

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 11, 2022

1:33 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers (via Teams)
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 23

"An Act relating to proposing and enacting laws by initiative."

- HEARD & HELD

SENATE BILL NO. 119

"An Act relating to oaths of office; and requiring public officers to read the state constitution, the Declaration of Independence, and the United States Constitution."

- MOVED CSSB 119(JUD) OUT OF COMMITTEE

SENATE BILL NO. 129

"An Act relating to information on judicial officers provided in election pamphlets."

- MOVED CSSB 129(JUD) OUT OF COMMITTEE

SENATE BILL NO. 118

"An Act establishing the committee on nullification of federal laws; and providing a directive to the lieutenant governor."

- HEARD & HELD

SENATE BILL NO. 31

"An Act relating to binding votes by or for a legislator under the Legislative Ethics Act."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 23

SHORT TITLE: INITIATIVE SEVERABILITY

SPONSOR(s): SENATOR(s) REVAK

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	STA, JUD
03/09/21	(S)	STA AT 3:30 PM BUTROVICH 205
03/09/21	(S)	Heard & Held
03/09/21	(S)	MINUTE(STA)
04/13/21	(S)	STA AT 3:30 PM BUTROVICH 205
04/13/21	(S)	Moved SB 23 Out of Committee
04/13/21	(S)	MINUTE(STA)
04/14/21	(S)	STA RPT 1DP 1DNP 3NR
04/14/21	(S)	NR: SHOWER, REINBOLD, HOLLAND
04/14/21	(S)	DP: COSTELLO
04/14/21	(S)	DNP: KAWASAKI
04/19/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/19/21	(S)	Heard & Held
04/19/21	(S)	MINUTE(JUD)
04/21/21	(S)	JUD AT 1:30 PM BUTROVICH 205
04/21/21	(S)	<Bill Hearing Canceled>
02/09/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/09/22	(S)	Heard & Held
02/09/22	(S)	MINUTE(JUD)
02/11/22	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 119

SHORT TITLE: OATH OF OFFICE

SPONSOR(s): SENATOR(s) REINBOLD

04/07/21	(S)	READ THE FIRST TIME - REFERRALS
04/07/21	(S)	EDC, JUD, STA, FIN
04/23/21	(S)	EDC AT 9:00 AM BUTROVICH 205
04/23/21	(S)	Heard & Held
04/23/21	(S)	MINUTE(EDC)
04/28/21	(S)	EDC AT 9:00 AM BUTROVICH 205
04/28/21	(S)	Moved CSSB 119(EDC) Out of Committee
04/28/21	(S)	MINUTE(EDC)
04/30/21	(S)	EDC RPT CS 4DP 1NR SAME TITLE
04/30/21	(S)	DP: HOLLAND, HUGHES, STEVENS, MICCICHE
04/30/21	(S)	NR: BEGICH

04/30/21 (S) FIN REFERRAL REMOVED
 04/30/21 (S) CRA REFERRAL ADDED AFTER EDC
 05/11/21 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
 05/11/21 (S) -- MEETING CANCELED --
 05/13/21 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
 05/13/21 (S) Moved CSSB 119(EDC) Out of Committee
 05/13/21 (S) MINUTE(CRA)
 05/14/21 (S) CRA RPT 1DP 1DNP 2NR
 05/14/21 (S) DP: HUGHES
 05/14/21 (S) DNP: GRAY-JACKSON
 05/14/21 (S) NR: MYERS, WILSON
 01/31/22 (S) JUD AT 1:30 PM BUTROVICH 205
 01/31/22 (S) Heard & Held
 01/31/22 (S) MINUTE(JUD)
 02/02/22 (S) JUD AT 1:30 PM BUTROVICH 205
 02/02/22 (S) Heard & Held
 02/02/22 (S) MINUTE(JUD)
 02/09/22 (S) JUD AT 1:30 PM BUTROVICH 205
 02/09/22 (S) <Bill Hearing Postponed to Feb 11>
 02/11/22 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 129

SHORT TITLE: ELECTION PAMPHLET INFORMATION RE: JUDGES
 SPONSOR(s): SENATOR(s) MYERS

04/21/21 (S) READ THE FIRST TIME - REFERRALS
 04/21/21 (S) JUD, STA
 05/05/21 (S) JUD AT 1:30 PM BUTROVICH 205
 05/05/21 (S) Heard & Held
 05/05/21 (S) MINUTE(JUD)
 05/12/21 (S) JUD AT 1:30 PM BUTROVICH 205
 05/12/21 (S) Scheduled but Not Heard
 05/14/21 (S) JUD AT 1:30 PM BUTROVICH 205
 05/14/21 (S) -- MEETING CANCELED --
 01/28/22 (S) JUD AT 1:30 PM BUTROVICH 205
 01/28/22 (S) Heard & Held
 01/28/22 (S) MINUTE(JUD)
 01/31/22 (S) JUD AT 1:30 PM BUTROVICH 205
 01/31/22 (S) Scheduled but Not Heard
 02/02/22 (S) JUD AT 1:30 PM BUTROVICH 205
 02/02/22 (S) Heard & Held
 02/02/22 (S) MINUTE(JUD)
 02/09/22 (S) JUD AT 1:30 PM BUTROVICH 205
 02/09/22 (S) Heard & Held
 02/09/22 (S) MINUTE(JUD)
 02/11/22 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 118

