

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 22, 2013

1:37 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

JANIE LEASK, Alternate

- CONFIRMATION ADVANCED

Commission on Judicial Conduct

JAMES "CHRIS" BROWN

- CONFIRMATION ADVANCED

SENATE JOINT RESOLUTION NO. 9

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

- HEARD & HELD

SENATE BILL NO. 72

"An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations issued by the ombudsman; relating to the privilege of the

ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence."

-SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SJR 9

SHORT TITLE: CONST. AM: EDUCATION FUNDING

SPONSOR(S): SENATOR(S) DUNLEAVY

02/13/13	(S)	READ THE FIRST TIME - REFERRALS
02/13/13	(S)	EDC, JUD
02/15/13	(S)	EDC REFERRAL REMOVED
02/15/13	(S)	FIN REFERRAL ADDED AFTER JUD
02/15/13	(S)	UPHOLD CHANGE TO REFERRALS Y11 N4 E4 A1
03/13/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/13/13	(S)	Scheduled But Not Heard
03/15/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/15/13	(S)	Heard & Held
03/15/13	(S)	MINUTE(JUD)
03/18/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/18/13	(S)	Heard & Held
03/18/13	(S)	MINUTE(JUD)
03/20/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/20/13	(S)	-- MEETING CANCELED --
03/22/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JANIE LEASK, Appointee (alternate)
Select Committee on Legislative Ethics
Anchorage, Alaska

POSITION STATEMENT: Testified during the confirmation hearing.

JAMES "CHRIS" BROWN, appointee
Commission on Judicial Conduct
Anchorage, Alaska

POSITION STATEMENT: Testified during the confirmation hearing.

DIANE RAVITCH, Research Professor
New York University

New York, New York

POSITION STATEMENT: Testified in opposition to SJR 9.

MIKE HANLEY, Commissioner

Department of Education and Early Development (DEED)

Juneau, Alaska

POSITION STATEMENT: Answered questions related to SJR 9.

L. MARTIN NUSSBAUM, Attorney

Rothgerber Johnson & Lyons LLP

Colorado Springs, Colorado

POSITION STATEMENT: Provided supporting information for SJR 9.

ACTION NARRATIVE

[1:37:12 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:37 p.m. Present at the call to order were Senators Dyson, Olson, and Chair Coghill. Senator Wielechowski arrived soon thereafter.

CONFIRMATION HEARINGS

Select Committee on Legislative Ethics

[1:37:37 PM](#)

CHAIR COGHILL announced the first order of business would be confirmation hearings. He asked Ms. Leask to introduce herself and discuss the position she was appointed to.

JANIE LEASK, appointee, Select Committee on Legislative Ethics, introduced herself and explained that her application was as an alternate member of the Select Committee on Legislative Ethics.

CHAIR COGHILL asked if she had participated in an Ethics Committee process.

MS. LEASK answered no.

CHAIR COGHILL asked if she volunteered to serve or if somebody suggested her name.

MS. LEASK explained that somebody put her name forward and she was very interested in serving because she believes in public service.

CHAIR COGHILL commented that her resume showed she has good experience in the business field and has worked with a diversity of people.

[1:39:43 PM](#)

SENATOR DYSON thanked Ms. Leask for her service.

CHAIR COGHILL thanked Ms. Leask for her service and noted that he would ask for a motion to forward her name after the committee heard from the next appointee.

[1:40:31 PM](#)

SENATOR WIELECHOWSKI joined the committee.

Commission on Judicial Conduct

[1:40:47 PM](#)

CHAIR COGHILL stated that the next appointment was Chris Brown to the Commission on Judicial Conduct.

[1:41:05 PM](#)

JAMES "CHRIS" BROWN, appointee, Commission on Judicial Conduct, said he looks forward to serving a second term on the Commission on Judicial Conduct, should he be confirmed. He believes he offered value in the last four years and found it enjoyable to work with the officers of the court. It has been encouraging to see how well the process can work, he said.

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SENATOR OLSON commented that Mr. Brown's bachelor's degree in electrical engineering was a strange fit with the Commission on Judicial Conduct.

MR. BROWN responded that he also has a business degree and jokingly refers to himself as a recovering engineer.

