

HJR

33

<TARGET><BILL>HJR 33</BILL><SUBJECT>HJR
33</SUBJECT><COMM>HFIN28</COMM></TARGET>

Larry D. Wood
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March 19, 2014

VIA FACSIMILE

The Honorable Bill Stoltze
The Honorable Alan Austerman
Co-Chairmen, House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99654

Re: Written Testimony in Support of HJR 33

Dear Co-Chairmen Stoltze and Austerman and Members of the House Finance Committee:

Unfortunately, I am Outside and return to Alaska on Saturday night following your Thursday hearing. However, I offer the following comments in support of HJR 33. The resolution proposes to increase the number of public members on the Alaska Judicial Council. I also suggest a revision.

By the way of introduction, I am a long time Alaska resident having been born in our state during its Territorial days. I have practiced law in Alaska for nearly 38 years. During that time, I have served as an Assistant Public Defender, Chief Assistant Attorney General, General Counsel for the Alaska Railroad, and Assistant General Counsel for Alyeska Pipeline Service Company. I have served as Chair for the Alaska Public Offices Commission and I have also served on many Alaska Bar Association committees.

I support the Missouri Plan for judicial appointments adopted in our state constitution. The plan is preferable over election of judges; however, I do share this concern expressed by Professor Brian Fitzpatrick of Vanderbilt University. He has argued that politics are undoubtedly a part of judicial selection in Missouri Plan states and writes: "In short, I am skeptical that merit selection *removes* politics from judicial selection. Rather, merit selection may simply *move* the politics of judicial selection into closer alignment with the ideological preferences of the bar." The Politics of Merit Selection, Missouri Law Review, Vol. 74, Issue 3. Importantly, Kathleen Tompkin-Miller, currently the longest serving member of the Alaska Judicial Council, similarly states in her February 20, 2014, letter supporting companion SJR 21: "It is routinely claimed, in defense of Chief Justice's and lawyers' roles on the AJC, that the Alaskan judicial system is free of political influence. That has not always been my experience." She adds:

"Regrettably, a candidate who has been actively involved in traditional 'conservative' causes is likely to have what appears to be a more vigorous background investigation, disparaging comments [by attorneys in bar polls], and poor bar scores." Ms. Tompkins-Miller also states: "Additionally, the members of the Alaska bar have tremendous influence over the process."

I agree. We attorneys exert influence over the selection and appointment of Alaska judges in three primary ways: by participating in a poll for selection and appointment by our association of three members of the Judicial Council, by participating in a poll regarding judicial candidates that is given great weight by the Judicial Council, and through the influence and tie-breaking authority of the chief justice, an attorney, and ex-officio member of the Judicial Council. Moreover, the professional advocacy skills and persuasive abilities of the four attorneys in Council deliberations must be considerable.

Qualifications of Alaska judges are established by statute. However, using its rulemaking authority, the Judicial Council has declared that only the names of those candidates who it determines *most* qualified will be submitted to the governor for appointment consideration. This determination is subjective, and has repeatedly led to the rejection of highly qualified candidates. Those occasions have left me and others shaking our heads in bewilderment. Ms. Tompkins-Miller adds: "This process also keeps many good attorneys from applying or they withdraw their name because of the poll being made available to the public. * * * Many with low bar scores likely feel they won't have the ability to get through the council. It can also be difficult to get a candidate through the process who would be considered by some to be 'conservative' in their judicial philosophy."

By adding that "These rules may be changed by the legislature" following the last sentence of Section 4.8, Article 4, of the Constitution, HJR 33 would provide legislative oversight of this and other Council rules.

In conclusion, I do agree that we have a better plan for selection and appointment of judges than an elective process. The Missouri Plan has made politics in judicial selection less influential --- but also less visible. If at all, politics should come into play only when an elected governor must choose amongst qualified judicial candidates. Expanding the number of public members will offset the remarkable influence of attorneys in this process, but will not vitiate the opportunity for important attorney input, expertise, and wisdom in the selection of judicial candidates. Please feel free to contact me with questions or comments.

Sincerely yours,

Larry D. Wood

through provisions for:

- Not more than twenty principal departments.
- The head of each department to be a single executive unless otherwise provided by law.
- Reorganization by executive order subject only to disapproval by the legislature within a prescribed period.
- All department heads to be appointed by the governor subject to approval of the legislature in joint session; in cases where a board or commission is authorized by law to appoint its executive officer, the appointment is subject to the governor's approval.

7. Authorization for the governor to convene the legislature, jointly or either house separately.

In these and other provisions, the convention laid the groundwork for a strong executive branch.

Judiciary Branch

The proposal dealing with the judiciary branch was the first to be considered by the convention. It emanated from a committee that was in general accord over the future state's judicial system. Consisting of five lawyers and two laymen, the committee quickly agreed to follow principles suggested by the American Bar Association and other professional civic groups. The main features of the proposed system were unity, simplicity, efficiency, accessibility, independence from the executive and legislative branches, and accountability to the people. The committee could start with an essentially clean slate—Alaska was then under the jurisdiction of federal courts, and these would fall away with statehood.

Members of the judiciary committee proposed a unified judicial system consisting of a supreme court, a superior court, and other courts established by the legislature. The entire court system was placed under the rule-making authority of the supreme court, with the chief justice named as the administrative head of all state courts. These provisions followed closely the example of the New Jersey constitution of 1947, which transformed one of the most cumbersome and costly state court systems into one recognized for its efficiency.

The judiciary article also embodied a nonpartisan plan for selecting judges based on the American Bar Association and Missouri Plan models. Under it, the governor appoints judges from nominees

presented to him by the judicial council, which is composed of three laymen appointed by the governor with the consent of the legislature; three attorneys named by the organized state bar; and the chief justice, who serves as chairman. Three years after his first appointment, a judge must submit his name to the voters of the state or of his district for approval or rejection. Once approved, a superior court judge goes before the voters for reconfirmation every seven years, and a supreme court justice stand for popular approval every ten years. The purpose of this provision is to make judges responsible to the people without subjecting them to partisan politics or competitive campaigns for election or re-election.

