

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

March 8, 2023

1:01 p.m.

**MEMBERS PRESENT**

Representative Sarah Vance, Chair  
Representative Jamie Allard, Vice Chair  
Representative Craig Johnson  
Representative David Eastman  
Representative Andrew Gray  
Representative Cliff Groh

**MEMBERS ABSENT**

Representative Ben Carpenter

**COMMITTEE CALENDAR**

HOUSE BILL NO. 28

"An Act restricting the release of certain records of convictions; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 82

"An Act relating to the selection, retention, and rejection of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 28

SHORT TITLE: ACCESS TO MARIJUANA CONVICTION RECORDS

SPONSOR(S): REPRESENTATIVE(S) WRIGHT

01/19/23	(H)	PREFILE RELEASED 1/9/23
01/19/23	(H)	READ THE FIRST TIME - REFERRALS
01/19/23	(H)	JUD, FIN
03/01/23	(H)	JUD AT 1:00 PM GRUENBERG 120
03/01/23	(H)	Heard & Held
03/01/23	(H)	MINUTE(JUD)

03/08/23 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 82

SHORT TITLE: SELECTION AND REVIEW OF JUDGES

SPONSOR(S): REPRESENTATIVE(S) RAUSCHER

02/27/23 (H) READ THE FIRST TIME - REFERRALS  
02/27/23 (H) JUD, FIN  
03/06/23 (H) JUD AT 1:30 PM GRUENBERG 120  
03/06/23 (H) Scheduled but Not Heard  
03/08/23 (H) JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

CHELSEA FOSTER, Board Member  
Alaska Marijuana Industry Association  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 28.

LACY WILCOX, Legislative Liaison  
Alaska Marijuana Industry Association  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 28.

REPRESENTATIVE STANLEY WRIGHT  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, provided an overview of HB 28 and answered questions.

ALLAN RIORDAN-RANDALL, Staff  
Representative Stanley Wright  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 28, on behalf of Representative Wright, prime sponsor.

LISA PURINTON, Chief  
Criminal Records and Identification Bureau  
Department of Public Safety  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 28.

NANCY MEADE, General Counsel  
Alaska Court System  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 28.

REPRESENTATIVE GEORGE RAUSCHER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, introduced HB 82.

RYAN MCKEE, Staff  
Representative George Rauscher  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided a summary of changes in the proposed CS for HB 82, Version B, on behalf of Representative Rauscher, prime sponsor.

LOREN LEMAN  
Anchorage, Alaska

**POSITION STATEMENT:** Offered invited testimony during the hearing on HB 82.

FRITZ PETTYJOHN  
Sonora, California

**POSITION STATEMENT:** Offered invited testimony during the hearing on HB 82.

#### **ACTION NARRATIVE**

[1:01:28 PM](#)

**CHAIR SARAH VANCE** called the House Judiciary Standing Committee meeting to order at 1:01 p.m. Representatives C. Johnson, Eastman, Gray, Groh, Allard, and Vance were present at the call to order.

CHAIR VANCE announced that she was offering Representative Gray a chance to clarify the comments he made during a previous committee meeting [on 3/1/23].

REPRESENTATIVE GRAY referred to the discussion regarding access to marijuana conviction records. He stressed that he was not speaking on behalf of the U.S. Department of Defense (DOD), the U.S. Army, the National Guard, or the Department of Military & Veterans' Affairs (DMVA). He explained that his intention was never to encourage people to lie or commit a felony; conversely, his intention was to highlight a barrier to entry into military service. He stated that serving in the military was a great

privilege, adding that he wanted as many qualified people as possible to have the same opportunity.

REPRESENTATIVE VANCE apologized to Representative Eastman for not allowing him the same privilege [of clarifying a statement on the record].

**HB 28-ACCESS TO MARIJUANA CONVICTION RECORDS**

[1:03:57 PM](#)

CHAIR VANCE announced that the first order of business would be HOUSE BILL NO. 28, "An Act restricting the release of certain records of convictions; and providing for an effective date."

CHAIR VANCE opened public testimony on HB 28.

[1:04:11 PM](#)

The committee took a brief at-ease.