CHAIR COGHILL thanked Mr. Brown for serving, and asked for a motion to forward both names.

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SENATOR DYSON moved to forward the name James Brown to serve on the Commission on Judicial Conduct and the name Janie Leask to serve as an alternate on the Select Committee on Legislative Ethics to the full body for consideration. He reminded members that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees, and that the nominations are

merely forwarded to the full legislature for confirmation or rejection.

CHAIR COGHILL announced that the names would be forwarded to the full body for consideration.

SJR 9-CONST. AM: EDUCATION FUNDING

[1:43:38 PM](#)

CHAIR COGHILL announced the consideration of SJR 9.

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DIANE RAVITCH, Research Professor, New York University, stated that she has an extensive background as a historian of education, and her professional credentials illustrate that she comes to the issues with a bipartisan perspective.

DR. RAVITCH said that she understands why some people want vouchers, but based on her own study she believes that they will undermine and destroy one of the essential institutions of a democratic society, the public education system. Vouchers are often called opportunity scholarships, but they're not scholarships. They're a way to use public money to pay for religious and private education, but they don't work.

She related that she heard from a colleague who participated in a conference at the Royal Swedish Academy of Sciences to discuss what vouchers had accomplished since Sweden adopted them in 1992. Starting in 1995 and up to the present all the international tests show that scores in reading, mathematics, and science have dropped. Sweden is also concerned that over this same period the privatization brought on by vouchers has increased segregation of students by socio economic status and ethnicity. The additional concern is that large profits are being amassed by independent schools using and consuming public funds.

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DR. RAVITCH warned that if vouchers are adopted this country will face the same problems that Sweden faces. She highlighted that several states have already adopted vouchers, but none were adopted by a vote of the people. In fact, they've been turned down every time they've been put to a vote in this country. The most recent example is Florida where voters turned vouchers down 58:42. Milwaukee, Cleveland, and the District of Columbia are the only urban districts that currently have vouchers and those are three of the lowest performing districts in the nation.

Milwaukee has had vouchers and charters for 22 years and the black kids there are performing on the same level as black kids in Mississippi.

She noted that some supporters tout higher graduation rates in voucher schools even though test scores may be low. However, what they don't mention is that the attrition rate is so high that the graduation rate is meaningless. A supporter evaluated the voucher program in Milwaukee and found that 75 percent of the kids who started in ninth grade had dropped out before the end of twelfth grade. She noted that another form of voucher that has recently become popular is the voucher for children with special needs. This started in Florida under Governor Jeb Bush with the McKay Scholarship Program. An expose of this program showed that the state has spent over \$1 billion for special education students to go to schools that are run by people without educational credentials, have no curriculum, and have no certified teachers.

DR. RAVITCH said the evidence clearly shows that children are not learning more as a result of vouchers. Another factor to consider is that the great social movements of the past half century including racial desegregation, gender equity, and the inclusion of students with disabilities all happened through public education, not through private schools or voucher schools.

DR. RAVITCH relayed that in states that are considering vouchers she is seeing bipartisan pushback, primarily from poor districts. In Texas the opposition to vouchers is coming from Republicans who are concerned that vouchers will destroy local public schools. In Wisconsin Republicans from rural districts are suggesting the people should vote on whether or not to expand the voucher program, because they know the voters oppose the idea.

DR. RAVITCH urged extreme caution in moving toward a voucher program. The highest performing nations in the world such as Finland, Singapore, and Japan have strong public education systems where everyone works together in the best interest of the children. Each person has the right and privilege to spend their own money to go to a private or religious school, but they shouldn't ask the government to pay for it.

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SENATOR DYSON asked if she was familiar with the Alaska Constitution.

DR. RAVITCH said no.

SENATOR DYSON asked if she had studied education in Alaska.

DR. RAVITCH responded that she assumes that Alaska has the same kinds of public schools as most states, but she didn't know if it had a Blaine Amendment. She noted that most states have that language in their constitution and the effort to establish vouchers usually involves a constitutional amendment to remove it.

SENATOR DYSON commented that people who don't support vouchers seem to think that the majority of parents can't be trusted to make wise decisions about where to place their kids in the educational system.

DR. RAVITCH responded that it would really demonstrate trust in parents if they were allowed to vote on vouchers. She reiterated that in state after state voters have turned down vouchers.