With respect to retirement of judges, attorney members of the committee R.E. Robertson of Juneau, seventy, and Warren Taylor of Fairbanks, sixty-four, strongly dissented from the proposal to set the retirement age for judges at seventy. They felt that ability to serve does not necessarily end at age seventy and that those reaching this age should "not be put in mothballs." A committee compromise was finally reached according to which judges would retire at age seventy but could be given special judicial assignments thereafter.⁷⁹

Once the committee agreed on the proposed article, committee chairman McLaughlin sent letters to the presidents of the Alaska Bar Association and local bar associations, district judges, the U.S. attorney, and the U.S. Commissioner in Alaska, and to others in and out of the territory, asking for their comments on the draft. As a consequence, many endorsements of the proposal were obtained, including action by the board of governors of the Alaska Bar Association, which met in Fairbanks during the time the judiciary article was before the convention. The board agreed to support the article as recommended by the committee, and members of the board of governors appeared before the judiciary committee and spoke in behalf of the proposal with individual delegates.

The proposed judiciary article was considered in plenary session on December 9, one month and one day after the convention began. A number of amendments were considered in second reading, dealing with such issues as the responsibility for drawing judicial district boundaries, selection of the judicial council, and qualification of judges.

The committee proposal required supreme court and superior court judges to have been admitted to practice law in Alaska at least five years prior to their appointment and to have been residents of the state for the same period. In line with general opposition to

⁷⁹*Anchorage Daily Times*, 6 December 1955.

excessive qualification requirements, the convention rejected both provisions. As finally passed, the article required only citizenship of the United States and Alaska and a license to practice law in the state. However, it also provided that the legislature could prescribe additional qualifications.

While the judiciary committee's residence requirements were defeated by convention delegates, its proposal that judges and justices be appointed by the governor upon nomination by the judicial council was upheld against those who favored an elected bench. The latter argued that the "appointment method will bring judges into politics more so than an election by the people."⁸⁰ The argument in favor of appointment was that judges chosen through elections would forever be looking over their shoulders to see if their decisions were popular. According to committee chairman George McLaughlin, all modern state constitutions and recent constitutional revisions provided for judicial appointment.⁸¹ McLaughlin was reinforced by Fairbanks attorney Warren A. Taylor, who said that if the article were adopted, every university in the United States that has a law school and all law societies that have the opportunity of reading this article can honestly say that we have perhaps the most progressive and most modern and up-to-date system of selecting the judiciary of any state in the United States.⁸²

Before the debate on this issue was over, nearly every attorney at the convention had spoken on this subject. In the end, only one other delegate, W.W. Laws of Nome, joined attorney Robert McNealy in opposing the selection process for judges; and the appointment process was sustained by a fifty-one to two vote.⁸³

McNealy again opposed the proposed selection when the judiciary article was in third reading. He once more lashed out at what he believed to be a process potentially subject to much greater political interference and corruption, declaring that the election of judges was the one way to keep politics out of the judiciary. Though he won a few converts, his fight was futile, and the judiciary article met approval by a forty-seven to six vote.⁸⁴

The approval of the judiciary article by the delegates was, however, not the last point at which basic questions were raised about its provisions. The convention consultants' memorandum reviewing the entire constitution pertained in part to the sections

⁸⁰*Proceedings*, p. 583.

⁸¹*Ibid.*, pp. 583-87.

⁸²*Ibid.*, p. 590.

⁸³*Ibid.*, p. 610.

⁸⁴*Ibid.*, pp. 2881-5.

that laid the basis for a strong and independent judiciary.⁸⁵ While they concurred with the basic objectives, the consultants stated that:

These sections in particular, however, go a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate 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 in putting them in the hands of a private professional group, however, public-spirited its members may be.

The consultants then suggested a number of revisions that would, in their view, democratize the proposed system by providing for legislative confirmation of attorney members of the judicial council, adding a superior court judge and another lay member to the membership of the council, and other changes. However, the suggestions were not accepted by the meeting of committee chairmen and never reached the convention floor.

Local Government⁸⁶

In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

A New Local Government System

Study of the PAS staff paper⁸⁷ and a review of local govern-

⁸⁵See Chapter 3, pg. 42.

⁸⁶For more information on this topic, see the author's chapter "The Constitution Framework" in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, pp. 33-65.

⁸⁷Public Administration Service, *Constitutional Studies*, Chapter VIII.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

MY NAME IS ROY MADSEN FROM KODIAK. MY FATHER WAS A DANISH IMMIGRANT AND MY MOTHER WAS OF RUSSIAN AND SUGPIAQ ALUTIIQ HERITAGE. I WAS BORN IN 1923 IN KANATAK, A VILLAGE THAT NO LONGER EXISTS ON THE ALASKA PENINSULA.

I GRADUATED FROM LAW SCHOOL IN OREGON IN 1953 AND WAS ADMITTED TO PRACTICE THERE 61 YEARS AGO. . IN 1961 I RETURNED TO ALASKA AND WAS ADMITTED TO THE ALASKA BAR IN 1962, OPENING A PRIVATE PRACTICE IN KODIAK.

THIRTEEN YEARS LATER IN 1975 I WAS APPOINTED BY GOVERNOR JAY HAMMOND TO THE ALASKA SUPERIOR COURT BENCH IN KODIAK AND SERVED 15 YEARS BEFORE RETIRING. TO DATE, I AM THE ONLY PERSON OF ALASKA NATIVE HERITAGE TO HAVE SERVED ON OUR STATE'S SUPERIOR COURT BENCH.

