

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

May 4, 2022

1:08 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Harriet Drummond
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

Representative Liz Snyder, Vice Chair
Representative Jonathan Kreiss-Tomkins

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5

"An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date."

- HEARD & HELD

CS FOR SENATE BILL NO. 161(JUD)

"An Act relating to the definition of 'political party'; and providing for an effective date."

- MOVED CSSB 161(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 5

SHORT TITLE: SEXUAL ASSAULT; DEF. OF "CONSENT"

SPONSOR(S): REPRESENTATIVE(S) TARR

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD
03/26/21	(H)	SPONSOR SUBSTITUTE INTRODUCED
03/26/21	(H)	READ THE FIRST TIME - REFERRALS
03/26/21	(H)	STA, JUD
03/27/21	(H)	STA AT 1:00 PM GRUENBERG 120

03/27/21	(H)	Heard & Held
03/27/21	(H)	MINUTE(STA)
04/13/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/13/21	(H)	Heard & Held
04/13/21	(H)	MINUTE(STA)
04/20/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/20/21	(H)	Heard & Held
04/20/21	(H)	MINUTE(STA)
04/27/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/27/21	(H)	Heard & Held
04/27/21	(H)	MINUTE(STA)
04/29/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/29/21	(H)	Scheduled but Not Heard
05/04/21	(H)	STA AT 3:00 PM GRUENBERG 120
05/04/21	(H)	Moved CSSSHB 5(STA) Out of Committee
05/04/21	(H)	MINUTE(STA)
05/06/21	(H)	STA RPT CS(STA) 1DP 5AM
05/06/21	(H)	DP: TARR
05/06/21	(H)	AM: VANCE, STORY, EASTMAN, KAUFMAN, KREISS-TOMKINS
05/06/21	(H)	FIN REFERRAL ADDED AFTER JUD
03/04/22	(H)	JUD AT 1:00 PM GRUENBERG 120
03/04/22	(H)	Heard & Held
03/04/22	(H)	MINUTE(JUD)
03/09/22	(H)	JUD AT 1:00 PM GRUENBERG 120
03/09/22	(H)	Heard & Held
03/09/22	(H)	MINUTE(JUD)
03/30/22	(H)	JUD AT 1:00 PM GRUENBERG 120
03/30/22	(H)	Heard & Held
03/30/22	(H)	MINUTE(JUD)
04/13/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/13/22	(H)	Heard & Held
04/13/22	(H)	MINUTE(JUD)
04/15/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/15/22	(H)	Heard & Held
04/15/22	(H)	MINUTE(JUD)
04/27/22	(H)	JUD AT 1:00 PM GRUENBERG 120
04/27/22	(H)	Heard & Held
04/27/22	(H)	MINUTE(JUD)
05/02/22	(H)	JUD AT 1:00 PM GRUENBERG 120
05/02/22	(H)	Heard & Held
05/02/22	(H)	MINUTE(JUD)
05/04/22	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: SB 161

