

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 10, 2013

1:05 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Neal Foster
Representative Gabrielle LeDoux
Representative Charisse Millett
Representative Lance Pruitt
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Steve Thompson

COMMITTEE CALENDAR

HOUSE BILL NO. 34

"An Act making state compliance with a federal law, regulation, or presidential executive order contingent on receipt of certain information from the federal government."

- HEARD & HELD

HOUSE BILL NO. 200

"An Act relating to the Alaska Judicial Council and to judicial retention elections."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54

"An Act relating to the identification, location, and notification of specified family members and family friends of a child who is in state custody."

- MOVED CSSSHB 54(HSS) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 34

SHORT TITLE: FEDERAL LAWS, REGULATIONS & EXEC. ORDERS

SPONSOR(S): REPRESENTATIVE(S) T.WILSON

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD
02/25/13 (H) JUD AT 1:00 PM CAPITOL 120
02/25/13 (H) Heard & Held
02/25/13 (H) MINUTE(JUD)
03/22/13 (H) JUD AT 1:00 PM CAPITOL 120
03/22/13 (H) Heard & Held
03/22/13 (H) MINUTE(JUD)
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120
04/08/13 (H) Scheduled But Not Heard
04/10/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 200

SHORT TITLE: ACTIVITIES OF THE JUDICIAL COUNCIL

SPONSOR(S): REPRESENTATIVE(S) KELLER

04/05/13 (H) READ THE FIRST TIME - REFERRALS
04/05/13 (H) JUD
04/10/13 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 54

SHORT TITLE: PLACEMENT OF A CHILD IN NEED OF AID

SPONSOR(S): REPRESENTATIVE(S) GARA, THOMPSON

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) HSS, JUD
01/24/13 (H) SPONSOR SUBSTITUTE INTRODUCED
01/24/13 (H) READ THE FIRST TIME - REFERRALS
01/24/13 (H) HSS, JUD
02/07/13 (H) HSS AT 3:00 PM CAPITOL 106
02/07/13 (H) Scheduled But Not Heard
02/26/13 (H) HSS AT 3:00 PM CAPITOL 106
02/26/13 (H) Heard & Held
02/26/13 (H) MINUTE(HSS)
04/02/13 (H) HSS AT 3:00 PM CAPITOL 106
04/02/13 (H) Moved CSSSHB 54(HSS) Out of Committee
04/02/13 (H) MINUTE(HSS)
04/04/13 (H) HSS RPT CS(HSS) NT 3DP 4NR
04/04/13 (H) DP: TARR, NAGEAK, SEATON
04/04/13 (H) NR: KELLER, PRUITT, REINBOLD, HIGGINS
04/08/13 (H) JUD AT 1:00 PM CAPITOL 120

04/08/13 (H) Heard & Held
04/08/13 (H) MINUTE(JUD)
04/09/13 (H) JUD AT 1:00 PM CAPITOL 120
04/09/13 (H) Heard & Held
04/09/13 (H) MINUTE(JUD)
04/10/13 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 34.

JIM POUND, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 200 on behalf of the sponsor,
Representative Keller.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 200 and
responded to questions.

WALTER L. CARPENETI
Juneau, Alaska

POSITION STATEMENT: As a former chief justice of the Alaska
Supreme Court and as a former chair of the Alaska Judicial
Council (AJC), provided comments and responded to questions
during discussion of HB 200.

MICHAEL PAULEY, Lobbyist
Alaska Family Action, Inc.
Alaska Family Council
Kenmore, Washington

POSITION STATEMENT: Testified in support of HB 200.

ROBERT FLINT, Member
Board of Directors
Alaska Family Council
Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 200.

LARRY COHN, Executive Director
Alaska Judicial Council (AJC)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 200.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of SSHB 54, provided comments as one of the bill's joint prime sponsors.

CHRISTY LAWTON, Director
Central Office
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Fairbanks, Alaska

POSITION STATEMENT: Responded to a question during discussion of SSHB 54.

ACTION NARRATIVE

[1:05:23 PM](#)

[Note: On the audio recording this meeting is misidentified as the House Health and Social Services Standing Committee meeting of 4/9/13.]