SHORT TITLE: CMTE ON NULLIFICATION OF FEDERAL LAWS

SPONSOR(s): SENATOR(s) REINBOLD

04/07/21 (S) READ THE FIRST TIME - REFERRALS
04/07/21 (S) STA, JUD
04/13/21 (S) STA AT 3:30 PM BUTROVICH 205
04/13/21 (S) Heard & Held
04/13/21 (S) MINUTE(STA)
05/04/21 (S) STA AT 3:30 PM BUTROVICH 205
05/04/21 (S) Moved SB 118 Out of Committee
05/04/21 (S) MINUTE(STA)
05/07/21 (S) STA RPT 1DP 4NR
05/07/21 (S) NR: SHOWER, COSTELLO, KAWASAKI, HOLLAND
05/07/21 (S) DP: REINBOLD
05/14/21 (S) JUD AT 1:30 PM BUTROVICH 205
05/14/21 (S) -- MEETING CANCELED --
02/02/22 (S) JUD AT 1:30 PM BUTROVICH 205
02/02/22 (S) Heard & Held
02/02/22 (S) MINUTE(JUD)
02/11/22 (S) JUD AT 1:30 PM BUTROVICH 205

BILL: SB 31

SHORT TITLE: PROHIBITING BINDING CAUCUSES

SPONSOR(s): SENATOR(s) SHOWER

01/25/21 (S) PREFILE RELEASED 1/8/21
01/25/21 (S) READ THE FIRST TIME - REFERRALS
01/25/21 (S) STA, JUD
03/18/21 (S) STA AT 3:30 PM BUTROVICH 205
03/18/21 (S) Heard & Held
03/18/21 (S) MINUTE(STA)
05/04/21 (S) STA AT 3:30 PM BUTROVICH 205
05/04/21 (S) Moved CSSB 31(STA) Out of Committee
05/04/21 (S) MINUTE(STA)
05/07/21 (S) STA RPT CS 2DP 2NR 1AM SAME TITLE
05/07/21 (S) DP: SHOWER, REINBOLD
05/07/21 (S) NR: COSTELLO, HOLLAND
05/07/21 (S) AM: KAWASAKI
05/10/21 (S) JUD AT 1:30 PM BUTROVICH 205
05/10/21 (S) Heard & Held
05/10/21 (S) MINUTE(JUD)
02/02/22 (S) JUD AT 1:30 PM BUTROVICH 205
02/02/22 (S) Heard & Held
02/02/22 (S) MINUTE(JUD)
02/11/22 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

KATI CAPPOZI, President;
Chief Executive Officer (CEO)
Alaska Chamber
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 23 to provide transparency and improve public policy to benefit voters and the ballot initiative process.

REBECCA LOGAN, Chief Executive Officer (CEO)
Alaska Support Industry Alliance
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 23 because the provisions of an initiative should not be severable after being circulated.

LAURA BONNER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 23 because it would usurp people's power in the initiative process.

SENATOR LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 119.

ED KING, Staff
Senator Roger Holland
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Explained Conceptual Amendment 1 to SB 129 on behalf of Senator Holland.

SUSANNE DIPIETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 129.

MIKE COONS, representing self
Palmer, Alaska

POSITION STATEMENT: Testified in support of SB 118.

MEGAN WALLACE, Director
Legislative Legal Services

Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered legal questions during the discussion of SB 118.

SENATOR LORA REINBOLD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 119.

JERRY ANDERSON, Administrator
Select Committee on Legislative Ethics
Legislative Agencies and Offices
Anchorage, Alaska

POSITION STATEMENT: Answered questions on legislative ethics during the discussion on SB 31.

NOAH KLEIN, Legislative Counsel
Legislative Legal Services
Legislative Affairs Agency
Alaska State Legislature*
Juneau, Alaska

POSITION STATEMENT: Answered legal questions during the discussion of SB 31.

ACTION NARRATIVE

[1:33:36 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Myers (via Teams), Hughes, Shower, Kiehl, and Chair Holland.

SB 23-INITIATIVE SEVERABILITY

[1:34:16 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 23 "An Act relating to proposing and enacting laws by initiative."

[SB 23 was previously heard on 4/19/2021 and 2/9/2022.]

[1:34:36 PM](#)

CHAIR HOLLAND opened public testimony on SB 23.

[1:35:13 PM](#)

KATI CAPPOZI, President; Chief Executive Officer (CEO), Alaska Chamber, Anchorage, Alaska, stated that the Alaska Chamber supports passage of SB 23. The Alaska Chamber was founded in 1953. Its mission is to promote a healthy business environment in Alaska. The Alaska Chamber represents 700 members and businesses of all sizes and sectors from across the state. Each year the Alaska Chamber membership votes on its advocacy agenda. Ballot measure reform was recently added as an issue of statewide importance for the business community in Alaska.

MS. CAPPOZI stated that their position of support for ballot measure reform says, in part, that "changes in the initiative process should produce more transparency and better public policy in a comprehensive and balanced manner equally benefiting both voters and the legislative process."

[1:36:08 PM](#)

MS. CAPPOZI related that the Alaska Chamber focused on two points. First, the Alaska Chamber wanted to ensure transparency that will benefit Alaskans and ballot measure proponents, and second, to uphold the constitutional rights and duty of the legislature. Once Alaskans sign their names to specific ballot measure language, their support should apply only to the exact wording in the ballot initiative. If any court or courts decides to alter or remove language for the initiative, no one can assume that support remains for the revised language. Likewise, if the court or courts sever language from a proposed ballot measure, no one can assume that the ballot measure proponents themselves will support the new language.