SHORT TITLE: POLITICAL PARTY DEFINITION

SPONSOR(s): SENATOR(s) WIELECHOWSKI

01/18/22 (S) READ THE FIRST TIME - REFERRALS
01/18/22 (S) STA, JUD
02/17/22 (S) STA AT 3:30 PM BUTROVICH 205
02/17/22 (S) Heard & Held
02/17/22 (S) MINUTE(STA)
03/01/22 (S) STA AT 3:30 PM BUTROVICH 205
03/01/22 (S) -- MEETING CANCELED --
03/03/22 (S) STA AT 3:30 PM BUTROVICH 205
03/03/22 (S) Moved SB 161 Out of Committee
03/03/22 (S) MINUTE(STA)
03/04/22 (S) STA RPT 4NR 1DP
03/04/22 (S) NR: SHOWER, COSTELLO, REINBOLD, HOLLAND
03/04/22 (S) DP: KAWASAKI
03/14/22 (S) JUD AT 1:30 PM BUTROVICH 205
03/14/22 (S) Heard & Held
03/14/22 (S) MINUTE(JUD)
03/16/22 (S) JUD AT 1:30 PM BUTROVICH 205
03/16/22 (S) Moved CSSB 161(JUD) Out of Committee
03/16/22 (S) MINUTE(JUD)
03/18/22 (S) JUD RPT CS 1AM 3DP SAME TITLE
03/18/22 (S) AM: HOLLAND
03/18/22 (S) DP: MYERS, HUGHES, KIEHL
03/25/22 (S) TRANSMITTED TO (H)
03/25/22 (S) VERSION: CSSB 161(JUD)
04/04/22 (H) READ THE FIRST TIME - REFERRALS
04/04/22 (H) STA, JUD
04/05/22 (H) STA AT 3:00 PM GRUENBERG 120
04/05/22 (H) -- MEETING CANCELED --
04/09/22 (H) STA AT 10:00 AM GRUENBERG 120
04/09/22 (H) Heard & Held
04/09/22 (H) MINUTE(STA)
04/21/22 (H) STA AT 3:00 PM GRUENBERG 120
04/21/22 (H) Moved HCS CSSB 161(STA) Out of
Committee
04/21/22 (H) MINUTE(STA)
04/25/22 (H) STA RPT HCS(STA) 4DP 1NR
04/25/22 (H) DP: TARR, CLAMAN, STORY, KREISS-TOMKINS
04/25/22 (H) NR: EASTMAN
04/27/22 (H) JUD AT 1:00 PM GRUENBERG 120
04/27/22 (H) Heard & Held
04/27/22 (H) MINUTE(JUD)
05/04/22 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

KIMBERLY KESSLER FERZAN, Earle Hepburn Professor of Law

University of Pennsylvania Carey Law School
Philadelphia, Pennsylvania

POSITION STATEMENT: Offered invited testimony during the hearing on CSSSHB 5(JUD).

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 161(JUD), as the prime sponsor.

ACTION NARRATIVE

[1:08:36 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 12:35 p.m. Representatives Drummond, Eastman, and Claman were present at the call to order. Representatives Vance and Kurka arrived as the meeting was in progress.

HB 5-SEXUAL ASSAULT; DEF. OF "CONSENT"

[1:09:08 PM](#)

CHAIR CLAMAN announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 5, "An Act relating to sexual abuse of a minor; relating to sexual assault; relating to the code of military justice; relating to consent; relating to the testing of sexual assault examination kits; and providing for an effective date." [Before the committee, adopted as the work draft on 5/2/22, was the proposed committee substitute (CS) for SSHB 5, Version 32-LS0065\R, Radford, 5/2/22, "Version R."]

[1:09:41 PM](#)

KIMBERLY KESSLER FERZAN, Earle Hepburn Professor of Law, University of Pennsylvania Carey Law School, informed the committee that she had written articles on sexual assault, and served as an advisor to the American Law Institute's (ALI's) Model Penal Code (MPC) sexual assault reform project; however, the views she expressed were her own. She offered the following prepared remarks [included in the committee packet], which read as follows [original punctuation provided]:

Good afternoon. My name is Kimberly Kessler Ferzan. I am the Earle Hepburn Professor of Law at the

University of Pennsylvania. I have written several articles on sexual assault, and I serve as an Advisor to the American Law Institute's Model Penal Code Sexual Assault reform project. My views are my own and not those of the ALI.

I wanted to speak for a few moments about the complexities of criminalizing sexual assault, and some of the choices the April 28th draft makes.

I want to talk about what consent is, distinguishing assent from consent, and how factors that may "defeat consent" are understood in the draft.

First, what is consent? Assuming there is no coercion, deception, or incapacity, something I will return to, what does one person have to do to make it permissible to have sex with them?

