

- The bill requires a person being released to sign a release agreement that describes the terms that the court has set.
- The bill eliminates a current provision that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides the bail review hearing for making such changes and the provision sort of leaves the victim in the dark. They might not be notified and wouldn't have an opportunity to be heard on the topic.

Section 4 adds new sections that address release before trial for persons charged with a crime. The proposed AS 12.30.011 adopts standards and conditions for release in general - including a requirement to obey all laws, appear in court when ordered, and keep in contact with their attorney. The proposed AS 12.30.016 adopts standards and conditions for release for specific crimes. The section is designed to streamline the procedures for release, and many of the provisions are found in current law.

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CHAIR FRENCH said he's surprised that the drafter didn't choose to repeal and reenact the provisions rather than adding new sections.

MS. MCLEAN directed attention to Section 27, which` proposes to repeal all the discrete conditions of release for different crimes.

MS. MCCLEAN continued the analysis of Section 4 pointing out that AS 12.30.011 subsection (d) provides evidentiary burdens that a court must apply in making a decision about whether to release a person on bail. The bill proposes a rebuttable presumption, which may be overcome by a preponderance of evidence, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim if:

- The person is charged with an unclassified felony, a class A felony, or a sexual felony;
- The person is charged with a felony and has a previous conviction for a felony that is less than five years old;

- The offense was committed while the defendant was on release for another offense; or
- The charge is for a crime involving domestic violence, and the defendant has been convicted of a crime of domestic violence within the past five years.

AS 12.30.016 adopts the additional conditions that may be imposed in particular cases, most of which are found in current law.

- Subsection (b) provides special conditions for persons charged with Title 4 violations such as selling alcohol or bootlegging and charged with drunk driving and refusing to submit to a breath test. A judicial officer may, for example, order a person to submit to a breath test when requested to do so by a law enforcement officer.
- Subsection (c) provides special conditions that may be imposed on a person charged with a violation of the drug laws. For example, a person may be prohibited from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.
- Subsection (d) adopts a mandatory requirement of \$250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that they did not stand to gain financially. This is a provision in current law.
- Subsection (e) adopts specific conditions for a person charged with stalking when it is not involving domestic violence. This provision is similar to current law.
- Subsection (f) adopts specific conditions for a person who is released after having been charged with a sexual offense. The court may order the defendant to have no contact with someone under age 18, except that made during the normal course of business in a public place. The court is required to notify the victim of the hearing, or make reasonable efforts to do so, and to consider the victim's comments when making a release decision. This is in current law.

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Section 5 adopts new standards for the appointment of a third-party custodian for a person released before trial. The court is required to ensure that a proposed custodian is physically able to perform the duties of a custodian, and requires them to report immediately if the defendant has violated conditions. It

also prohibits a person from acting as a third-party custodian under certain circumstances, such as being a witness in the case, having a recent conviction, or having been recently charged with a crime.

Section 6 attempts to address the issue in the Williams v. State case relating to general release conditions of a person charged with a crime involving domestic violence. It contains language that conforms to the new sections of the bill.

Section 7 is in response to Williams, which held that the statute prohibiting a person from returning to the home of a victim was overly broad. That case said that the court could enter such a prohibition but it must consider specific conditions. In cases of domestic violence the defendant could not return to the home of the victim for at least 20 days; the victim would need to consent to the return; the defendant could not have a prior conviction for domestic violence; and the defendant would need to establish by clear and convincing evidence that his or her return to the residence would not pose a danger to the victim.

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Section 8 rewrites the provision for appeal from conditions of release, but it does not reenact the current provision that allows the court to amend the release order at any time. Rather, it requires the person to follow the procedures adopted for asking the court to amend conditions of release. The appeal procedure of the trial court's bail decision is similar to current law.

Section 9 adds a new section to address the temporary release of a person for an emergency such as the death of a family member. This is similar to the current law under AS 12.30.010(a).

Section 10 addresses the release of a person who has been found guilty but not yet sentenced or whose conviction is being appealed. It allows the release under the general provisions of AS 12.30, but the person seeking release is required to establish by clear and convincing evidence that the release would reasonably assure the person's appearance and would reasonably assure the safety of the victim and the community. The bill would prohibit the release of a person found guilty of all sexual felonies, and a person found guilty of a class B felony or class C felony who has been convicted of a felony in the prior 10 years. This avoids the equal protection of law problems in Bourdon v. State.