[1:36:48 PM](#)

MS. CAPPOZI stated that Alaska's current system threatens all ballot measure proponents, regardless of the cause or political affiliation. It restricts groups from an opportunity to go back to the drawing board if a court or courts alter the language of the measure they submitted initially. Second, the Alaska Chamber wants to ensure that the constitutional obligations of the legislature are upheld. Allowing courts to sever the language of a proposed law and placing that proposed law on the ballot would grant the judicial branch the power to write law, which is expressly limited to the legislative branch or the people by way of the ballot measure process. This strips the legislature of its constitutional obligation to review initiatives and, if it chooses, to enact a law that is considered substantially similar. The Alaska Chamber supports the passage of SB 23 to benefit the people of Alaska and ballot measure proponents by increasing transparency and providing for a clear set of rules.

Further, it provides the express ability to write laws to the legislature and Alaska's voters.

1:38:03 PM

REBECCA LOGAN, Chief Executive Officer (CEO), Alaska Support Industry Alliance, Anchorage, Alaska, spoke in support of SB 23. She stated that the Alaska Support Industry Alliance (Alliance) is a 43-year-old trade association representing 500 members and support companies for oil, gas, and mining. The Alliance has supported this legislation since the late Senator Birch first introduced it as Senate Bill 80. The Alliance believes that the provisions of an initiative should not be severable after being circulated. The Alliance bases this on the desire to protect the integrity of the ballot initiative process by ensuring that voters know that the language on the ballot is precisely the same as what was presented when they signed the ballot initiative.

MS. LOGAN said the Alliance also supports prohibiting the court and unelected judges to amend initiative language, thereby crafting legislation from the bench. Finally, the Alliance would like to ensure that ballot initiative language passes legal and constitutional muster before it's presented to the voters. She urged members to support this critical legislation.

1:39:40 PM

LAURA BONNER, representing self, Anchorage, Alaska, spoke in opposition to SB 23. She stated that she lives in Senator Revak's district, the same district that the late Senator Birch represented.

MS. BONNER said that the Alaska Constitution, art. XI, sec. 1 begins with "The people may propose and enact laws by initiative...." She expressed concern that SB 23 would usurp people's power in the initiative process. The gathering of signatures demands substantial time, effort, and expense to obtain the number of signatures required in all 40 House districts. If SB 23 passes the legislature, the sponsors tasked to gather enough signatures must start all over if one word or sentence is changed, added, or deleted after a judicial review or court decision.

1:40:33 PM

MS. BONNER stated that she had signed quite a few petitions over the years. And some of those she signed only because she thought it should be voted on by the people, or perhaps by the legislature before the election. She related this was allowed in

Section 4 in the Legislative Legal letter dated April 23, 2019, regarding Senate Bill 80, which is identical to SB 23.

MS. BONNER highlighted a paragraph at the end of that letter, which read, "The Court has also described the people's initiative power as an act of direct democracy guaranteed by our constitution. However, under SB 80 a person proposing an initiative would be prohibited from including a severability provision." Because of this, it could be considered unconstitutional. She said she believes that is true.

MS. BONNER said the voters' initiative constitutional rights shouldn't be stifled, and passage of SB 23 would do just that. She acknowledged that she is not an attorney, but she offered her view that there may be constitutional issues regarding the bill.

[1:42:34 PM](#)

SENATOR SHOWER welcomed her ideas on how to amend the bill. He explained that the issue SB 23 addresses is when an initiative is significantly changed after people initially signed the petition. When that happens, voters no longer vote on the initiative they supported.

[1:43:14 PM](#)

MS. BONNER responded that what counts is when voters cast their vote once the initiative is placed on the ballot. She viewed it as similar to the legislative process when legislators support or co-sponsor a bill and the bill changes in the committee process. Legislators can vote against it on the floor. The floor vote counts just as a vote cast for a ballot proposition that changed during the initiative process.

[1:44:06 PM](#)

CHAIR HOLLAND closed public testimony on SB 23.

[1:44:12 PM](#)

CHAIR HOLLAND held SB 23 in committee.

SB 119-OATH OF OFFICE

[1:44:19 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 119 "An Act relating to oaths of office; and requiring public officers to read the state constitution, the Declaration of Independence, and the United States Constitution."

[CSSB 119(EDC) was before the committee.]

CHAIR HOLLAND stated that SB 119 was previously heard on 1/31/22 and 2/2/2022. Public testimony was closed on 2/2/2022.

[1:44:37 PM](#)

CHAIR HOLLAND moved to adopt Amendment 1, work order 32-LS0163\G.2.

32-LS0163\G.2
Marx
2/1/22

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR HOLLAND
TO: CSSB 119(EDC)

Page 1, line 2:
Delete "**, the Declaration of Independence,**"

Page 1, line 6:
Delete "**, the Declaration of Independence,**"

Page 2, line 2:
Delete "**, the Declaration of Independence,**"

Page 2, lines 7 - 8:
Delete "**, the Declaration of Independence,**"

Page 2, lines 13 - 14:
Delete "**, the Declaration of Independence,**"

Page 2, lines 19 - 20:
Delete "**, the Declaration of Independence,**"

Page 2, lines 25 - 26:
Delete "**, the Declaration of Independence,**"

Page 3, lines 3 - 4:
Delete "**, the Declaration of Independence,**"

Page 3, lines 10 - 11:
Delete "**, the Declaration of Independence,**"

Page 3, lines 17 - 18:
Delete "**, the Declaration of Independence,**"

Page 3, line 23:

Delete ", the Declaration of Independence,"

SENATOR SHOWER objected for discussion purposes.

[1:44:52 PM](#)

CHAIR HOLLAND explained that Amendment 1 would remove references to the Declaration of Independence since state law requires public officials to swear an oath to the US Constitution and Alaska Constitution. However, he said the oath that members take does not refer to the Declaration of Independence. As Senator Kiehl pointed out, expanding the required reading list could open the door to any number of materials that anyone might think is essential.