Could make it just words: Must get "yes"
Could require a yes through "words and actions"
Could require a yes through "words and actions", but allow inferences from inaction as well, "If no one objects, these minutes are approved"
Internal: just willingness

If I see my neighbor crossing my lawn and I think, that is okay with me, he no longer is trespassing. If we are respecting my autonomy, then I can change others rights and duties simply by what I choose to allow.

You have "willingness"—
This can be understood as the internal act view, where how someone behaves gives evidence of this internal choice. Or words and action that allow inferences from silence (c)(2). Is silence evidence that the person is saying yes, or is the person saying yes by silence? No practical difference

Some feminists would urge a "words and actions" standard that requires more. Let me explain that sort of argument. You have defined sexual assault in the second degree to include sexual penetration without consent. Given Alaska's provision for default mental states under 11.81.610, this means that the defendant must be reckless as to lack of consent. That is, he

or she must consciously disregard a substantial and unjustifiable risk that the victim is not consenting. So, let's say that the victim does not resist and allows the D to continue. She later says she was experiencing frozen fright and he says he took her acquiescence as consent. As long as he believes she was consenting, he is not guilty. Even if you dropped the mental state to negligence, if a reasonable person believed there was consent (b/c people often consent rather passively), he is not guilty. So, to protect victims, and change social norms, some states create affirmative consent standards, thereby requiring words and action.

The biggest problem with doing this is that you are trying to shift behavior without really giving anyone notice of it. It becomes a trap for the unwary. It is easy to do this with college kids whom you can make go to orientation, but shifting social norms is more difficult. Do you want to punish people with severe felonies to change how people consent to sex? And remember, this applies not just to inexperienced first timers but to those in long term relationships as well.

A second concern is that it is also extremely hard to articulate what counts as a "yes" and can potentially invite the very kind of dissection of the victim's behavior that affirmative consent standards may wish to avoid. Some scholars have worried that in practice this subjects victims to substantial scrutiny.

Finally, with an affirmative consent standard, more onus is put on defendants. If you think about how affirmative consent would be shown, it would come closer to requiring a defendant to convince a jury that he had consent than to requiring the state to prove its absence. There is then the question whether it is fair to punish someone if the state has not shown lack of consent beyond a reasonable doubt.

For these reasons, I would leave your "willingness" formulation in place. (If I had my druthers, I might go with "decision," "choice" or willed acquiescence" to better distinguish consent from mere desires, but "willingness" is tracking the current MPC draft.)

Here is a second question about consent that impacts drafting. Consent is conceptually confusing because we use this one word to mean two things. Sometimes we mean this internal (or external) act and sometimes we mean the internal (or external) act plus sufficient conditions of freedom, knowledge, and capacity. Sometimes, cases simply lack that internal or external act. Having sex with a comatose person doesn't involve either an internal or external yes. In other cases, though, the person does "say yes" but it doesn't count. So, a 12-year-old's enthusiastic yes to sexual contact doesn't count. So, too, someone who says yes at the point of a gun doesn't count as making the action permissible. Some people would say that there isn't consent in these cases, but we also in our ordinary language say, "she consented at gunpoint" or the teenager "consented." This makes things tricky. Because the MPC locked in its definition of consent as willingness, it then had to use the term "effective consent" elsewhere.

You define consent as willingness, and then say that consent is "ineffective" if induced by fraud, duress, or deception. This means you are making the decision to say that 12-year-olds do consent, but not effectively. An alternative would be to say that assent is willingness. And consent is assent without any of the undermining conditions.

Why does this matter? First, consider the double duty in your use of force provision criminalizing sex "without consent of that person by the use of force or the express or implied threat."

Notice this will cover both the person who is not saying yes at all and is compelled, and the person who says "yes" but only because there is a gun. It arguably equivocates on what you mean by consent. (Really a person who says yes at gunpoint is willing.) Although courts might interpretively gloss this as you'd like, it isn't quite precise of what consent means.