[1:04:41 PM](#)

CHELSEA FOSTER, Board Member, Alaska Marijuana Industry Association, stated her support for HB 28. As a result of restricting access to conviction records, she listed the following benefits: employment opportunities; higher wages; access to housing; removing barriers to full engagement in family life; and putting an end to the social stigma and anxiety associated with a criminal record. She shared key research findings. She urged the committee to support HB 28, describing the bill as equitable and fiscally responsible for Alaska.

[1:06:36 PM](#)

REPRESENTATIVE EASTMAN asked whether she was advocating for an expungement of [marijuana conviction records].

MS. FOSTER clarified that she was advocating for the sealing of records on Court View.

[1:07:18 PM](#)

LACY WILCOX, Legislative Liaison, Alaska Marijuana Industry Association, offered a prepared statement [included in the committee packet], which read as follows [original punctuation provided]:

The Alaska Marijuana Industry Association would like to offer our support for HB 28.

We believe that this piece of legislation is an incremental but important step in the right direction towards destigmatizing cannabis consumption. While it is hard for us to identify specific individuals whom this legislation would impact due to confidentiality, we do know anecdotally that public records impact an individual's ability to secure fair housing, fruitful employment, and education opportunity.

It is common knowledge that employers, schools, and landlords use CourtView to perform background checks on applicants. In CourtView a simple marijuana possession charge appears similar to this, "MisconductControlled Substance 6A". Very few understand the drug schedule, and most people performing background checks are unlikely to do the next step of discovery to see that VIA is only marijuana. They will simply put the application aside. Therefore, anything that removes even a small barrier to positive life outcomes, we will support.

We want to thank the sponsor and prior session sponsors of similar legislation and urge its support and passage by both bodies.

[1:08:59 PM](#)

REPRESENTATIVE EASTMAN asked whether an employer had the right to know whether an applicant had a marijuana conviction on record.

MS. WILCOX shared her understanding that nothing in HB 28 would prohibit employers from asking applicants about their criminal history.

REPRESENTATIVE EASTMAN asked whether dishonesty about one's criminal history was a fireable offense.

MS. WILCOX suspected that consequences could ensue if a lie was told. She indicated that it was up to employers to use their discretion on such matters.

[1:11:17 PM](#)

CHAIR VANCE closed public testimony on HB 28. She invited the bill sponsor to brief the committee on the merits of the proposed legislation.

[1:11:56 PM](#)

REPRESENTATIVE STANLEY WRIGHT, Alaska State Legislature, prime sponsor of HB 28, conveyed that the bill would provide an opportunity to right a wrong. He acknowledged the severity of breaking the law; however, he pointed out that the recreational use and possession of marijuana was legalized in Alaska. He opined that every person was deserving of hope and the ability to move forward. He concluded by humbly asking the committee to hear his words and take them to heart.

[1:13:16 PM](#)

REPRESENTATIVE ALLARD asked how the bill would impact background checks.

[1:14:43 PM](#)

ALLAN RIORDAN-RANDALL, Staff, Representative Stanley Wright, Alaska State Legislature, clarified that state or federal background checks would not be impacted.

REPRESENTATIVE ALLARD expressed concern that employers could be deceived by potential employees.

REPRESENTATIVE WRIGHT said he was not encouraging applicants to lie. He reiterated that his intent was to right a wrong and to encourage conversations between employers and employees.

REPRESENTATIVE ALLARD disagreed with the sentiment that the bill would "right a wrong," as any person with a marijuana conviction had committed a crime.

CHAIR VANCE requested a sectional analysis of the bill.

[1:17:03 PM](#)

REPRESENTATIVE WRIGHT presented the sectional analysis for HB 28 [included in the committee packet], which read as follows [original punctuation provided]:

SECTION I: It is the intention of the legislation to reduce barriers to employment and other basic daily functions for individuals who under past statute were convicted of low level marijuana related crimes.

SECTION II: Describes when, why and to what agencies or organizations information protected in this bill may be released.

SECTION III: Persons aged 21 years or older shall in the provisions of this bill have records of low level marijuana convictions as detailed in this section, which by todays statutes made to be inaccessible other than as listed in section II.

SECTION IV: Records relating to the individuals and occurrences in this bill shall not be publicly published by the Alaska Court System. Information shall be made available on how to obtain information removed from public view.

SECTION V: Records currently posted by the Alaska Court System shall be removed from public view.

