

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 19, 2014
1:40 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Bob Lynn, Vice Chair
Representative Charisse Millett
Representative Max Gruenberg

MEMBERS ABSENT

Representative Neal Foster
Representative Gabrielle LeDoux
Representative Lance Pruitt

COMMITTEE CALENDAR

HOUSE BILL NO. 47

"An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation to give security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained."

- MOVED CSHB 47(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 18

Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 1

Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 47

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION
SPONSOR(s): REPRESENTATIVE(s) FEIGE, CHENAULT

01/16/13 (H) PREFILE RELEASED 1/11/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) JUD
01/30/13 (H) JUD AT 1:00 PM CAPITOL 120
01/30/13 (H) Heard & Held
01/30/13 (H) MINUTE(JUD)
02/10/14 (H) JUD AT 1:00 PM CAPITOL 120
02/10/14 (H) Heard & Held
02/10/14 (H) MINUTE(JUD)
02/14/14 (H) JUD AT 1:00 PM CAPITOL 120
02/14/14 (H) -- MEETING CANCELED --
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 18

SHORT TITLE: CONST. AM: ELECTED ATTORNEY GENERAL
SPONSOR(s): REPRESENTATIVE(s) STOLTZE

01/21/14 (H) PREFILE RELEASED 1/10/14
01/21/14 (H) READ THE FIRST TIME - REFERRALS
01/21/14 (H) STA, JUD, FIN
02/04/14 (H) STA AT 8:00 AM CAPITOL 106
02/04/14 (H) Heard & Held
02/04/14 (H) MINUTE(STA)
02/11/14 (H) STA AT 8:00 AM CAPITOL 106
02/11/14 (H) Moved Out of Committee
02/11/14 (H) MINUTE(STA)
02/12/14 (H) STA RPT 2DP 2NR 2AM
02/12/14 (H) DP: GATTIS, KELLER
02/12/14 (H) NR: KREISS-TOMKINS, LYNN
02/12/14 (H) AM: ISAACSON, HUGHES
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 1

SHORT TITLE: CONST. AM: EDUCATION FUNDING
SPONSOR(s): REPRESENTATIVE(s) KELLER

01/16/13 (H) PREFILE RELEASED 1/7/13
01/16/13 (H) READ THE FIRST TIME - REFERRALS
01/16/13 (H) EDC, JUD, FIN
02/22/13 (H) EDC AT 8:00 AM CAPITOL 106
02/22/13 (H) Heard & Held
02/22/13 (H) MINUTE(EDC)
03/01/13 (H) EDC AT 8:00 AM CAPITOL 106
03/01/13 (H) Heard & Held

03/01/13 (H) MINUTE(EDC)
02/07/14 (H) EDC RPT 3DP 3DNP 1NR
02/07/14 (H) DP: REINBOLD, SADDLER, GATTIS
02/07/14 (H) DNP: P.WILSON, DRUMMOND, SEATON
02/07/14 (H) NR: LEDOUX
02/07/14 (H) EDC AT 8:00 AM CAPITOL 106
02/07/14 (H) Moved Out of Committee
02/07/14 (H) MINUTE(EDC)
02/19/14 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE ERIC FEIGE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as one of the joint prime sponsors of HB 47.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HJR 18.

GEORGE PIERCE
Kasilof, Alaska

POSITION STATEMENT: Testified in opposition to HJR 18.

STUART THOMPSON
Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to HJR 18.

RICHARD KOMER, Attorney
Institute for Justice
Arlington, Virginia

POSITION STATEMENT: Testified regarding review of the Alaska Constitution and HJR 1.

STEVEN O'BRIEN
Palmer, Alaska

POSITION STATEMENT: Expressed concerns with HJR 1.

STEWART THOMSON
Wasilla, Alaska

POSITION STATEMENT: Testified that HJR 1 should be put before the voters.

YOLANDA GRIFFITH

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

MARK WIGGINS

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

MATHEW FAGNANI, Chairman

Board of Lumen Christi High School

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 1.

DEENA MITCHELL

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

SUSETTNA KING, Second Vice-President

Alaska Native Sisterhood

Glacier Valley Camp 70

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

JENNIFER HOWELL

Seward, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

RON FUHRER, President

National Education Association

Anchorage, Alaska

POSITION STATEMENT: Expressed concerns with HJR 1.

MARY HAKALA

Juneau, Alaska

POSITION STATEMENT: Expressed concerns with HJR 1.

MARK CHOATE

Juneau, Alaska

POSITION STATEMENT: Expressed concern with HJR 1 being presented as a repeal of the Blaine Amendment.

ANN GIFFORD

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

CARRIE GOTSTEIN

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

SHEILA SELKREGG

Anchorage, Alaska

POSITION STATEMENT: Urged the committee not to forward HJR 1.

MARKO HAGGERTY

Homer, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

MARTHA McNULTY

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to public funds being used for private schools or any school the does not accept all children.

GLENN PRAX

North Pole, Alaska

POSITION STATEMENT: During hearing of HJR 1, proffered that HJR 1 is about letting the current generation reconsider a policy decision made 50 years ago.

TAMMI GANGULI

Fairbanks, Alaska

POSITION STATEMENT: Expressed concerns with HJR 1.

GEORGE PIERCE

Kasilof, Alaska

POSITION STATEMENT: Testified in opposition to HJR 1.

ACTION NARRATIVE

[1:40:46 PM](#)

CHAIR WES KELLER called the House Judiciary Standing Committee meeting to order at 1:40 p.m. Representatives Lynn, Millet, Gruenberg and Keller were present at the call to order. Representatives Foster, LeDoux, and Pruitt arrived as the meeting was in progress.

HB 47-INJUNCTION SECURITY: INDUSTRIAL OPERATION

[1:41:57 PM](#)

CHAIR KELLER announced the first order of business would be House Bill 47, "An Act requiring a party seeking a restraining order, preliminary injunction, or order vacating or staying the operation of a permit affecting an industrial operation to give

security in the amount the court considers proper for costs incurred and damages suffered if the industrial operation is wrongfully enjoined or restrained."

CHAIR KELLER advised that the version of HB 47 before the committee is labeled 28-LS0072\N, Bullock/Wallace, 1/10/14, and there were [four] amendments.

[1:43:58 PM](#)

CHAIR KELLER closed public testimony.

[1:44:05 PM](#)

The committee took a brief at-ease.

[1:46:56 PM](#)

REPRESENTATIVE MILLETT, noting that Amendment 1 was a suggestion of the court system, moved that the committee adopt Amendment 1, labeled 28-LS0072\N.1, Wallace, 2/18/14, which read:

Page 1, line 11:

Delete "The"

Insert "Upon request of any party and when that party presents evidence, the"

CHAIR KELLER objected for purposes of discussion.

[1:47:23 PM](#)

REPRESENTATIVE ERIC FEIGE, Alaska State Legislature, speaking as one of the joint prime sponsors, remarked that the court has no [avenue] to [acquire] the information necessary to determine the amount of the security bond unless it requests the information from the affected individuals, contractors and/or sub-contractors.

