ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
March 11, 2020
1:37 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Peter Micciche, Vice Chair
Senator Shelley Hughes
Senator Lora Reinbold
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 13
Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

- HEARD & HELD

CONFIRMATION HEARING

Public Defender Agency
Samantha Cherot - Anchorage

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 13
SHORT TITLE: CONST. AM: PROHIBIT ABORTION/FUNDING
SPONSOR(s): SENATOR(s) HUGHES

01/21/20	(S)	READ THE FIRST TIME - REFERRALS
01/21/20	(S)	HSS, JUD, FIN
02/26/20	(S)	HSS AT 1:30 PM BUTROVICH 205
02/26/20	(S)	Heard & Held
02/26/20	(S)	MINUTE(HSS)
03/06/20	(S)	HSS AT 1:30 PM BUTROVICH 205
03/06/20	(S)	Moved SJR 13 Out of Committee
03/06/20	(S)	MINUTE(HSS)

03/09/20	(S)	HSS RPT 3DP
03/09/20	(S)	DP: WILSON, SHOWER, GIESSEL
03/09/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/09/20	(S)	Heard & Held
03/09/20	(S)	MINUTE(JUD6
03/11/20	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

LISA HART, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented a PowerPoint on SJR 13.

JEANNEANE MAXON, Attorney, J.D.
Law and Compliance Consultant; Associate Scholar
Charlotte Lozier Institute
Washington, D.C.
POSITION STATEMENT: Testified in support of SJR 13 and reported on abortion laws in other states.

LOREN LEMAN, representing himself
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SJR 13 and provided his perspective on legislative and judicial actions in Alaska.

STACIE KRALY, Chief Assistant Attorney General;
Statewide Section Supervisor
Civil Division
Human Services Section
Department of Law
Juneau, Alaska
POSITION STATEMENT: Presented a timeline of court cases on abortion during the hearing on SJR 13.

SAMANTHA CHEROT, Appointee
Public Defender Agency
Department of Administration
Anchorage, Alaska
POSITION STATEMENT: Testified as appointee to the Public Defender Agency.

ACTION NARRATIVE

1:37:13 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 Hughes, Reinbold, Micciche, Kiehl and Chair Coghill.

SJR 13-CONST. AM: PROHIBIT ABORTION/FUNDING

1:37:55 PM
CHAIR COGHILL announced consideration of SENATE JOINT RESOLUTION NO. 13, Proposing an amendment to the Constitution of the State of Alaska relating to abortion.

1:39:04 PM
SENATOR HUGHES said she would address three areas related to SJR 13: first, she will provide the federal background and allowances related to abortion and how states have set policy based on these allowances; second, she will provide a brief history on the right to privacy amendment in the Constitution of the State of Alaska; and third, she will discuss the separation of powers as it relates to SJR 13. She paraphrased from a portion of the sponsor statement:

> Senate Joint Resolution 13 proposes an amendment to the Alaska State Constitution, adding a new section that would provide clarity regarding Article 1 (specifically pertaining to the right to privacy and the right to equal protection) and Alaska's ability to set public policy related to abortion.

She emphasized that nothing could be construed to secure or protect a right to an abortion or to require public funding for an abortion.

1:40:22 PM
SENATOR HUGHES paraphrased from a portion of the sponsor statement:

> Although the U.S. Supreme Court declared in Roe v. Wade (1973), and reaffirmed in Planned Parenthood v. Casey (1992), that there is an alleged federal constitutional right to abortion, the federal courts have nonetheless held that states can still legislate related issues in a number of ways – e.g., by banning the use of public funds for abortions, requiring a parent to consent before abortion can be performed on a minor, and even disallowing certain abortion

procedures (such as partial-birth abortion or late term abortion).

She said the Alaska Supreme Court has not allowed what the federal courts have allowed, and other state legislatures have determined certain policies regarding abortion and their laws have been upheld at the state and federal level.

SENATOR HUGHES said that when the Alaska legislature determined a policy related to abortion, one that would have been permitted and upheld in other states, Alaska courts have struck down the policies. This happened when Alaskans determined a policy via a voter initiative, even though the federal courts would have upheld it in other states.