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Keller, Foster, LeDoux, Lynn, and Millett were present at the call to order. Representatives Gruenberg and Pruitt arrived as the meeting was in progress. Representative Thompson was also in attendance.

HB 34 - FEDERAL LAWS, REGULATIONS & EXEC. ORDERS

[1:05:39 PM](#)

CHAIR KELLER announced that the first order of business would be HOUSE BILL NO. 34, "An Act making state compliance with a federal law, regulation, or presidential executive order contingent on receipt of certain information from the federal government." [Before the committee was a proposed committee substitute (CS) for HB 34, Version 28-LS0195\C, Nauman, 1/30/13, adopted as the working document on 2/25/13; included in members'

packets was a new proposed CS for HB 34, Version 28-LS0195\O, Nauman, 4/1/13.]

1:06:09 PM

REPRESENTATIVE LYNN moved to adopt the proposed committee substitute (CS) for HB 34, Version 28-LS0195\O, Nauman, 4/1/13, as the working document. There being no objection, Version O was before the committee.

1:06:41 PM

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, sponsor, mentioning that she would be working during the interim to address concerns with HB 34, explained that Version O of the bill would preclude the state from complying with a federal law, federal regulation, or presidential executive order until the state requests from the federal government a written report on the economic effect - on the state, on the community, on industry, and on the local government - of complying with the federal law, federal regulation, or presidential executive order; and would preclude the state from accepting any associated federal funding until either the federal government or the state provides that written report. Under Version O, the state would request the written report from the federal government, but if the federal government does not provide it within 90 days, then the state would instead prepare the report and transmit it to the legislature.

REPRESENTATIVE T. WILSON explained that also under Version O, the state would be required to complete a similar report for all state laws, state regulations, and executive orders; the Administrative Regulation Review Committee would be required to provide certain types of information about proposed regulations in its statutorily-required notifications, and would be required to submit comments to the lieutenant governor on the proposed regulations prior to those regulations being filed by the lieutenant governor; and the lieutenant governor would in turn [be required to review those comments, and would] have the discretion to return the proposed regulations to the appropriate department for further consideration. The changes proposed by HB 34, she proffered, would result in the state and industry having a better understanding of the economic ramifications of federal and state laws, regulations, and executive orders, and thereby be better-equipped to make decisions. In conclusion, she reiterated that she would be working during the interim to address concerns with HB 34.

[HB 34, Version 0, was held over.]

HB 200 - ACTIVITIES OF THE JUDICIAL COUNCIL

[1:09:03 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE BILL NO. 200, "An Act relating to the Alaska Judicial Council and to judicial retention elections."

CHAIR KELLER, as the sponsor of HB 200, referred to the Alaska State Constitution, and noted that Article IV, Section 8, in part stipulates that the Alaska Judicial Council shall act according to rules which it adopts; and that Article IV, Section 9, in part stipulates that the Alaska Judicial Council shall perform other duties assigned by law. He indicated that HB 200 is being offered because there was confusion during the last election [regarding those rules and duties].

[1:10:46 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, on behalf of the sponsor, Representative Keller, relayed that HB 200 would preclude the Alaska Judicial Council (AJC) from providing the voters with a recommendation relating to a judge or justice seeking retention, a practice which some feel to be unfair. He assured the committee that under the bill, the AJC would still be able to review [things about] Alaska's judges and justices, and submit certain information for inclusion in the election pamphlet.

[1:12:48 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said the ACS opposes HB 200 and has serious concerns with it. In response to questions, she explained that although the ACS usually declines to take a position on proposed legislation, the ACS feels it's necessary to take a position in this instance because HB 200 would have a direct impact on the court's practices, on the administration of the ACS, on the ACS's employees - Alaska's judges and justices - and on the Alaska Judicial Council (AJC), which is both supported by the ACS and depended upon by the ACS to help it maintain a judicial system that has high-performing, professional, competent, neutral judges. In response to another question, about whether a judge

or justice's personnel file is open to the public prior to a judicial retention election, Ms. Meade explained that the AJC, in fulfilling its constitutional and statutory duties, provides the public with a lot of information about judges and justices who are up for retention; however, some information the AJC obtains about judges and justices either is, or might be, considered confidential, and some claims by unhappy litigants, for example, of a judge or justice's alleged wrongdoing are completely unsubstantiated right from the outset.