The Model Penal Code draft defines consent as willingness and then needs to back out by saying: the act is without effective consent because: (i) the actor uses or explicitly or implicitly threatens to use physical force or restraint against anyone;

Many of us thought this led to clunky drafting. If the consent is ineffective when there is force, then you only need to discuss the force, not the consent because consent doesn't count anyway. You just want that the person submits or is compelled by force..

Now, consider how you deal with defeaters like force, fraud, more generally.

First, it is not clear how you want the specific defeaters that you mention in the statute (sex when the person is subject to a threat of force or is lied to about a medical procedure) and your provision that consent is ineffective if induced by force, duress, or deception. MPC only has that the very provisions that it defines in the statute count as force, fraud, or incapacity.

To see how this matters, assume that Bob lies to Alice and tells her that he loves her, and she has sex with him because of that. Under your very limited statutory provisions, it seems as though Alice was not sexually assaulted because you have not spelled out that kind of lie. But under your provision that consent is ineffective if induced by force, duress, or deception, she does not consent, and so Bob would be guilty of sexual assault in the second degree. That is your provision about ineffective consent, which doesn't specify when it is ineffective could be construed broadly. Indeed, if the way deception is defined elsewhere in your code is used here, Bob would be guilty of second-degree sexual assault. This would make Alaska a significant outlier in the kinds of cases that jurisdictions punish for deception. All kinds of lies would then count, including for example, if a spouse lies and tells her partner that she is not sleeping with other men, if it is that representation that leads to continued marital sex.

I hope this is helpful and I await your questions.

[1:20:02 PM](#)

CHAIR CLAMAN invited questions from committee members.

[1:20:29 PM](#)

REPRESENTATIVE DRUMMOND requested the definition of the term "defeaters."

MS. KESSLER FERZAN stated that a "defeater" of consent referred to a "yes" that "doesn't count." She provided the example of a "yes" that was compelled by force; a "yes" compelled by deceit; and a "yes" given at gunpoint.

[1:22:06 PM](#)

REPRESENTATIVE EASTMAN said he had heard of a scenario in which a college took a "proactive approach" to affirmative consent by requiring affirmative consent to every physical act. He asked whether there was data to support that approach.

MS. KESSLER FERZAN shared her understanding that most colleges have stronger affirmative consent standards, which she referred to as "enthusiastic consent."

REPRESENTATIVE EASTMAN asked how to ascertain where Alaska landed on the spectrum of embracing contemporary consent concepts. He recalled that Ms. Kessler Ferzan had stated that the Version R would make Alaska an outlier.

MS. KESSLER FERZAN clarified that Alaska would be an outlier in terms of its bold stance on how deception was understood. Because of the statutory language, "extraordinarily" broad lies, such as "I love you" could be interpreted as sexual assault, she said. She added that such an expansion would make jurisdictions nervous, as they do not want to be in the business of policing which kinds of lies would undermine consent. Regarding the definition of consent, she conveyed that jurisdictions were "all over the place" on affirmative consent standards, adding that it was an ever-changing landscape.

CHAIR CLAMAN noted that he had sent Ms. Kessler Ferzan an excerpt of the definition of consent from AS 11.81.900(b), in addition to the general definitions in the criminal code.

[1:28:59 PM](#)

REPRESENTATIVE EASTMAN inquired about the harm that could result from taking this "bold" approach [to the definition of consent].

MS. KESSLER FERZAN said it was a matter of whether [the legislature] wanted every single lie to constitute sexual assault each time it was material to the victim. Additionally,

whether [the legislature] wanted the courts in the business of policing the kind of lies that were private and, in some sense, the defendant's personal business. Ultimately, she said there were questions about what kind of false impressions could count as deception under this statute.

REPRESENTATIVE EASTMAN asked whether failure to disclose the presence of a sexually transmitted disease (STD) would be counted as deception under Version R.