SECTION VI: An effective date for this act shall be; 1st of January 2024.

CHAIR VANCE asked Ms. Purinton to describe how Section 2 would impact the Department of Public Safety (DPS).

[1:19:04 PM](#)

LISA PURINTON, Chief, Criminal Records and Identification Bureau, Department of Public Safety, stated that Section 2 sought to modify AS 12.62.160 [Release and use of criminal justice information; fees]. She explained that the bill would limit low-level marijuana convictions, as outlined in HB 28, from being displayed on "any person" reports, which were background checks often conducted by landlord/tenants or generated by non-state/non-federal required record checks.

CHAIR VANCE asked Ms. Purinton to define "expunged" versus "sealed."

[1:21:36 PM](#)

MS. PURINTON explained that an expunged record would no longer exist in the system, whereas a sealed record was only accessible in a limited capacity. She defined sealing as "limited dissemination."

CHAIR VANCE asked whether HB 28 sought to seal or expunge [the marijuana conviction records].

MS. PURINTON said the bill would seal the record of conviction, as the marijuana conviction would still exist on record for specific authorized purposes, such as federal and state authorized background checks.

CHAIR VANCE sought questions from members of the committee.

[1:23:12 PM](#)

REPRESENTATIVE EASTMAN asked whether an employer could receive access to a person's full criminal history should the bill pass.

MS. PURINTON said it would depend on whether the employer was authorized by state or federal law. She shared, for example, that the Anchorage School District (ASD) was authorized by state law to perform background checks as a condition of employment; therefore, ASD could obtain access to an applicant's full criminal history report. She continued to explain that if the bill were to pass, "any person" reports requested by employers would exclude low-level marijuana convictions.

REPRESENTATIVE EASTMAN asked whether a disclaimer would be included with the background check.

MS. PURINTON confirmed that there was a "quasi" disclaimer notice highlighting the limited scope of the "any person" report in accordance with AS 12.62.160(b)(8). She explained that non-conviction records were not displayed in addition to records that had not been adjudicated.

[1:25:47 PM](#)

REPRESENTATIVE EASTMAN asked who could access sealed conviction records.

MS. PURINTON stated that the records would be available in the state repository to all entities listed under AS 12.62.160.

CHAIR VANCE inquired about the DPS fiscal note.

[1:27:20 PM](#)

MS. PURINTON informed the committee that year one costs would be higher to provide for a contract programmer at the estimated cost of \$56,000 to modify the main frame system to limit the dissemination of the marijuana conviction records. The additional cost, she explained, was to fund a temporary position to research all record sealing requests and update the criminal history repository accordingly.

CHAIR VANCE highlighted the language "upon request of the defendant" and inquired about the impact of removing that language from the fiscal note.

MS. PURINTON suspected that the temporary [criminal justice technician] position would be needed for a longer period. She estimated that 8,000 records could potentially qualify for restricted access under the proposed legislation.

CHAIR VANCE indicated she was trying to understand the anticipated workload.

[1:31:26 PM](#)

REPRESENTATIVE ALLARD sought to confirm that individuals who were eligible for this policy could not have committed any other crime.

MS. PURINTON shared her understanding that [marijuana possession] must be the sole conviction in the case; further, the offender must have been under the age of 21 when the offense was committed.

MS. PURINTON, in response to a follow-up question from Representative Allard, clarified that the bill pertained specifically to crimes involving under one ounce of marijuana.

[1:32:47 PM](#)

REPRESENTATIVE GRAY asked where the \$56,000 [to fund the contract programmer] was included on the fiscal note.

MS. PURINTON said the total cost in year one should include \$56,000 for the programming cost.

REPRESENTATIVE GRAY restated his question, referencing the "Year 1" and "Year 2" breakdown of costs on page 2. He asked where the \$56,000 was included in that.

MS. PURINTON, referring to page 1 of the fiscal note, indicated that \$56,000 was included in the \$72,000 cost of services.

[1:34:44 PM](#)

REPRESENTATIVE EASTMAN inquired about the process for people under the age of 21 at the time of conviction.

MS. PURINTON shared her understanding that records of individuals under the age of 21 would still be displayed and available.

REPRESENTATIVE EASTMAN asked whether the criminal records of minors were handled differently.