CHAIR KELLER, noting his understanding that the Alaska Court System is happy with Amendment 1, withdrew his objection. There being no further objection, Amendment 1 was adopted.

[1:48:34 PM](#)

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 2, labeled 28-LS0072\N.2, Wallace, 2/18/14, which read:

Page 1, line 7:

Delete "A"

Insert "Unless exempt under AS 09.68.040(a), a"

REPRESENTATIVE MILLETT objected for discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 2 clarifies that the state and municipalities are exempt under state law and are not required to submit a bond when seeking an injunction, as is the case now.

REPRESENTATIVE FEIGE said he had no objection to Amendment 2.

REPRESENTATIVE MILLETT removed her objection. There being no further objection, Amendment 2 was adopted.

1:49:50 PM

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 3, labeled 28-LS0072\N.5, Wallace, 2/18/14, which read:

Page 1, line 9:

Following "security":

Insert ", "

Following "proper":

Insert ", "

REPRESENTATIVE MILLETT objected for discussion purposes.

REPRESENTATIVE GRUENBERG explained that Amendment 3 does not change Civil Rule 65(c), and simply corrects a typographical error such that the commas in Civil Rule 65(c) are maintained in the legislation.

REPRESENTATIVE MILLETT removed her objection. There being no further objection, Amendment 3 was adopted.

1:51:29 PM

REPRESENTATIVE GRUENBERG moved the committee adopt [Conceptual] Amendment 4, as follows [original punctuation provided]:

page 1 line 11 after "restrained"
delete "The" and insert
"As one relevant factor the"

REPRESENTATIVE MILLETT objected for discussion purposes.

1:52:12 PM

REPRESENTATIVE GRUENBERG related his understanding that the purposed of HB 47 is to require the court to consider as a relevant factor the amount of wages and benefits for employees and payments to contractors and sub-contractors of the industrial operation. He related his further understanding that HB 47 is not to impinge on the court's authority to consider whatever is relevant. Amendment 4 clarifies that "as one relevant factor" the court shall consider that.

REPRESENTATIVE FEIGE said he had no objection to [Conceptual] Amendment 4.

1:54:09 PM

REPRESENTATIVE MILLETT pointed out that the handwritten amendment specifies that it's conceptual. She then asked whether Representative Gruenberg wanted the amendment to be conceptual to allow Legislative Legal Services to adapt the language or did he want to only use the language specified in the handwritten amendment.

REPRESENTATIVE GRUENBERG replied that unless there is an overriding grammatical reason, the language written in Amendment 4 should be used.

1:54:37 PM

The committee took a brief at ease.

1:55:35 PM

REPRESENTATIVE GRUENBERG [amended his motion] such that he moved that the committee adopt [New] Amendment 4, as follows:

Page 1, line 11, after the word "restrained."
Insert "As one relevant factor"

REPRESENTATIVE MILLETT removed her objection. There being no further objection, [New] Amendment 4 was adopted.

1:56:28 PM

The committee took a brief at-ease.

[2:01:03 PM](#)

REPRESENTATIVE MILLETT, noting she is a co-sponsor of HB 47, stated she fully supports the bill and moving it today, if it is the will of the committee.

[2:01:45 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 47, Version 28-LS0072\N, Bullock/Wallace, 1/10/14, as amended, out of committee with individual recommendations and the attached zero fiscal notes. There being no objection, CSHB 47(JUD) was reported from the House Judiciary Standing Committee.

[2:02:32 PM](#)

The committee took an at-ease at 2:02 until 2:06 PM.

HJR 18-CONST. AM: ELECTED ATTORNEY GENERAL

[2:06:11 PM](#)

CHAIR KELLER announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 18, Proposing amendments to the Constitution of the State of Alaska relating to the office of attorney general.

CHAIR KELLER announced that HJR 18 will be held in committee today.

[2:06:33 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, speaking as the sponsor of HJR 18, advised that HJR 18 places the issue of an elected attorney general before the voters. This measure has been before the legislature multiple times and has been a bi-partisan endeavor, but the resolution has never been before the voters. The framers of the Alaska State Constitution appropriately made amending it difficult by requiring an affirmative vote by two-thirds of each house. He highlighted that this proposed change can only be initiated within the legislature. Alaska is only one of seven states without an elected attorney general. However, Representative Stoltze opined the public would embrace the proposed change to the Alaska State Constitution. He emphasized that HJR 18 is not a

statement of inadequacy, inappropriateness, or disrespect to current or past attorneys general.

[2:11:25 PM](#)

CHAIR KELLER advised that as a member of the House State Affairs Standing Committee he agreed to consider amendments wherein both the lieutenant governor and governor are of the same party.

[2:12:08 PM](#)

REPRESENTATIVE STOLTZE stated that as HJR 18 is currently written [the attorney general] is a separate elected position. He acknowledged there was a suggestion to make the lieutenant governor and attorney general positions more closely tied to a partisan position so the [the governor and lieutenant governor] run on a slate adding to the lieutenant governor's position the position of attorney general. He advised he did not have a preference and considered such an amendment a compromise that would not do damage to the resolution.

[2:13:51 PM](#)

CHAIR KELLER recalled that in the House State Affairs Standing Committee there were questions as to whether there should be a standard for the removal of an attorney general and whether an individual must meet the same qualifications as the governor.

[2:14:29 PM](#)

REPRESENTATIVE LEDOUX pointed out that the resolution specifies that an individual seeking the position of attorney general must meet the same qualifications as a superior court judge rather than governor.

[2:14:41 PM](#)

REPRESENTATIVE STOLTZE advised he was following language from previous iterations and had no strong possession of that section. He clarified that if he was setting the qualifications, an individual seeking the position of attorney general would be a member of the bar in good standing.

[2:15:56 PM](#)

REPRESENTATIVE LEDOUX expressed her agreement with the sponsor that if the attorney general position is elected, the individual

should not be vetted by the Alaska Judicial Council as he/she will be vetted during the election process. Therefore, she suggested the language be changed to say "a member of the bar in good standing."

[2:16:42 PM](#)

REPRESENTATIVE STOLTZE interjected his preference to specifically refer "the Alaska Bar," although the attorney general will likely be a member of the Alaska Bar Association because HJR 18 requires the same residency and citizenship requirements for the attorney general as the lieutenant governor and governor. Representative Stoltze indicated his agreement with Representative LeDoux as he did not want to impose the Alaska Bar Association process in determining the qualification for the attorney general.

[2:19:03 PM](#)

REPRESENTATIVE LEDOUX, noting that she like the idea of HJR 18, inquired as to how [the process] works in states where the attorney general, [lieutenant governor and governor] do not run as a slate, and therefore could result in a governor and lieutenant governor from one political party and an attorney general from another political party.