[1:45:32 PM](#)

SENATOR SHOWER asked the sponsor to comment on Amendment 1.

[1:45:49 PM](#)

SENATOR LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of SB 119, said that the United States is one nation under God, and it should soar like an eagle. The US Constitution provides the most powerful protection for individual liberties. She said the charter is the mission statement, which is the Declaration of Independence. The US Constitution provides a set of bylaws that accompanies the charter. For example, it outlines due process and how the charter takes place. She opined that the charter and bylaws are inseparable. She characterized it as two wings that allow the eagle to fly. She expressed concern that some justices view the US Constitution as a living document. However, going back to the mission statement clarifies and identifies the goals of life, liberty, and pursuit of happiness. It protects individuals and keeps the judicial branch in its lane. She said she objects to Amendment 1.

[1:47:36 PM](#)

SENATOR SHOWER stated his support for Amendment 1 but said he could go either way.

SENATOR SHOWER maintained his objection.

CHAIR HOLLAND recognized Senator Hughes wished to comment.

[1:48:01 PM](#)

SENATOR HUGHES offered her view that tying it into oath is important. She said she hopes that anyone who steps up to serve

in any elected or appointed position reads and becomes familiar with the Declaration of Independence. However, she did not think it fits in SB 119 because the statutes relate to the oath, and even the short title of the bill is "Oaths of Office." She said she would stick with the readings actually tied to the oath itself.

[1:49:47 PM](#)

SENATOR MYERS, (via Teams), echoed what Senator Hughes said. He acknowledged that the Declaration of Independence identifies the purpose of government, including the life, liberty, and pursuit of happiness, which is the most well-known language. However, the vast majority of the Declaration of Independence is a list of grievances against England. And while that's important historically, it isn't as important when it comes to taking an oath. He suggested that other documents that pertain to the point of government, could include John Locke's Second Treatise of Government and similar documents. He offered his view that removing it would help the legislature to narrow the focus to the oath public officials take.

[1:51:19 PM](#)

SENATOR SHOWER maintained his objection.

[1:51:33 PM](#)

A roll call vote was taken. Senators Hughes, Myers, Kiehl, and Holland voted in favor of Amendment 1, and Senator Shower voted against it. Therefore, Amendment 1 passed by a 4:1 vote.

[1:51:20 PM](#)

SENATOR REINBOLD made closing remarks. She offered her view that it is vitally important when the executive branch and judicial branch overreach to understand that the US Constitution was put in place to keep the government "in its lane" and protect individual liberties. She said she hoped that the bill would move from the committee.

[1:52:55 PM](#)

SENATOR SHOWER moved to report SB 119, work order 32-LS0163\G, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR HOLLAND heard no objection, and CSSB 119(JUD) was reported from the Senate Judiciary Standing Committee.

[1:53:27 PM](#)

At ease

SB 129-ELECTION PAMPHLET INFORMATION RE: JUDGES

1:55:20 PM

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE BILL NO. 129 "An Act relating to information on judicial officers provided in election pamphlets."

[SB 129 was previously heard on 5/5/21, 1/28/22, 2/2/22, and 2/9/22. Public testimony was opened and closed on 1/28/22. Amendments 1,2, and 3 were considered on 2/9/22.]

1:56:18 PM

At ease

1:57:38 PM

CHAIR HOLLAND reconvened the meeting.

1:57:51 PM

SENATOR HUGHES moved to adopt Amendment 4, work order 32-LS0751\0.5.

32-LS0751\0.5
Radford
2/3/22

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR HUGHES
TO: CSSB 129(JUD), Draft Version "O"

Page 2, following line 30:

Insert a new subparagraphs to read:

"(I) a description of previous political and governmental positions held by the judge, including any political office held;

(J) a description of the judge's primary practice areas before appointment, including the approximate percentage of the judge's pre-appointment career spent as a trial lawyer;

(K) a description of the types of clients the judge represented before appointment;"

Page 3, line 1:

Delete "(G), and (H)"

Insert "and (G) - (K)"

Delete "i"

Insert "[SHALL CONTAIN A BRIEF STATEMENT DESCRIBING EACH PUBLIC REPRIMAND, PUBLIC CENSURE, OR SUSPENSION RECEIVED BY THE JUDGE UNDER AS 22.30.011(d) DURING THE PERIOD COVERED IN THE EVALUATION. A STATEMENT MAY NOT EXCEED 600 WORDS]."

Page 3, lines 2 - 14:

Delete all material.

CHAIR HOLLAND objected for discussion purposes.

1:58:02 PM

SENATOR HUGHES explained that Amendment 4 would require a judge standing for retention to provide the same information for the voter pamphlet, whether it is their first retention election, their third, or fourth one. First, the more information a voter has is helpful. Second, if it is possible to fit the biographical and performance information for the first retention election, it should be possible for subsequent ones. She suggested that doing so would create less confusion for the voters. Otherwise, voters would review the judges for retention elections and wonder why specific information was omitted. Third, she said the jobs, positions, and education that shapes judges before becoming judges is relevant since what shapes us remains constant throughout life. For example, childhood experiences shape a person, and it remains so whether the person is 25 or 65 years old. Therefore, voters need to consider a judge's pre-judicial work, whether they held a government or political position, and the specific area of law the judicial candidate had practiced. She emphasized that this remains relevant background information throughout their tenure.

SENATOR HUGHES related a scenario to illustrate this. She explained that a superior court judge appears on the ballot for retention election every six years. She highlighted that nearly 30 percent of Alaska's population is new to the state every election. New voters will not have the background information on judges on the retention ballot unless it is provided. Further, she questioned whether the average person would recall prior judicial retention election information.