OVER TIME UNTIL BEING APPOINTED TO THE KODIAK SUPERIOR COURT SEAT, IN ALL I APPLIED FOR FOUR DIFFERENT ALASKA JUDICIAL POSITIONS, THOSE BEING A SUPERIOR COURT SEAT, THE COURT OF APPEALS, THE SUPREME COURT, AND THE KODIAK COURT POSITION WHEN IT WAS CREATED BY THE LEGISLATURE. FOR ALL THESE I APPEARED BEFORE AND WAS INTERVIEWED BY MEMBERS OF THE ALASKA JUDICIAL COUNCIL. I KNEW NONE OF THEM, NEITHER THE LAWYER NOR CITIZEN MEMBERS OF THE COUNCIL. MY NAME WAS FORWARDED TO THE GOVERNORS EACH OF THESE FOUR TIMES.

AS A CASE IN POINT ON THE ISSUE BEFORE THIS COMMITTEE OF ENSURING A FAIR REPRESENTATION OF ALASKA CITIZENRY ALONG WITH MEMBERS OF THE ALASKA BAR ON THE JUDICIAL COUNCIL, I RELATE AN EXPERIENCE OF MY OWN REGARDING JUDICIAL SELECTIONS.

WHEN I APPLIED FOR THE NEW KODIAK POSITION, MY NAME WAS FORWARDED ALONG WITH OTHERS TO THEN GOVERNOR KEITH MILLER, WHO WAS RUNNING FOR THE GOVERNOR POSITION, AS GOVERNOR WALTER HICKEL HAD RESIGNED TO BECOME UNITED STATES SECRETARY OF THE INTERIOR. GOVERNOR MILLER'S OPPONENT IN RUNNING FOR GOVERNOR WAS WILLIAM EGAN.

ONE DAY A REPRESENTATIVE OF THE GOVERNOR CALLED ME UP AND TOLD ME GOVERNOR MILLER WAS COMING TO KODIAK AND WAS GOING TO ANNOUNCE AT A LUNCHEON THAT HE WAS APPOINTING ME TO THE KODIAK BENCH. THIS PERSON THEN STATED TO ME I SHOULD UNDERSTAND THAT MR. MILLER NEEDED ALL THE HELP HE COULD GET TO BECOME ELECTED. I REPLIED THAT "I'M SORRY I COULD NOT BE OF ANY HELP" TO HIM BUT THAT I WOULD BE WILLING TO SIT AT THE HEAD TABLE WITH HIM WHEN HE MADE THE ANNOUNCEMENT AND THAT'S ALL I WOULD BE ABLE TO DO.

CONSEQUENTLY, I WAS NOT INVITED TO THE LUNCHEON, IF THERE WAS ONE, AND GOVERNOR MILLER ANNOUNCED THE APPOINTMENT OF ONE OF THE OTHER CANDIDATES FOR THE KODIAK POSITION. IT WAS LATER I WAS APPOINTED BY GOVERNOR HAMMOND TO THE KODIAK BENCH.

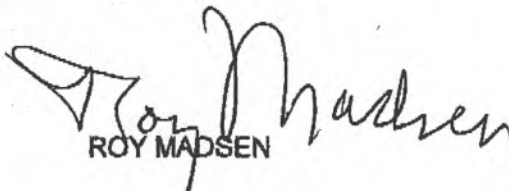
TO ME, THIS POINTS OUT THAT IF THERE ARE ANY POLITICS INVOLVED IN FILLING SEATS ON THE BENCH, IT COMES FROM A GOVERNOR MAKING THE APPOINTMENT, NOT THE JUDICIAL COUNCIL AS PRESENTLY COMPRISED.

WHEN I RETURNED TO ALASKA IN 1961, I WAS VERY PROUD THAT OURS WAS ONE OF THE FEW STATES THAT HAD A PRIMARILY NON-POLITICAL WAY OF SELECTING JUDGES, AND I STILL AM. THIS IS COMPARED TO STATES LIKE OREGON AND WASHINGTON WHERE JUDGES HAVE TO RUN FOR ELECTION WHICH MEANS THEY HAVE TO HAVE A CAMPAIGN MANAGER AND SOLICIT CAMPAIGN CONTRIBUTIONS FROM MEMBERS OF THE PUBLIC AND THE BAR, WHICH RESULTS IN A CONFLICT OF INTEREST.

I FELT THAT MEMBERS OF THE JUDICIAL COUNCIL TREATED ME FAIRLY AND POLITELY ON ALL FOUR OCCASIONS THAT I CAME BEFORE THEM. NO ONE CAN QUESTION THE DIVERSITY OF OUR ALASKA COURT SYSTEM, WE HAVE HAD MANY WOMEN JUDGES, AN AFRICAN AMERICAN, AN HISPANIC, AN ASIAN, AND MYSELF, OF ALASKA NATIVE HERITAGE.

THE FRAMERS OF OUR STATE CONSTITUTION GAVE US A PROCESS FOR JUDICIAL SELECTIONS WHICH STANDS OUT, IT HAS RESULTED IN DIVERSITY ON OUR COURTS, IT HAS WORKED FOR FIFTY-FIVE YEARS AND I DON'T BELIEVE WE CAN IMPROVE ON IT. WHY CHANGE SOMETHING THAT IS NOT BROKEN?

THANK YOU.


ROY MADSEN

MARCH 31, 2014

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHJR 33(JUD)
 Fiscal Note Number: 1
 (H) Publish Date: 3/17/14

Identifier: HJR33-AJC-2-28-14
 Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL
 Sponsor: JUDICIARY
 Requester: House Judiciary Committee

Department: Alaska Court System
 Appropriation: Judicial Council
 Allocation: Judicial Council
 OMB Component Number: 771

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel	11.0		11.7	11.7	11.7	11.7	11.7
Services	0.2		0.2	0.2	0.2	0.2	0.2
Commodities	1.1						
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	12.3	0.0	11.9	11.9	11.9	11.9	11.9

Fund Source (Operating Only)

1004 Gen Fund	12.3		11.9	11.9	11.9	11.9	11.9
Total	12.3	0.0	11.9	11.9	11.9	11.9	11.9

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version:

Initial version for HJR33.