SENATOR DYSON highlighted that a recent poll in Alaska shows that 56 percent of the respondents approve parents having some kind of choice. He added that he was uncomfortable with government having control over virtually all education and thereby being able to influence children's thinking.

DR. RAVITCH said she had been involved in this field since the late 1960s and had seen nothing to indicate that the government was making an effort to teach children to have a particular point of view. She opined that with vouchers kids are more likely to go to schools that teach a particular point of view, whereas in a public school the emphasis is on both sides of the question. The latter makes for an intelligent citizenry, she said.

SENATOR DYSON noted that administrators in his school district have said that most parents don't want the schools to teach their kids values, but he believes that everyone wants their kids to be taught some core values.

DR. RAVITCH offered her belief that teaching values is a family responsibility and the role of the public school is to teach children to think seriously about the consequences of their behavior.

SENATOR DYSON said the only reason he disagrees is that he believes that truth and values are transcendent and true in all places, at all times, for all people.

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CHAIR COGHILL asked Dr. Ravitch to submit her testimony in writing.

DR. RAVITCH agreed.

[2:00:31 PM](#)

MIKE HANLEY, Commissioner, Department of Education and Early Development (DEED), offered to answer questions.

SENATOR WIELECHOWSKI asked how many children in Alaska attend private schools.

COMMISSIONER HANLEY estimated the number was between 7,000 and 8,000.

SENATOR WIELECHOWSKI asked if the average amount for the foundation formula was \$6,000/student.

COMMISSIONER HANLEY affirmed that was the base student allocation; it didn't include the cost differentials.

SENATOR WIELECHOWSKI calculated that \$6,000 times 7,000 students amounted to \$42 million. He asked if removing \$42 million from the budget would have an impact on the public education system.

COMMISSIONER HANLEY responded that the legislature is fully responsible for funding education and determining where the funds go, but [\$42 million] would fund more students.

SENATOR WIELECHOWSKI asked if DEED had analyzed the impact it would have on the public education system to fully fund all the students in private schools.

COMMISSIONER HANLEY said no; the resolution deals with a constitutional amendment rather than a funding component, so there was no fiscal analysis for the department to do.

SENATOR WIELECHOWSKI asked if he had an opinion about passing the resolution.

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COMMISSIONER HANLEY said yes; the state has the responsibility to offer an appropriate education for students in the way that will provide the best outcomes. He opined that providing choice was a valuable way to do that and he supported the resolution.

SENATOR WIELECHOWSKI asked if he would run an analysis before the committee voted on the resolution to show what the impact of the cuts would be.

COMMISSIONER HANLEY responded that the simplest math would be the number of private school students multiplied by the BSA. He didn't necessarily agree with the perception that there would be a deficit, but funding education was the purview of the legislature.

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SENATOR WIELECHOWSKI asked if he had a sense of the number of students in the public school system who would take advantage of a voucher program.

COMMISSIONER HANLEY declined to venture a guess.

CHAIR COGHILL said it's a legitimate question and he, too, would be interested in the answer.

[2:06:33 PM](#)

SENATOR WIELECHOWSKI asked if he or the administration would support a proposal to cut \$42 million from the education budget.

COMMISSIONER HANLEY acknowledged that the department would see significant negative impacts if \$42 million was cut from the education budget.

SENATOR WIELECHOWSKI asked what the negative impacts would be.

COMMISSIONER HANLEY replied that it would probably fall to the formula funds.

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SENATOR OLSON clarified that the Finance Committee makes the determination about funding for education. He then asked where the private schools were located because they weren't in rural Alaska.

COMMISSIONER HANLEY acknowledged that they were largely in the urban areas.

SENATOR OLSON asked how many of the private schools are not affiliated with a church.

COMMISSIONER HANLEY said he didn't know.

CHAIR COGHILL said it's a valid question.

SENATOR WIELECHOWSKI asked the commissioner to talk about how village school systems work and whether they are closed if the student population drops below a certain number.

COMMISSIONER HANLEY explained that there is a funding formula to provide a school in communities that have at least ten students. If the student population subsequently drops below ten the state reduces the funding. When that occurs, local school boards often decide that the most feasible response is to close the school.