MS. MEADE went on to note that members' packets contain information about the AJC printed from the AJC's web site; samples of information the AJC provides to the public via its web site regarding judges and justices who are up for retention, including a sample illustrating 14 links to the various surveys, rate studies, and questionnaire responses that were considered by the AJC for a particular judge; and, for four judges who sought retention in past elections, copies of the information that the AJC prepared and provided to the lieutenant governor for inclusion in the election pamphlets. With regard to the types of information provided in election pamphlets, she explained that this information is provided in order to help the voters understand more about the judges and justices that they will be voting on. And at the bottom of each of the aforementioned election-pamphlet samples, she pointed out, is located the AJC's recommendation to the voters regarding whether to vote "NO" or "YES" on the question of retaining the particular judge.

[1:22:45 PM](#)

MS. MEADE said it is the ACS's view that those recommendations are crucial: they help the voters understand the other information that the AJC provides for inclusion in the election pamphlet, thereby allowing the voters to make a more-informed decision. Members' packets also contain copies of a couple of typical retention-election notices that the AJC places in various newspapers throughout the state; those [2 column by 5 inch] notices include the AJC's recommendation to the voters. As required by the Alaska State Constitution, six appointed members - chosen on the basis of geographic representation and without regard to political affiliation - and the chief justice of the Alaska Supreme Court - serving as ex officio member and chair - comprise the Alaska Judicial Council (AJC); three of the appointed members are attorneys chosen by the Board of Governors of the Alaska Bar Association (ABA), the other three appointed members are chosen from the public by the governor and confirmed

by the legislature, and the chief justice votes on both judicial-retention issues and judicial-nomination issues but only when the vote by the other six members is tied. That happens rarely, though. Everything the AJC does is done by consensus, she noted in conclusion, adding that many, many of the AJC's votes are unanimous.

MS. MEADE, in response to a question, relayed that she would research how often the chief justice has been called upon to vote on judicial-retention issues, though statistics [going as far back as 1984] regarding the AJC's judicial-nomination votes, for example, illustrate that the chief justice has been called upon to vote only about 6 percent of the time - only 67 times out of 1116 total votes; furthermore, in only 14 instances was it that the public members and the attorney members were divided in their vote.

[1:30:43 PM](#)

WALTER L. CARPENETI, noting that he'd recently retired, relayed that he would be speaking both to the court's position, as a former chief justice of the Alaska Supreme Court, and to the AJC's position, as a former chair of the AJC. Referring to the Alaska State Constitution, he said:

I think [the AJC] ... has three main jobs. First, for every judicial vacancy, it has to nominate two or more applicants to the governor, who then makes the decision - that's under Article IV, Section 5. Secondly, with regard to retention or non-retention of judges [and justices], the [AJC] ... shall evaluate judicial performance and shall provide information to the voters, and it may make recommendations on retention/non-retention - that's under Article IV, Section 9, which says, "other duties assigned by law", and you, as the legislature, have assigned those duties, mainly in Tittle 22 but also in Title 15. And then third, [the AJC] ... has to conduct studies for the improvement of the administration of justice and report to the [Alaska] Supreme Court and to the legislature on those studies. So that's the sort of strict legal description.

MR. CARPENETI continued:

I was on [the AJC] ... as a lawyer, way back when, before I became a judge, and then, for three years, as

the chief justice, and I'd like to give you what I would think [of] as the real-life description of what ... [the AJC] does. It's an incredibly hardworking group of citizens. In my time, every year, [the AJC] ... averaged over three solid weeks of meetings each year, all over the state - not just Anchorage and Fairbanks and Juneau and Palmer, but Bethel and Dillingham and Kotzebue, many of those places more than once - [and so] a lot of travel time [was] involved. [The AJC] ... literally, every year, reviews thousands of pages: applications; writing samples; surveys of lawyers, police and probation officers, jurors, court employees, social workers, [and court-appointed special advocate (CASA)] workers ... in children's cases; [and] reports of the independent judicial observer [from Alaska Judicial Observers, Inc.]. [The AJC] ... looks at credit reports; it looks at disciplinary proceedings - both for sitting judges [and justices], and for lawyers that want to become judges; it looks at criminal records - hopefully that's not a big part of the review; it obtains comments from opposing attorneys and judges and litigants; it holds public hearings on every applicant for judicial office and [on] every judge up for retention; [and] it interviews all applicants, and any sitting judge about whom questions of fitness for office have been raised.

