

ALASKA STATE LEGISLATURE B
HOUSE JUDICIARY STANDING COMMITTEE

April 15, 2017

5:11 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 13

"An Act prohibiting the expenditure of state or municipal assets to create a registry based on race or religion."

- HEARD & HELD

HOUSE BILL NO. 200

"An Act establishing a top two nonpartisan open primary election system for elective state executive and state and national legislative offices; repealing the special runoff election for the office of United States senator or United States representative; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'"

- MOVED CSHB 200(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 13

SHORT TITLE: NO ST. FUNDS FOR FEDERAL REGISTRY
SPONSOR(s): REPRESENTATIVE(s) JOSEPHSON

01/18/17 (H) PREFILE RELEASED 1/9/17
01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) STA, JUD
02/18/17 (H) STA AT 11:00 AM GRUENBERG 120
02/18/17 (H) Heard & Held
02/18/17 (H) MINUTE(STA)
03/23/17 (H) STA AT 3:00 PM GRUENBERG 120
03/23/17 (H) Scheduled but Not Heard
03/28/17 (H) STA AT 5:30 PM GRUENBERG 120
03/28/17 (H) Moved CSHB 13(STA) Out of Committee
03/28/17 (H) MINUTE(STA)
04/03/17 (H) STA RPT CS(STA) NT 4DP 1NR
04/03/17 (H) DP: WOOL, KNOPP, TUCK, KREISS-TOMKINS
04/03/17 (H) NR: BIRCH
04/14/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/14/17 (H) Scheduled but Not Heard
04/15/17 (H) JUD AT 10:00 AM GRUENBERG 120

BILL: HB 200

SHORT TITLE: NONPARTISAN OPEN PRIMARY ELECTIONS
SPONSOR(s): REPRESENTATIVE(s) LEDOUX

03/29/17 (H) READ THE FIRST TIME - REFERRALS
03/29/17 (H) JUD, STA
04/10/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/10/17 (H) Heard & Held
04/10/17 (H) MINUTE(JUD)
04/12/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/12/17 (H) <Bill Hearing Canceled>
04/14/17 (H) JUD AT 1:00 PM GRUENBERG 120
04/14/17 (H) Heard & Held
04/14/17 (H) MINUTE(JUD)
04/15/17 (H) JUD AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 13 as prime sponsor.

PAUL KELLY, Staff
Representative Andy Josephson
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 13, testified and answered questions.

KAYLA EPSTEIN

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 13, offered support for the legislation.

COURTNEY ENRIGHT, Staff
Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 200, answered questions.

ACTION NARRATIVE

[5:11:44 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 5:11 p.m. Representatives Claman, Fansler, Eastman, and Kopp were present at the call to order. Representatives Kreiss-Tomkins, LeDoux, and Reinbold arrived as the meeting was in progress.

HB 13-NO ST. FUNDS FOR FEDERAL REGISTRY

[5:2:11 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 13, "An Act prohibiting the expenditure of state or municipal assets to create a registry based on race or religion."

[5:12:35 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, advised that this bill arose from a series of statements made by the national administration before the national election, after the national election, and after the inauguration. Essentially, he explained, Title 44.99, is called "Miscellaneous Laws" and this bill adds a prohibition to spending state assets by aiding federal agency in creating registries based on race, religion, ethnicity, or national origin. It is noteworthy, he related, that the section falls under "other prohibitions on uses of state assets," such as aiding the federal government in any

infringement of Alaskan's Second Amendment rights to keep and bear arms and due process rights. He suggested that this legislation be viewed as a civil liberties and anti-federal overreach provision.

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PAUL KELLY, Staff, Representative Andy Josephson, Alaska State Legislature, explained that HB 13 prevents state and municipal resources from being spent in order to violate the privacy of Alaskan residents on issues that should not be of public interest, including race, religion, ethnicity, and national origin. This bill is a preventative measure meant to stop an injustice before it happens and, he commented that it should save money for the state and its municipalities while securing liberties that should be protected by state and federal constitutions. He referred to Korematsu v. United States, [323 U.S. 214 (1944) contained within the committee packet], and explained that Fred Korematsu was an American citizen of Japanese ancestry who went into hiding rather than submit to Japanese internment camps required by the Department of the Army during World War II. Mr. Korematsu was arrested and he then took his case all the way up to the United States Supreme Court which, in the end, ruled against him. He surmised that many people regard this as one of the worst decisions of the United States Supreme Court, and it proved that the justice system is rarely expedient when rights are violated, and that justice is not always guaranteed in the end. Mr. Korematsu spent more than three years in custody until he and his family were released at the end of the war.

MR. KELLY advised that the state stands to save money with this legislation, there is a zero fiscal note, and this bill prevents unfunded mandates of the federal government from consuming state and municipalities resources. Another reason to support the bill, he related, is to protect the liberty of constituents because they may arrive from the Philippines, Canada, Mexico, Europe, Russia, Japan, and Viet Nam, and Alaska's residents hold privacy and other constitutional rights sacred. In summary, he said, this bill is about the following: prohibiting the state or its municipality from using its assets to create a registry based on race, religion, ethnicity, or national origin; it spares Alaskans the expense, hassle, and uncertainty, of using the courts to defend their rights; it saves Alaska's state and municipalities resources that would be used to support an unfunded mandate; and it reduces government intrusion.

5:18:26 PM

REPRESENTATIVE LEDOUX noted that the school districts must have some sort of records as to who speaks what language, and while the records are not necessarily based on race, religion, ethnicity, or national origin, they may be based simply on language, which offers a good idea of the student's origin. She asked how that interplays with this legislation.