MS. PURINTON said the state repository had limited criminal history records for individuals under the age of 18.

[1:36:39 PM](#)

REPRESENTATIVE ALLARD said she would consider supporting the bill if the individuals paid for the sealing of their records. She asked whether the sponsor would consider implementing this change into the bill.

REPRESENTATIVE WRIGHT said he would have to think about it. Initially, however, he said he would not be supportive because these individuals were already struggling financially.

REPRESENTATIVE ALLARD opined that the burden should not be placed on taxpayers.

[1:37:47 PM](#)

REPRESENTATIVE EASTMAN asked why the bill didn't seek to expunge low-level marijuana conviction records.

REPRESENTATIVE WRIGHT shared his belief that sealing the records, as opposed to expunging them, was more palatable. He suggested that a conversation about expungement could be had in the future.

[1:38:32 PM](#)

REPRESENTATIVE EASTMAN directed attention to Section 3 of the bill. He asked whether HB 28 would extend to charges that did not result in a conviction.

REPRESENTATIVE WRIGHT reiterated that the bill only applied to people that were charged solely with [a low-level marijuana] conviction.

[1:40:01 PM](#)

REPRESENTATIVE ALLARD inquired about the price per person if all 8,000 records were to be sealed.

MS. PURINTON offered to follow up with the requested information.

[1:40:44 PM](#)

REPRESENTATIVE EASTMAN referred to page 3, line 19, of HB 28 and inquired about the notice that would be provided on how to obtain a criminal history record.

[1:41:36 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, pointed out that a disclaimer and a notice on how to search criminal records was already provided on Court View.

REPRESENTATIVE EASTMAN expressed confusion. He remarked, "If we're saying in Section 2 of the bill that DPS can't release this information to just anybody, why are we saying in Section 4 of the bill that just anyone can go to DPS and get this information."

MS. MEADE interpreted Section 4 of the bill to suggest that a general notice would be posted on the website directing people to DPS for criminal history record checks. Nonetheless, she acknowledged that if HB 28 were to pass, [marijuana conviction records] would not be accessible via DPS. She added that the only way to obtain the records in question would be at the courthouse.

REPRESENTATIVE EASTMAN asked whether people would have access to the sealed information at the courthouse.

MS. MEADE noted that from the perspective of the courts, these records would not be considered "sealed," as the term meant something different to the court system. She clarified that, per Sections 3-4 of the bill, the marijuana convictions would simply be removed from Court View. In response to Representative Eastman, she answered yes, the kiosk at the courthouse would provide access to an individual's full criminal history.

REPRESENTATIVE EASTMAN referred to Section 3 and asked whether the court fell within the statutory definition of "agency."

MS. MEADE answered no.

[1:46:34 PM](#)

CHAIR VANCE announced that HB 28 would be held over.

[1:47:07 PM](#)

The committee took a brief at-ease.

#### **HB 82-SELECTION AND REVIEW OF JUDGES**

[1:49:22 PM](#)

CHAIR VANCE announced that the final order of business would be HOUSE BILL NO. 82, "An Act relating to the selection, retention, and rejection of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; and relating to the duties of the Commission on Judicial Conduct."

[1:49:38 PM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, prime sponsor, presented HB 82. He provided the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

House Bill 82 would bring the Judicial system by to what was envisioned by the framers of the Alaska Constitution. First it should be noted that there are two types of judges. 1. Constitutional Judges: Superior Court Judges and Supreme Court Justices, which must be vetted by the Judicial Council (Council) and the Governor can only select from a list of two or

more names submitted by the Council. HB 82 holds constitutional judges harmless. The operating authority of this provision is: Art IV Sec 5. "The Governor shall fill any vacancy in an office of the supreme court justice or superior court judge by appointing one of two or more persons nominate by the Judicial Council.

2. Statutory Judges: District, Appellate and Magistrates. The last of the 3 is not in this legislation. Existing statute currently follows the Judicial Council nomination process. However, judicial candidates are subject to the legislature's discretion on how they are selected, appointed and whether they are confirmed by the legislature. HB 82 exercises the legislature's delegated constitutional authority to set policy on how these statutory judges are selected to serve on the bench. The operating authority of the provision is: Art IV Sec 4. "Judges of other courts shall be selected in a manner, for terms, and with qualifications as prescribed by law."