Prepared By: <u>Susanne DiPietro, Executive Director</u>	Phone: <u>(907)279-2526</u>
Division: <u>Judicial Council</u>	Date: <u>02/28/2014 04:30 PM</u>
Approved By: <u>Susanne DiPietro, Executive Director</u>	Date: <u>02/28/14</u>
Agency: <u>Judicial Council</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHJR 33(JUD)

Analysis

HJR33 proposes a constitutional amendment to increase the membership of the Alaska Judicial Council from seven to ten members. If HJR33 becomes law during this legislative session, the proposal to amend the constitution would be put to the voters on the November 2014 ballot. If the voters approve the amendment, the change would become law during FY2015.

The law would increase costs for AJC members to travel for meetings to nominate applicants for state judgeships. Travel costs would increase for two reasons: (1) a larger number of Council members will need to travel, and (2) the larger number of Council members would cause meetings to last longer, thus incurring additional meal and lodging expenses. The amount is based on an average of our Council member current travel costs. The travel costs will be slightly lower in FY15 than in subsequent years because the new Council members would not be appointed until partway through the 2015 fiscal year.

The three new Council members will need electronic devices for storing and viewing meeting materials. This commodity cost is a one-time cost.

The impact of this change on staff time and conference room space is not able to be determined at this time.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHJR 33(JUD)
Fiscal Note Number: 2
(H) Publish Date: 3/17/14

Identifier: HJR033-OOG-DOE-2-28-14
Title: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL
Sponsor: JUDICIARY
Requester: House Judiciary

Department: Office of the Governor
Appropriation: Elections
Allocation: Elections
OMB Component Number: 21

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services	1.5						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	1.5	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1004 Gen Fund	1.5						
Total	1.5	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **No**
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Gail Fenumiai, Director	Phone:	(907)465-3876
Division:	Division of Elections	Date:	02/28/2014 03:00 PM
Approved By:	Guy Bell, Administrative Director	Date:	02/28/14
Agency:	Division of Administrative Services, Office of the Governor		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHJR 33(JUD)

Analysis

Passage of this resolution would require the constitutional amendment to appear on the 2014 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this resolution require printing an 8-1/2 by 18 inch ballot, the cost will increase to \$22.0.

Helen Phillips

From: Jennie Hafele
Sent: Monday, April 07, 2014 12:47 PM
To: House Finance; House Finance Legislation
Cc: carlb@alaska.com; Rep. David Guttenberg; Rep. Doug Isaacson; Rep. Eric Feige; Rep. Pete Higgins; Rep. Scott Kawasaki; Rep. Steve Thompson; Rep. Tammie Wilson; Sen. Click Bishop; Sen. John Coghill; Sen. Lyman Hoffman; Sen. Pete Kelly
Subject: FW: SJR21 and HJR33

Please enter into the record the testimony below to the House Finance committee on HJR 33 (SJR 21) dated 4/7/2014

Thanks,
Jennie H
FBX LIO

From: Carl S. Benson [carlb@alaska.com]
Sent: Monday, April 07, 2014 10:42 AM
To: LIO Fairbanks
Subject: SJR21 and HJR33

Dear members of the Alaska Senate and House of Representatives.

I was surprised and amazed to learn about the changes proposed for the Judicial Council. This council was carefully designed in our Alaska Constitution; it works. It is not broken, don't fix it. I urge the immediate defeat of these proposals.

Sincerely,
Carl S. Benson, Ph.D.

Helen Phillips

From: Jennie Hafele
Sent: Monday, April 07, 2014 10:38 AM
To: House Finance; House Finance Legislation
Cc: Rep. David Guttenberg; Rep. Doug Isaacson; Rep. Eric Feige; Rep. Pete Higgins; Rep. Scott Kawasaki; Rep. Steve Thompson; Rep. Tammie Wilson; Sen. Click Bishop; Sen. John Coghill; Sen. Lyman Hoffman; Sen. Pete Kelly
Subject: Testimony/HJR33-SJR21

Please enter into the record the comments below to HJR 33 in the House Finance Committee dated 4/7/2014.

—
SJR 21 and HJR 33

We do not need to inject corrupt political views into Alaska courts like the lower 48 has done.
I strongly urge you oppose each of these resolutions amending to our constitution.

Ed Dailey
327 Glacier Ave.
99701



887-9620 cell

Susanne DiPietro
EXECUTIVE DIRECTOR

alaska judicial council

510 L Street, Suite 450, Anchorage, Alaska 99501
(907) 279-2526 Ext. 10 FAX (907) 276-5046
www.ajc.state.ak.us sdipietro@ajc.state.ak.us

Susanne DiPietro
Executive Director, Alaska Judicial Council

Thank you for the opportunity to testify today on HJR33. Because we were pressed for time, I omitted a few points that I had wished to discuss. I hope you will accept this additional information.

As I mentioned, the Alaska Judicial Council has not taken a position on this legislation. The purpose of this letter is not to support or oppose HJR but rather to provide information that the Committee may find useful in its work.

Background

The Alaska Judicial Council has constitutional and statutory duties in three main areas:

1. **Screening applicants for judgeships** based on their qualifications, and sending at least two names to the governor for appointment;
2. **Evaluating the performance of sitting judges**, and providing information about judges' performance directly to the voters;
3. **Conducting studies to improve the administration of justice** (past work includes criminal sentencing, recidivism, and outcomes in felony case processing; alternative dispute resolution, civil jury verdicts, child protection litigation, and domestic violence protective orders.)