What this leads to is my conclusion that Alaska does more to evaluate judicial performance than any jurisdiction in the country. And I think that's something that we all, and especially you, as the legislature, should be proud of. These are, then, volunteer citizens, unpaid, who exist for terms of six years in a kind of what I think of as a perpetual jury service: ... they're doing really important work, they're rolling up their sleeves and digging in and looking at the facts, and looking at the law, and coming to conclusions. They're doing it with regard to who sits on the bench and not with regard to the outcomes of cases, but I think it's admirable work - they deserve our respect and our thanks.

[1:34:20 PM](#)

MR. CARPENETI - noting that HB 200 provides an opportunity to discuss the important issue of how the public can best be

informed about how Alaska's judges are performing and whether or not they should be retained - relayed that there are four reasons why the legislative decision that was made 38 years ago to provide more information to the public should not be changed [by the bill]. The first reason is that a judge's accountability to the public would decrease [under the bill]. Currently the AJC serves the critical function of letting the voters know when a judge is not performing the way he/she should. A problem judge - although historically there haven't been many such judges - is less likely to be voted off the bench if the AJC is precluded from making a direct recommendation to the voters. The public should know, very clearly, when a judge is not fit for the bench, and the AJC is the entity set up by the Alaska State Constitution and by the legislature to evaluate persons' fitness for the bench in the first place, and their continuing fitness once they've been appointed. Out of the 228 individual judicial-retention elections that have occurred since 1988, the AJC has recommended "NO" votes on three judges. Those "NO" votes were recommended because of issues involving mental health - an Anchorage judge who later admitted that his chronic anxiety disorder made it impossible for him to function in his judicial position; issues involving sexual harassment and other serious problems - a Kenai judge who made really egregious comments and suggestions to female court employees; and issues involving unethical conduct - a Bethel judge who had improper conduct with one side in a case. The Anchorage and Kenai judges were removed by the voters, and the Bethel judge resigned.

MR. CARPENETTI relayed that the second reason is that a judge's accountability to the AJC would decrease [under the bill]. Currently, if complaints about a judge surface with enough time for the AJC to bring the complaints to the attention of the judge [before he/she becomes a problem judge], the AJC does so and tries to work with the judge to encourage improvement, often with mentors. If the AJC is precluded from making a direct recommendation to the voters regarding retention, however, it would remove the incentive for such a judge to work with the AJC and comply with its performance-improvement plans. Such incentive is present now because judges and justices facing retention elections certainly want to avoid being the subject of a "NO" recommendation. The AJC's authority to make such a direct recommendation is a very useful tool for ensuring that judges and justices are performing properly and fairly in the eyes of the public.

[1:37:15 PM](#)

MR. CARPENETI said that the third reason is that the public's knowledge about Alaska's judges and justices would decrease [under the bill]. Currently the AJC provides a vast amount of information about judges and justices seeking retention, along with what he referred to as an easy-to-understand "bottom line" regarding whether all of the information collected by the AJC shows that the judge is fit to continue on the bench, or should not be retained. Again, the AJC collects a lot of information: polls from all of the aforementioned groups; surveys; public testimony; transcripts of court proceedings; interviews with litigants, other individuals, and the judges themselves; and other information. Without a direct recommendation to the voters by the AJC - the people who've actually dug into all the information - the other information included in the election pamphlets, although unquestionably voluminous, would be sterile, difficult to understand, incomplete, and much less useful to the voters. Survey results alone, while helpful, may still fail to disclose inappropriate conduct; for example, two judges who'd received a "NO" recommendation by the AJC and who were voted off the bench received, by and large, acceptable survey ratings that did not reflect the significant problems revealed during the AJC's investigations. With full information and understanding, the public can have a more accurate picture of a judge's abilities and flaws; this helps the public, not just with voting, but also with having confidence in the entire legal system.