MR. KELLEY responded that this legislation addresses federal mandates, and Legislative Legal and Research Services found that although this information is sometimes collected within state and municipal agencies, it is never published other than in its aggregate form, such as a percentage of different races, ethnicities, religions, or national origins, in a statistical sense.

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REPRESENTATIVE LEDOUX referred to Mr. Kelly's statement that "it's never published" and asked whether the school district has the information.

MR. KELLEY replied that he was unsure exactly what information the school districts keep, but if the issue is the importance of what language someone speaks, it would not be necessary to know where they come from, simply the language they speak.

REPRESENTATIVE LEDOUX expressed that the language someone speaks is probably a pretty good indication of their origin.

REPRESENTATIVE JOSEPHSON explained that the research request included advising of the "benign registries" made currently, and Legislative Legal and Research Services reported that the Department of Health and Social Services (DHSS) does gather some of that information, and this bill does not allow Alaska's own assets to be used when there is a federal imposition for a registry request based solely on race and religion alone. The concern, he said, was that the administration wanted a list of Muslim Americans and Hispanic Americans, and this bill is actually a response to those race based registries.

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REPRESENTATIVE LEDOUX noted that it appears from Representative Josephson's testimony that this only relates to a federal order and asked why he wouldn't want to craft it so that if someone

had this idea to do it in Alaska, such as the mayor of Anchorage or governor of Alaska, the bill doesn't prohibit them from creating those lists as long as it's not related to a federal mandate. She opined that California Governor Earl Warren, before he became the darling of the liberals as the Chief Justice of the Supreme Court, was "kind of a racist" with respect to the Japanese citizens.

REPRESENTATIVE JOSEPHSON referred to an article from The Hill magazine published two months ago, and the Ambassador to the United Nations, Nikki Haley, former governor of South Carolina, repudiated the idea of a registry. Although, he noted, when Secretary of State Rex Tillerson was asked about it, Mr. Tillerson said that while he ruled out a blanket ban on Muslim immigration to America, he would need more information before deciding whether to support a registry of Muslims. Representative Josephson said he would have the same concern about the mayor of Anchorage or the governor of Alaska if they had made statements in that manner, but they haven't. Given that section the legislation was applied was about federal overreach, he said the concern was with the federal government's request for registry.

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REPRESENTATIVE KOPP related that he certainly agrees with the spirit of the legislation, yet commented that this is more difficult than it appears because the state takes federal money in its education system and justice system, and both the Department of Corrections (DOC) and Department of Education and Early Development (DEED) have exhaustive lists on these issues. He advised that DOC can produce printouts on pretty much everything this bill tells them not to do, and he would be interested to know whether that is required as part of the federal penal system or receiving federal funding. He pointed out that in the state's education system, when applying for a student loan or graduate school, a person fills out all these blanks and some of it is to determine what kind of funding the person was eligible, and if they fit into a minority status it can actually open up doors, so they are not all nefarious reasons. In the legislature's fervor to do good, he said he wanted to be sure it didn't accidentally cross over into doing something harmful due to the federal nexus to state funding type issues.

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REPRESENTATIVE JOSEPHSON noted that although constituents have said they would not support, for example, the efforts of immigration and customs to perform a "roundup," he did not want to get into those issues because there could be circumstances to support a roundup of someone who was dangerous. He pointed out that the focus in this legislation was on any federal effort to say, "This registration is based on this and this alone." He referred to a report by Tim Spangler, [Legislative Legal and Research Services, contained within the committee packets], who found no evidence that anything was done in isolation just because of one's race or religion, and that no one cared to have that data in isolation with no other purpose. For example, he related, it is a known fact that someone of a particular race may be medically predisposed to a certain disease, which may be a relevant area of race data. Certainly, he said, there is a lot of data on race, but not solely on race or religion and that is what this bill targets.

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REPRESENTATIVE REINBOLD said the definition of a registry is "a place or an office where registers or records are kept," and she thought this may be the vehicle to get rid of the massive unconstitutional databases kept on students, families, and teachers within Alaska's schools, and asked the goal of the bill.

REPRESENTATIVE JOSEPHSON responded that the goal was partly preventative, and partly to note that this is a historical moment, and that the people of Alaska would not tolerate the registry of individuals for the reasons alone that they are of that race or religion, and not for benign reasons.

REPRESENTATIVE JOSEPHSON suggested adding the word "solely" to the following language as a friendly amendment on CSHB 13(STA), Version 0, [AS 44.99.040(a)((1)(C), page 1, line 14 and page 2, line 1,] to read as follows:

(C) create a registry [solely] based on race, religion, ethnicity, or national origin; or

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REPRESENTATIVE REINBOLD noted that "it's cool" to go back and look at the contributions of African Americans and the building of the Alaskan Highway, and offered that she could probably list a dozen of special days based on a specific race Alaska has

celebrated, such as Black History Month. She asked whether this bill has anything to do with public safety because this is probably the biggest repeal of state government of any bill she had ever seen, and asked whether the ultimate goal was to have no registries. She then referred to the Pioneer Homes where staff enters the race and religion of new residents into the database due to various reasons. She again asked the goal of the bill.