The Council Strives to be Open in its Judicial Selection Procedures

The Council involves the public at every step of its process in order to understand what the people of a particular area think about the applicants and what qualities they want in their judge. The Council travels in person to every town where a judgeship is open, and has a public hearing there to listen to what people of the area have to say. The Council makes liberal use of press releases to keep folks aware of who has applied and when the meeting is scheduled. In the smaller communities, Council staff try to get on the radio or give talks to local groups who are interested in the process. People who'd rather not come to a public hearing can submit letters or other written comments to the council.

As much as possible, the Council shares information publicly. This includes releasing the Bar survey scores and voting in public on each applicant.

An attachment to this letter further describes the Council's judicial selection procedures.

Council Members' Votes Show a Striking Amount of Agreement

Because their focus is on qualifications, Council members are usually of one mind about which candidates to send to the governor. In fact, 72% of the time the Council members agree, and another 19% of the time all but one agree. So about 82% of the time there is full or almost full agreement among the Council members on which names to forward to the governor.

There have been times when Council members have not agreed, and the Chief Justice has been required to vote. Those situations have occurred in about 6% of all votes cast over the last 30 years. There has never been a time when the Council was split 3 – 3 but the Chief Justice had a conflict of interest that prevented him or her from voting.

Over the last two years, the Chief Justice has voted with about the same frequency (actually, a little less frequently) than the historical average of 6%. Specifically, since the beginning of 2012, the Council has voted on 142 candidates for 15 vacancies. Of those votes, the Chief Justice voted 6 times, which is only about 4.2% of all votes - less than the historical average of 6% of all votes. Looking back over the last 5 years, we see that the Chief Justice voted 12/271 votes, for an average of 4.4% of all votes, still under the historical average.

The chart attached to this letter has more information about the Council's selection votes.

Constitutional Convention

The delegates to Alaska's Constitutional Convention debated vigorously and thoroughly whether and how to adopt a merit selection plan for Alaska's judges. Many of the issues being discussed today were discussed and decided by the delegates 50 years ago. For

example, on the issue of legislative confirmation of attorney members, the chair of the Judiciary Committee explained:

If you require confirmation of your attorney members you can promptly see what will happen. The selection is not then made by the organized bar on the basis of a man's professional qualifications alone. The determination of the selection of those people who are on the judicial council will be qualified by the condition, are they acceptable to a house and a senate or a senate alone, which is essentially Democratic or essentially Republican. No longer is the question based solely on the qualification of the candidate for the bench. The question is, will those people whom we set up here on the judicial council, that we send from the bar, will they be acceptable in terms of political correctness? If political correctness enters into the determination of the selection of those professional members who are to be placed upon the judicial council, the whole system goes out the window. All you have is one other political method of selection of your judges. The theory, and the only way it can possibly work, is that the lawyers are put on there to get the best man and not to take a man on the basis of his politics.

You heard testimony today that a consultant hired to assist the delegates was concerned that the merit selection plan approved by the delegates gave too much influence to the organized bar. It is true that the consultant expressed that concern and recommend revisions. The recommended revisions were presented to all the committee chairmen (not just the Judiciary chair), and the chairmen did not accept them. In fact, consultants made recommendations for a number of substantive changes, only one of which was adopted. "The other major proposals had been discussed in one form or another in committee or in plenary discussions, and the chairmen understandably resisted the idea of reopening controversial issues during the last days of the convention." Source: V. Fisher, Alaska's Constitutional Convention, at page 42.

Most other states' panels are balanced

Of the 38 states that use judicial nominating commissions, 18 have an equal number of attorney and non-attorney members as Alaska does.

A few states (five) have more non-attorney members, but four of those states have restrictions that require balanced political party representation (in order to prevent an appointing authority from “stacking” the membership.) In Arizona, which has been mentioned as a possible model for this legislation, the law specifically prohibits more than three of the five attorneys and 5 of the 10 nonattorney members from being of the same political party.

A few other states (five) have more attorney than non-attorney members, but again, two of the five also have the restrictions to preserve balanced political party representation.¹

Source: American Judicature Society: www.judicialselection.us.

¹ The remainder to do not designate their membership.

Alaska Judicial Council Judicial Selection Procedures

All vacancies are publicly announced via web site and press release. The Council releases the names and biographical information about all applicants for judicial vacancies (other states' judicial nominating commissions do not release applicants' names).

For each applicant, the Council solicits information about the applicant from:

- every past employer (legal and nonlegal);
- lawyers and judges who have been involved in recent litigation with the applicant;
- professional references who speak to the applicant's legal skills, integrity, fairness and temperament;
- character references who speak to the applicant's integrity, fairness, and temperament;
- members of the public.

In addition, the Council investigates each applicant's:

- educational achievements (legal and nonlegal),
- publications,
- community service,
- bar service,
- trial experience and criminal or civil practice experience,
- grievances filed and any resulting discipline,
- criminal history and any tickets,
- civil lawsuits, and
- credit reports.

The Council sends out a survey to active members of the Alaska Bar Association. Bar members are asked to rate applicant on legal ability, temperament, integrity, fairness, and suitability of experience. The results of that survey are made public.

On the survey, Bar members are invited to submit written comments about the applicants. The comments can be signed or anonymous. However, anonymous comments are not considered by the Council members unless they are corroborated, independently substantiated, or acknowledged by the applicant. The Council shares each applicant's comments with the applicant after they have been edited to preserve the anonymity of the commenter.

After providing all this information to the Council members, the members interview each applicant. Each interview lasts at least 45 minutes. The interviews are held at the location of the vacancy so that the Council can have a public hearing at which it invites people to comment on the applicants or any other aspect of the process. This interview can be public or private, depending on the candidate's wishes. Each interview is scheduled for 45 minutes to an hour. The chair goes around the table so that each Council member has the chance to ask questions that are important to him or her.

After the interviews, the Council members deliberate. During deliberation, each member is called on to state his or her views. The focus is on the relative merits of each candidate compared to the other candidates. The Council members vote in public (about half of nominating commissions in other states do not take public votes).