Currently, Appellate and District Court Judges are nominated in a statute defined process that mirrors the Art IV Sec 5 Judicial Council process.

The Council is structured to give a majority of the Alaska Bar (Bar) members the control of who gets to be a judge or justice. The deciding vote in a tie is given to the ex-officio seventh member, the Chief Justice. The Chief Justice has voted 79 times to break ties since 1984.

Additionally, Bar members of the Council are appointed internally by the Bar with no legislative confirmation or administrative oversight. Virtually all the Judiciary Branch is, "beyond the democratic control of a more non-bias process."

The constitutional framers that sought to protect upper benches from becoming bias when choosing their own installed safeguards, which left the lower benches up to legislative control.

Interesting enough, till now the legislature ceded 100% control, and it mirrors the "constitutional" Alaska Bar selection controls.

The Alaska Constitutional Convention Judiciary Committee Consultants wrote, as reported by Vic Fisher in his book, "Alaska's Constitutional Convention." - "No state constitution has ever gone this far in placing one of the three branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe (emphasis added) in putting them in the hands of a private professional group, however, public-spirited its members may be.

House bill 82 strikes the "safe" constitutional balance envisioned by the framers by giving the governor and the people's representatives an appropriate say in who sits on the certain statutory benches. It allows the governor to appoint and the legislature to confirm who fills district court and appellate judges. It still allows the Council to screen and recommend all candidates, but the governor is not mandated to appoint from only the Bar submitted list. The Governor can nominate and appoint his own Judicial Council screened magistrate, district, and appellate judges.

HB 82 exercises the authority expressly granted in the constitution, for the legislature and governor to prescribe how District Court judges and Appellate Court judges are nominated.

[1:52:45 PM](#)

REPRESENTATIVE ALLARD moved to adopt the proposed committee substitute (CS) for HB 82, Version 32-LS0483\B, Gunther/Radford, 3/4/23, as the work draft. There being no objection, Version B was before the committee.

[1:56:49 PM](#)

The committee took an at-ease from 1:56 p.m. to 2:00 p.m.

[2:00:22 PM](#)

REPRESENTATIVE RAUSCHER deferred to his staffer, Mr. McKee, to provide a summary of changes in Version B.

[2:00:43 PM](#)

RYAN MCKEE, Staff, Representative George Rauscher, Alaska State Legislature, on behalf of Representative Rauscher, prime sponsor, provided a summary of changes in the proposed CS to HB 82, Version B, which read as follows [original punctuation provided]:

1. Title change;

Adds: "Selection of magistrates" to title.

Adds: Relating to the conduct of magistrates; and relating to the impeachment, disqualification, suspension, removal, retirement, and censure of magistrates, to the title.

2. Body of Bill;

Removes magistrates from the approval and rejection process on the ballot that all other judges are subject to. Sec 1, Sec 2, Sec3, Sec 4, Sec 5, Sec 6, Sec 7, Sec 8, Sec 9, are all eliminated.

Adds magistrates to the legislative confirmation process.

Streamlines the recommendation process for the Judicial Council;

- Version\A had a two tier system of nominations, the Judicial Council nominated, and if the governor did not like nominations, he then could nominate his own.
- Version\B both the Governor and Judicial Council simultaneously nominate on the same time frame.

Eliminates magistrates from the judicial report associated with removal and retention process.

Retains magistrates in the Commission on Judicial Conduct and impeachment process.

[2:02:17 PM](#)

REPRESENTATIVE EASTMAN asked why the changes in Version B were being proposed.

REPRESENTATIVE RAUSCHER stated that the purpose was to add "magistrate" (indisc.), which was omitted from the original version of the bill.

REPRESENTATIVE EASTMAN attempted to clarify whether magistrates were being removed from or added to the retention removal process.

[2:03:48 PM](#)

REPRESENTATIVE RAUSCHER clarified that Version B would eliminate magistrates from the judicial report associated with the removal and retention process; however, the proposed CS retained magistrates in the Commission on Judicial Conduct and impeachment process.

CHAIR VANCE welcomed invited testimony from former lieutenant governor Loren Leman.