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CHAIR CLAMAN intervened and advised Representative Reinbold that Representative Josephson had previously answered her question, which is that it is not to have a registry, it is only a registry where the specific order from the president or federal government is, "Thou shalt create a registry of ethnicity." He explained that creating that registry is different from keeping track of ethnicity or different features regarding students in school because that order is that if Alaska is going to get federal funds for schools, it must keep this certain amount of data in exchange for receiving federal funds. This bill, as Representative Josephson testified, is strictly, if an order comes down from the federal government saying "Thou shalt create a registry of these people" this bill addresses that situation only, and it does not go more broadly. He said that Representative Josephson was not looking at wiping out every registry.

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REPRESENTATIVE JOSEPHSON remarked that Chair Claman was precisely correct. Legislative Legal and Research Services research found that none of the entities it queried reported that they desegregate the data in a manner that would identify people based on race, ethnicity, religion, or country of origin of individuals. Basically, he explained, that means no one is gathering this data just to say "Here's a list of people from Syria that live in Alaska." He referred to the celebration of Black History Month, and offered that it would be an odd thing for the federal government to say, that before the nation could celebrate Black History Month it needed every African American to enter their names on a registry. He stressed that that is what he is trying to avoid.

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REPRESENTATIVE REINBOLD offered a scenario that the federal government could decide that a person from Syria or wherever, may cause a health concern. Also, she said, "ANSWERS" was a federal mandate so "you can't have a double standard here" where the federal government wanted ANSWERS to collect a tremendous amount of data on Alaska's students, which is a registry. She offered that it appears to be a double standard that if the federal government is going to ask Alaska for people who may have originated from a certain place or religion, it probably is for a public safety, health concern, or potentially a public threat of some antagonists in another country such as ISIS. She asked what Representative Josephson thought "if it's a public safety concern to people, which is a specific group of specific origin, and possibly even a specific religion where they are following the laws of their country and trying to impose them over here." In the event it is a public safety concern, she asked whether that weighs into the ability to have some sort of information for public safety and homeland security.

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REPRESENTATIVE JOSEPHSON answered that the federal government, no doubt does that, and he is glad to some degree that the federal government knows where people are traveling which is legitimate state and national security interest. Except, he reiterated, this bill reads that Alaska does not need to participate when it is solely based on race with no other putative or obvious reason. Research found that juvenile justice and public assistance have records on race, but it was always linked to some other public governmental policy purpose and it was not just a naked, "We want a list of Muslims and, we, the federal government, insist on it, and please give us that list." He pointed out that this bill should not be described as alarmist because the national administration, although it had been tamped down a little bit lately, said that, indeed, it does intend to do these things. He explained that part of the goal is that when future generations look back on the Thirtieth Alaska State Legislature and see that the legislature caught a Korematsu situation, that it made a statement, and that it did something about the Korematsu situation.

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REPRESENTATIVE EASTMAN said Representative Josephson made a distinction as to whether it's the sole purpose of anyone of these individual categories, but it seems like the distinction is "too easy of being evaded." For example, he could have a

database of religion except not for the sake of religion because that would be a violation. Rather, he decided that he would have a category of religion because he wanted to study minority religions, and find ways to promoting the fact that are not many minority religions. Thereby, giving distinction to some kind of recognition, and whether with that type of add on would satisfy Representative Josephson's sole reason for prohibition.

REPRESENTATIVE JOSEPHSON responded that these are the kinds of tests courts engage in frequently and are skilled in knowing whether something is pretextual or legitimate. Presumably, he said, a court would apply a test to something like that and reach a conclusion as to whether the interest was legitimate or pretextual.

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REPRESENTATIVE EASTMAN said he understands that a court would try to identify the intent, but he was specifically asking the sponsor how that scenario lines up with his intent for how the bill would be used. He asked whether he would find it to be legitimate or a subterfuge.

REPRESENTATIVE JOSEPHSON commented that it would depend on the facts and the circumstances, and said he didn't want to muddy the water too much but that he had spent a fair amount of time looking at school prayer litigation, and referred to Wallace v. Jaffree, 472 U.S. 38 (1985). For example, he offered, if there was a moment of silence legislation, [he would consider] what was said in committee, and whether this was really about a prayer in public school. Given that the court had previously said that was a violation of the separation of church and state, the court would look to see whether there was something pretextual or whether it was just meant to be meditative and truly a moment of silence. He explained that the intention of this bill is to preclude these registries based solely on race, religion, ethnicity, and national origin, with no obvious other reason that is apparent in the administrative order, the executive order, or the law.

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REPRESENTATIVE LEDOUX noted that basically the committee was reading into this now, even though no member had offered an amendment, that it would be based solely on race, religion, ethnicity, or national origin. She offered a scenario of the federal government's concern regarding the great deal of

terrorism involving Muslim Americans and, as a matter of national security, it would keep a registry. Under this bill, she remarked, that would be something the government could still order so what was the purpose of the bill.

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REPRESENTATIVE JOSEPHSON answered that Alaska obviously cannot stop the federal government from doing anything, but Alaska could watch the federal government and someone could intervene by seeking an injunction stating that the federal government was painting every Muslim in Alaska with the same brush, and it was against the law in Alaska [in the event this bill is enacted into law]. Or perhaps, people would cower in the same manner as when Japanese Americans were rounded up by not responding. He pointed to the "very poignant bench" in Pocket Park, next to the Terry Miller Building, which expresses shame for the fact that the citizens of Juneau watched this happen, but he acknowledged that perhaps there was nothing they could do about it. The bench was designed to mark that sort of concern. He expressed that the federal government could do something, but it doesn't mean that Alaskans must follow.