REPRESENTATIVE STOLTZE conveyed that most commonly the attorney general runs independently, which can result in [the attorney general] being from a different political party than [the governor and lieutenant governor]. He opined, however, that to say our Alaska's attorneys general are not political is a misconception. Representative Stoltze noted for historical reference that the average length of an attorney general's tenure is about 18 months. However, in the early 1990s when a sitting attorney general was retained by the incoming governor there was some contention that the attorney general was not confirmed and was a hold over as has been the case with other commissioners. Alaska, he highlighted, had an unelected attorney general serve for almost a decade. Therefore, Alaska had an unelected attorney general with the power to make law on the advice of an assistant attorney general for almost 10 years.

[2:21:22 PM](#)

REPRESENTATIVE LEDOUX reiterated her understanding that in some states governors and lieutenant governors run on separate tickets, and theoretically could be elected from different

political parties. In those instances, she surmised the governor would never leave the state.

[2:22:02 PM](#)

REPRESENTATIVE MILLETT inquired as to the reasoning of the framers of the Alaska State Constitution regarding choosing to have an appointed rather than elected attorney general. She also inquired as to how many states have changed their constitution from an appointed attorney general to an elected attorney general. Such information would be helpful for the committee.

REPRESENTATIVE STOLTZE indicated those are questions he will investigate. The power, he opined, should rest with the people whether electing U.S. Senators or a state attorney general. He further opined that other than the power of succession, an attorney general on a day-to-day basis is far more powerful than a lieutenant governor.

[2:25:19 PM](#)

REPRESENTATIVE GRUENBERG noted that HJR 18 states the heads of various departments must be confirmed by the legislature, which is also the case in another section of Article III, the heads of independent boards such as the Board of Fisheries, Board of Game, and State Board of Education and Early Development. Although there is no allowance for the legislature to confirm a deputy commissioner exists or is included in the resolution, he suggested that perhaps some of the sub-cabinet position with a lot of power should go through a confirmation process.

REPRESENTATIVE STOLTZE recalled that Representative Gruenberg might be speaking of the Bradner decision. The only change made in this resolution is adding the attorney general along with the lieutenant governor and governor as an elected official.

REPRESENTATIVE GRUENBERG then expressed the notion that perhaps the powerful positions of the head of the House and Senate Finance Committees should be elected as well.

[2:29:08 PM](#)

CHAIR KELLER opened public testimony.

[2:29:00 PM](#)

GEORGE PIERCE stated all commissioners and "everyone" should be elected rather than appointed as sometimes governors "stack the deck" with their appointments to boards and commissions. Alaskans recently voted against a constitutional convention and he yet it seems that every other piece of legislation being introduced is about changing or amending the constitution. Some of the legislation being introduced to change the Alaska State Constitution is absurd, he said. Alaskans, he reiterated, have said they don't want the constitution amended. He opined that the proposed amendments are for special interest groups not Alaskans.

[2:30:46 PM](#)

CHAIR KELLER questioned if Mr. Pierce is in favor of the election of the attorney general, but not for amending the constitution to do so.

MR. PIERCE answered yes; it would be good electing the attorney general. However, he reiterated that Alaskans just voted against a constitutional convention. Thus he encouraged members to stop picking and choosing which aspects of the Alaska State Constitution to change.

REPRESENTATIVE GRUENBERG surmised that Mr. Pierce's meant that once the legislature starts amending the constitution it becomes a slippery slope and becomes easier and easier to amend [provisions in] the constitution.

[Mr. Pierce was no longer online to respond.]

[2:31:59 PM](#)

STUART THOMPSON strongly advised that legislators carefully review the materials the Alaska Constitutional Convention members studied about [this issue], including the extensive debate regarding unelected versus elected attorneys general. He requested that the wheel not be re-invented as many questions and queries that are now being raised were covered in 1955. He added that confirmation of appointments by the legislature is worthy of consideration.

[2:33:54 PM](#)

CHAIR KELLER, upon determining no one else wished to testify, close public testimony.

[2:34:41 PM](#)

REPRESENTATIVE STOLTZE, in response to Representative LeDoux advised that similar resolutions were introduced between the [24th] and 27th Alaska State Legislatures; it was first introduced by Senator Fred Dyson, and Representative Harry Crawford introduced the legislation in the 25th and 26th Alaska State Legislatures, and most recently by Senator Bettye Davis in the 27th Alaska State Legislature. He added that Tennessee Senator Mae Beavers has introduced a constitutional amendment such that the attorney general would change from being appointed to a "hybrid" election. In further response to Representative LeDoux, Representative Stoltze recalled that a similar resolution reached the [House] Rules Standing Committee, but that no such resolution has ever made it to the floor of either house in the 1990s.

REPRESENTATIVE STOLTZE, in responding to Representative LeDoux, advised he did not believe the Alaska legislation ever made it to the floor of either house in the 1990s.

[2:38:38 PM](#)

REPRESENTATIVE MILLETT stated she has materials available regarding discussions during the Alaska Constitutional Convention and believes that historical context is important to the committee's conversation.

[2:40:04 PM](#)

CHAIR KELLER announced that HJR 18 would be set aside.

[2:40:23 PM](#)

The committee took a brief at-ease.
[Chair Keller passed the gavel to Vice Chair Lynn.]

[2:41:18 PM](#)

HJR 1-CONST. AM: EDUCATION FUNDING

[2:41:33 PM](#)

VICE CHAIR LYNN announced the next order of business would be HOUSE JOINT RESOLUTION NO. 1, Proposing amendments to the Constitution of the State of Alaska relating to state aid for education.

2:41:44 PM

CHAIR KELLER, speaking as the sponsor of HJR 1 described the Alaska Constitution as neither infallible or prescient, and therefore there is an amendment process built into the constitution. He advised that there are only the two following ways to change the meaning of the constitution: the language can be interpreted differently as time passes or the text of the constitution can be changed by amendment. He explained that HJR 1 would allow the people to vote on the changes proposed in HJR 1. He reminded the committee that an amendment to the Alaska State Constitution can only be adopted if two-thirds of the House of Representatives and Senate agree, which increases the burden on legislators. Changing the Alaska State Constitution is an important matter. Furthermore, it is an important matter to choose to prevent the sovereigns of the state from voting on an issue. Chair Keller then informed the committee that the amendment embodied in HJR 1 and SJR 9 as well as House Joint Resolution 16 [in the 27th Alaska State Legislature] have received a total of 24 hours of testimony and over 150 testifiers. However, he submitted that the text itself had not been reviewed.

2:46:31 PM

CHAIR KELLER then directed attention to Page 1, line 8, which would delete the following language from the Alaska State Constitution: "No money shall be paid from the public funds for the direct benefit of any religious or other private educational institution. The aforementioned language is known as the "Blaine Amendment," which he believed it caused a "shameful" blemish on the history of the United States as it was based upon prejudice, bigoted action, and discrimination. Chair Keller reviewed the history that led to the Blaine Amendment becoming a standard feature of state constitutions during this time.