She paraphrased a portion of the sponsor statement to illustrate some concrete examples:

> In Minnesota, both parents must be informed before a minor can have an abortion. In Illinois, one parent must be informed. There are 37 states that have laws requiring parental notification, and 21 requiring actual parental consent; additionally, 21 states have laws in effect that prohibit "partial birth" abortion, and 3 have laws that apply to post-viability (ability to survive outside of the uterus) abortions. In Alaska, we are unable to have any provisions in law related to these matters unless we fix our constitution.

She said that when Alaska passed a parental consent law, the Alaska Supreme Court struck it down. The court ruling indicated that a parental notification law would be acceptable. Subsequently, Alaskans via a voter initiative passed a parental notification law, but the Alaska Supreme Court struck it down.

She explained that when she refers to blue states, she is referring to ones that lean left, or their state house, senate, or governor is a Democrat. Red states are ones in which states lean right or are Republican, and gray states are a mix. It is not partisan, because across the political spectrum, states have set some of these policies. She provided some examples, noting that the slide presentation will illustrate her point.

SENATOR HUGHES asked members to fix the constitution so some of the same parameters could be allowed to stand if it is the will of the people. She clarified that this is not designed to answer

the question, in terms of abortion, of what a woman may legally do, or what the legislature may fund. It does not set any specific parameters. She offered her view that SJR 13 would allow Alaska to be on par with other states by preventing the courts from adding something to the Constitution of the State of Alaska that its framers never envisioned.

1:45:08 PM
SENATOR HUGHES turned to the second point. She provided a brief history of the right to privacy since it has been the court's default to overturn abortion related policy in Alaska. In 1972 the legislature put the right of privacy on the ballot, which had nothing to do with abortion. According to Alaska's Constitution, a Citizen's Guide [Section 22. Right of Privacy], she read, "This section was added to the constitution by amendment in 1972. It was prompted by fear of the potential for misuse of computerized information systems, which were then in their infancy." In the early 1970s, the Department of Public Safety was developing the Alaska Justice Information System, a computerized database of information on the criminal history of individuals. Fearful that such a system was the precursor of a "big brother" government information bureaucracy, legislators responded with the constitutional amendment which was handily ratified by the voters. She said that was the beginning of the concern about data mining.

1:47:03 PM
SENATOR HUGHES turned to the third point, which is about protecting the separation of powers. She offered her belief that the state has seen a pattern of obstruction by the courts. Judge Andrew Kleinfeld, Fairbanks, in a 1995 Ninth Circuit Court of Appeals case, Compassion in Dying v. State of Washington, made a statement. She read his remark from [his dissenting decision], "That a question is important does not imply that it is constitutional. The founding fathers did not establish the United States as a democratic republic so that elected officials would decide trivia, while all great questions would be decided by the judiciary."

She asked members whether the legislature should hand over the answering of all great questions to the judiciary or if the legislative branch should address the great questions. She said the legislative branch has the duty, obligation, and power to answer great questions. Justice Craig Stowers commented on a ruling that struck down a 2014 law passed by the legislature pertaining to the public funding of abortions. She quoted: "I believe the court today fails to give respect to the

legislature's proper role, but instead substitutes its own judgment for that of the legislature." She asked members to respect the careful balance of power and ensure that the legislature can fulfill its duty as representatives of the people, that it not be subjugated by the judicial branch or relinquish its responsibility to the judiciary. The legislature has the ability and the right under the U.S. Constitution as a state legislature to make laws related to abortion.

SENATOR HUGHES said she personally wants unborn babies to be protected and for abortion to end. She would like babies to be cared for and cherished by loving parents, including adoptive families. She offered her belief that one day Americans will look back on abortions, like slavery, as a barbaric act that does not have any place in a civil society. However, this resolution is not about that; it simply will allow Alaskans rather than the courts to make decisions on policies related to abortion in Alaska.

1:51:32 PM
LISA HART, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, Alaska, began a slide presentation, "SJR 13 Constitutional Amendment Relating to Abortion," consisting of a series of color coded U.S. maps illustrating the political makeup of each state based on the house and senate majority, and the office of the governor. She said slide 2 shows eight states with minimal or no timing restrictions for abortions in the state, including Alaska.