2:01:13 PM

SENATOR MYERS, speaking as sponsor, said he appreciated the spirit in which Amendment 4 was offered, which fits the bill's spirit. He said his objection to Amendment 4 was more administrative because the space in the election pamphlet is

limited. He highlighted that the goal was to provide the voters with information, specifically the most applicable information. He expressed concern that including personal or professional endeavors that occurred before the person became a judge might mean not providing more relevant information. For example, the description of the continuing legal education acquired, or any disciplinary proceedings might be relevant to voters. As Ms. DiPietro mentioned, the council might provide some information for some judges in the pamphlet but not for others. He said he hoped that would prompt some voters to go to the Alaska Judicial Council's website to obtain more information.

2:03:01 PM

SENATOR SHOWER agreed with Senator Hughes' sentiment in Amendment 4, but pointed out that currently, the bill has a zero fiscal note. He expressed concern that if the committee pushes for more information, it will increase the number of pages in the voter pamphlet, increase the council and division's work, and increase costs. This concerns him because a Finance Committee referral might mean the bill would never get a hearing and could die. He offered his view that the bill in its current form works. He stated that while this is a good idea, he cannot support Amendment 4.

CHAIR HOLLAND said he was aligned with Senator Shower. He offered his view that SB 129 greatly improves the process. Although Amendment 4 is not a bad idea, he was concerned about what the changes would cost. He maintained his objection.

SENATOR HUGHES offered her view that the space and cost concerns were not valid. First, in terms of space, the business and professional positions held the preceding 10 years would drop off over time and leave room for the items listed in Amendment 4. Second, nothing in Amendment 4 would trigger a fiscal note. The judges' information provided to the Division of Elections and the Alaska Judicial Council (AJC) for the first judicial retention election fits on one page.

SENATOR HUGHES reiterated that more voter information is better than less for the sake of new Alaskans and for those who might not recall information provided at a prior election. She surmised that AJC does not want earlier political and government affiliations as part of information. However, she maintained her view that having information before and throughout the judge's career was relevant for voters.

2:07:48 PM

CHAIR HOLLAND maintained his objection.

2:08:03 PM

A roll call vote was taken. Senator Hughes voted in favor of Amendment 4, and Senators Myers, Kiehl, Shower, and Holland voted against it. Therefore, Amendment 4 failed on a 1:4 vote.

CHAIR HOLLAND stated that Amendment 4 failed on a vote of 1 yea and 4 nays.

2:08:37 PM

CHAIR HOLLAND moved to adopt Conceptual Amendment 1.

On page 2, lines 21-22 of SB 129, Delete all material and insert:

"(F) the number of decisions by the judge that were reviewed and disposed of by a written decision of an appellate court, the percentage of issues in those decisions that were affirmed by the appellate court."

SENATOR SHOWER objected for discussion purposes.

2:08:58 PM

ED KING, Staff, Senator Roger Holland, Alaska State Legislature, Juneau, Alaska, explained Conceptual Amendment 1 on behalf of Senator Holland. First, he described an amendment the committee considered at its last meeting. Senator Holland previously offered and withdrew Amendment 2, work order 32-LS0751\0.6, on February 9, 2022. The discussion on the current language in subparagraph (F) highlighted that the courts might not be able to provide that information. The sponsor of SB 129 expressed concern that the information in Amendment 2 may be too voluminous and requested that the second half be removed. The Alaska Judicial Council considered the request and suggested using language from Amendment 2. So Conceptual Amendment 1 contains the language in the first half of Amendment 2. He stated that the sponsor could elaborate more on the effect of the language in Conceptual Amendment 1.

2:10:05 PM

SENATOR MYERS said he supported the language in Conceptual Amendment 1, which he viewed as a technical clarification. He reiterated Mr. King's explanation, adding that his concern with the previous amendment related to the amount of verbiage AJC might use to explain affirmance or other performance. He

suggested that perhaps the Judicial Council and the Division of Elections could provide half a page at the beginning of the judicial retention section of the election pamphlet explaining the different ratings and some background information on affirmance rates. However, he preferred not to address that in statute.

[2:11:29 PM](#)

SUSANNE DIPIETRO, Executive Director, Alaska Judicial Council, Alaska Court System, Anchorage, Alaska, responded that the Alaska Judicial Council does not have an opinion on the amendment.

[2:11:51 PM](#)

SENATOR HUGHES asked whether the Alaska Judicial Council and the Division of Elections could provide explanatory information for judges up for retention election or if it would require statutory authority for them to do.

MS. DIPIETRO responded that she would need to discuss this with the Division of Elections since she was unaware of the constraints the division has on the election pamphlet length or space. She assured members that the council would explore this with the division.

[2:12:41 PM](#)

SENATOR HUGHES asked for any disadvantages voters would have if Amendment 2 was adopted, and they read the affirmance rate without having an explanation in the pamphlet. She wondered if it would mislead the voters.

MS. DIPIETRO answered that AJC always provides the percentage of decisions affirmed in context. AJC posts a memo on its website, approximately 10-11 pages in length, providing historical averages compared to all judges, not just the ones in the voter pamphlet standing for retention in order to provide context. This contextual information highlights the significance of the percentage so voters can determine if a judge is within the performance range of other judges with similar caseloads or if they rank lower or higher. AJC has always provided this information with a significant amount of context. She suggested that AJC, in consultation with the division, would recommend and prefers providing any context that fits within the statutory limit and the division's logistical issue. This information helps voters to understand what the numbers mean.