SENATOR WIELECHOWSKI asked if the state would have a way to ensure that there was no discrimination if there was a voucher system.

COMMISSIONER HANLEY opined that the legislature would establish an equal-opportunity/nondiscrimination provision in the voucher statute.

SENATOR WIELECHOWSKI asked if private school students would have to meet standardized testing and graduation requirements.

COMMISSIONER HANLEY replied it would be up the legislature to develop the voucher.

SENATOR WIELECHOWSKI asked if he would encourage meeting those requirements.

COMMISSIONER HANLEY said he believes that the expectation is that there would be a public outcome if public funds are expended. The state's constitutional responsibility is to establish and maintain a system of public education and the courts have determined that the department is responsible for providing oversight and support, setting standards, providing assessments toward those standards, and providing adequate funding.

CHAIR COGHILL described the discussion of standards versus outcomes as one of the main questions.

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SENATOR WIELECHOWSKI asked Commissioner Hanley if he envisions increased competition in rural Alaska if the voucher program evolves.

COMMISSIONER HANLEY said he would anticipate additional opportunities for students to take courses or enroll in schools online.

SENATOR DYSON encouraged the committee not to stray from the topic of a constitutional amendment and the proposal to at least clarify what is already in the constitution. Responding to Senator Olson's question, he noted that in the past Alaska had outstanding private schools that were largely run by local people.

CHAIR COGHILL characterized the discussion as appropriate.

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SENATOR WIELECHOWSKI said it was his understanding that this committee would discuss the educational impacts since the education referral was removed. If that's no longer the case, the education referral should be added back. He asked the chair his intention.

CHAIR COGHILL stated that it was his intention to have a full discussion on the constitutional amendment and to also allow a broad discussion on the potential education policy.

SENATOR DYSON asked the commissioner if he knew the administration's position on putting this constitutional amendment on the ballot.

COMMISSIONER HANLEY said the governor has been clear in his support for giving students additional choices and for allowing Alaskans to make the decision.

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SENATOR DYSON asked if DEED has partnerships with private educational service providers and, if so, who they are.

COMMISSIONER HANLEY responded that the primary partnership is the Pre-Kindergarten Program. He explained that DEED provides funding to districts that partner with nonprofits like Rural CAP to provide the services. Additional partnerships include Parents As Teachers and Best Beginnings. The latter isn't quite the same as an educational institution, but public funds go to it in support of young children.

SENATOR DYSON asked if some of the apprenticeship programs or vocational schools also receive public monies.

COMMISSIONER HANLEY explained that decisions about those sorts of programs are made at the local level, the funds don't come directly from DEED.

SENATOR DYSON asked if Slingerland schools are private.

COMMISSIONER HANLEY replied that both the Anchorage School District and the private Gateway School in the past used the Slingerland principles and approach to teaching, but he wasn't aware of any currently.

SENATOR DYSON noted that Vic Fischer said that the public/private partnerships in education were unconstitutional, but that they'd never been challenged because everyone likes them. He asked Commissioner Hanley if he could name any other public/private partnerships in education.

COMMISSIONER HANLEY named the Sylvan tutoring programs and added that a private vendor might be used to access a particular course for physical education or art education.

SENATOR DYSON asked where he stood on the debate about public money being used to the benefit of a private or religious organization in the specific circumstance of a charter school renting a church building for classrooms.

COMMISSIONER HANLEY replied that DEED relies heavily on its legal counsel to make sure it follows the law, and it's an ongoing challenge to find that line.

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L. MARTIN NUSSBAUM, Attorney, Rothgerber Johnson & Lyons LLP, Colorado Springs, CO, said he was testifying on behalf of the Alaska Policy Forum. He stated that he practices religious liberty and religious freedom law, and thus is well acquainted with constitutional issues, including those related to the Blaine Amendment. He noted that he submitted an outline of his testimony.

He reviewed the history of the Blaine Amendment movement starting in 1874. This amendment forbade the use of public funds in education for "sectarian" schools. The legislative history is very clear that "sectarian" was code for Catholic. The bill

failed to pass, but the Blaine Amendment became an unofficial condition for statehood. The conditions worked out in different ways from state to state, but the hallmark is that no public funds or support goes to sectarian schools. He noted that a majority of the members of the U.S. Supreme Court have indicated that the Blaine Amendment was "born of bigotry." He said he believes that the core Blaine Amendment is likely unconstitutional under the equal protection, free exercise clauses and perhaps the fundamental right of parents to direct the educational upbringing of their children.