2:52:33 PM

CHAIR KELLER then pointed out that HJR 1 proposes on page 1, lines 14-15 to add to Section 6 of the Alaska State Constitution the following: "; however nothing in this section shall prevent payment from public funds for the direct educational benefit of the students as provided by law."

Representative Keller related his belief that everyone would like the best education possible for the children of Alaska, and

it is not an offensive position to allow the state government to spend money for the direct educational benefit of the students as provided by law. The debate on HJR 1, however, has been over the word "voucher," which may or may not be an issue because [the benefit] is "as directed by law" and is [to be determined] at a future time, he opined. The point of HJR 1, he explained, is to change the text of the Alaska State Constitution and delete prejudice against Catholic and private schools, which he believes is a valid choice for voters to decide. He encouraged the committee to focus on the testimony and the question of why the public should be able to vote on the proposed change in HJR 1. Representative Keller stated he is personally convinced that Alaskans want the option to vote on this proposed constitutional amendment.

[2:55:49 PM](#)

REPRESENTATIVE LYNN related his understanding that it is not a question about vouchers, but rather would afford the voters an opportunity to remove the [Blaine Amendment] from the Alaska State Constitution.

[2:57:01 PM](#)

REPRESENTATIVE FOSTER clarified that if HJR 1 passed by a two-thirds vote in the House and a two-thirds vote in the Senate, it would go before the voters of the state during a general election, and would require a majority vote to pass.

CHAIR KELLER noted his agreement

[2:57:38 PM](#)

REPRESENTATIVE MILLETT characterized the time of the passage of the Blaine Amendment as an embarrassment in terms of how [immigrant] legal citizens of the U.S. were treated. She then requested that the historical documents with which she is in possession be included in the committee packet. Although the Blaine Amendment was in place prior to Alaska's Statehood, during Alaska's Constitutional Convention the conversation was not about the Blaine Amendment but rather about public money going to private schools that were religious; she opined, and at the time of the [Constitutional Convention] there were many religious groups moving into Alaska villages and creating schools. The committee's conversation, she further opined, should be whether or not to have the Blaine Amendment in the Alaska State Constitution rather than whether to have vouchers

and [state funds] going to private schools or religious schools because that is an entirely different conversation than the purpose of HJR 1, which is to remove the Blaine Amendment.

[3:01:56 PM](#)

REPRESENTATIVE LYNN predicted that if HJR 1 were to go before the people, there would be a lot of debate. Furthermore, if HJR 1 was approved by the people, it would return to the legislature where legislation would likely be introduced and go through the committee process of debate. He stated his agreement that HJR 1 merely addresses the Blaine Amendment.

[3:02:28 PM](#)

REPRESENTATIVE LEDOUX requested that a Department of Law (DOL) representative explain how the state is constitutionally able to provide opportunity scholarships to high school achievers to [attend] either a University of Alaska school or a private school.

CHAIR KELLER assured the committee that he would have DOL staff available to the committee to answer questions.

REPRESENTATIVE LYNN returned the gavel to Chair Keller.

[3:03:51 PM](#)

RICHARD KOMER, Senior Attorney, Institute for Justice, noted agreement with earlier testimony that the [Blaine Amendment] is a relic of an anti-Catholic past that proliferated directly in response to the increasing immigration of Irish Catholics to the United States in the 1800s. At the time the Irish and Catholics were arriving, public schools were not the secular schools of today in that were public schools used the King James Bible, Protestant doctrine, and history that was specifically anti-Catholic. The aforementioned resulted in Catholics starting their own schools. Therefore, there were Protestant public schools and Catholic parochial schools and the Catholics requested equal funding for their schools. The language of the Blaine Amendment was specifically designed to rebuff the efforts of Catholics to achieve equal treatment from the public authority. With dereligionification of public schools, the situation is such that there are secular public school and private school marketplaces with many different religious schools, including quite a few Catholic schools. Therefore the Blaine Amendment has continued its original discriminatory

purpose of depriving Catholic schools of any state aid. However, today the school choice movement is an effort to provide assistance to families to choose the school that best suits their needs, he opined. The aforementioned, he said, is the paradigm outside of Alaska in terms of how higher education scholarships assistance and Federal Pell grants provide. Alaskan students can receive Federal Pell grants to use at religious colleges in Alaska, however, due to the decision in Sheldon Jackson [College] v. State [599 P.2d 127, 1979] there are inhibitions in allowing private scholarships used at religious colleges in Alaska.

MR. KOMER then turned the question as to why it is necessary to amend the Alaska State Constitution. He emphasized that it shouldn't be necessary to amend Alaska's Blaine Amendment because on its face Alaska's Blaine Amendment does not forbid school choice scholarship type programs. However, two Alaska Supreme Court decisions interpreted Alaska's Blaine Amendment extremely broad as if it read similar to other states' Blaine Amendments and prohibits any programs that provide direct or indirect benefits to religious institutions. The Alaska Supreme Court, he charged, expanded "direct" to include the concept of "indirect," which was specifically rejected at the Constitutional Convention as it chose to only forbid direct benefit to private institutions. Therefore, amending this language, he opined, returns the state to where the [delegates] of the Alaska Constitutional Convention [intended]. Furthermore, due to the Alaska Supreme Court's misinterpretations of the Mathews v. Quinton [362 P.2d 932, Alaska 1961] and Sheldon Jackson [College] cases, the only recourse now is to amend the underlying language and overrule the Alaska Supreme Court's decisions. Thus, a constitutional amendment is necessary unless it reverses itself. Therefore, he surmised, the Alaska Blaine Amendment has been interpreted with a much broader limitation than the Federal Establishment Clause, which permits religiously neutral scholarship programs at both the K-12 and collegiate level.

[3:13:01 PM](#)

MR. KOMER then turned to the question of whether the constitutional amendment is constitutional. In Bess v. Almer [985 P.2d 979 Alaska 1999] the Alaska Supreme Court addressed the issue of when to use the amendment process and when to use the revision process when amending the constitution. He submitted that this amendment, HJR 1, is constitutional because it is narrow, addresses a single subject, and is focused on

overruling the Sheldon Jackson [College] case. He opined, this does not create a voucher/scholarship program but allows the legislature to provide for a scholarship program at the higher education level or at the K-12 level. Mr. Komer, in response to Chair Keller, informed the committee that the Institute for Justice is reviewing state constitutions and advocates for school choice programs.

[3:17:05 PM](#)

REPRESENTATIVE LEDOUX asked if the inclusion of the [Blaine Amendment] in the Alaska State Constitution was the result of Catholic bias.

MR. KOMER stated he could not answer that [question], but did not believe there was [Catholic bias] as this provision was never intended to prevent students from using state scholarships to attend religious colleges or religious schools. However, the Alaska Supreme Court in Sheldon Jackson [College] said that by giving aid to students, the state would be giving direct benefit to the colleges the students attend.

[3:19:56 PM](#)

REPRESENTATIVE LEDOUX related her understanding that the state provides opportunity scholarships for high school students who meet certain criteria and can be used anywhere in Alaska, including private or religious colleges. In view of the Sheldon Jackson [College] case, she questioned whether that program, if challenged, might face problems.