[2:14:50 PM](#)

SENATOR SHOWER stated that voters currently receive substantial campaign information during the election and are told that the statutory changes contemplated were easily remedied by educating the voters. For example, ranked-choice voting is supposedly easy for voters to understand, but during the committee hearings members found otherwise. He offered his view that directing voters to a 10 - 11-page document would not be easier for them. Amendment 2 would concisely put the judicial performance information in the voter pamphlet rather than expecting voters to interpret or distill the data from a 10 - 11-page explanation.

[2:15:46 PM](#)

SENATOR MYERS said AJC currently provides the survey ratings but not the appeal rates. The survey polls jurors, law enforcement, and others about judicial performance. He highlighted that the spirit of the bill was to give voters enough information, not overwhelm them, or take up too much space in the voter pamphlets. He stated he intended to omit the affirmance information. He envisioned that most voters could compare the judges' affirmance rates and ascertain if one was ranked 15 percent lower. He understood AJC's point that the council would provide some context. For example, a voter might review the voter pamphlet for judges up for judicial retention and see that one judge was 50 percent lower than the others. Although he understood Ms. DiPietro's point, he believes some context is provided, and since the pamphlet has space limitations, he would like to give voters a broader range of information.

[2:17:15 PM](#)

SENATOR SHOWER offered his belief that voters won't dig through a 10-11 page document, so Conceptual Amendment 1 makes sense.

[2:17:52 PM](#)

SENATOR HUGHES stated that Conceptual Amendment 1 would remove the explanation about judicial affirmance rates and replace it with a percentage. She expressed her preference. She would like AJC to provide a little explanation to ensure the voters have enough information. Although she is comfortable with Conceptual Amendment 1, she would like to hear from Ms. DiPietro after she consults with the division. She suggested that the sponsor may need to consider a floor amendment to address this.

[2:20:35 PM](#)

CHAIR HOLLAND asked if the committee should hear from Ms. DiPietro first.

[2:20:42 PM](#)

SENATOR MYERS said he would like to consider it. He related that this bill has one more committee referral before it heads to the floor, so it's possible to amend it, if needed. However, he said he didn't think it would be necessary to do so.

[2:21:19 PM](#)

SENATOR HUGHES responded that it works for her. She said she did not realize that the bill had one more committee of referral.

[2:21:37 PM](#)

At ease

[2:21:57 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:22:09 PM](#)

SENATOR SHOWER removed his objection.

CHAIR HOLLAND heard no further objection, so Conceptual Amendment 1 was adopted.

SENATOR MYERS thanked the committee for its work on the bill. He stated the goal of the bill is to provide voter education, by ensuring that voters have additional information on judicial retention elections.

[2:23:04 PM](#)

SENATOR SHOWER moved to report SB 129, work order 32-LS0751\0, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR HOLLAND found no objection, and CSSB 129(JUD) was reported from the Senate Judiciary Standing Committee.

[2:23:28 PM](#)

At ease

SB 118-CMTE ON NULLIFICATION OF FEDERAL LAWS

[2:26:59 PM](#)

CHAIR HOLLAND reconvened the meeting and announced the consideration of SENATE BILL NO. 118 "An Act establishing the committee on nullification of federal laws; and providing a directive to the lieutenant governor."

[SB 118 was previously heard on 2/2/2022.]

[2:27:12 PM](#)

CHAIR HOLLAND noted his intention to take public testimony, consider any issues, and hold the bill in committee.

[2:27:21 PM](#)

CHAIR HOLLAND opened public testimony on SB 118

[2:27:41 PM](#)

MIKE COONS, representing self, Palmer, Alaska, spoke in support of SB 118 because nullification is the basis to countermand amendments passed by the legislature, as needed. It would give the new Committee on Nullification of Federal Laws the duty and authority to review and nullify statutes, regulations, and executive orders. He opined that this would provide Alaskans with a means to address federal overreach.

[2:28:59 PM](#)

CHAIR HOLLAND closed public testimony on SB 118.

[2:29:22 PM](#)

MEGAN WALLACE, Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, introduced herself.

CHAIR HOLLAND stated that several legal questions arose at the last hearing. He asked for the interplay between federal and state laws.

MS. WALLACE explained that the supremacy clause of the US Constitution art. VI states explicitly that the laws of the federal government shall be the supreme laws of the land. The US Constitution states that states will follow federal law. The Tenth Amendment reserves powers not delegated to the United States by the Constitution to the states. The supremacy clause would trump state law if the federal and state governments passed laws that conflict. However, if the federal government has not regulated or passed laws, the Tenth Amendment reserves to states the right to make laws to address the matter.

[2:31:37 PM](#)

CHAIR HOLLAND asked whether any legal precedent supports a state's right to nullify a federal law within its borders.

MS. WALLACE responded that she was unaware of any case law that supports the state legislature's authority to nullify federal law. The general legal mechanism used to challenge federal laws is through litigation. *Marbury v. Madison* essentially

established the federal judicial doctrine that the federal courts and the US Supreme Court ultimately have the role and responsibility to decide whether federal laws are constitutional.

[2:32:37 PM](#)

SENATOR SHOWER suggested that the bill sponsor might wish to respond.

SENATOR LORA REINBOLD, Alaska State Legislature, Juneau, Alaska, sponsor of SB 118, pointed out that Wyoming, Alabama, and Utah have set a precedent. She stated that the laws of Congress are restricted by the US Constitution. She said that in Federalist No. 33, Alexander Hamilton noted that the supremacy clause expressly confines this supremacy to laws made pursuant to the constitution. She interpreted this to mean the federal government must "stay in its own lane."

CHAIR HOLLAND asked if the language in SB 118 was modeled after legislation other states have passed.