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REPRESENTATIVE LEDOUX related that she hates to sound politically incorrect, but she pointed to "national origin" and offered a scenario of this country being at war with another country. Mr. Korimatsu was an American citizen and this doesn't just apply to American citizens, and she offered her belief that it might be relevant when at war with another nation to know where those people live in America.

MR. KELLEY replied that nothing in this bill prevents Alaska from aiding in keeping track of the nation's citizenship, but national origin is the issue. For example, Mr. Korimatsu was an American citizen and probably shouldn't have been considered a threat, but there would be no record that he was of Japanese ancestry.

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REPRESENTATIVE REINBOLD asked whether Representative Josephson has any problem with the federal government using state or local resources to track groups such as ISIS.

REPRESENTATIVE JOSEPHSON responded that he does want ISIS tracked and has no problem with that.

REPRESENTATIVE REINBOLD described the state's most important mandate as public safety, and the delicate balance in privacy rights and public safety, and that she understands the government's need to know the perpetrators and the targets. World history has shown religions persecuted in the past, such as the Jewish religion or Christians, and if religions are being persecuted, possibly by another religion, the important concept is where the government intervenes to put public protections in place. Possibly, she said, the government would want to know who was a Christian if they were receiving immense attacks, such as in India.

REPRESENTATIVE JOSEPHSON related that he didn't have a comment.

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CHAIR CLAMAN opened public testimony on HB 13.

[5:47:32 PM](#)

KAYLA EPSTEIN, advised she was speaking for herself and she supports the bill. She related that she is Jewish and is "very sensitive" to the fact that it has never worked out to the benefit of anyone to keep a list of someone by their religion. She remarked that she has seen no evidence verifying that the keeping of lists of persecuted people benefited those people in any manner. Also, she pointed out that if a person was Christian and worried about being persecuted, she has not seen that a list would work to their advantage. At the time the United States was at war with Italy, Japan, and Germany, the plight of the Japanese people was clearly a matter of greed and discrimination. At that time, the federal government had been extremely careful watching these groups before the war, watching organizations advocating the destruction of America, and were well aware of the Italian, German, and the Japanese individuals who posed a threat, and they were arrested. She explained that President Franklin Delano Roosevelt had been notified by the military that the Japanese people were of no threat, except he ignored that information due to the political pressure from, for example, Governor Earl Warren of California, and proceeded to allow Japanese people to be rounded up. She stated that she is "totally in favor" of this bill.

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CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on HB 13.

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REPRESENTATIVE EASTMAN surmised from Representative Josephson's response to Representative LeDoux that he had decided not to put the distinction of "citizenship" on the list.

REPRESENTATIVE JOSEPHSON advised that he had said the national government is free to do what it will, but that if the federal government asked this state or its municipalities to use assets, treasurer and human resources, to make such a list it would violate this law if it passed. He described this law as a good thing as a matter of principle.

REPRESENTATIVE EASTMAN said he thought Representative Josephson had made a distinction not to put citizenship on this list of things that are not for the government's knowledge.

REPRESENTATIVE JOSEPHSON replied that the word "citizenship" was not considered and he was unaware whether it was an absence of considering the word, or that a legitimate decision that "citizenship" would not be included in the list. He opined that it was the former, and he would have to give it some thought.

MR. KELLEY advised that the important aspect of this bill is not tracking national origins. For example, with someone who is an American citizen, there is no interest in knowing whether they might be Muslim or from Syria. Although, he said, perhaps there is an interest in knowing what citizenship someone holds when they arrive in America. For example, a current Syrian citizen in America on a visa, there may be the distinction that perhaps there was a legitimate government interest in tracking their citizenship, but not the national origin and especially not of American citizens.

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REPRESENTATIVE EASTMAN offered a situation where citizenship information may not be available, what would be the procedure in obtaining that information. He described that it is important information to have, at least statistically, as there would be a strong correlation between national origin and citizenship.

REPRESENTATIVE JOSEPHSON responded that fundamentally it is not the job of a state to entertain such ideas. In the event the federal government wanted to go house-by-house to see who should or shouldn't be here, those actions would be a massive historical chapter for which the federal government would have to account. President Franklin D. Roosevelt is regarded broadly as one of the better presidents, yet it is widely known that he has a very black mark for his treatment of Japanese Americans. He said, "And as you've noted in a letter to the floor about Korimatsu being one of the worst decisions." Fundamentally, he stated, Alaska does not have to be involved in deputizing in order to gather that sort of information.

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REPRESENTATIVE EASTMAN commented that whether deputized or not, citizenship is important to Alaska because its citizenship is fundamental to its state election laws in order to identify citizenship correctly.

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REPRESENTATIVE REINBOLD surmised that people will not be able to say "African American or Russian American or Greek American, or whatever," that it's just going to be American if no resources are allowed at the municipality or state level, and the state wouldn't have knowledge of that information. She asked whether that was Representative Josephson's understanding.

REPRESENTATIVE JOSEPHSON said, "No." He explained that those are terms in the nomenclature and each generation will have to decide its comfort level with that sort of terminology. Also, he pointed out that Representative was talking about how things are spoken in the vernacular and that is not what this bill is about.

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REPRESENTATIVE REINBOLD said she would like to know the bottom line of this bill, and also an explanation as to the language "(REAL ID Act of 2005)" on page 2, line 2.

REPRESENTATIVE JOSEPHSON responded that the importance of the reference to REAL ID Act is that it speaks to how "wonderfully appropriate" this bill is placed in Title 44, because it is about overreach. This legislation is akin to the REAL ID Act in that it is designed to stop federal overreach.