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MR. NUSSBAUM reviewed the Blaine Amendment as it pertains to Alaska. The Territorial Organic Act of 1912, which Alaska operated under until it became a state, says there shall be no use of public monies for sectarian, denominational, or private schools. When Congress passed the Alaska Statehood Act of 1958, it contained a pure Blaine provision in Section 6(j). Alaskan legislative bodies handled it in various ways.

The Constitutional Convention adopted art. VII, sec. 1, of the Alaska Constitution, which says no public funds shall be used for the direct aid [of any religious or other private educational institution]. The debates make it very clear that consideration was given to including a prohibition of indirect aid. The anti-Catholic focus in the original Blaine Amendment was rejected.

MR. NUSSBAUM directed attention to the table in Appendix A of his testimony. It contains instances of Alaska legislative bodies and school districts that passed educational provisions that resisted Blaine. The Bus Transportation Act of 1955 permitted buses taking students to public schools to also transport students going to private schools. That territorial legislature supported indirect aid [to private schools] by its action. The Constitutional Convention essentially says no direct aid, but indirect aid is okay. He noted that is more restrictive than federal constitutional law, but less restrictive than Blaine. The legislature in 1968 passed the Tuition Grant Act that said indirect aid was okay. That is the legislation at issue in the Sheldon Jackson case. The legislature in 2004 passed the Alaska Advantage Education Grant, which is a form of indirect aid. He offered his understanding that more than 100 grants have been issued between 2009 and 2013 to private organizations for programs and facilities related to education or training. Those direct grants are a statement of the legislature's attitude about direct aid. The legislature in 2011

approved the Alaska Performance Scholarship, which is a form of indirect aid. In 2012-2013, DEED school districts approved a mix of 122 for profit and nonprofit contracts with supplemental educational service providers. This is a form of direct aid. He clarified that the term "aid" in this context is hiring organizations to provide services, not grants to give someone money. Finally, the legislature in 2013 approved 41 grants to private organizations for workforce development. That is probably a form of both direct and indirect aid.

MR. NUSSBAUM stated that in his view the representative bodies in Alaska have consistently rejected Blaine and instead have chosen to work together with public and private entities to best serve the needs of Alaskan students.

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MR. NUSSBAUM turned attention to *Matthews v. Quinton*, 362 P.2d 932 (Alaska 1961) that revived the "Blaine impulse." The Alaska Supreme Court struck down the Bus Transportation Act of 1955, and by implication said it would not permit direct or indirect aid. Given that the state constitution specifically says that direct aid is permissible, he said he and others believe that was a legally erroneous decision. He suggested it was worth the committee's time to read both the principle decision and the dissent by Justice Dimond.

He noted that *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979) was the second Alaska Supreme Court case on this subject, but it curiously did not mention the precedent setting *Mathews* decision. An explanation was provided in footnote 20. The 1979 court said it declined to rely on the 1961 *Mathews* decision and thus had no occasion to overrule or reaffirm it. The court did acknowledge there was a substantial question as to *Mathews'* continuing vitality in light of the analysis employed in the *Sheldon Jackson* decision. That footnote did everything but overrule the *Mathews* decision, and was such a strong indicator that soon after the Alaska attorney general issued an opinion that the *Mathews* decision essentially had no effect on the use of public funds for school busses.

MR. NUSSBAUM asked if funding is currently provided for school buses to take [both public and private school students] to school.

CHAIR COGHILL said yes.

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MR. NUSSBAUM reviewed the errors in the *Mathews* decision. First, the court redefined "direct" to mean "indirect." It also disagreed with the territorial legislature's recitation of why it passed the bus bill and ignored the rich legislative discussion of this during the Constitutional Convention. Next, the court found that the 1955 law violated the Organic Act, even though that law has no legal effect once a territory becomes a state. There was also a U.S. Supreme Court decision on busing that the Alaska Supreme Court was aware of in the *Mathews* decision, but didn't defer to it.