[2:04:49 PM](#)

LOREN LEMAN, former lieutenant governor, stated his support for HB 82. He shared a personal anecdote recounting his experience as a freshman in the Sixteenth Alaska State Legislature. He opined that the process for selecting judges was a detriment to public policy in Alaska. He recalled that the consultants to the Alaska Constitutional Convention [1955-1956] had advised against placing power in the hands of a private professional organization. He remarked that that with the exception of Justice Craig Stowers, strict constructionists had been denied appointment to the Alaska Supreme Court. He suggested that every governor since statehood had complained about the limited choices presented to them. He argued that although HB 82 would not immediately solve the imbalance of judicial temperament on the Alaska Supreme Court, it would be a step in the right direction. He opined that the bill demonstrated a process with better balance that would work well for district and appellate courts. He urged the committee to consider the legislation, advance it, and support the bill on the House floor. He characterized HB 82 as a novel approach that would move the judiciary closer to the concept of "We the people."

[2:11:19 PM](#)

REPRESENTATIVE GRAY asked whether the purpose of the bill was to get judges with a more political agenda on the bench.

MR. LEMAN asked Representative Gray to clarify the question.

REPRESENTATIVE GRAY remarked, "Do you want people to think like Republicans - to give more of a partisan view of the law?"

MR. LEMAN shared his understanding that the intent was to implement a fair and balanced system for nominating and selecting judges. He argued that the existing system, which he termed a "merit plan," wasn't working. He added that under the current system, strict constructionists "need not apply."

REPRESENTATIVE GRAY sought to verify that Mr. Leman had stated that the intent was to [select] judges that had no political agenda and applied the law fairly. He asked whether that was a fair summation.

MR. LEMAN confirmed that the goal was to select judges who applied the law fairly.

[2:14:33 PM](#)

REPRESENTATIVE EASTMAN asked how the jurisprudence of the justices on the Alaska Supreme Court compared to other states or the U.S. Supreme Court in terms of diversity.

MR. LEMAN opined that the Alaska Supreme Court was less diverse. He shared his belief that the bench was lacking strict constructionists.

[2:15:59 PM](#)

REPRESENTATIVE ALLARD suggested that the voice of the people was not being heard by the current judicial selection process because elected officials "had no say." She asked whether Mr. Leman agreed with that statement.

MR. LEMAN opined that the Alaska Judicial Council was effectually making selections for the governor by putting forth two names, one of which the governor would never pick. He said he would support a provision requiring [the governor's] selection to be subject to confirmation by the Senate.

REPRESENTATIVE ALLARD asked whether the judicial system in Alaska was imbalanced.

MR. LEMAN answered yes, adding that the court was "5-0." He opined that Alaska would be better served with a more balanced court.

[2:20:27 PM](#)

REPRESENTATIVE GRAY inquired about the meaning of the expression "5-0 court."

MR. LEMAN shared his belief that all five judges shared a comparable judicial philosophy that was not based on a strict reading of the Constitution of the State of Alaska.

REPRESENTATIVE GRAY asked Mr. Leman to expound on the uniting philosophy of the Alaska Supreme Court and to provide an example.

MR. LEMAN discussed the parental right to privacy, citing Article 1, Section 22 [Right of Privacy] of the state constitution.

[2:23:40 PM](#)

REPRESENTATIVE GROH sought to confirm that three of the seven members of the Alaska Judicial Council were appointed by the governor, as provided by the constitution.

MR. LEMAN responded yes, adding that those members were also confirmed by the legislature.

REPRESENTATIVE GROH asked Mr. Leman to define the term "strict constructionist."

CHAIR VANCE asked whether this line of questioning was germane to the bill.

REPRESENTATIVE GROH understood that Mr. Leman would like Alaska's judicial system to select more strict constructionists, which was the basis for his support for the legislation. He sought to understand the meaning of the term.

[2:25:07 PM](#)

MR. LEMAN defined "strict constructionist" as someone who applied the constitution at face value.

REPRESENTATIVE GROH asked for examples of cases that would have been decided differently had Mr. Leman's preferred system for judicial selection been in effect.

MR. LEMAN remarked, "I haven't made that list, but I can tell you that that particular initiative passed by the people of Alaska by a large margin would have been one of them on that list."

REPRESENTATIVE GROH pointed out that initiatives were not cases.

MR. LEMAN indicated that the initiative turned into a case.