REPRESENTATIVE JOSEPHSON advised that the intent of this bill is about the fact that it flies in the faces of our Founding Fathers to require a list. For example, he advised, President George Washington famously spoke at the Providence Rhode Island Synagogue about the importance of Jewish Americans and how welcomed they were as citizens of the country. President Washington did not tell the Jewish American citizens to put their names on a tracking list. This bill was designed, in keeping with President Washington, to state there cannot be a benign registry based solely on race, religion, ethnicity, or national origin, and he stressed that almost by definition there must be some ill motive that is an un-American motive.

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REPRESENTATIVE REINBOLD described concern that the bill stripped local control by telling municipalities that even if its taxpayers wanted to spend money keeping track of an organization such as ISIS, it could not. In addition, she said, she is concerned that the state collects a tremendous amount of data, and commented that any data can be used for good or evil. She then asked whether Representative Josephson would allow a friendly amendment that in the cases where Alaska's citizens were at risk, if a list needed to be compiled to protect Alaska's citizens, whether he would support the amendment.

REPRESENTATIVE JOSEPHSON answered "No." First of all, he explained, he is not on the committee and the committee can amend this bill in any manner it prefers. Secondly, he pointed out that he would not want local governments or factions to decide to target a group based on religion because it was "freaked out" about a certain group and felt it needed to intervene. He described, that would be a blemish akin to what President Roosevelt was stuck with for all time.

[HB 13 was held over.]

HB 200-NONPARTISAN OPEN PRIMARY ELECTIONS

[5:59:56 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 200, "An Act establishing a top two nonpartisan open primary election system for elective state executive and state and national legislative offices; repealing the special runoff election for the office of United States senator or

United States representative; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; requiring certain written notices to appear in election pamphlets and polling places; relating to declarations of candidacy and letters of intent; and amending the definition of 'political party.'

[6:00:13 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, Version 30-LS0038\U.1, Bullard, 4/12/17, which read as follows:

Page 2, following line 27:

Insert a new bill section to read:

"* **Sec. 3.** AS 15.07.060(b) is amended to read:

(b) **Every registration form must include space for an applicant who is registered in another jurisdiction to specify that jurisdiction and a notice that the director will notify the chief elections officer in that jurisdiction.** If the applicant has been previously registered to vote in another jurisdiction, the director shall notify the chief elections officer in that jurisdiction that the applicant has registered to vote in Alaska and request that that jurisdiction cancel the applicant's voter registration there."

REPRESENTATIVE FANSLER objected.

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REPRESENTATIVE LEDOUX explained that Amendment 1 clarifies the process in the event candidate two died, was incapacitated, decided to get out of the race, and so forth, the amendment advances candidate three to the number two position.

REPRESENTATIVE KOPP described Amendment 1 as fairly exhaustive, involving a number of policy calls and he would like a full analysis.

REPRESENTATIVE LEDOUX answered that the bottom line is Amendment 1 simply moves the candidate in third place to the second place position.

[6:01:51 PM](#)

COURTNEY ENRIGHT, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, noted there is a lot of conforming language within Amendment 1, although, a couple of pieces do create a bit more intricacy. The amendment provides that in the event of a tie, for example, if two candidates had advanced that had tied in the first position, the person who came in second "instead of strictly third" would advance, and it takes into account that particular instance of occurrence. The amendment also speaks to current statute which states that if the state was 64 days out from the general election, the third candidate would not advance, which is also in compliance with federal voting laws. This relates to the requirement to have ballots prepared and forwarded to overseas troops, and others, 45 days prior to an election, and that deadline is in existing statute. Those, she said, are the biggest complications in the amendment.

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CHAIR CLAMAN, in response to Representative Kopp, advised that his office received Amendment 1 yesterday, and it was distributed to the committee last night.

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REPRESENTATIVE EASTMAN commented that under the state's current partisan primary system, for example, there is an interested party to nominate or replace if someone resigns or whatever, and that is not included in this proposal. He pointed out that he was concerned that its absence may militate in the direction of creating a new or greater incentive for coercing someone or convincing someone to withdraw knowing that another party candidate might be the replacement.

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REPRESENTATIVE FANSLER pointed out that the amendment speaks only of the third person moving up into second place, and he could think of several scenarios where possibly that would not be the appropriate avenue. For instance, he remarked, the third person had moved on with their life and decided not to be part of the election, there was not a mechanism to move down to the fourth candidate. He asked what happens if two people drop off the ticket with no mechanism to move to lower positions.

[6:05:12 PM](#)

MS. ENRIGHT agreed that there is no mechanism to move down through the other positions because the amendment stays consistent with other systems. She explained that those other systems do not allow anyone to advance from the third position to the second position in the general election, and they have managed to successfully implement their systems for many years. Ironically, she explained, the reason the other systems do not allow candidates to advance from third to second position if there is an incapacitated instance, are the same reasons Representative Eastman expressed concern about not having an individual advancing from second to third. The other systems, she explained, believe there is a greater incentive for coercion. For example, when speaking with the group that ran the California ballot initiative, it advised that it had specifically not included that caveat because it was believed that in continuing to move down the line, political pressure could be provided to get individuals to withdraw their candidacy. She confirmed that Amendment 1 does not provide a mechanism to continue moving down the ballot past the third candidate.

[6:06:21 PM](#)

REPRESENTATIVE FANSLER asked whether the main bill or this amendment speaks to a situation where there is a tie or second and third place tie.

MS. ENRIGHT explained that it would be addressed in the same manner as any other tie vote would be addressed under Alaska State Statute, "through a lot or a coin toss."