1:52:49 PM
MS. HART reviewed slide 3, which showed 24 states that have state laws in place to disallow abortions after 24 weeks. She noted the broad makeup of red, gray, and blue states that have set this 24-week parameter. She read, "In 1973 the Supreme Court established that states could prohibit abortion after viability - the point at which a baby can self-sustain life. For reference purposes, viability is determined on an individual basis - the standard number of weeks for viability averages around 22-24 weeks."

She turned to slide 4, which identified states that do not allow any abortions after 18-22 weeks. She pointed out that three of the 14 states are gray states, including Kansas, Wisconsin, and North Carolina.

MS. HART reviewed slide 5, which depicted the states that do not allow any abortion after six to eight weeks, which is commonly

referred to as a "heartbeat bill". Two of the six states, Louisiana and Kentucky are gray states.

1:54:16 PM
MS. HART reviewed slide 6, "Parental Involvement, Parental Consent, and Parental Notification." This slide shows which states have enacted legislation for parental involvement for abortion for parental consent, parental notification, or both. She said legislation by the states has opened a much-needed debate about the role of states, legislatures, and government with respect to abortion.

1:54:53 PM
MS. HART read slide 7:

> The Alaska Supreme Court has determined that the state constitution provides a broader right to abortion than that interpreted in the U.S. Constitution
>
> Passing SJR 13 will allow common-sense abortion policies if we so choose – as permitted under the federal constitution
>
> It will allow elected officials -- or the people acting through the initiative process -- to determine the policies on abortion, instead of unelected justices on the Supreme Court.

1:55:35 PM
MS. HART read slide 8:

> Abortion-Related Laws Overturned in Alaska
> Hospital Participation:
> 1970 law passed (no mandatory participation)
> 1997 courts struck down
> Parental Consent:
> 1997 law passed
> 2007 courts struck down: court recommended to change "parental consent" to "parental notification"
> Parental Notification:
> 2010 voter initiative passed
> 2016 courts struck down
> Public Funding:
> 1998 law passed to limit (to rape/incest, life of mother)
> 2001 struck down (but limiting to medically necessary ok)

2014 law passed (to limit medically necessary)
2019 courts struck down

She said these are examples that show where the Alaska legislature and a voter initiative have put laws on the books in the areas of hospital participation, parental consent, parental notification, and public funding. However, the courts have struck down these laws.

1:56:10 PM
MS. HART read slide 9, the sectional analysis of SJR 13:

> Section 1 - Article I, Constitution of the State of Alaska, Page 1, Lines 3-7 Amends the Constitution of the State of Alaska by adding a new section, Section 26. Abortion. The amendment states that in order to protect human life, nothing in this constitution may be construed to secure or protect a right to an abortion or require the State to fund an abortion.
>
> Section 2 - Article I, Constitution of the State of Alaska, Page 1, Lines 8-10 Adds that the amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

1:57:07 PM
CHAIR COGHILL thanked the presenter.

1:58:26 PM
JEANNEANE MAXON, Attorney, J.D., Law and Compliance Consultant; Associate Scholar, Charlotte Lozier Institute, Washington, D.C., said she has worked on public policy for over ten years. She offered her view that SJR 13 will return to Alaska's citizens and this legislature the constitutionally protected right to make decisions on abortion. While the U.S. Supreme Court has routinely affirmed the constitutional right of states to reasonably restrict or expand their laws on abortion, the Alaska Supreme Court usurped this right in 1997 with notable consequences. The rest of the nation saw a seven percent decrease in abortion rates, but Alaska saw a two percent increase in abortion while the population was decreasing, according to recent statistics. She reported that in 2019, 31 states passed laws related to abortion, either restricting or expanding their abortion policies, which represents a significant increase from 2018. As previously mentioned,

hundreds of laws have been passed throughout the country in recent years. Notably absent is Alaska, she said.

1:59:51 PM
MS. MAXON reiterated that SJR 13 does not take a position on abortion but rather restores to the citizens of Alaska the power to decide this issue for themselves, which is afforded to most citizens in other states. In recent years, three states have approved similar changes to their constitutions: Alabama, West Virginia, and Tennessee. Louisiana is currently considering an amendment, as well. The United States Court of Appeals for the Sixth Circuit upheld the right for Tennessee voters to approve such ballot measures. The U.S. Supreme Court allowed this ruling to stand. As a result these legislatures in these states have been able to enact some very common sense restrictions on abortion, including post-viability and post-22 week prohibitions on abortion with exceptions for the life of the mother and informed consent laws designed to protect the health and safety when minor girls are seeking abortion.