MR. KOMER stated, "Yes, I would."

[3:21:53 PM](#)

STEVEN O'BRIEN advised that when he studied the Alaska Constitutional Convention he thought all the [delegates] looked to the First Amendment of the United States Constitution regarding separation of church and state and didn't believe there were any racists at the convention. He then noted his expectation that a constitutional amendment would have more specificity. As a retired educator, graduate of a parochial school system, and Catholic, he questioned the admission policies of these schools and asked whether they would be open to anyone. With regard to discipline policies, would these schools have to be in compliance with state law and would suspensions and expulsions be reviewed by a body such as a

school board or would they follow their own church or private school policies, he asked. Even busing of students becomes a consideration as does the entity that monitors the expenditures. In terms of curriculum, he inquired as to who would monitor it as it should be thoroughly vetted by the state. He then asked if certified teachers who have passed the Praxis as required by state law be the recipients of this money, he asked, or will the teachers just be high school graduates. Moreover, will the administrators be certified under state law, he asked. He further questioned who would monitor the budgets and state expenditures of these schools. Will the aforementioned be relegated to elected school boards, another body, or will there be no monitoring at all, he asked. In a situation in which teachers and staff of private schools receive state funds, would they become part of the Alaska Teachers' Retirement System (TRS) and/or the Alaska Public Employees' Retirement System (PERS,) he asked. At the present time, Mr. O'Brian characterized [HJR 1] as a blank check in that it seems to be using tax dollars without any direct voice of the people to monitor the situation.

[3:25:52 PM](#)

STEWART THOMSON provided the following remarks:

This constitutional amendment about education should be put to a public vote. What is at issue is a very basic human freedom. Freedom of mind that is founded on freedom of choice. What is at issue socially is the ability of our state's people to reach for posterity. The only real virtue of U.S. private education is its reduced class sizes and dedicated teachers that survive intimidation. The only real virtue of U.S. public education is its economic efficiency and dedicated teachers that survive intimidation. The major defect of private education has developed by contagion from public education's major defect and that is indoctrination masquerading as education. Symptomatic of indoctrination is emphasis on memorization encouraged and forced by testing and adult duress. This in turn produces people who cannot think with or long remember what they memorized and worse, have mental conflicts creating attention loss that naturally arise from what they do not conceptually understand. Educational snake oil salesmen then push psychotropic drugs and crack pot educational theories as solutions to student problems, inattention and unruliness. On the basis

that student passivity equals attention and information assimilation. The lack of retention that naturally results has put the U.S. near the bottom of national economic achievement by populations of industrialized countries for numerous recent studies. What is the result? Our nation is dying. We justify a consumer, not industrialized, economy, government encouraged psychotropic drug and entertainment doping. Spiraling individual and national debt, population protected directed by an elite, government supported special interests for the public good, and force and bribery masquerading as international relations because it supports our so-called high quality of life. This is proof that our general population is insufficiently educated to recognize the propaganda of the economic, scientific, and intellectual aristocracies covering up degradation of the American people. I do not think the framers of the Alaska Constitution envisioned the disaster in the face of valiant individual teacher efforts that our educational system has fallen into. But they did establish an amendment process, let's do it, it is only just. We just might get young people actively engaged in helping to rationally educate themselves because they have been taught how to research and learn and do, in any subject, for all their lives, not only things to pass tests and feed the egos of ignorant adults. Thank you for your attention, good luck on your deliberations.

[3:29:06 PM](#)

CHAIR KELLER announced he would continue the committee meeting until 3:50 p.m., when a committee member has to leave and requested witnesses to limit their testimony to two minutes. He added that he will open public testimony the next time the resolution is before the committee.

[3:29:51 PM](#)

YOLANDA GRIFFITH maintained it was not right [to limit testimony to two minutes] because other people testified longer than seven minutes and everyone should be allowed equal time with no preference. She advised she did not belong to the National Education Association (NEA) or to the American Legislative Exchange Council (ALEC). She then stated her opposition to HJR 1 and related that her children had attended a private school

where those children whose parents had political influence received priority and preference, but now attend public school and are doing well as they have different choices and excellent teachers and counselors. Therefore, she related her strong support for public education and argued that politicians should set an example to children by showing respect to the Alaska State Constitution as it was created. She questioned why there is an obsession to destroy public education and change the Alaska State Constitution.

CHAIR KELLER, in response to Ms. Griffith, advised there is no intent to harm public education as the education of all children is considered a high priority. Speaking for himself, he said he liked the idea of parents having a choice.

[3:32:40 PM](#)

MARK WIGGINS said he found Mr. Komer's remarks and all such remarks about the Blaine Amendment to be sheer and transparent obfuscation around the issue of church and state. He noted that he is Irish Catholic and attended a Catholic school, and finds it "hilarious" that at this stage of his life when he is a fairly well-to-do, professional oil and gas Caucasian can claim he was discriminated against by having to pay for his Catholic education. Mr. Wiggins advised he is a strong proponent of public schools as his children have an estimated total of 15-17 years in public education and there has never been an unacceptable occurrence. He expressed the need to take SJR 9 and HJR 1 off the table and move to the task of strengthening the [public] school system to the premiere educational system desired by all. Wisely, the framers of the Alaska State Constitution included Article 7 § 1. [Public] Education to try to insulate it from this "religious fervor" that seems to be driving this "gut the constitution" push, he opined. Mr. Wiggins asked that the committee not approve HJR 1 and instead increase the [base student allocation] to a level that does not cause teachers to work under stressful conditions with such large classes.

[3:36:27 PM](#)

MATHEW FAGNANI, Chairman, Board of Lumen Christi High School, noting he is the past chair of Anchorage's largest charter school, began by stating his support for HJR 1. He informed the committee that Lumen Christi High School is a Catholic high school with 40 percent of its faculty and students coming from different denominations of faith. He advised his children had

participated in all three types of education: charter, parochial, and public, and found that choice was important as his children did not fit the one-size-fits-all-philosophy. The Alaska State Constitution may not benefit from the one-size-fits-all philosophy either. Not all children learn the same way and the "cookie cutter" approach is not sufficient to compete in today's market place, he opined. By passing HJR 1 the legislature is providing exciting opportunities of innovation and education for students while allowing parents to take control of their children's education and choose the best process for education Alaska's money can buy, he stated. The founders of the state recognized that future generations would need flexibility to respond to possibilities in a manner that would benefit all students, he maintained.

[3:38:26 PM](#)

CHAIR KELLER pointed out that passage of HJR 1 will place the constitutional amendment before the people for a vote, and [if passed] there would be a legislative process.