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Section 11 makes clarifying changes to the law pertaining to the release of a material witness who is not responding to a subpoena to appear; he or she may be arrested. After the witness has been deposed, he or she may be released under the bail law unless his or her presence is required at trial.

Section 12 specifies that a person who is in custody with a petition to revoke probation does not have an automatic right to be released under AS 12.30, but he or she may seek release. The bill provides that the probationer must establish by clear and convincing evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victims, other persons, and the community.

[Section 13 is a conforming amendment to current law.]

Section 14 clarifies that for purposes of the bail statute, a conviction occurs at the time a person is found guilty, either by verdict or by plea.

Sections 15-29 are either definitions or conforming amendments with the exception of Section 26 that amends Rule 603(b), Alaska Rules of Appellate Procedure, to clarify that the release of a person whose conviction is being appealed may be allowed under the provisions of AS 12.30.

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CHAIR FRENCH focused on the new subsection (d) on page 7 that addresses a person who has been charged with a crime and is seeking release from jail ahead of trial. He observed that to some extent the bill tracks the federal bail statutes, but the U.S. Constitution and the Alaska Constitution articulate the right to bail differently. Under the Eighth Amendment the right to bail is a right to be free of excessive bail, whereas the Alaska Constitution is much more emphatic. It says that a person has a positive right to be released on bail ahead of trial.

MS. MCLEAN said that's correct provided the victim and the community will be protected and that the person will appear at trial.

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CHAIR FRENCH asked if she's had occasion to ask for a memo on this because he foresees potential problems.

MS. MCLEAN offered to provide a memo at the next hearing based on research that Ms. Carpeneti has done.

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CHAIR FRENCH found no further questions and announced he would hold SB 252 in committee.

**SB 92-U.S. PRESIDENTIAL ELECTION COMPACT**

[2:15:16 PM](#)

CHAIR FRENCH announced the consideration of SB 92.

[2:15:37 PM](#)

SENATOR DAVIS, sponsor of SB 92, said her intern would present the bill.

QUINN KENDALL, Intern to Senator Davis, read the following sponsor statement for SB 92 into the record:

Under the National Popular Vote Interstate Compact, electoral votes, which are based on the number of U.S. representatives and U.S. senators in each state, would be awarded to the national winner, not the state winner. The U.S. Constitution gives the states exclusive and plenary control over the matter of awarding their electoral votes. The winner-take-all rule is not in the Constitution. The fact that Maine and Nebraska award electoral votes by congressional district, is a reminder that an amendment to the U.S. Constitution is not required to change the way the president is elected.

As of January 2010, this interstate compact has been joined by Hawaii, Illinois, Maryland, New Jersey, and Washington. Their 61 electoral votes amount to 23 percent of the 270 votes needed for the compact to take effect. The bill has also passed in one or both houses in many states and has continued to gain support nationally.

Because of the current winner-take-all rule, a candidate can, and has won the presidency without winning the most popular votes nationwide. This has occurred in 4 of the nation's 56 presidential elections (and 1 in 7 of the non-landslide elections). In 2004, a shift of fewer than 60,000 votes in Ohio would have defeated President Bush despite his nationwide lead of 3.5 million votes.

Another shortcoming of the winner-take-all rule is that presidential candidates have no reason to poll, visit, advertise or organize in states where they are comfortably ahead or hopelessly behind. In 2008, candidates concentrated over two-thirds of their campaign visits and ad money in just six closely divided "battleground" states. A total of 98 percent went to just 15 states. In other words, voters in two-thirds of the states were essentially spectators to the election.

Under the National Popular Vote Interstate Compact bill, all the electoral votes from the enacting states would be awarded, as a bloc, to the presidential candidate who receives the most popular votes in all 50 states and Washington D.C. The bill would take effect only when enacted by possessing a majority of the electoral votes - that is, enough electoral votes to elect a president (270 of 538).

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MR. KENDALL said that enacting the National Popular Vote Interstate Compact will increase political efficacy and civic engagement in Alaska and throughout the U.S.

CHAIR FRENCH posed a hypothetical situation to show that if just 270 electoral votes were committed to the National Popular Vote system, a candidate could receive a clear electoral majority despite the fact that within the states that opted for NPV there was an overwhelming majority for the other candidate. Some folks are likely to comment on this possibility, he said.

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TRENT ENGLAND, Director, Save our States (SOS) Project, Washington State, said SOS is dedicated to protecting the institutions of federalism, one of which is the Electoral College. He relayed that he often analogizes the Electoral College to the keel on a sailboat. A self-appointed nautical reformer may decide that the boat would function very well without a keel. That would only happen until the wind blows, he said. The Electoral College does two important things; it has a nationalizing and unifying affect on politics and it has a moderating affect.