She said the need for this legislation is important because of the strong possibility that Roe v. Wade could soon be significantly curtailed or overturned. Last week the U.S. Supreme Court heard June Medical Services v. Russo. This case presents the first opportunity for the new court with a majority of five justices poised to do so. A decision in that case is expected no later than June 30, 2020. If Roe v. Wade is overturned, states will be afforded the opportunity to make broader decisions on their abortion policy without interference from the federal government. In anticipation of this, half of the states have passed laws that will automatically define the legality of abortion in their states, including bans or legalization, with most states falling somewhere in between.

2:02:06 PM
MS. MAXON said that because of the Alaska Supreme Court's decision, Alaska's citizens have not been afforded the opportunity to prepare for this possibility. Considering these developments, she offered her belief that it is critical that Alaskans also have a voice on abortion policy, either through ballot initiatives or through their elected officials. If this resolution fails to be brought before the voters, a majority of three individuals on the Alaska Supreme Court will hold the absolute power of determining abortion policy in Alaska. Alaska's citizens deserve their rights on this issue. She urged members to support SJR 13.

2:02:50 PM
CHAIR COGHILL thanked the presenter.

2:03:07 PM
LOREN LEMAN, representing himself, Anchorage, Alaska, said he previously served 14 years in the legislature and for four years as lieutenant governor of Alaska. He spoke in support of SJR 13 because it will give the state the ability to set policy on abortion, which has been usurped for more than 20 years by the courts.

He stated that for over 23 years he has defended the rights of parents to be involved in their children's lives with respect to abortion. Although his effort has been disrupted and delayed, he is not defeated or giving up. In 1997, he sponsored Senate Bill 24 to enable the state to enforce a 1970 law that required a doctor to obtain parental consent before performing an abortion on a girl under the age of 18. A 1970 attorney general opinion stated that law was unenforceable because the U.S. Supreme Court had subsequently ruled that state parental involvement laws must allow minors the option to seek a waiver in court, which is commonly known as a judicial bypass. In his view, the state effectively ignored the parental consent law.

MR. LEMAN explained that Senate Bill 24 included a judicial bypass provision in full compliance with the rulings of the U.S. Supreme Court. At the time, [1997] that court had recently issued a 9-0 decision in a case from Montana that effectively signaled to states not to send any cases related to parental consent since it had provided guidance. He remarked that even Ruth Bader Ginsberg joined in that decision.

2:06:01 PM
MR. LEMAN reported that Senate Bill 24 passed the legislature with super majority support. However, before the law could take effect, Planned Parenthood challenged it and it took ten years to resolve. He said he was extremely disappointed when the Alaska Supreme Court issued a 3-2 decision to strike it down. Highly respected Justice Carpeneti said in a dissenting opinion that, "This court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people." This statement encompassed his view, too, he said. In the majority opinion, Justice Fabe wrote that a law that is less restrictive than parental consent, such as one requiring parental notification would be acceptable.

He said the legislature introduced a bill to do so, but it did not move. He helped sponsor an initiative in 2010, Ballot Measure 2, gathering more than 45,000 signatures to place it on the ballot. Ballot Measure 2 received more than 56 percent approval by voters.

2:08:10 PM
MR. LEMAN said Planned Parenthood v. Alaska challenged the law, which was upheld by superior court, relying on the Alaska Supreme Court's assurance that a parental notification law would be considered constitutional, but it was struck down 4-1 by the court. Some felt that the court lied to them, he said. In the sole dissenting opinion, Chief Justice Craig Stowers said, "I cannot see how the court can reach these results under our standard of review for constitutional questions, adopting the most persuasive rule of law in light of precedent, reason, and policy."

He offered his view that Justice Stowers was correct. He said he also believes that many of the Alaska Supreme Court justices' decisions are not driven by the law or constitution, but by personal ideology, which is a problem. He stated that legislators make decisions based on their values and life experiences. However, legislators earn their right to make decisions as elected officials. Unelected judges have not earned that right so if judges exceed their authority, these judges deserve an aggressive response from the people. He said SJR 13 will allow the public to weigh in again. He reiterated that this resolution does not ban abortion or change abortion law, but it will restore to Alaska's leaders the right to set policy related to abortion. That power has been taken away from Alaskans who must live with the bad results. SJR 13 is a step in the right direction. It will help Alaskans decide the type of society in Alaska.