[3:39:10 PM](#)

DEENA MITCHELL advised that her husband works in the oil and gas industry, she is a stay-at-home mother with three children in the public school system, and has been pleased with the choices available in [public school]. She opined that while the Blaine Amendment may have been anti-Catholic, it has been effective at keeping the separation of church and state, which she characterized as a plus. Although it is an admirable goal to allow voters to decide in November on HJR 1, she related her belief that the general public just does not have the time to vet these issues. This resolution should not go on the ballot until the financial and institutional ramifications are understood, she opined. As a state, she contended, the [legislature] should consider whether during these tight budgetary times this is really the time to be opening this [issue]. She questioned the true purpose of HJR 1 as there has been testimony that [HJR 1] is not about vouchers but instead is to remove the Blaine Amendment due to its insidious history. Furthermore, she contended that there are a great number of choices and options through the public school system, including Specialized Academic Vocational Education (SAVE) School in Anchorage, Family Partnership [Charter] School, Interior Distance Education of Alaska (IDEA), and public schools. Noting her Master's degree in Economics, she advised she would have to review the study that some have said found 90 percent of people

in Alaska are in favor of HJR 1 because "numbers can say whatever we want them to say." She then mentioned a study she heard about that found 90 percent of parents would recommend their school to others. She opined that Alaska public schools are doing a fine job with a challenging demographic and conditions in spite of the last three years of budget cuts. She echoed Mr. Wiggins' testimony to take HJR 1 off the table and focus on the real issue of strengthening and restoring financial stability to public schools.

[3:43:59 PM](#)

REPRESENTATIVE LYNN highlighted that there are a number of initiatives on an upcoming election and questioned whether the general public is trusted to vote on those. He reminded the committee of the democratic process in which the general public takes part.

[3:45:16 PM](#)

SUSETTNA KING, Second Vice-President, Alaska Native Sisterhood, Glacier Valley Camp 70, advised that the Alaska Native Sisterhood Glacier Valley Camp 70's main goal is education. Although she appreciated the committee bringing forward the intent of HJR 1, she questioned from where the funding would come. More specifically, she questioned whether funding would be diverted from public school, which are struggling financially due to severe budget cuts, increased class sizes, declining resources, and [funding] not keeping up with inflation. She then asked whether private school teachers and administrators would be held to the same expectations as with public schools.

MS. KING, in response to Representative LeDoux's clarified that if HJR 1 goes before the [voters] there should be more clarification as to what is desired with HJR 1.

CHAIR KELLER advised that HJR 1 merely allows discussion because legislation is required to appropriate funds for education. The legislature, he opined, has demonstrated a strong commitment to funding education. He estimated the state spends approximately \$22,000 per year [per student].

MS. KING conveyed that the Alaska Native Sisterhood, Glacier Valley Camp 70 opposes HJR 1.

[3:50:57 PM](#)

JENNIFER HOWELL stated she is representing herself, but noted she is a kindergarten teacher. With only 90 days in the legislative session and the legislature hasn't put the funds forth to fund education. She expressed disappointment the legislature is putting energy into taking [the Blaine Amendment] out of the constitution and possibly opening doors that will erode public education, rather than focusing on issues currently affecting the public education system. She then related that she truly believes in the existing [public] education system.

[3:52:24 PM](#)

RON FUHRER, President, National Education Association-Alaska (NEA-AK) began by informing the committee he represents 13,000 education support professionals and teachers and 130,000 public school students. In response to an earlier question as to why HJR 1 should not be on the ballot and a discussion of vouchers and the bleeding of money from the public school system should be discounted, he identified the problem as the [proponents of HJR 1] are trying to boil it down to a simplistic question of "yes" or "no" on the Blaine Amendment. Alaskan voters deserve to know the impact of their decisions as the people supporting HJR 1 believe they will have school choice, while the people opposing it believe it will harm public education. However, he opined that no one knows [the answer] because the [proponents] are hiding behind the "piece" that says to just vote the Blaine Amendment up or down and if it passes, then "we'll" tell you what it does. The real issue, he stated, is the ballot language and whether the voters wish to remove the Blaine Amendment from the Alaska State Constitution or whether [the question is about] family school choice. He expressed concern that people will be voting based upon their perception of what HJR 1 does, or do not do.

CHAIR KELLER advised that within the legislative process are constituents and each legislator tries to represent his/her constituents and there has been a lot of input that this should be there.

MR. FUHRER remarked that voters like to know for what their representatives stand.

[3:55:23 PM](#)

MARY HAKALA advised she was a 1975 graduate from Juneau Douglas High School (JDHS), with three children who went through that system, and a parent founder of a charter school. She

emphasized the importance of choice within the public school framework as there are possible innovations to review. This proposed amendment is not an attempt to remedy a past ill and does not remove a sentence or two that is disliked or is racist, rather it opens the door for state funding in support of private and religious schools, she opined, in a state with a very clear and strong distinction between church and state. She urged the legislators to focus on the real issue, which is how to improve schools for all children. She then related her belief that HJR 1 will lead to discrimination as private schools are not required to [enroll] every child and can kick them out at will. She then expressed concern for children with disabilities in terms of additional choices given to those families and those children under [HJR 1]. She noted that she would leave the committee with information about vouchers. In closing, Ms. Hakala emphasized HJR 1 proposes a significant change in Alaska's State Constitution.

[3:58:21 PM](#)

MARK CHOATE, noting that he is an attorney with the Choate Law Firm, LLC. stated he is representing himself, but as a trial lawyer he works a lot on framing issues. He expressed concern with the committee's decision to consider HJR 1 a repeal of the Blaine Amendment is simply framing done by very sophisticated outside interests and it does a great disservice to the founding fathers and mothers who wrote the Alaska Constitution. He then expressed disagreement with the idea that the framers of the Alaska State Constitution were anti-Irish or carrying out a plan from the 1860s-1880s that was anti-Irish and anti-Catholic.

CHAIR KELLER interjected that earlier the history of the Blaine Amendment, which is a remnant and reminder of a time in history of discrimination and bigotry was presented. Chair Keller maintained the Alaska Constitution was written after that time period.

MR. CHOATE highlighted that many of the Alaska constitutional founders were Catholic and the founders were not anti-Irish or anti-Catholic. The provision was not included with the intention to harm or hurt Catholics or the Irish people, which he presumed Chair Keller would agree. Therefore, that's the concern with the statements that [HJR 1] repeals the Blaine Amendment.

CHAIR KELLER agreed with Mr. Choate's statement and pointed out that the Alaska State Constitution only prohibited the direct

investment in private and religious schools and had the court system not interpreted [the Blaine Amendment] differently, [HJR 1 would not exist]. The court applied the same wording that is in other states, and other states with the same language [as the Blaine Amendment in the Alaska State Constitution] do not hide behind the language to "protect a weak government monopoly on the system."

[4:00:53 PM](#)

MR. CHOATE, mentioning the Establishment Clause, pointed out that the founding fathers who wrote the U.S. Constitution Establishment Clause were just three generations away from English civil wars and had direct familiarity with the involvement of church and state in terms of the millions of lives lost here and in Europe. The Alaska State Constitution is considered a model, particularly in terms of its right to privacy and the way it has been utilized in the Alaska Court System is a national model for impartiality. Mr. Choate suggested the committee avoid characterizing what Alaska's founding fathers did as being any form of discrimination.