MR. ENGLAND pointed out that all credible candidates and political parties start campaigning in the states where they

have significant support and later focus on the swing states. NPV considers this a problem, but the reality is that swing states draw politics in toward the center for a unifying affect. Grover Cleveland learned about the moderating affect of the Electoral College in 1888 when he won the most votes nationwide and lost the presidency. The NPV would claim he became a poster child for how terrible the Electoral College is, but the 1884 vote was based on intense regional popularity rather than having a broad national coalition. In the four years that Mr. Cleveland was out of the presidency he rebuilt the democratic coalition and then recaptured the presidency in 1892, winning both the national popular vote and the electoral vote. If the national popular vote system had been in existence at the time, the Democratic Party might never again have become a national party or the civil rights coalition that it did. That is all owed to the Electoral College process, he stated.

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JOHN KOZA, Chair, National Popular Vote, point out that voters in two-thirds of the states are totally ignored by presidential candidates. Candidates spend 98 percent of their time and money in just 15 states. States like Alaska are simply ignored when presidential candidates or a sitting president considers issues, he said.

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ROBERT M. HARDAWAY, Professor of Law, University of Denver, Sturm College of Law, said he is the author of "The Electoral College and the Constitution: The Case for Preserving Federalism." He said his comments would center on the particular problems with "Koza scheme" and whether or not it's a good idea to do away with the Electoral College. He asked the following questions: about what would

1. What would happen under the "Koza scheme" if a recount was required, but just a handful of states engaged in the recount?
2. Who would decide what the national popular vote is and what would happen if a national official and a state officer disagreed on the vote tally?
3. Would Alaska be bound to accept the popular vote tallies from states whose voting standards violate Alaska public policy?
4. Which state officer would be empowered to overrule the will the voters of Alaska and instead allocate votes to the other candidate?
5. What would happen if some states decided to withdraw from the [NPV]?

6. What provision is there in the "Koza scheme" for a runoff election?
7. If "Koza scheme" supporters want to undermine federalism, wouldn't the first step be to abolish the U.S. Senate since it is the more violative of the "one man one vote" principle?
8. Would the Koza supporters claim that the British system was undemocratic?

MR. HARDAWAY cited the final committee vote in the Colorado Legislature and noted that once these problems were pointed out, Colorado did not adopt the National Popular Vote system. He further pointed out that national recounts would be particularly problematic because all 50 states would have to participate. "Multiply the problems we had in Florida by 50 times," he said. Minorities have testified against NPV because it dilutes their voting power, particularly in swing states.

MR. HARDAWAY concluded that the most essential feature of the Electoral College is that it requires broad-based support.

[2:37:34 PM](#)

JAMES GILLES, representing himself, Bird Creek, said he believes that the National Popular Vote is a good way to go. It's a system that would finally help Alaska.

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JOSEPH F. ZIMMERMAN, Professor of Science, Rockefeller College, State University of New York at Albany, relayed that when the Electoral College was established, the assumption was that the electives in each state would vote for the best candidate, but that's not the way it has worked. This is a nation of majority rule yet voters are not allowed to vote directly for presidential and vice-presidential electives. Furthermore, major candidates only campaign actively in the so-called swing states. These are democratic deficits. Former U.S. Justice Felix Frankfurter and James Landis wrote that the U.S. Constitution encourages creativeness "to devise a variety of legal alternatives to cope with the diverse forms on interstate interests." The National Popular Vote proposal is a creative way to ensure that this nation has majority rule when it comes to the selection of the president and vice president of the United States, he stated.

MR. ZIMMERMAN noted that he is the author of about 40 books, many on federalism and several on interstate compacts.

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DEBBIE JOSLIN, President, Eagle Forum Alaska, Delta Junction, said that as a patriotic Alaska she opposes SB 92 because it would make the state irrelevant in the election of the president and vice president. She recognizes that Alaska has just three electoral votes, but they have far greater influence than they would under the National Popular Vote system.

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BARRY F. FADEM, President, National Popular Vote, said he enjoys going state to state having discourse on this issue, but he finds it somewhat offensive for Professor Hardaway to refer to this proposal as the "Koza scheme." He noted that some people have been working on this project for up to four years. Also, the book he co-authored on the subject has forwards by three former congressmen and a former senator so he would hope that it would rise above the level of a scheme. He further noted that the book deals with much of the misinformation that is circulating about the NPV proposal.