2:11:11 PM
SENATOR REINBOLD commended on his relentless effort on this issue. She related her own experience listening to the Alaska Supreme Court decision on the initiative related to parental consent. She wondered what efforts he has made to remove any judges.

MR. LEMAN said the voters can vote on retention of judges during elections. He said he has voted against retaining judges when he believes they have not followed the constitution or have not correctly interpreted the law. He was unsure if there will be an

organized effort, but individuals have the right to vote and to speak up.

2:14:56 PM
CHAIR COGHILL agreed that SJR 13 would allow the right to speak up and give the voice back to Alaskans.

2:16:18 PM
STACIE KRALY, Chief Assistant Attorney General; Statewide Section Supervisor, Civil Division, Human Services Section, Department of Law, said the committee received testimony providing an overview of litigation in Alaska. She said she would provide a broad overview of the Alaska Supreme Court and U.S. Supreme court cases related to abortion.

2:17:52 PM
MS. KRALY said that in 1973, the U.S. Supreme Court, in Roe v. Wade, found a constitutional right to abortion. Previous testifiers have provided an overview of cases for the past 40 years in Alaska and her focus will be on Alaska Supreme Court cases. She reiterated that in 1973, the U.S. Supreme Court ruled that there was a constitutional right to abortion in Roe v. Wade. In 1976, the federal government enacted what is commonly referred to as the Hyde amendment that prohibits use of federal funds for abortions under Medicaid. The Hyde amendment was challenged at the federal level in 1980 under Harris v. McCrae. The U.S. Supreme Court ruled that the legislative enactment was constitutional, affirming the limitation on federal funds except under narrow circumstances, including a threat to the health and welfare of the mother or for victims of rape or incest. That legislative enactment has been the law of the land since 1980, she said.

2:18:57 PM
MS. KRALY said that in 1977, the Alaska Supreme Court ruled in Valley Medical v. Mat-Su Coalition that there was a constitutional right to abortion in Alaska. The Alaska Supreme Court ruled that it does not rely on the Roe v. Wade analysis, that it is not looking at federal case law when evaluating constitutional rights, but it uses the Constitution of the State of Alaska, which provides much broader protections than the U.S. Constitution does. This means that when case law in Alaska is evaluated, the Alaska Supreme Court does not rely on federal case law in its analysis. The primary basis for the right to an abortion under Valley Medical v. Mat-Su Coalition rests in the constitutional right to privacy in the Constitution of the State of Alaska, Article 1, Section 22.

2:20:21 PM
MS. KRALY said Senator Hughes provided several restrictions on the right to an abortion, which were predicated in the 1992 Planned Parenthood v. Casey decision. She indicated that the U.S. Constitution provides states with the ability to regulate abortion so long as it does not create an undue burden on access to services. She stated that the court departed from a viability argument to an undue burden analysis. Anything a state does or any regulation or statute that it enacts is evaluated under an undue burden analysis, she said.

In 1997, the Department of Health and Social Services (DHSS) adopted a regulation, 7 AAC 43.140, that followed the Hyde amendment, which indicated that the state would not permit public funds for abortion. At the same time Senate Bill 24 formalized parental consent provisions in AS 18.16.020. Both cases were appealed to the Alaska Supreme Court.

MS. KRALY turned to the 2001 State v. Planned Parenthood public funding case. The Alaska Supreme Court again affirmed that there is a constitutional right to an abortion under the Constitution of the State of Alaska relying upon Article 1, Section 22, related to the right to privacy. However, the Court also looked at equal protection, relying on the 1997 Valley Medical v. Mat-Su Coalition ruling regarding the restriction on public funding. The Court ruled that the regulation adopted by DHSS was unconstitutional, and therefore the state must cover publicly funded abortions with the distinction that it meant using state funds, not federal funds for abortions.