[1:38:50 PM](#)

MR. CARPENETI offered that the fourth reason is that the chance of maintaining Alaska's [traditionally-high] standards of excellence in the judiciary would decrease [under the bill]. Alaska has a very fine judiciary, and it would be more difficult, he opined, to maintain such with the passage of HB 200. The Alaska Judicial Council was established by the Alaska State Constitution as an impartial body designed to improve justice. One way to ensure such improvement is by making recommendations regarding whether judges/justices ought to be retained. The duty to recommend against the retention of an unfit judge/justice is a duty that the AJC takes very seriously. And although used rarely and sparingly, this power to make such "NO" recommendations is critical for purposes of maintaining a high-quality judiciary. With regard to the AJC's power to make a "YES" recommendation, he offered his belief that it's important for voters to be informed of the results of all of the AJC's information-gathering and analyses, important particularly given that under the code of judicial conduct,

unlike candidates for typical political office, judges/justices facing retention elections cannot campaign at all unless there is already organized opposition to their retention, and even then they are restricted in many ways, including in terms of raising campaign funds. The AJC's simple and straight-forward recommendations are the constitutional means by which to get reliable information about judicial elections to the public.

MR. CARPENETI, in conclusion, opined that the original legislative decision - to require the AJC to gather substantial information and present it to the voters, and to empower the AJC to make recommendations to the voters - was sound; to reverse that decision would decrease judges and justices' accountability to the public, decrease judges and justices' accountability to the AJC, decrease the public's knowledge about how judges and justices are performing, and decrease the chances of maintaining Alaska's [traditionally-high] standards of excellence in the judiciary.

[1:41:40 PM](#)

REPRESENTATIVE LEDOUX expressed concern that the AJC has been straying from simply providing a "YES" or "NO" recommendation, and has instead been using state funds to engage in what she called a "political advertising campaign." She characterized such as inappropriate.

MR. CARPENETI offered his understanding that there has been agreement [by the AJC] not to do so in the future.

CHAIR KELLER concurred.

REPRESENTATIVE FOSTER surmised that that's the issue HB 200 is intended to address.

MR. CARPENETI - in response to comments and questions related to the bill's proposal to preclude the AJC from providing the voters with a recommendation relating to a judge or justice seeking retention - explained that the overall results of the information gathered by the AJC are made available to the public; that the statewide public hearings conducted by the AJC provide the public with the opportunity to comment on the judges and justices seeking retention; that the framers of the Alaska State Constitution were of the consensus that lawyers themselves would have the best idea of who amongst their brethren would be qualified to sit on the bench; and that the AJC automatically gives less weight to any comments [about judges and justices

seeking retention] that are provided anonymously. In conclusion, he offered his belief that in conducting statewide public hearings, disseminating information throughout the state, and polling over a thousand people [who regularly address or are connected with the court], the AJC tries really hard to hear from everyone and does a good job of obtaining information from Alaskans about the judges and justices seeking retention.

MR. CARPENETI, in response to further questions, indicated that [since 1976], there have been approximately 344 individual judicial-retention elections, with the AJC having provided a total of eleven "NO" recommendations involving eight judges, and with four of those judges having been retained [by the voters] nonetheless.

REPRESENTATIVE GRUENBERG expressed concern that HB 200 might interfere with the AJC's constitutional freedom-of-speech rights.

[2:00:32 PM](#)

MICHAEL PAULEY, Lobbyist, Alaska Family Action, Inc., Alaska Family Council, said the organization strongly supports HB 200, believing that its proposed changes would preserve the original intention of the framers of the Alaska State Constitution in establishing judicial-retention elections. Referring to the bill's proposal to preclude the Alaska Judicial Council (AJC) from providing the voters with a recommendation relating to a judge or justice seeking retention, and mentioning that the organization he represents has taken an active role in judicial-retention elections, he offered examples of how some other states approach the issue of judicial evaluation/retention, and opined that [money held by the AJC] should not be used to provide a specific recommendation to the voters. Instead, voters should decide whether to retain a particular judge or justice on their own. Indicating a belief that informing the voters that a particular judge or justice is unfit to continue sitting on the bench serves no valid public purpose and thus the AJC should be precluded under Article IX, Section 6, of the Alaska State Constitution from spending public funds to do so, Mr. Pauley shared his understanding of what occurred in 1975 when the AJC was initially given the statutory discretionary authority to make a specific recommendation relating to a judge or justice seeking retention, and paraphrased a quote from U.S. Supreme Court Justice Scalia's dissenting opinion in Planned Parenthood of Southeastern Pennsylvania v. Casey (91-744), 505 U.S. 833 (1992), to illustrate why he believes that voters