He explained that the 1979 *Sheldon Jackson* case was about a \$2,500 scholarship for students attending private colleges. The court struck this down holding that it constituted direct aid and thereby violated art. VII, sec. 1, of the Alaska Constitution. He characterized the decision as legally erroneous and described some of the errors.

The core of the court's analysis relies on the overturned U.S. Supreme Court precedents *Wolman v. Walter*, 433 U.S. (1977) and *Meek v. Pittinger*, 421 U.S. (1975). Both cases involve aid to religious schools and have constitutional issues involving the establishment clause that don't apply to scholarships to any kind of school. The analysis also relies on *Mitchell v. Helms*, 530 U.S. 793 (2000), which overrules the previous two decisions.

The opinion dismisses the salutary effect of having parents direct the economic benefit and says using the student as an intermediary has no cleansing effect. This does not comport with *Mueller v. Allen*, 463 U.S. 388, 399 (1983) and a number of other U.S. Supreme Court decisions. The *Mueller* case involved a Minnesota statute that provided tuition, textbook, and transportation expense tax credits for students going to public or private schools. He read an excerpt of that decision as follows:

[B]y channeling whatever assistance it may provide to parochial schools through individual parents, Minnesota has reduced the Establishment Clause objections... It is true, of course, that financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children. It is also true, however, that under Minnesota's arrangement public funds become available only as a result of numerous, private choices of individual parents of school-age children. Where, as here,

aid to parochial schools is available only as a result of decisions of individual parents no 'imprimatur of state approval'...can be deemed to have been conferred on any particular religion, or religion generally.

MR. NUSSBAUM described a voucher program that is only eligible to Lutheran schools and students as an example of picking an ecclesiastical winner, which would not be permitted. He opined that having the parents decide where to send their children to school inoculates the state from that problem. For the *Sheldon* court to say this doesn't matter derogates about a dozen U.S. Supreme Court decisions that give great significance to the fact that the aid was indirect. He opined that the Alaska Supreme Court has consistently overridden legislative choices and tried to revise the effect of Blaine, the result of which is an inconsistent, Alaska-specific jurisprudence, particularly with regard to whether a benefit is direct or indirect.

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MR. NUSSBAUM concluded his comments stating that SJR 9 appears to be an excellent choice for resolving the following questions: First is whether the legislative branch really is independent of the judicial branch in light of the two court decisions. The second is shall the legislature preserve the historical choices that they and the school boards have made with regard to students' educational needs. The third question is shall the legislature preserve its prerogative to decide what is best for the students of Alaska and their educational needs.

If SJR 9 passes and the legislature decides in a future session to look at some type of parochial aid, it would still have to comply with the compulsory education requirements and the Establishment Clause. A number of U.S. Supreme Court decisions provide guidance in this area so future legislatures could feel comfortable that what they are passing will pass constitutional muster.

[2:53:54 PM](#)

SENATOR WIELECHOWSKI commented that he's seen judges get it wrong, but it's a system of checks and balances and the Supreme Court has the final say. He then asked if he would comment on a western New England law review article that argued that if the U.S. Supreme Court were to find the Blaine Amendment unconstitutional, a variety of other religious laws, such as those targeting Mormon polygamy, would be found unconstitutional.

MR. NUSSBAUM said he didn't see a link because that type of case would be decided on a different type of analysis. For example, *United States v. Reynolds* involved the criminal prosecution of a man in a plural marriage. The man challenged under the Free Exercise Clause and the court turned him down. That is a Free Exercise analysis, whereas these types of cases are decided primarily on Establishment Clause analysis. He clarified that he was not saying that art. VII, sec. 1, of the Alaska Constitutional is unconstitutional. He believes that the Alaska Constitutional Convention rejected much of Blaine, and that the Alaska Supreme Court reinserted many of the Blaine values through its decisions.

He said he respectfully takes issue with the comment that the Supreme Court has final word, because the legislature does not have to be silent when the court speaks. He restated his view that the Alaska Supreme Court undid what the Constitutional Convention, legislatures, and school boards intended. SJR 9 helps address that.

CHAIR COGHILL stated that the people have the right to amend their constitution. He quoted the following excerpt from the constitution:

All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.

CHAIR COGHILL held SJR 9 in committee.

[2:58:25 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:58 p.m.