2:22:44 PM
MS. KRALY said that in 2001, the Alaska Supreme Court took up the first parental consent case, which she referred to as Planned Parenthood 1 (PP1). This case challenged whether the parental consent act was constitutional. First, the Court affirmed the constitutional right to an abortion under the right to privacy provided by the Constitution of the State of Alaska. Second, the Court held that minors have a constitutional right to privacy, which extended the right to an abortion to a minor. The Court held that the trial court failed to engage in a more robust evaluation of the equal protection analysis, relying solely on the Valley Medical v. Mat-Su Coalition right to privacy argument. The Court remanded the case back to superior court for a trial to determine if an equal protection issue was present. In 2009, after the superior court heard the case, Planned Parenthood v. Casey, was back before the Alaska Supreme

Court, referred to as PP II. In that case the Court affirmed its prior ruling related to the right to privacy and the right to an abortion, but ruled that it violated equal protection such that the parental consent act was not constitutional. She recalled that Senator Hughes and Mr. Leman both indicated that the decision was lengthy, and it outlined the possibility of parental notification being constitutional in the majority and minority opinions. As a result, the voter initiative took place [in 2010 with Ballot Measure 2] and the parental consent act was amended to require a parental notification component.

2:24:59 PM
MS. KRALY said that in 2013, DHSS adopted a regulation related to public funding and medical necessity, which goes back to the original public funding case. In 2014, the legislature passed AS 47.07.068, related to medical necessity for abortion. She pointed out that under PP 1, the Court did not distinguish between medically necessary and elective abortions, but it made it clear that the Medicaid program does not cover non-medically necessary services. The Court left open the question of what would be covered under a medically necessary analysis. When the statutes and regulations were amended to define what would constitute medical necessity, those enactments were also challenged.

She turned to the last two cases. In 2016, in State of Alaska v. Planned Parenthood, referred to as PP III, notwithstanding the prior judicial language about notification, the Court went through the same analysis related to the constitutional right to privacy and equal protection and found that the parental notification provision was also unconstitutional because it was not narrowly tailored to achieve the state's interests.

2:27:00 PM
MS. KRALY said that in 2019, in State v Planned Parenthood, the state had its last public funding litigation over the definition of medical necessity. The Court held that there was a constitutional right to an abortion, but under an equal protection analysis, the statutory and regulatory framework were unconstitutional because it treated individuals differently. It treated women seeking non-abortion services differently than it did women who were seeking abortion services.

2:27:41 PM
MS. KRALY offered that the common theme is that women in Alaska have a constitutional right to an abortion under the privacy clause, Article 1, Section 22, of the Constitution of the State

of Alaska. The analysis goes through to the 1992 Planned Parenthood v. Casey, which does not apply to Alaska. The attempt to regulate an abortion in Alaska is examined in the Constitution of the State of Alaska framework of equal protection. She reiterated that in Alaska, the Court has always looked through a state lens and does not rely upon the federal framework for a right to an abortion.

2:28:27 PM
CHAIR COGHILL said the committee will consider the case law related to the right to privacy and the equal protection issues and consider how that interacts with the constitutional issues. He suggested that the constitution will allow a public discussion, but it still must go through a series of tests. The committee must go through the equal protection and right to privacy least restrictive means alongside something that might be passed under SJR 13.

2:29:38 PM
MS. KRALY said that is correct; if SJR 13 passed the legislature and went through an initiative process it would create a stand-alone provision in the Constitution of the State of Alaska related to abortion. While that would provide a constitutional right to regulate or make adjustments on how that right is exercised in the state, it would be necessary to make sure it is framed and crafted so that the state would not run into additional roadblocks related to other constitutional provisions.

CHAIR COGHILL said he anticipates that other constitutional concerns would arise because natural tensions exist in laws on criminal justice issues and fish and game management or other natural resource management.

SENATOR HUGHES said that Cori Mills, Legislative Legal could also assist the committee with constitutional issues. She asked if any laws that the courts ruled as unconstitutional were ever fixed. She related her understanding that if this resolution passed the state would have a blank slate and would need to revisit previous laws.

CHAIR COGHILL related his understanding that if SJR 13 passes and an initiative passes, it needs to be clear that the courts would need to consider the language.

2:32:47 PM
MS. KRALY agreed it would open new discussions on the issue.

2:32:59 PM
SENATOR KIEHL said he has numerous questions on SJR 13.

CHAIR COGHILL suggested that the committee should hold discussions before public testimony it taken. He said that public testimony would be held open.

2:34:07 PM
CHAIR COGHILL said SJR 13 would be held in committee.