CHAIR FRENCH asked him to address the question of whether or not a national recount might be necessary.

MR. FADEM said that under the NPV system recounts would be far less likely than under the current system. It's the current system that causes the crises that result when there's a very close count in just one state as in Florida in 2004. He noted that in the last 56 presidential elections, just five were close enough that legal challenges were brought. He reported that the Washington D.C. based organization called Fair Vote studied 7,645 statewide elections and found that the probability of a recount was one every 332 elections. Using those statistics, the chances of a recount occurring under NPV would be once every 1,328 years. But what's more important, he said, is that under the current system there are literally 51 separate elections each time there's a national election.

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CHAIR FRENCH asked him to respond to the argument that changing to the NPV system would require an amendment to the U.S. Constitution.

MR. FADEM replied the founding Fathers gave state legislatures the right to determine how to award electoral votes so it's a state's rights issue. If a state feels that the president should be elected by the NPV, it has the right to do that. He noted that 70 percent of the 800 some voters polled in Alaska said

they favored the National Popular Vote. He opined that it's a landslide if 70 percent of voters agree on anything today.

[2:51:22 PM](#)

SENATOR COGHILL asked him to read the poll question.

MR. FADEM said the question asked, "How do you think we should elect the president? Should it be the candidate who gets the most votes in all 50 states or the current Electoral College system?"

CHAIR FRENCH commented that he almost asked each witness if they believe that the candidate with the most votes should be elected, but it seems rather unfair because who would oppose that.

SENATOR COGHILL remarked that he thinks people might have a different response if they understand that the majority vote of the nation might take their state's votes.

CHAIR FRENCH said he doesn't disagree.

MR. FADEM said that a recent focus group asked if whoever gets the most votes in all 50 states should become president. The answer was, "Well, duh; it's the American way, it's the democratic system."

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CHAIR FRENCH asked how many different state compacts there are since the issue is whether or not this can be done by state compact.

MR. FADEM replied there are literally thousands; it's a very common vehicle for states to use when they agree upon something. He knows that every state is in at least one compact with all 50 states. The issues include environmental, juvenile justice, education, and child support.

MR. FADEM concluded saying the states that have very few electoral votes are the poster child for how bad the current system is; that's why Hawaii was one of the first states to join the compact. They understood that, just like Alaska, their votes as a non-battleground state do not count.

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TARA ROSS, representing herself, said she is the author of "Enlightened Democracy: The Case for the Electoral College." The

NPV proposal asks states like Alaska to give their electors to the winner of the national popular vote rather than the winner on their own state's vote. This plan would practically eliminate the Electoral College, which would do more harm than is generally appreciated. She noted that she outlined her reasoning in written testimony she submitted.

MS. ROSS expressed the view that eliminating the Electoral College by implementing SB 92 carries special logistical dangers. She supports the Electoral College but if it is to be eliminated it should be done through the constitutional amendment process. The compact contemplated by SB 92 would require participating states to award their electors to the candidate winning the largest National Popular Vote total. Under this scheme, Alaska could be forced to commit its electors to a candidate who was not on the ballot. There are other inconsistencies among states ballots that could skew election results. For example, some states allow felons to vote, whereas Alaska does not. Inevitably Alaska would have to abide by national election results derived from policies with which it does not agree.

MS. ROSS said it's a big assumption that recounts wouldn't happen under the popular vote scheme as has been claimed. If there were recounts, huge problems would result because of the differences in state recounting statutes. Voters would inevitably be disenfranchised and there would be chaos and litigation each and every election year. She said she focused on the logistical problems because they aren't given enough attention, but the proposal has philosophical problems as well. She believes that formally eliminating the Electoral College in any manner would be unhealthy for the country.

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SENATOR WIELECHOWSKI asked if under the current system a candidate could win with just 15 percent of the nationwide vote.

MS. ROSS replied she doesn't see how that could happen because of the current, strong two-party system, which forces political parties and candidates to compromise. She noted that a professor once said that nobody gets their first-choice candidate, but lots of people get their second choice because presidential candidates have to build concurrent majorities to win.

SENATOR WIELECHOWSKI said it's also the case that under the current system a candidate who is not on the ballot in Alaska could win.

MS. ROSS disagreed; the case today is that Alaska's three electorates will cast their votes for whomever qualifies for the ballot.

CHAIR FRENCH announced he would hold SB 92 for a future hearing.

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There being no further business to come before the committee, Chair French adjourned the meeting at 3:03 p.m.