[6:07:10 PM](#)

REPRESENTATIVE FANSLER withdrew his objection.

[6:07:14 PM](#)

REPRESENTATIVE REINBOLD objected.

[6:07:22 PM](#)

A roll call vote was taken. Representatives Kreiss-Tomkins, LeDoux, Fansler, Eastman, and Claman voted in favor of the adoption of Amendment 1. Representatives Kopp and Reinbold voted against it. Therefore, Amendment 1 was adopted by a vote of 5-2.

[6:07:59 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 2, Version 30-LS0038\U.2, Bullard, 4/14/17, which read as follows:

Page 1, line 1, following "**nonpartisan**":
Insert "**ranked-choice**"

Page 6, line 9, following "**nonpartisan**":
Insert "**ranked-choice**"

Page 7, following line 12:
Insert a new paragraph to read:

"(16) The director shall design the primary or special primary election ballot to accommodate ranked-choice voting for candidates for the offices of governor and lieutenant governor, for candidates for the legislature, and for candidates for the United States Congress. The ballot shall direct the voter to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign a particular ranking to more than one candidate in the same race."

Page 7, following line 20:
Insert new bill sections to read:

"* **Sec. 12.** AS 15.15.350 is amended by adding new subsections to read:

(c) When counting primary or special primary election ranked-choice voting ballots, the election board shall initially count each ballot as one vote for the highest-ranked continuing candidate on the ballot or as an exhausted ballot. The election threshold shall be calculated. Tabulation shall then proceed sequentially as follows:

(1) if the number of continuing candidates whose vote totals exceed the election threshold is equal to two, those two candidates are nominated, and the tabulation is complete; if the number of continuing candidates is equal to or less than two, then those continuing candidates are nominated, and the tabulation is complete; otherwise, the tabulation continues to (2) of this subsection;

(2) if no candidate has a vote total that exceeds the election threshold, the tabulation continues to (3) of this subsection; if at least one continuing candidate has a vote total that exceeds the

election threshold, then the continuing candidate with the highest vote total is nominated, the number of surplus votes for the candidate shall be calculated, and the surplus fraction for the candidate shall be calculated; the new transfer value of each vote cast for the candidate shall be calculated; votes for the candidate shall be added, at their new transfer values, to the totals of each ballot's highest-ranked continuing candidates or counted as exhausted ballots, and a new round begins under (1) of this subsection; in all subsequent rounds, candidates elected under this paragraph have vote totals equal to the election threshold;

(3) the candidate with the fewest votes is defeated; then, if the number of continuing candidates is equal to two, all continuing candidates are elected, and the tabulation is complete; otherwise, votes for the defeated candidate shall cease to be counted for the defeated candidate and shall be added, at their current transfer values, to the total of the next-ranked continuing candidate on each ballot or counted as exhausted ballots, and a new round begins under (1) of this subsection.

(d) When counting primary or special primary ranked-choice election ballots,

(1) a ballot assigning a particular ranking to more than one candidate for an office shall be declared invalid when the double ranking is reached;

(2) if a ballot skips a ranking, then the election board shall count the next ranking; and

(3) if there is a tie vote between continuing candidates, the procedures in AS 15.15.460 and AS 15.20.430 - 15.20.530 shall be followed.

(e) In this section,

(1) "continuing candidate" means a candidate that has not been defeated or nominated;

(2) "election threshold" means the number of votes sufficient for a candidate to be nominated; the election threshold is calculated by dividing the total number of votes for continuing candidates in the first round by three and rounding up to four decimal places;

(3) "exhausted ballot" means a ballot that is not counted for a continuing candidate for one or more of the following reasons:

(A) it does not rank a continuing candidate;

(B) its highest continuing ranking contains an overvote; or

(C) it includes two or more consecutive skipped rankings before its highest continuing ranking;

(4) "highest continuing ranking" means the highest ranking for a continuing candidate;

(5) "overvote" means the assignment by a voter of the same ranking to more than one candidate;

(6) "ranking" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on;

(7) "round" means an instance of the sequence of voting tabulation in a primary or special primary election;

(8) "skipped ranking" means a ranking blank on a ballot on which a voter has ranked another candidate at a subsequent ranking;

(9) "surplus" means a positive difference between a candidate's vote total and the election threshold;

(10) "surplus fraction" means the number equal to a candidate's surplus divided by the candidate's vote total, calculated to four decimal places and ignoring any remainder;

(11) "transfer value" means the proportion of a vote that a ballot will contribute to its highest continuing ranking; each ballot begins with a transfer value of one; if a ballot transfers from a nominated candidate with a surplus, the ballot receives a new transfer value that is calculated by multiplying the surplus fraction of the nominated candidate by the current transfer value of the ballot, calculated to four decimal places and ignoring any remainder.

* **Sec. 13.** AS 15.15.360(a)(1) is amended to read:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question that the voter desires to designate. In addition, a voter may mark a ballot at a primary or special primary election by the use of roman or Arabic numerals that are clearly spaced in one of the squares opposite the name of the candidate that the voter desires to rank.

* **Sec. 14.** AS 15.15.360(a)(4) is amended to read:

(4) Except as provided in AS 15.15.350(c) for primary and special primary election ballots, if [IF] a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office may not be counted.