SENATOR REINBOLD responded that she would need to consult with Legislative Legal.

[2:34:19 PM](#)

CHAIR HOLLAND asked if the Alaska legislature has the authority to tell Alaskans not to abide by federal law or executive order.

SENATOR REINBOLD responded that the US Constitution and Alaska Constitution protect individual civil liberties. If a federal law is unconstitutional, the state absolutely must ensure individual rights are protected. She remarked that members take an oath to support and defend the Constitution of the United States and the Constitution of the State of Alaska. She remarked that it is the legislature's responsibility to uphold state sovereignty.

[2:35:43 PM](#)

SENATOR SHOWER stated that he supports states' rights. He commented that what works in Alaska does not necessarily work in other states, such as Florida, New York, or Hawaii. He surmised the founding fathers never envisioned the tremendous growth of the federal government or the extent of its law-making that governs everything. He stated it is valid to limit the federal government since it has become too big and powerful, usurping the states' powers. He related he introduced a bill that would bifurcate the election system to ensure Alaska can operate its

elections in a manner it chooses rather than abide by a plan devised by bureaucrats or elected officials in Washington DC.

2:37:33 PM

SENATOR HUGHES stated that art. VI is not in conflict with art. 1, sec. 10, which allows states to retain power over anything that is not granted to the federal government. She suggested that the committee might want to strengthen the language. She referred to page 1, lines 11 - 14, and read, "In making its recommendation, the committee shall consider whether the statute, regulation, or executive order is outside the scope of the powers delegated to the federal government in the Constitution of the United States." She interpreted that means it is not constitutional to nullify something that the constitution granted the federal government to govern. However, if it is an item that was not granted to the federal government, it falls under the Tenth Amendment and the state should have a means to nullify it. She related that Ms. Wallace said the usual method is through litigation, but that doesn't mean it is the only way. Nothing prohibits a state from asserting a state's rights. She offered her view that as long as the state doesn't nullify laws because the legislature doesn't like them or wishes the federal government had not passed a law, the state can nullify something that falls within [the Tenth Amendment].

2:40:00 PM

CHAIR HOLLAND asked if Alaska's legalization of marijuana was an example of nullification.

2:40:21 PM

MS. WALLACE answered that she did not think Alaska's legalization of marijuana was nullification. She related her understanding that nullification was a term used in that a state has the right to nullify or invalidate federal laws that it deems unconstitutional. The state marijuana laws did not nullify or invalidate the federal laws regulating marijuana. As most members are aware, tension exists between states and the federal government regarding marijuana. While the federal government has not enforced the federal laws against marijuana in states that have legalized marijuana, that tension still exists. She pointed out that the possibility exists that the federal government would enforce the federal laws in superiority over state laws.

2:42:00 PM

CHAIR HOLLAND acknowledged he did not think it was an example. He asked what would happen if Alaska nullified a law, but the federal government decided to enforce the federal law.

MS. WALLACE expressed concern with the process established in the bill to nullify federal law. The bill provides for nullification by concurrent resolution. Alaska Supreme Court decisions indicate that if the legislature is going to act and affect people outside the legislative branch, it needs to act by law. Arguably, if the legislature nullified federal laws, the bill risks challenge that it does not nullify by law. Second, suppose the legislature were to attempt to nullify federal law. In that case, a strong likelihood exists that the federal government would not recognize that the state has the power to nullify it. The federal government might continue to execute or enforce it in Alaska. She offered her view that ultimately that tension or conflict would end up in court.

[2:43:55 PM](#)

SENATOR SHOWER recalled that early on the federal government was enforcing marijuana laws. He surmised it was less common now because so many states legalized marijuana, so the federal government let it go. Although the federal government might want to enforce the marijuana laws, it has limited resources, so the Drug Enforcement Agency relies on states and local authorities, such as troopers to enforce federal law. He said the state could push back if the federal government attempted to take over Alaska's elections by refusing to allow them to use Alaska's election equipment. It would be difficult for the federal government to create its own system. He concluded that this approach would avoid the conflict between constitutional powers.

[2:45:58 PM](#)

SENATOR KIEHL related one question he posed to the sponsor at the last hearing was the cost to review each federal law as proposed by SB 118. He suggested that Congress passes approximately 2 million words of federal law each year, and 3,000 to 4,000 new regulations each year.

SENATOR REINBOLD reminded members she previously chaired the Administrative Regulation Review Committee. She suggested that combining that committee with the Senate Judiciary Committee would be appropriate. She opined that the committee and the Legal Services attorney would bring forth ideas.

[2:47:58 PM](#)

SENATOR KIEHL said the bill just says upon receipt. He asked if the sponsor intended that Legislative Legal Services would do the winnowing of those laws or if citizens would forward them to the committee.

SENATOR REINBOLD stated the intention of SB 118 was to allow the committee to set up the process. She said it would be open to who brings forth the law for review.

[2:48:55 PM](#)

SENATOR MYERS referred to the federal Real ID Act from 2005. At one point, the state passed legislation that indicated the state would not expend state resources to implement the Real ID Act. He recalled that the law was repealed several years ago. He asked whether that sponsor envisioned the Real ID Act as a candidate for nullification.

SENATOR REINBOLD answered yes. She explained that art. 1, sec. 22 of the Alaska Constitution indicates that the privacy of citizens shall not be infringed. She said it is the legislature's responsibility.

[2:49:59 PM](#)

SENATOR MYERS wondered how nullifying a federal law would affect the public. He related his understanding that many businesses were concerned about accessing military bases. He asked what would happen if the state nullified the Real ID Act and a contractor submitted a non-Real ID driver's license as identification to enter a base, but it was rejected.