CHAIR KELLER noted his agreement with Mr. Choate that the discussion is not about Alaska's founding fathers, but was the broader picture.

MR. CHOATE, in response to Representative Gruenberg's question, stated that during 2006-2012 he was a member of the Juneau School Board.

REPRESENTATIVE GRUENBERG emphasized that he appreciated Mr. Choate's testimony and was hopeful he and other members of the bar would monitor this legislature and also work with the committee, even though it may not always agree with their advice.

[4:03:47 PM](#)

ANN GIFFORD advised that although she is an attorney who has worked with school districts in Alaska for more than 25 years, she is representing herself today. Ms. Gifford stated her opposition to Amendment 1 and noted she had previously submitted written testimony in opposition to vouchers, and therefore today her testimony is regarding provisions of the constitution itself. Ms. Gifford noted that from everything she has seen the Blaine Amendment's discrimination issue was not part of Alaska's constitutional delegate's discussions as the framer's primary

concern was about supporting and protecting a strong system of public schools. The aforementioned is why the language specifics there won't be any direct [state] support for private schools including religious schools. She then voiced concern that there has been no discussion today about the second part of the proposed resolution [Sec. 2. Article IX, sec. 6. Public Purpose.]. Alaska's constitution, she posited, would be weakened by [HJR 1] by adding an exception to the [original] provision that all public funds must be spent for a public purpose; the constitutional delegates wrote the provision as a fundamental principle in Alaska's constitution. The constitution reads that if the state or a local government is going to tax and spend public money, the money is to be spent for a public purpose. In that regard, any educational program should at least be able to pass that test, she opined. Therefore, she urged the committee to not weaken that constitutional principle.

[4:06:13 PM](#)

CHAIR KELLER asked if Ms. Gifford would consider [public money] spent for a direct educational benefit to the student as a public purpose.

[4:06:28 PM](#)

MS. GIFFORD responded that [legislators] should not be changing that part of the constitution because any program that is for the direct benefit of students and meets a public purpose is appropriate to spend [public funds], but if there is [a reason] for the direct benefit of a student that is not for a public purpose she did not believe public funds should be spent. Ms. Gifford expressed concern about "mucking around" with any of the language in that section of the constitution.

[4:07:07 PM](#)

REPRESENTATIVE LYNN questioned whether education is a public purpose.

MS. GIFFORD responded that public education is for a public purpose, but she opined that private education is not a public purpose. She further opined that public funds should not be used to support private education.

[4:07:26 PM](#)

MS. GIFFORD recalled Mr. Komer's testimony in which he stated the reason he gave for removing the Blaine Amendment is to allow vouchers/scholarships. If the aforementioned is the case, then it is important for the committee to also listen to testimony from people with thoughts about whether or not vouchers are a good idea, as vouchers [scholarships] are the reason Mr. Komer gave for why the committee is considering HJR 1 today.

[4:09:16 PM](#)

CARRIE GOTSTEIN advised she was testifying on her own behalf and as the mother of two children attended the Anchorage School District. She remarked that there are a lot of red herrings being tossed about and it is interesting to hear the various ways in which people frame HJR 1. With regard the perspective that people should be allowed to vote, she opined that it is the legislature's job to properly vet the implications and consequences of HJR 1 before putting it to a vote so people can be informed. She characterized framing HJR 1 with the Blaine Amendment as a red herring. The main issue with HJR 1 amendment, she said, is separation of church and state. Religious freedom is one of the founding principles of this country, but she said she relies on Alaska's public schools to not promote one religion over another and to teach respect for another's beliefs, which is the hallmark and cornerstone of Alaska's democracy, of a civil society. Public funds should only be used for public education, she stated, and is one of the reasons she strongly supports public education. She related support for the right of families to choose what is right for their children and that the Anchorage school system offers a wide variety of choices. In fact, years ago she was the chair of a parent committee that worked to develop Poloris K-12 school, although her children did not attend it. Therefore, she testified that one can get their children's needs met within the public school system. Ms. Gotstein expressed support of the existence of all religious schools and respect for parents' rights for a religious form of education, but did not think it was appropriate to be paid for on the public's "nickel." Furthermore, funding for public education is currently sparse and using public money for private education will end up decimating the public school system, she opined. In response to Representative LeDoux's earlier question regarding Alaska Performance Scholarships, advised that students who attend religious schools can benefit from the Alaska Performance Scholarships if they meet the criteria. The Alaska Performance Scholarship goes to public schools, which is how it was designed.

4:15:27 PM

SHEILA SELKREGG, speaking as a graduate of East Anchorage High School and a mother of three children who went through the Anchorage school district, said she recalled when Alaskan schools were at the top in the nation and Alaska's teachers were the highest paid. She highlighted that previous testimonies stated the Blaine Amendment was framed in racism when actually it was grounded in [General] Ulysses Grant's presentation to veterans when he ran for president. General Grant propounded that public money should not support "secular, pagan or atheistic dogma" in the American education system, but instead should support good "common" schools and good "common" education for all citizens. General Grant's beliefs were grounded in the country's fundamental belief of separation of church and state, she opined. Ms. Selkregg advised she teaches public policy and that having access to a public education has been and remains an avenue that has served as stepping stones for all people. She related her belief that private schools and charter schools attract middle class and upper class families whereas public schools have a large portion of poor and working class people. In public schools people from disadvantaged and of less income have the opportunity to make great strides in their life. Education funding is allocated to the school systems on a "per head" basis and as upper middle class and upper class families skirt away from exposing their children to lower class families. She predicted the defunding of public schools, which would be a great loss to the middle class.

MS. SELKREGG then informed the committee that currently over 50 percent of children in the Anchorage School Districts are economically disadvantaged. Furthermore, the schools with the lowest outcomes for students have a turnover in students as high as 50 percent, which means children attend two to three schools in one year. The issue before the committee is not a struggle of whether more options are needed as there are many, rather the issue is how the state can begin to address the poverty and disparity, which is a reflection of the national level, and create good opportunities in the public schools, housing programs, ex cetera in order to ensure that everyone has an equal opportunity in life and access to the American dream, she opined. She urged the committee not to move forward but rather address the critical issues that help as this legislation was a distraction from the working people of the state. In conclusion, Ms. Selkregg stated public schools are doing a good job and increasing graduation rates.

4:20:10 PM

MS. SELKREGG, in response to Chair Keller advised that she currently teaches at the university but has spent most of her life not teaching. Prior to teaching she said she worked for the federal government, owned her own business, and was a member of the municipal assembly. Ms. Selkregg characterized herself as a committed citizen who care about the state and hoped the focus could be on the critical issues before the state.