Alaska Judicial Council
Historical Voting Information
March 20, 2014

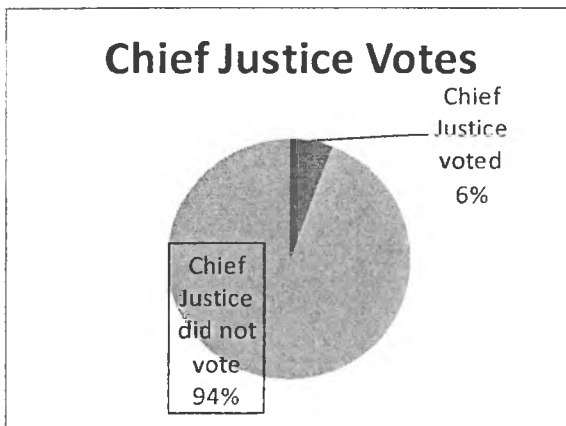
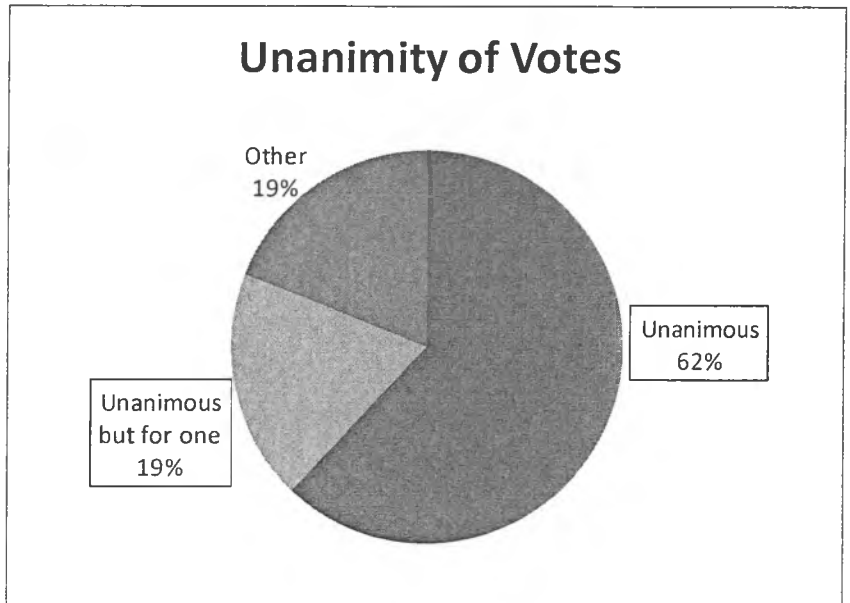
The Council members voted on **1,136 applications** between January 1, 1984 and December 31, 2013. This fact sheet shows some of the ways those votes were taken.

- **Council members have a high rate of agreement about nomination decisions**

Historically, most Council votes have been unanimous (62%).

In an additional 19% of all votes, only one person voted differently from the others.

Thus, in 81% of the votes, Council members have been unanimous or nearly so in their assessment of whether an applicant's name should be forwarded to the governor.



- **The Chief Justice rarely votes**

The Chief Justice votes only when to do so would change the outcome. Over the past 30 years, chief justices have voted only 68 times. Thus, 94% of the time, the chief justice does not vote.

In the last two years,

- **Attorney/nonattorney vote splits are rare**

Only 15 times in the last 30 years have disagreements about nomination decisions broken along attorney-nonattorney lines. This situation occurred in less than 2% of all votes.

- **When called upon to vote, the chief justices usually forward the name in question to the governor.**

75% of the time, chief justices voted "yes" to forward the name in question to the governor.

- **The Council usually forwards more than two names to the governor**

In about seventy-three percent (73%) of all judicial selections, the Council members forward more than two names to the governor. Instances in which the Council sends fewer names often occur on vacancies in small rural areas.



**ALASKA COURT SYSTEM
ADMINISTRATIVE OFFICES**

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Prepared Testimony in Opposition to HJR 33 to House Finance Committee from Nancy Meade, General Counsel for the Alaska Court System. [Prepared Notes; not a transcript of remarks actually given to committee at March 13, 2014 meeting]

As this committee knows, the Court System works closely with the legislature on many bills, but we rarely take any position on proposed legislation. We only oppose a bill (or resolution) when it has the potential to affect the administration of justice, and would therefore impact a core aspect of the judicial branch. I am now opposing HJR 33 because, unfortunately, it is one of those bills. The court does not take this step lightly – taking a position in opposition to a bill or resolution is only done at the express direction of the Supreme Court.

BACKGROUND – ROLE OF COURT

First, I'd like to be clear about the Court's role and why I am testifying. The Judicial Branch of government actually is made up of three entities: (1) the Court System, which is, of course, the principal entity, and two very small ones, (2) the Judicial Council and (3) the Commission on Judicial Conduct. "The Court System" is often used interchangeably with "the Judicial Branch," and this is understandable and nearly always perfectly clear in context – after all, the other two entities are small, with defined authority, few employees, and small budgets. The Court System is NOT the Council – the Council has separate offices, separate employees, and separate duties. I've never been in the Judicial Council offices in the ten years I've worked for the court.

Nonetheless, the Court System's functions and mission depend very much on the work that the Council is tasked with performing: the Council screens judicial applicants to ensure they're qualified, and we need highly qualified judges to maintain the public's trust and confidence in our work. We, the Court System, want and need the Council to do a thorough, fair job with screening applicants for judgeships, so that we continue to have a top-notch group of sitting judges. No one wants judges that are not fairly chosen or that are anything short of the best, most ethical, respectable

professionals in the legal field. It is because the Court depends on the Council's work that I am testifying against this resolution.