should be making judicial-retention decisions based solely on whether they like a judge or justice's ruling in a particular case. In conclusion, Mr. Pauley urged the committee to support HB 200's proposed changes.

[2:12:52 PM](#)

ROBERT FLINT, Member, Board of Directors, Alaska Family Council, relayed that he would be testifying in favor of HB 200, which he characterized as removing both the Alaska Judicial Council (AJC) and what he termed, "one-sided public funding" from judicial-retention elections. Providing some historical information related to the Alaska Constitutional Convention's drafting of [Article IV of] the Alaska State Constitution, he offered his belief that the goal back then was to give the voters the ability to remove a judge or justice based on their perception of his/her judicial philosophy, and therefore the AJC - which evaluates judges and justices up for retention based on different criteria - should not now be providing recommendations to the voters in judicial-retention elections, and there should instead be a return to how things were done prior to 1975 when the AJC was initially given the aforementioned statutory discretionary authority to provide a recommendation relating to a judge or justice seeking retention. He offered his understanding that that statutory change wasn't addressing any known problems with Alaska's judicial-retention elections, and that such elections become contested on the bases of judicial philosophy and separation of powers, not on the bases by which the AJC evaluates judges and justices. In conclusion, Mr. Flint offered his belief that passage of HB 200 would ensure that the AJC won't get involved in influencing judicial-retention elections.

[2:24:01 PM](#)

LARRY COHN, Executive Director, Alaska Judicial Council (AJC) - after providing some historical information and offering his understanding that the concern HB 200 is intended to address revolves around the advertising that the AJC engaged in for purposes of the 2012 judicial-retention election - relayed that although he has not yet had a chance to ask the AJC what its position on HB 200 is, he is confident that the AJC would be against the bill for the reasons outlined by Mr. Carpeneti and would be taking an official position on the bill should it proceed through the legislative process. With regard to the concern HB 200 is intended to address, he surmised that it stemmed from the AJC's having responded to a campaign that the

Alaska Family Council launched against the retention of Judge Sen K. Tan. Mr. Cohn, too, noted that under the code of judicial conduct, judges and justices facing retention elections cannot campaign at all unless there is organized opposition to their retention, adding that historically, such opposition has been filed just days before an election, leaving judges and justices with only a very limited opportunity to respond.

MR. COHN explained that since 1976, judges and justices have faced organized opposition to their retention, and the AJC has always responded and the legislature has always provided the AJC with funding to advertise its judicial-retention recommendations and has been aware of the AJC's responses to such opposition. Now that the AJC understands the concern about responding to organized opposition, however, the AJC will refrain from doing so. It would be a different thing entirely, though, to deprive the public of the AJC's judicial-retention recommendations, because although the summarized information the AJC provides for inclusion in election pamphlets is more information than any other jurisdiction in the country provides, and is obtained via a more transparent process than any other jurisdiction provides for, it is still just a small amount of the total information the AJC obtains about judges and justices seeking retention, and wouldn't necessarily be reflective of problems such as sexually harassing others, repeatedly engaging in unethical conduct, and having mental health issues, for example, particularly when such problems aren't evident in the courtroom itself. It is therefore important that the voters have the benefit of the process the AJC undergoes and its analyses relating to judges and justices seeking retention.