4:22:53 PM

MARKO HAGGERTY, speaking on his own behalf, informed the committee that he two children through the public school system and was pleased with the system. He took exception to [Mr. Komer's] comments regarding equating scholarships with vouchers as scholarships are based upon merit and vouchers are not. He further took exception to the comments regarding the persecution of the Irish and pointed out various American leaders. He then disagreed with prior testimony that without [HJR 1] people will not have a choice, and highlighted that everyone has the choice to send their children to the school of their choice. Mr. Haggerty opined that [HJR 1] is about vouchers funneling public money into private coffers and has nothing to do with the Blaine Amendment.

4:25:44 PM

CHAIR KELLER inquired as to why Alaskan should be allowed to vote as there is no specific indictment or ruination of the public schools. In fact, he said, other states have [used scholarship programs], and that studies have shown when the public funds are used for scholarship programs or vouchers it has helped the public school system in the area where it took place. Competition is a good thing, he remarked, Chair Keller then noted that in his district the public school system has done very well at providing choice within its system. He stated that anything said was not meant to disparage what the good schools have done. He agreed that Alaska's founding fathers did not have an anti-Irish or anti-Catholic bias and stated that his previous description of the Blaine Amendment was meant to give background and was not meant to impugn the Alaska framers.

4:28:30 PM

MARTHA McNAUTY, speaking as a 27-year resident of Alaska with two children who went through the Anchorage School District, explained that while living in Fairbanks her son's public school teachers recognized that he had severe learning disabilities. Throughout the years her son received an excellent education with the assistance of specialists in speech and reading therapy, such that he graduated without advanced placement (AP) classes with a 3.98, despite all of his learning disabilities. She related her understanding that religious schools do not accept children with disabilities and that if a child in a private school is not performing correctly or has issues, the child is removed from the [private] school in order to keep the school's number up. Therefore, she opposed use of public funds for schools when all children are not accepted. Looking back had this voucher program been in place when her son had these issues, she said she was not certain public funding would have been there to help him and she doubted private schools would have assisted her son. At that time in their lives her family could not have afforded the assistance her son needed as she and her husband were going to college.

[4:31:49 PM](#)

GLENN PRAX, representing himself, stated that the issue is not about public education but rather the governing process. The [Preamble] to the Alaska Constitution proclaims in part:

We the people ... in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty ... do ordain and establish this constitution...

MR. PRAX specified that within [the Constitution] there is an article that prohibits this generation's representatives from funding educational alternatives that many Alaskans want. Passage of HJR 1 and SJR 9 will give this generation of Alaskans the ability to review that restriction. The opponents of HJR 1 are expressing an "elitist" fear of the people which should be ignored. If a majority of Alaskan voters decide to remove that restriction funding decisions are still controlled by a majority of the legislature, as with all departments of state government, he opined. Speculation is no excuse to vote against the resolution as no rights are infringed upon if HJR 1 passes, but if it does not pass, the public's right to review its constitution would be infringed. The resolutions are about letting the current generation reconsider a policy decision made 50 years ago by a previous generation. If Alaska's heritage of

political, civil, and religious liberty has been transmitted to this generation the House Judiciary Standing Committee will unanimously recommend passage to the full house.

4:35:00 PM

TAMMI GANGULI suggested that if the concern is regarding the Blaine Amendment represented historically, a public message [could be submitted] stating that this generation of Alaskans do not support the Blaine Amendment. The [committee] is opening the door as [HJR 1] is not simply deciding whether the public should vote on removing the Blaine Amendment from the constitution. Ms. Ganguli contended that Alaskans will not be involved in the vote that could allow vouchers or funding of private schools as only the legislature will be allowed to vote on those. She said separation of church and state is a founding [principle], and therefore, she didn't view leaving [the Blaine Amendment] in as a problem. She expressed disappointment in the House Judiciary Standing Committee that had an expert who does not live in this state, does not understand how Alaska schools work, and who is paid by an organization that supports the free choice change was allowed to spend the majority of the [testimony] time talking about this issue. She then questioned where the other side is in this hearing other than the people who testified earlier. She admitted that she was getting very confused and believed [the issues] should be very clear to the voters. Some are afraid to place this before the voters because political groups, she opined, that manipulate the population under a certain pretense, and furthermore when an [initiative] is phrased a certain way the voters do not understand whether saying "yes" or "no." The aforementioned is why such issues are supposed to be put before those with lots of staff getting them the correct information and research. She disagreed with earlier remarks that it's elitist fear and charged that removal of [the Blaine Amendment] will open the door...

4:38:45 PM

CHAIR KELLER opined the reason the Blaine Amendment should be taken out of the Alaska State Constitution is because the Alaska Supreme Court interpreted the language the constitution differently than what was intended by the Alaska founders in their use of "direct" instead of "indirect." He pointed out that the "so-called" Blaine Amendment never had the purpose of separation of church and state but rather was directed at Catholics by the Protestants.

4:39:44 PM

MS. GANGULI responded that she appreciated the history of the Blaine Amendment; however, if [HJR 1] is necessary because the Alaska Supreme Court interpreted [the Blaine Amendment] in a certain way, why then can't a case be brought forward to argue the interpretation. Once the [Blaine Amendment] is removed, she asked, where is the safety net for the voters of Alaska to say "yes" or "no" to funding private education with public dollars. She opined that removing the [Blaine Amendment] does more than revoke a nasty provision written years ago. If the legislature is going to fight to allow the public to be involved in the process to removed [the Blain Amendment], then she stressed that [the legislature] should ensure the public has input in the funding process of using public funds for private industry.

4:41:05 PM

GEORGE PIERCE advised that he found it offensive that Chair Keller took out-of-state testimony over that of Alaskans. He then expressed concern that out-of-state people are [contacting] Alaskan legislators and [imposing] their input on the State of Alaska. Mr. Pierce stated he is opposed to HJR 1 for exactly the same reason as with HJR 18 and all of the resolutions to change the state constitution. He questioned whether there would be accountability of private and religious schools in return for accepting public funds as state money should be used to comply with state standards. He further questioned how more expensive funneling money to more expensive [private] schools is going to fix the problems. He then informed the committee of a survey of the Anchorage School District, the largest in the state that found that 90 percent of parents were happy with the district while legislators are working with studies linking poverty to achievement. Mr. Pierce opined it is important to continue the separation of church and state and if religious schools cannot afford to remain open, they should "shut their doors." He believed the legislators should stay out of the constitution as it is a "slippery slope" and should listen to their constituents of which 95 percent today said to stay out of the Alaska State Constitution. In fact, the Department of Education and Early Development Commissioner, Mike Hanley believes [SJR9/HJR1] is a bad idea. Mr. Pierce then related his belief that this could be a resolution from the American Legislative Exchange Council (ALEC) and that legislators who represent ALEC do not represent Alaska. He predicted a million dollar lawsuit, and questioned whether the state could afford that. He emphasized that legislators should hold town hall

meetings on this issue rather than listening to outside lawyers and special interest groups. In conclusion, he urged the legislature to stay out of the constitution.

4:45:20 PM

CHAIR KELLER closed public testimony.

4:45:31 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:45 p.m.