[2:26:58 PM](#)

REPRESENTATIVE EASTMAN asked whether creating a law school in Alaska or changing the score required to pass the Alaska Bar Exam would solve Mr. Leman's concern.

MR. LEMAN said offering more options would be a good idea; however, he argued that it would not resolve the basic unfairness in the system, as the system for judicial nomination and selection was flawed.

[2:30:21 PM](#)

FRITZ PETTYJOHN, former legislator, noted that he had been a member of the Alaska Bar Association (ABA) for 40 years. He stated that he rejected the philosophy that lawyers should be agents of social change through the court system. He opined that an overwhelming majority of ABA members favored judicial activism, as opposed to judicial restraint. He argued that there was no balance or diversity in the Alaska judicial system resulting in a court system that injected itself into public policy. He believed that the judicial system should be confined to interpreting the law. He defined the bill as a small step in the right direction. He expressed his hope that in the future, the state constitution would be amended to allow the legislature and the governor some control over the selection of judges. He encouraged the committee to pass the bill.

CHAIR VANCE inquired about the dangers of uniformity.

MR. PETTYJOHN stated that judicial conservatives like himself were not represented on the Alaska Supreme Court. He emphasized the need for diverse philosophies, adding that ideological conformity was being enforced by the ABA. He characterized the

ABA as a group of self-interested lawyers who get to control who becomes a judge.

[2:38:47 PM](#)

REPRESENTATIVE GRAY asked how changing Alaska's judicial system to conform with the Lower-48 or the Federal Judiciary would bar judges [with a certain philosophy], like Ruth Bader Ginsburg or Clarence Thomas.

MR. PETTYJOHN said he did not understand the question.

REPRESENTATIVE GRAY asked how HB 82 would make the system less partisan.

MR. PETTYJOHN said he would like to see more judges like Clarence Thomas on the Alaska Supreme Court. Conversely, he proclaimed that Ruth Bader Ginsburg believed in advancing her conception of social justice through the court system, which he disagreed with; consequently, he said, he would oppose judges who shared the same political philosophy as Ms. Ginsburg.

REPRESENTATIVE GRAY asked how the Alaska Supreme Court lacked diversity.

MR. PETTYJOHN said, "Just read their opinions." He asserted that the record of the Alaska Supreme Court over the past 40 years showed a history of expanding their own power and restricting the power of the legislature, the governor and thereby, the people of Alaska.

REPRESENTATIVE GRAY asked whether past decisions would have been different if more judges like Clarence Thomas had sat on the bench.

MR. PETTYJOHN exclaimed, "Of course there would be."

[2:42:37 PM](#)

REPRESENTATIVE ALLARD remarked, "Are you stating that because there are more Judge Ginsburg - are you telling us that the court system leans more towards that because you believe that's who sits on the court system now?"

MR. PETTYJOHN answered, "That is the way the court system is now. That's because the way the Alaska Bar Association has

determined the court system will be through its power over the judicial selection."

[2:44:26 PM](#)

REPRESENTATIVE ALLARD asked whether there were instances in which the court had interpreted state law in contradiction to the legislative intent.

MR. PETTYJOHN asserted that [the Alaska Supreme Court] primarily "perverted" the constitution to expand their own power. He shared an example of judicial activism.

[2:46:00 PM](#)

REPRESENTATIVE GROH asked whether Mr. Pettyjohn had ever taken a poll of practicing lawyers across the state to determine the diversity of their attitudes.

MR. PETTYJOHN recounted a personal anecdote regarding the Anchorage Bar Association and the legalization of marijuana. He explained that after practicing law in Alaska for 41 years, he found the ABA to be overwhelmingly liberal, left wing, democrat, and [full of] judicial activists.

CHAIR VANCE asked the bill sponsor whether the purpose of the bill was to allow the legislature to have a voice in the appointment of judges and judicial officers.

[2:48:56 PM](#)

REPRESENTATIVE RAUSCHER likened the judicial selection process to legislators picking the next legislators. He added that the goal was to implement a comprehensive system with checks and balances. He emphasized that the goal was not implement a more progressive or conservative ideology, reiterating that a balanced system was the goal.

CHAIR VANCE announced that HB 82 would be held over.

[2:52:57 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:52 p.m.