CONFIRMATION HEARING: Public Defender Agency

2:34:36 PM
CHAIR COGHILL announced that the next order of business would be the confirmation hearing for Samantha Cherot to the Public Defender Agency.

2:35:08 PM
SAMANTHA CHEROT, Appointee, Public Defender Agency, Department of Administration, Anchorage, Alaska, stated she has been serving as the director of the Public Defender Agency since September 2019. She said she grew up in Alaska, primarily raised by a single mother who instilled a strong work ethic, independence, and a commitment to give back to others. She attended undergraduate and law school in California and entered private law practice representing public entities and employment law litigation in California. She represented sheriff departments, cities, counties, and school districts. She trained public employees in employment law compliance. Like many Alaskans, she was pulled back to Alaska. In 2009, she and her husband returned to Alaska where she worked primarily as a public defender. She said her interest was to work with clients, participate in trials and serve those in need. She spent three years serving in the [Department of Law] criminal division where she gained extensive trial experience. She supervised support staff, law office assistants and paralegal staff. She returned to private practice with Cashion Gilmore LLC, in Anchorage. She continued with criminal and civil litigation, including divorce and custody cases. In 2015, she returned to the public defender agency because of her desire to assist those in need and to help families reunite. She primarily represented parents or children in the child in need of aid (CINA) cases. She also worked on mental health cases, including involuntary commitment, and forced medication proceedings. Through her work, she observed many people find stability in their communities. She observed

people obtain substance abuse treatment and sobriety, manage their mental health challenges, become more empowered, and become safer parents who could be reunited with their children.

2:37:51 PM
MS. CHEROT said it was a difficult decision to return to the public defender. She still represents clients, but that aspect of her work is minimal. She is tasked with overseeing the public defender agency's 13 offices, with over 100 attorneys and 70 support personnel when fully staffed. She said she has found that her employment law background and training experience has been valuable. Her primary focus has been on recruitment and retention and how to best use the agency's resources to be effective and efficient while not compromising the constitutional mandates and ethical obligations to their clients. She acknowledged that the agency turnover requires substantial training. She related that the agency has high vacancies and attorneys have substantial workloads. She said she has one regional office with one applicant in three months.

2:39:35 PM
CHAIR COGHILL thanked Ms. Kraly for her willingness to serve.

2:39:55 PM
SENATOR REINBOLD said she would like to put some important issues on the record.

CHAIR COGHILL acknowledged that she had questions. He informed Senator Reinbold he would not distribute materials to committee members until after the meeting.

2:41:01 PM
SENATOR REINBOLD emphasized that public safety is government's most important mandate. She indicated that the public defender agency should be focused on safety for Alaskans. She said she has done her due diligence on appointees, including Ms. Cherot. She indicated issues she had with the previous public defender, Quinlan Steiner, during work on the comprehensive crime bill.

CHAIR COGHILL reminded members to keep questions brief.

2:42:06 PM
SENATOR REINBOLD referred to an April 12, 2019 letter of resignation from Quinlan Steiner. She asked if he has been hired on contract.

MS. CHEROT expressed concern about discussing employees due to the confidentiality provided by the personnel act. She said she would need to seek an advisory opinion before responding.

SENATOR REINBOLD remarked that she has valid proof that Mr. Steiner is currently a state employee. She expressed concern that a conflict of interest could occur if a defendant who was unhappy with the public defender could potentially be defended by Mr. Steiner. She considered this a red flag.

CHAIR COGHILL related that the question is if defendants report any ethics concerns to her and to identify her superior.

2:44:20 PM
MS. CHEROT answered that ethics matters or concerns about an attorney would be reported to the Alaska Bar Association. She said what is public information is who is employed by the agency. She indicated that the State of Alaska does not currently employ Mr. Steiner. The agency has the statutory authority to use contractors during times of retention and recruitment challenges and crisis.

CHAIR COGHILL agreed that retaining and hiring is a challenge for public defenders, prosecutors, and police.

2:45:15 PM
SENATOR REINBOLD referred to her resume and questioned her ability to manage 13 public defender offices since she lacks managerial experience. She said she understood the agency has significant backlogs. She reiterated her concern that Mr. Steiner could represent a defendant who is unhappy, which she viewed as a conflict of interest.