MS. KESSLER FERZAN said in some jurisdictions, courts determined whether a person was deceived to the nature and quality of the act. For example, a medical procedure that was actually "a body part." She explained that the courts attempted to define the act, such as disease-free sex, rather than just sex.

[1:33:50 PM](#)

CHAIR CLAMAN asked about the pros and cons of the term "willingness" versus "freely given." More specifically, he asked which term tended to be more protective of victims in terms of rape shield laws.

MS. KESSLER FERZAN said "freely given" was generally thought by feminists to be more protective of victims; however, many people wondered whether, in practice, that kind of scrutiny helped victims as much as it was intended to. She provided examples.

CHAIR CLAMAN asked whether it was Ms. Kessler Ferzan's perspective that the committee should consider removing or altering the language "consent is ineffective if induced by force, duress, or deception" on page 4, line 17.

MS. KESSLER FERZAN opined that the language could be stricken or changed to "consent is ineffective if induced by force, duress, or deception, as defined in" with references to the earlier provisions related to force, deception, and duress that backed undermined consent.

[1:43:22 PM](#)

CHAIR CLAMAN pointed out that an earlier version of the bill made sexual assault without consent first degree sexual assault whether induced by force or not. Alternatively, Version R graded that classification by requiring the use of force in first degree sexual assault and not requiring the use of force in second degree sexual assault. He asked how other states were

approaching the classification of sexual assault with the use of force versus no force and whether the general pattern was to distinguish the two in terms of severity.

MS. KESSLER FERZAN said it was her general sense that force was graded more severely [in other states], for which she advocated. Additionally, she indicated that she was in favor of more layers of complexity rather than fewer. She provided examples.

[1:46:21 PM](#)

REPRESENTATIVE EASTMAN inquired about the term "implied threat of force" and how other states captured that concept.

CHAIR CLAMAN noted, for reference, that Representative Eastman was referring to the language on page 1 and page 2 of [Version R] that specifically discussed the use of force or the express or implied threat of force.

MS. KESSLER FERZAN confirmed that the current MPC draft was using the implied use of force. She posed two questions: First, how to prove implied use of force after the fact; and second, whether victims could mistakenly perceive something to be a threat of force. On the latter, she discussed the significance of the defendant's mens rea ["the intention or knowledge of wrongdoing that constitutes part of a crime"], or "mental state," and provided an example. She highlighted the difficulty of "unpacking" an implied threat of force for the jury.

[1:50:48 PM](#)

REPRESENTATIVE DRUMMOND asked whether "freely given" consent was more protective of victims than willingness.

MS. KESSLER FERZAN said the question was empirical, as it varied from case to case and used a "words and action standard," which placed a "tremendous" amount of scrutiny on the victim's behavior. For that reason, she believed that a words and action standard was inherently dangerous for victims.

[1:52:10 PM](#)

CHAIR CLAMAN sought to clarify whether the words and action standard was associated with the "freely given" version of the law or the "willingness" standard in the current version.

MS. KESSLER FERZAN clarified that the words and action standard was the definition in the older standard. She referenced Section 6 [of CSSH 5(STA)], which defined "freely given" as an agreement to cooperate in the act that was positively expressed by word or action.

[1:52:56 PM](#)

REPRESENTATIVE DRUMMON asked Ms. Kessler Ferzen to repeat her previous statement.

MS. KESSLER FERZAN restated the definition, which read as follows:

(9) "consent" means a freely given, reversible agreement specific to the conduct at issue; in this paragraph, "freely given" means agreement to cooperate in the act was positively expressed by word or action.

MS. KESSLER FERZAN expounded on the definition, explaining that words like "yes" and "absolutely" would count as consent, in addition to actions that, likewise, count as a "yes." She provided an example. She reemphasized the potential downside of implementing such a standard in that a lot of judgement would be placed on the victim's behavior and whether it constituted a yes. The potential upside, she added, was that silence would not count as a "yes." She provided an example.