SENATOR REINBOLD stated that the Department of Defense (DoD) is under a different jurisdiction. She related that previously she was allowed to use her passport to access the base.

SENATOR SHOWER responded that the military could restrict access to bases due to national security concerns. He explained the process contractors would use. If a person did not have the Real-ID, the military would obtain their personal identifiers, vet the person, and issue them a temporary pass to get on base for events or contractors.

[2:52:44 PM](#)

SENATOR MYERS asked whether he could use a non-Real ID at the airport. He asked whether he would need to call the troopers and explain the legislature nullified the Real ID Act.

SENATOR REINBOLD answered that when conflicts arise, state statutes would trump corporation policies. She asked whether the legislature should allow corporations to set laws. She pointed out that the supreme law is the US Constitution.

[2:54:32 PM](#)

CHAIR HOLLAND held SB 118 in committee.

SB 31-PROHIBITING BINDING CAUCUSES

[2:54:51 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 31 "An Act relating to binding votes by or for a legislator under the Legislative Ethics Act."

[CSSB 31(STA) was before the committee. SB 31 was previously heard on 5/10/21 and 2/2/22.]

[2:55:07 PM](#)

CHAIR HOLLAND noted members raised several questions at the last hearing. He related that Mr. Anderson, the Select Committee on Legislative Ethics administrator, was available for questions.

[2:55:25 PM](#)

SENATOR SHOWER said he would like to work with members on amendments. He recalled Senator Kiehl asked whether SB 31 would apply to more than procedural votes or the budget.

[2:56:18 PM](#)

SENATOR MYERS highlighted his only concern was enforcement issues.

[2:56:33 PM](#)

SENATOR SHOWER offered to provide context for the bill. He related that legislative leadership docked his staff's pay. Since Mason's Manual or the Uniform Rules didn't address that issue, his staff had no recourse. One goal of SB 31 is to provide recourse if a member was stripped of their committee chair or membership and their staff suffered financial losses.

[2:57:59 PM](#)

JERRY ANDERSON, Administrator, Select Committee on Legislative Ethics, Legislative Agencies and Offices, Anchorage, Alaska, offered to make general comments on the bill. He stated that he did not find any changes to how parties would file complaints under AS 24.60.170. The caucus process is silent in the Legislative Ethics Act, and it was a product of precedent set through the legislative process.

[2:58:48 PM](#)

SENATOR SHOWER recalled a felony penalty provision for a statute that stated a person could not influence an elected official to

vote or prevent them from voting. However, this has happened under a binding caucus. He said leadership threatened members with direct action that affected legislators, their staff, and their districts if they did not follow the caucus on procedural or budget votes. He said he disagrees that leadership didn't face the consequences for their threatening behavior because it didn't violate any law. If a public member required someone to vote a certain way, they could go to jail, but legislators are not punished if they do the same thing.

[3:00:11 PM](#)

MR. ANDERSON responded that he had no further comments.

[3:00:19 PM](#)

SENATOR HUGHES asked for the penalty provisions for violations of the ethics law. She recalled that penalties could be financial or impose certain things. Second, the conduct in question was not about being bribed for receiving a prerequisite (perk), which would fall under criminal law. Instead, the bill states that the person may not commit their vote. She wondered how it would affect a legislator who voted a certain way in exchange for a perk. She said she didn't have enough information.

[3:01:53 PM](#)

SENATOR MYERS asked if this bill passed in its current form, whether the penalty was an ethics violation or complaint or if the bill should elevate the penalty to a felony.

SENATOR SHOWER responded that colleagues expressed concern that the bill would impose a felony. He commented that it might not be politically viable to elevate this behavior to a felony. He related his goal was to establish a consequence for a binding caucus that required another legislator to commit to vote for or against a bill, appointment, veto, or another measure that may come to a vote before a legislative body. He was unsure how to address the issues related to a binding caucus other than to pass the bill to prohibit a binding caucus explicitly.

[3:03:59 PM](#)

SENATOR KIEHL said the bill carves out an exception for certain votes or informal polls in a caucus. He asked whether it would apply to a formation of a caucus. Since he is not a member of the majority, he has less staff and less pay for staff, which the sponsor has highlighted as forbidden binding mechanisms. He asked whether this bill would apply to the formation of a caucus in the first place. He wondered whether the bill could be

interpreted to mean that minority members must have the same resources as majority members.

MR. ANDERSON responded that the definitions used in SB 31 were taken from open meetings guidelines. Those guidelines discuss caucus procedures. He stated that some were included and others were not. For example, political strategy is not part of the open meetings guideline. Under AS 24.60.039(g)(1) "caucus" means a group of legislators who share a political philosophy, or have a common goal, or who organize as a group. He said if the complaint met that definition, the Select Committee on Legislative Ethics would consider it. If the committee found a violation, it would go through the complaint process, including issuing specific sanctions. He deferred to Mr. Klein to further respond.

[3:07:03 PM](#)

NOAH KLEIN, Attorney, Legislative Counsel, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, asked Senator Kiehl to repeat the question.

[3:07:16 PM](#)

SENATOR KIEHL asked whether the bill would apply to the formation of minority or majority caucuses since the sponsor described the binding mechanisms, including fewer staff, pay ranges, and committee chair assignments.

MR. KLEIN responded that the bill could apply to the formation of caucuses if legislators were committing for or against a bill or veto. He said if it occurs during the formation, it would not be subject to the exception in paragraph (1).

[3:08:57 PM](#)

CHAIR HOLLAND held SB 31 in committee.

[3:09:32 PM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 3:09 p.m.