[2:31:49 PM](#)

MR. COHN, in response to questions, reiterated that now that the AJC is aware of the aforementioned concern, the AJC will refrain from using its advertising funds to respond to organized opposition to judges or justices seeking retention, and will instead just leave it to the judges and justices themselves and their supporters to respond to any such campaigns. Consider, though, that when the AJC provides the voters with a "NO" recommendation regarding a judge or justice seeking retention, there is no other entity that can explain why such a recommendation is being made - there is no other entity that will advocate on behalf of the public against a judge or justice who is no longer fit to serve on the bench. He posited that no one would want to have to go before judge or justice that has the kinds of problems over which the AJC has made "NO"

recommendations in the past after investigation, and expressed the hope that the AJC won't be precluded from providing the voters with such recommendations in the future. Again, the AJC will no longer pay for advertising in response to organized opposition to the retention of a particular judge or justice, now that the AJC knows that doing so has raised concern with members of the legislature.

MR. COHN, in response to further questions, indicated that he himself might not object to a proposed statutory change if the bill could be rewritten such that it would only preclude the AJC from responding to organized opposition to a judge or justice seeking retention, but it would depend on the exact wording used in the bill.

REPRESENTATIVE LYNN opined that such a restriction would be appropriate to put in statute.

[2:36:16 PM](#)

MR. COHN, in response to earlier questions regarding judicial-retention elections, clarified that the AJC publishes all of the details and demographics of its surveys and polls on its web site. Furthermore, information from the public about a judge or justice is solicited, investigated, and retained by the AJC throughout the judge or justice's entire term; public hearings are held all over the state and are advertised all over the state; and reports submitted by [volunteer organizations] trained in observing judicial performance are also published by the AJC. He also clarified that the chief justice has never been called upon to vote on judicial-retention issues because the votes cast by the other six members of the AJC have never been tied. In response to further questions, he explained that the names of the respondents to the various polls/surveys the AJC uses are kept confidential, as are the specific comments provided by the respondents. Maintaining the anonymity of the respondents insures that useful and candid information about judges and justices seeking retention is provided to the AJC, and comments aren't published because some of them are completely untrue, and it wouldn't be fair to either the public or to the judges/justices themselves to publish them. Also, the AJC gives no weight at all to any comments that are provided anonymously, unless those comments are substantiated, or corroborated, or acknowledged by [the subject of the comments].

CHAIR KELLER, referring to the aforementioned copies of retention-election notices that the AJC places in various

newspapers throughout the state, pointed out that those notices inaccurately state that the AJC is required to provide the voters with a recommendation regarding whether to retain a particular judge or justice.

MR. COHN acknowledged that point. In response to a further question, he explained that Alaska's judges and justices are not evaluated on the basis of judicial philosophy, and indicated that doing so would be problematic; the AJC wants judges and justices who are fair and neutral and who will try their best to follow the law, which won't always comport with their personal beliefs or with that of the voters. [A judicial retention election] is not a popularity contest, and judges and justices ought to be making their civil- and criminal-case rulings without regard to any judicial philosophy and without regard to anyone's personal beliefs.

CHAIR KELLER relayed that HB 200 would be held over.

HB 54 - PLACEMENT OF A CHILD IN NEED OF AID

[2:48:26 PM](#)

CHAIR KELLER announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 54, "An Act relating to the identification, location, and notification of specified family members and family friends of a child who is in state custody." [Before the committee was CSSHB 54(HSS).]

[2:49:08 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, as one of the joint prime sponsors of SSB 54, in response to questions asked during previous hearings on the bill, offered his understanding that the Office of Children's Services (OCS) does not notify a parent who's [already] had his/her parental rights terminated [of the removal of the child from the child's home]; and that the notifications provided by the OCS [regarding such removal] don't include the physical address of the child anyway.

[2:51:32 PM](#)

CHRISTY LAWTON, Director, Central Office, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), in response to a question, offered to research how federal law addresses the issue of noncustodial parents convicted of domestic violence (DV) crimes.

REPRESENTATIVE GRUENBERG referred to a handout included in members' packets, and offered his understanding that 42 U.S.C. 671(a)(29) - federal law addressing removal-from-custody notifications - contains the phrase, "subject to exceptions due to family or domestic violence". He surmised, therefore, that under that language, state law could provide for such an exception.

REPRESENTATIVE GARA concurred, but pointed out that SSHB 45 doesn't address the issue of who is notified. Instead, the bill merely provides that a supervisor must verify that [due diligence was exercised].

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REPRESENTATIVE LYNN moved to report CSSSHB 54(HSS) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSSHB 54(HSS) was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:56 p.m.