[1:57:05 PM](#)

REPRESENTATIVE DRUMMOND asked how to account for a victim who froze in the act and could not respond.

MS. KESSLER FERZAN stated that the "freely given" standard would capture frozen fright, as it would prohibit sex with another person who has not said "yes" or engaged in behavior that says "yes."

[1:57:49 PM](#)

REPRESENTATIVE VANCE asked whether coerced sex was addressed in the bill. She provided an example of a person who was coerced by the threat of revealing something to the public and asked whether that was classified as rape in the bill.

MS. KESSLER FERZAN believed that was not covered in the bill. She said the MPC dedicated an entirely different section for coercive conduct.

REPRESENTATIVE VANCE sought to confirm that Ms. Kessler Ferzan was recommending the inclusion of a separately graded section in relation to coercion.

MS. KESSLER FERZAN suggested that an additional provision could outline various types of coercion, either by specifying clear rules or including a general standard.

[1:59:59 PM](#)

REPRESENTATIVE EASTMAN considered a scenario in which a person gave affirmative consent to have sex but did not consent to a specific sexual act that followed.

MS. KESSLER FERZAN said that would be tricky, given that consent was defined as a willingness to engage in the conduct at issue [in CSSSHB 5(STA)]. She added that there would always be "gray area" questions that were hard to legislate.

[2:03:31 PM](#)

CHAIR CLAMAN sought further questions from committee members.

[2:03:45 PM](#)

REPRESENTATIVE DRUMMOND asked how many states were using the word "willingness" and whether it was impacting the success of convictions.

MS. KESSLER FERZAN said she did not know. The problem with impacting convictions, she said, was that many hurdles exist for victims of sexual violence before one even gets to the substantive criminal law, which prevents victims from comfortably coming forward.

[2:05:16 PM](#)

CHAIR CLAMAN compared sexual assault in the first versus second degree. He shared his understanding that Ms. Kessler Ferzan was discussing some level of conduct that may not be covered in the second degree as penetration without consent. He asked her to expound on that statement in further detail.

MS. KESSLER FERZAN said she was unclear on the statement in question.

CHAIR CLAMAN provided further context, adding that the conversation revolved around consent provided under duress. He asked how that fit within the definition of sexual assault in the first degree, which considers consent through the use of force, and in the second degree, which includes everything else.

MS. KESSLER FERZAN provided several examples and concluded that it was a question of whether to capture specificity for scenarios in which a person has not said yes, or whether to capture cases in which a person said the word "yes," but it was made ineffective by contextual factors that were not specified in statute.

CHAIR CLAMAN shared his understanding that page 4, line 17, of Version R could be adding uncertainty and complexity, which may require additional definitions for clarity or to be removed entirely.

MS. KESSLER FERZAN confirmed that Representative Claman's understanding was accurate.

[2:10:35 PM](#)

REPRESENTATIVE EASTMAN asked whether there was a recommended way to address, in statute, the contradiction between the rape shield law, which conceals certain information, and the "contact at issue." He questioned how to strike a balance between the "contact at issue" and implied circumstances and asked whether the bill adequately addressed the tension between the two concepts.

MS. KESSLER FERZAN said she was not familiar with Alaska's rape shield law; however, under the federal rules of evidence, evidence of past conduct was allowed to be introduced for the particular defendant under the rape shield statute, which helped to alleviate some of the tension referenced by Representative Eastman. She provided an example.

[2:14:39 PM](#)

CHAIR CLAMAN announced that CSSSHB 5(JUD) was held over.

SB 161-POLITICAL PARTY DEFINITION

[2:15:18 PM](#)

CHAIR CLAMAN announced that the final order of business would be CS FOR SENATE BILL NO. 161(JUD), "An Act relating to the definition of 'political party'; and providing for an effective date." [Before the committee was HCS CSSB 161(STA).]