CHAIR COGHILL indicated that her concern is with Mr. Steiner.

2:46:12 PM
SENATOR REINBOLD asked her to describe her management experience.

MS. CHEROT answered that she hired and supervised staff in California, and trained staff on employment compliance laws. She agreed that she has not managed an office of this size, which is challenging, but she is committed to do so.

2:46:58 PM
SENATOR REINBOLD reviewed the public defender agency staff, which includes supervising over 100 attorneys and 72 staff. She

expressed concern that Ms. Cherot lacks enough management experience.

CHAIR COGHILL said Ms. Cherot answered the managerial experience question.

2:47:16 PM
SENATOR REINBOLD asked her to elaborate on the December 2019 hiring request for Summer Rife.

CHAIR COGHILL asked how that is relevant.

SENATOR REINBOLD answered that Ms. Cherot hired Summer Rife who was married to Peter Seda.

CHAIR COGHILL asked how that is relevant.

SENATOR REINBOLD replied Ms. Rife's husband has ties to terrorism, according to at least six articles that she printed from the internet.

CHAIR COGHILL said he understood her concern is that Ms. Cherot hired someone whose husband has ties to terrorism.

SENATOR REINBOLD reiterated her concern.

2:49:39 PM
MS. CHEROT answered that the personnel act prevents her from speaking about specific employees. According to the employee directory, Summer Rife is not currently employed with the public defender agency. She said she cannot withhold an appointment based on discrimination of a protected class or for classified employees based on their political views. She looks for people who are committed to the work the agency performs, including representing clients and trying cases. The public defender takes great lengths to train attorneys to be objective and act as strong advocates for clients. Many new hires are also new attorneys. She said that if she had a concern about any employee's conduct that negatively impacted the individual's ability to perform his or her duty as a public defender, she would take action to remedy the matter in the best interest of their clients.

2:50:58 PM
CHAIR COGHILL suggested that Senator Reinbold could take her concern to the Department of Law if she had a specific complaint.

2:51:22 PM
SENATOR KIEHL expressed an interest in the public defender's role vis-a-vis the executive branch and how she interacts given that the state has a strong executive branch. The legislature established the public defender separately.

MS. CHEROT stated that the public defender agency falls under the Department of Administration. The agency's statutes clearly indicate its independence, identify the director's role in hiring and termination decisions, ensure that it is not being impacted by undue political influence or influences that would negatively impact the agency's ability to meet its constitutional and ethical obligations to its clients.

2:52:55 PM
SENATOR KIEHL asked her to discuss the appropriate role when the executive branch and the public defender differ on what constitutes an adequate budget for the agency's mission.

MS. CHEROT stated that she had good rapport when she worked with Commissioner Tshibaka and the Department of Administration during the last budget cycle. She related that the agency's budget meets its needs, given that it has great vacancies and challenges with retention and recruitment. The agency is not currently asking for additional positions and funding, but that could change in future budget cycles, she said.

2:53:59 PM
SENATOR KIEHL said he did not have concerns about the current commissioner, but he hoped to get a sense of the overall dynamic since the public defender could likely serve several administrations.

MS. CHEROT answered that if any issue arose it would be put forward to the legislature. She indicated that the role of the public defender and the director relates to the agency's independence and ensuring that the agency has enough resources to meet its ethical and constitutional mandates to its clients.

2:55:13 PM
CHAIR COGHILL asked testifiers to send written comments to senatejudiciary@akleg.gov. He indicated that public testimony will be left open.

2:56:31 PM

SENATOR REINBOLD said she would like to hear from testifiers. She indicated that she had materials to pass out to the committee. She remarked that terrorism is not a political view; it is a threat to citizens, and the legislature must protect Alaskans.

CHAIR COGHILL said he would make the materials available to members and the appointee.

SENATOR REINBOLD noted that she met with Ms. Cherot previously.

2:57:31 PM
CHAIR COGHILL expressed appreciation for Ms. Cherot's willingness to step forward. He remarked that the criminal justice system finds people innocent until found guilty. Defendants are entitled to a defense. People who are innocent but charged as guilty are entitled to an appeal. The system provides the state with a means to prevent victimization but also to hold people accountable who victimize people.

He held the name Ms. Cherot, appointee, Public Defender Agency in committee.

2:59:03 PM
There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:59 p.m.