CONSTITUTIONAL BALANCE

HJR 33 has the potential to significantly change the judicial screening and selection process – even though that process has worked effectively for over 50 years. The current Council selects the *most qualified* applicants based on their *merit*, a merit selection process that is considered the Gold Standard in judicial selection, if what you want is a fair, impartial judge deciding your disputes. Merit selection means judges are screened based on their legal knowledge, skills (like writing and organizing), their ability to create cogent arguments, the ability to identify flaws and nuances in other people's arguments, their judicial temperament (ability to control the courtroom while being polite and firm in challenging situations, many of which are highly emotional for the parties), and experience (such as their past public and private sector jobs). As a result of the Council's focus on merit, the applicants most qualified to be *A JUDGE* are forwarded to the Governor for selection. We, the court system, and all Alaskans, benefit from having a bench made up of those people. As you've heard others testify, we have not experienced problems with judges that are involved in scandals in case decisions, or corruption, or kickbacks, for example. The Council's current makeup works.

But this resolution would unsettle the carefully considered balance between the non-attorney members, who bring the general public's perspective on what to look for in a judicial candidate, and the attorney members, who bring in a lawyer's perspective on what to look for in a judicial candidate. It is this even balance, this *equilibrium*, that makes the Council's system work so well. *Both* groups are crucial for merit-based decisions that the public can trust: the lawyers have direct experience with the applicant as another lawyer – how is the applicant's legal knowledge? Their writing skills? Their integrity during litigation? Do they comport themselves honorably and respectfully? How do they handle difficult or emotional cases? Do they have the respect of their peers? And the public members bring an equally valid perspective – what is the applicant's ability

to connect with people, to relate to non-attorneys in a meaningful way, and to keep the public's respect, as people and as decision-makers.

The current even balance that is set in the Constitution, with 3 attorney members and 3 non-attorney members (and four needed for any action), keeps the discussion and decisions focused on the merits and qualifications of the judicial applicants. Why? Because neither group can ignore the others' views, or prevail on any decision, without buy-in from at least one of the others. *That is KEY!* They have to, and nearly always in fact do, work together, through consensus.

COUNCIL VOTING DATA

I want to just briefly touch on the votes tallies that show, fairly unequivocally, that the Council operates well, and is not a group marked by factions or divisiveness or problems with attorney/non-attorney splits. In your packet is a summary fact sheet that I prepared for your consideration. The first page illustrates the vote tallies over the last 29 years (as far back as the Council has data), and page two pulls out the more recent years for a closer look. As you can see from page one, in over 60% of the 1,136 votes on applicants taken since 1984, the vote was unanimous, and in *over 80% of the cases, the council's vote was either unanimous or off by just 1.* Those are the statistics for the last 30 years! This is an impressive record of an organization that is cohesive and healthy –not one marked by divisiveness or a failure to function. Any group of 6 voting members that can reach unanimity, or near unanimity, over 80% of the time is not a dysfunctional group.

There was testimony last week about the times that the chief justice votes. That happens only when his or her vote is needed to decide whether a name gets forwarded to the governor – that is, when there's a 3-3 tie, or if there aren't 4 votes because someone abstained or was absent. Overall, since 1984, 94% of all applicants were agreed upon without a vote by the chief justice. Of the *6% in which the Chief did have to vote (which was 68 of the 1,136 votes over the last 30 years)*, three-fourths of the time

(51 of the 68), the Chief's vote was to forward the applicant's name to the governor.

Those 68 times the Chief had to vote were mostly because of ties among the members, but that is NOT the number of times the attorneys and non-attorneys tied at 3-3. That's a much lower number – *only 15*. So most of the split votes, 53 of them, have a mix of attorney/non-attorneys on both sides.

Now it is true, that of the 15 votes that were tied at 3 attorneys and 3 non-attorneys on opposite sides (remember, 15 out of 1,136!), the Chief voted with the attorneys more often than with the non-attorneys [10/15] - - but again, the numbers are so small (less than a percent of the over one thousand votes) that it isn't really justifiable to draw definitive conclusions from them. And, in those 15 cases, the Chief's vote ended up sending the applicant's name to the Governor 7 times. The fact is, an implication that the two groups of members are factions or cliques, or even natural divisions with the Chief always on the attorneys' side, just isn't supported by the voting statistics.

And let me mention just one more quick set of numbers. Since 2000, the system has actually worked even a *little bit better* than that. While overall, since 1984 the council has agreed without a tie 94% of the time, since 2000, so just taking the last 13 years rather than a 30-year look, the percentage has *increased* slightly to 96% of the time. Also since 2000, the percentage of the time that the chief justice votes to send the name to the governor has increased slightly from 75% to 77% of the time.

I don't mention this because the changes are monumental, but they are clearly at odds with the view that there is a growing problem. In fact, the change in percentages supports the opposite, and shows the system is more cooperative than ever.

I heard in the supporters' testimony no discussion of these numbers, this evidence, but there has been a suggestion that there is a growing tension between attorneys and non-attorneys, or that things are becoming somehow more lop-sided or skewed in recent years. To help you analyze

that, I have on the second page a breakdown of the most recent four years' worth of votes. You can see that it's still 75% unanimous or unanimous except for 1. You also see a split between attorneys and non-attorneys in 7 votes. Seven out of 201 for that time period, or 3.5%, is hardly evidence of factions or dysfunction. And this does show the statistics that others have mentioned, that the Chief Justice voted more often with the attorneys – in particular, in the most recent 5 split votes, the Chief voted with the attorneys with the result that the applicants' names did not go to the Governor.

But that is not a trend, or a drift, that requires a constitutional amendment. That may be a bump, but the raw number is so small, that one very reasonable *and probable* conclusion is that those 5 individuals were not qualified to sit on the courts that they applied to! Three of those were for seats on the Supreme Court, and two were actually the same individual who applied for two separate openings. This is simply not enough proof to establish that the constitutional balance that's worked fairly and efficiently for 50 years ought to be disrupted.

You can find a lot of information in the data, but the one thing you can't find is evidence of a problem.