* **Sec. 15.** AS 15.15.370 is amended to read:

Sec. 15.15.370. Completion of ballot count; certificate. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, including the number of votes at each round of the primary or special primary ranked-choice voting tabulation process under AS 15.15.350(c), and the number of votes for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram, or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To assure adequate protection, the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

* **Sec. 16.** AS 15.15.450 is amended to read:

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting review for a primary or special primary election, the director shall certify the two persons

receiving the greatest majority and the second greatest majority of votes for the office for which those persons were candidates as nominated to the general election ballot, and, for a general election,
the director shall certify the person receiving the largest number of votes for the office for which that person was a candidate as elected to that office and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum, or constitutional amendment."

Renumber the following bill sections accordingly.

Page 11, line 16:

Delete "number of votes and the second greatest number"

Insert "majority of votes and the second greatest majority"

Page 13, line 13, following "ballots.":

Insert "(a)"

Page 13, following line 23:

Insert a new subsection to read:

"(b) The director shall include instructions on primary and special primary election ballots directing the voter to rank candidates for an office in order of preference and to rank as many choices as the voter wishes, but not to assign the same ranking to more than one candidate."

Page 13, line 28:

Delete "number of votes and the second greatest number"

Insert "majority of votes and the second greatest majority"

Page 13, line 31:

Delete "number"

Insert "majority"

Page 14, line 3:
Delete "number"
Insert "majority"

Page 14, line 9:
Delete "number"
Insert "majority"

Page 14, line 10:
Delete "number"
Insert "majority"

Page 14, line 11:
Delete "number"
Insert "majority"

Page 14, line 13:
Delete "number"
Insert "majority"

Page 14, line 14:
Delete "number"
Insert "majority"

Page 14, line 15:
Delete "number"
Insert "majority"

Page 14, line 17:
Delete "number"
Insert "majority"

Page 22, line 28:
Delete "most"
Insert "greatest majority and second greatest majority of"

Page 23, line 16:
Delete "may vote for any candidate listed"
Insert "must rank the candidates in the numerical order of your preference, ranking as many candidates as you wish. Your second, third, and subsequent ranked choices will be counted only if the candidate you ranked first does not receive enough votes to continue on to the next round of counting, so ranking a second, third, or subsequent choice will not hurt your first-choice candidate. Your ballot will be counted

regardless of whether you choose to rank one, two, or more candidates for each office, but it will not be counted if you assign the same ranking to more than one candidate for the same office"

Page 23, line 17:

Delete "most"

Insert "greatest majority and second greatest majority of"

Page 23, line 28:

Delete "may vote for any candidate listed"

Insert "must rank the candidates in the numerical order of your preference, ranking as many candidates as you wish. Your second, third, and subsequent ranked choices will be counted only if the candidate you ranked first does not receive enough votes to continue on to the next round of counting, so ranking a second, third, or subsequent choice will not hurt your first-choice candidate. Your ballot will be counted regardless of whether you choose to rank one, two, or more candidates for each office, but it will not be counted if you assign the same ranking to more than one candidate for the same office"

Page 23, line 29:

Delete "most"

Insert "greatest majority and second greatest majority of"

Page 25, following line 23:

Insert a new bill section to read:

"* **Sec. 59.** AS 15.80.010 is amended by adding a new paragraph to read:

(46) "ranked-choice voting" means the method of casting and tabulating votes at a primary or special primary election in which voters rank candidates in order of preference and in which tabulation proceeds in sequential rounds in which last-place candidates are defeated and the candidates with the greatest majority of votes and the second greatest majority of votes are nominated to appear on the general election ballot."

Page 26, line 9, following "NONPARTISAN":

Insert "RANKED-CHOICE OPEN"

Renumber the following bill sections accordingly.

REPRESENTATIVE LEDOUX objected.

[6:08:09 PM](#)

REPRESENTATIVE EASTMAN offered that Amendment 2 provides an opportunity to include "ranked-choice voting" in this bill. He explained that "ranked-choice voting" in multi-winner elections maximizes the effectiveness of every vote to ensure that as many voters as possible will help elect a candidate they rank highly. It minimizes wasted votes and the impact of tactical voting, allows voters to have more choices, encourages positive campaigning collation building, upholds both minority representation, and the principle of majority rule. Due to its proven history, its emphasis on candidates rather than parties in its ability to allow voters to express their full honest preference on the ballots, ranked-choice voting is the form of fair representative voting best suited for use in the United States elections. Recently, he advised, the State of Maine decided to take this route and they are the first state and, were Alaska to do this it would be the second state.

[6:09:30 PM](#)

REPRESENTATIVE LEDOUX said she was unsure whether she really opposed this amendment as it was fairly complicated, but she would certainly look into the amendment as the bill moved on to the next committee of referral, assuming it so moved.

[6:10:18 PM](#)

REPRESENTATIVE KREISS-TOMKINS described it as a monster of an amendment, shared Representative LeDoux's intrigue having followed ranked-choice voting (RCV) quite a bit, and noted the State of Maine initiative made Maine the first state, but several municipalities may have ranked-choice voting. He asked Representative Eastman to explain how this would interact with the bill as written, whether it would be an ornament on top or would effectively replace it.

REPRESENTATIVE EASTMAN responded that there many way of performing ranked-choice voting, and in this case the bill creates a top two results of a primary that go off into a run-off in the general remains as is, the amendment revamps the primary portion of the bill completely. For example, it comes up in a situation where "you have so many candidates who run for

the office based on however many candidates run" and then calculate those top two and those top two would go on, and from there the bill would be unchanged. He explained that part of that is because it's the bill in front of the committee and that would have been a completely different bill to carry that into the general, but also, he further explained, research found that [Alaska's] constitution may have a prohibition, at least in the gubernatorial race, against ranked-choice voting in the general election for the governor.