CHAIR CLAMAN explained that members of the committee had expressed interest in an amendment that would undo an amendment adopted by the House State Affairs Standing Committee. However, research indicated that an identical version of the bill cannot be introduced as a new version of the same bill.

[2:16:46 PM](#)

REPRESENTATIVE DRUMMOND [made clear the committee's intent to work from the Senate version of the bill: CSSB 161(JUD)].

[2:18:08 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 1 to CSSB 161(JUD), labeled 32-LS1361\I.3, Bullard, 5/4/22, which read:

Page 1, line 6:

Delete "**registered voters**"

Insert "**members who declared an affiliation with that organized group when registering to vote**"

CHAIR CLAMAN objected.

[2:18:58 PM](#)

REPRESENTATIVE VANCE requested the definition of "members."

REPRESENTATIVE EASTMAN explained that Amendment 1 defined members as those who declared an affiliation with an organized group when registering to vote. He welcomed the bill sponsor's thoughts on the proposed amendment, and questioned the legal significance should it be adopted.

[2:19:49 PM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, as prime sponsor of CSSB 161(JUD), expressed concern that should Amendment 1 pass, a political party could unilaterally decide not to have someone's political party placed next to the individual's name on the ballot. He cited AS 15.15.030, which

indicated that the candidate shall decide which political party is listed on the ballot. He added that Legislative Legal Services verified that there was a "freedom of association" issue with Amendment 1.

[2:21:26 PM](#)

REPRESENTATIVE VANCE sought confirmation that should Amendment 1 pass, the candidate would determine the political party.

SENATOR WIELECHOWSKI confirmed that's correct. For that reason, he shared his belief that Amendment 1 was unnecessary, as it was duplicative of existing law. He reiterated that Legislative Legal Services had indicated that a party cannot determine a person's political affiliation. He emphasized that it was the candidate's choice, adding that if a person had registered as a Democrat, he/she would be on the ballot as a Democrat.

[2:22:53 PM](#)

CHAIR CLAMAN asked whether the proposed amendment would change existing law.

REPRESENTATIVE EASTMAN shared his understanding that it would not. Further, he opined that the proposed amendment may not be needed.

[2:24:51 PM](#)

REPRESENTATIVE KURKA shared his understanding that upon registering to vote, a political affiliation was declared. If the political affiliation or group did not meet the threshold of 5,000 [members], he asked whether the language in Amendment 1 would be needed.

SENATOR WIELECHOWSKI explained that if a candidate was registered as affiliated with a political party or group, the affiliation may be designated on the ballot after the name of the candidate by request of the candidate. He reiterated that under existing law, the party with which the candidate registered would be placed on the ballot. He opined that Amendment 1 was unnecessary, as the concept was already established under state law.

[2:27:22 PM](#)

REPRESENTATIVE EASTMAN withdrew Amendment 1.

[2:27:44 PM](#)

The committee took a brief at-ease at 2:27 p.m.

[2:27:57 PM](#)

CHAIR CLAMAN sought final comments from committee members.

[2:28:16 PM](#)

REPRESENTATIVE EASTMAN recalled the discussion in the House State Affairs Standing Committee regarding membership threshold, opining that the threshold could be substantially reduced. Ultimately, he opined that a threshold of 5,000 was an improvement; however, he believed that the change may be immaterial to many Alaskans.

[2:30:54 PM](#)

REPRESENTATIVE DRUMMOND moved to report CSSB 161(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 161(JUD) was reported from the House Judiciary Standing Committee.

[2:31:19 PM](#)

The committee took a brief at-ease at 2:31 p.m.

[2:32:09 PM](#)

CHAIR CLAMAN announced that the committee would recess for the day.

[2:32:19 PM](#)

ADJOURNMENT

The House Judiciary Standing Committee meeting was recessed at 2:32 p.m. to May 6, 2022, at 10:30 a.m.