[6:12:23 PM](#)

REPRESENTATIVE KREISS-TOMKINS surmised that basically the primary election would be a ranked-choice vote, and then the top two coming out of that ranked-choice vote primary election would advance to the general, and it would be the top two.

REPRESENTATIVE EASTMAN answered in the affirmative.

[6:12:43 PM](#)

REPRESENTATIVE LEDOUX asked whether it would still be an open primary system under Amendment 2.

REPRESENTATIVE EASTMAN responded that there is nothing that would say it would have to change, and that could be another discussion point if there was a reason to change it. Ranked-choice voting, he explained, is not mutually exclusive to nonpartisan in any manner. There could still be the same opportunity to identify as a particular party candidate but the party would not be controlling who could file for office, and who could be part of that first election.

[6:13:21 PM](#)

REPRESENTATIVE LEDOUX asked whether the State of Maine has an open primary, because her office had not identified the State of Maine as having an open primary.

REPRESENTATIVE EASTMAN replied that he thought Representative LeDoux was correct, but he was not an expert on that part of the process.

REPRESENTATIVE LEDOUX related that she would be willing to look into this. It appears Representative Kreiss-Tomkins may also be fascinated by the idea and he is the chair of the next committee of referral, she offered.

REPRESENTATIVE KREISS-TOMKINS concurred with Representative LeDoux's comments, and described the amendment as a knuckle ball.

[6:14:15 PM](#)

CHAIR CLAMAN said that he does not support this amendment, and referred to Alpheus Bullard, Legislative Legal and Research Services, 4/4/17 memorandum directed to Representative Eastman, page 3, last two sentences of the first paragraph, which read as follows:

Note that the language required to implement a "multi-winner" ranked-choice system defines simplification. Given the time allotted, I used the language of Fairvote's multi-winner ranked-choice system, modifying it only as necessary or as appropriate to a "two-winner" system

CHAIR CLAMAN commented that this is an interesting idea and there is the notion that ranked-choice voting is also sometimes called the "instant run-off method." He opined that, at least with regard to the state's nonpartisan municipal elections, the instant run-off would be a positive thing particularly in the mayoral races where 25 percent of the voters show up for the first go-round which turns out to be a run-off, and about 15 percent of the voters show up for the second round. He described, with regard to instant run-offs and ranked-choice it would be a service to the voters to not go through the cost.

[6:15:29 PM](#)

REPRESENTATIVE LEDOUX maintained her objection.

[6:15:34 PM](#)

REPRESENTATIVE EASTMAN related that he appreciated the comments from the committee as this is something that hasn't been tried before, noting a desire to change something for the better after carefully considering what would be considered "the better," and that he offered the amendment as part of that conversation. The drafter of the amendment noted there had to be a number of caveats to account for all of the different potential outcomes of tie-votes, such as incorrectly marking a ballot and so forth, which required complexity in the language which was unavoidable. He stressed that there was no slight to the drafter who put in a

huge amount of time drafting the amendment. Representative Eastman withdrew Amendment 2, with the understanding that hopefully this amendment could be part of the understanding moving forward.

[6:16:58 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that he is supportive of the bill and intrigued by Amendment 2, and was excited to see the bill and amendment in the next committee of referral.

[6:17:18 PM](#)

REPRESENTATIVE KOPP commented that he does not support the bill and believes HB 200 intentionally dilutes the validity of having political parties, the purpose of having primary elections is so that voters can see which candidate best supports their party views, and it introduces mischief into the process by having insincere candidates committing to carrying out the platform of the party on behalf of many voters.

[6:18:07 PM](#)

REPRESENTATIVE REINBOLD noted that the policy of the bill had not been vetted well and that she found it disturbing because the process in which people are elected, and the people in power, is of the utmost importance to the people of Alaska. She said she does not support HB 200.

[6:19:03 PM](#)

REPRESENTATIVE FANSLER said he was intrigued by this bill.

[6:19:33 PM](#)

REPRESENTATIVE EASTMAN commented that like many of his constituents, he looked at the trend in the state and the effectiveness of its current primary process and the relatively new trend of people running in primaries and then resigning or moving to a different ticket, and said he could not imagine that this happens often in a lot of other states. Due to that issue, there is a desire to step away from that trend and this bill might become a vehicle to do that, except he does not support the bill's current language.

[6:20:56 PM](#)

REPRESENTATIVE LEDOUX pointed out that this is the third committee hearing on this bill and; therefore, it could not be said that this bill was being fast tracked.

REPRESENTATIVE LEDOUX, in response to comments made in a previous committee hearing, offered to make available a memorandum from Legislative Council directed to Legislative Legal and Research Services advising how it is to prioritize its work. She expressed there is nothing in that memorandum to suggest that minority amendments [or requests] be placed at the bottom of the barrel.

REPRESENTATIVE LEDOUX advised that for the reasons previously stated, this is a good bill and she would appreciate moving it to the next committee of referral.

[6:22:09 PM](#)

REPRESENTATIVE FANSLER moved to report CSHB 200, Version 30-LS0038\U out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE REINBOLD objected.

[6:22:23 PM](#)

A roll call vote was taken. Representatives Kreiss-Tomkins, LeDoux, Fansler, and Claman voted in favor of moving CSHB 200 out of committee. Representatives Reinbold, Kopp, and Eastman voted against it. Therefore, CSHB 200(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-3.

[6:23:43 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 6:23 p.m.