PUBLIC INVOLVEMENT

But the supporters' justifications for this resolution have evolved from a focus on the votes and statements about the Council suffering from splits, to a focus on public involvement, and the Council being too small. Again, though, the Council is working as intended, and produces highly-qualified lawyers for the Governor to choose from in his appointments. If you nonetheless reach a policy determination that the Council ought to be bigger, to allow non-attorney participation, you could do that *without upsetting the balance that keeps the focus on merits* of applicants. You could make the Council four Governor appointees, and four attorneys, for example. Or even five of each. And if the true concern is diversity, you could amend a statute and insert some *geographical diversity requirement* – that wouldn't be difficult to draft.

But this version, with the governor's appointees having a majority, has the potential to, as former Chief Justice Carpeneti and others have testified, insert politics at a level of the judicial application process that has been, laudably, focused on credentials.

Again, if the balance were upset, as HJR 33 would do by having an unequal number of attorney and non-attorney members, and if the public members were to have a majority, the need for consensus would be diminished. Then if the majority is of a like mind, or unified in their thinking or approach, they need not consider the views of the other members at all. And the attorney members, who are in a very good position to know the professional competence of the applicants and the skills and abilities that make a good judge, could be excluded.

RETENTION AND POTENTIAL FOR CONTROL

Finally, we've focused on screening judicial applicants, but the Council also has a role in the retention of judges. They review, in great detail, a judge's work, they conduct surveys of jurors, law enforcement, court staff, and others, they collect public input, etc., and then the Council makes a recommendation, Yes or No, on a judge who is standing for retention. It's likely that a great many voters rely upon the recommendations, which are included in the official election pamphlet. Well, consider what happens if a judge issues an order in a case that is contrary to the Governor's wishes. This could be in an environmental case, or an oil tax case, or a subsistence or land use case . . . and the Governor appointees are in a position to determine what the Council's recommendation will be, a very important factor in whether that judge keeps his or her job. It's not difficult to see that there is a threat, a real potential, that the *impartiality of the judge would be questioned* – if the judge rules against the government in favor of a citizen, or an oil company, or a group seeking land use rights, that judge faces the real threat of getting a no recommendation, and losing his position. Would any of us trust that our case was being decided by an impartial judge in those circumstances? That's the situation this resolution creates, though, with a majority of Council members being Governor appointees.

BACKGROUND OF JUDGES

I'd like to address one more issue directly. Some testifiers and members of other committees have acknowledged that they believe the current system doesn't work, because certain attorneys are unable to have their names sent to the Governor, and it's been said in particular that "conservatives" cannot be judges. I want to be clear: the Court System has 73 sitting judges that have come through the Judicial Council process, and they have come from *all sorts of backgrounds!*

There are dozens of sitting judges who had been district attorneys, many were public defenders, and they were attorneys who defended oil companies, insurance companies, the state, and children and parents on every side of family law cases. I cannot say who among our judges are "conservative" or "liberal," (because I truly do not know), but I can say that they are from all sorts of backgrounds. They're from public universities, military schools, private law schools, and Christian law schools. Their interests range from flying and fishing and snow machining, to gardening and athletics and Boy Scouts and church activities. A statement that a "conservative" attorney cannot become a judge, *because* that person is a conservative, is simply not supportable, and is contradicted by the facts about who IS a judge.

[More information on judges is available on the Court's web page, under the link: Alaska Judges.]

SUMMARY

The data, then, just doesn't support a conclusion that there is a problem with the decision-making of the Council. The increased public input and diversity that some supporters are seeking can be accommodated by many options for revisions to laws or policies, without upsetting the balance and inserting political considerations into a process that is currently focused on worthy credentials. The Resolution has the strong potential of causing the public to lose confidence in the impartiality of their court system. I suggest there may be other ways to address the *perception* that some people have that a problem exists -- the Council may

need to do more education and outreach for example -- short of this potentially very problematic constitutional amendment.

It is for these reasons that the Court System views HJR33 as having an impact on the administration of justice – a potentially very negative impact – and that the Court opposes the Resolution.

Thank you for hearing my testimony, and I'd be happy to answer any questions.

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House Judiciary Committee

SPONSOR STATEMENT CSHJR 33 (JUD)

"Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council."

Committee Substitute for House Joint Resolution (CSHJR) 33 Judiciary proposes to amend the Constitution of the State of Alaska at the next general election ballot by giving Alaskans the option to increase the non-attorney membership of the Alaska Judicial Council from three to six members. The Judicial Council's regular voting membership would increase from six to nine members with the chief justice of the Alaska Supreme Court serving as the tenth and ex-officio member. Voters would also decide whether all Judicial Council members should be confirmed by the Alaska State Legislature.

CSHJR 33 (JUD)'s expansion of the non-attorney membership improves Alaska's judicial selection and retention process in two important ways. First, the Judicial Council's current membership is ill-suited to properly meet its constitutional mandate of reflecting Alaska's diverse geographic and cultural makeup. The number of qualified judicial applicants has increased since Statehood and Alaskans are more interconnected than ever before. It is therefore reasonable and prudent to increase the Council's membership to better reflect a 21st century Alaska.

Secondly, CSHJR 33 (JUD) resolves an apparent conflict of interest caused by the Judicial Council's current membership. The Council's bylaws state that the Chief Justice "shall only vote when to do so could change the result." Should there be, for example, a split vote between the attorney and non-attorney members, and the Chief Justice breaks the tie in favor of the attorney members, he or she is likely to be subjected to partisan accusations of having a conflict of interest due to their being attorneys themselves and voting for or against potential fellow AK judges and justices. Changing the number of regular voting members from an even six to an odd nine greatly reduces the need for the Chief Justice to cast a deciding vote and thereby unfairly subjects their personal and professional honor to partisan attack.

Please join in supporting CSHJR 33 (JUD)'s mission to enhance the able work the Alaska Judicial Council has and continues to do.

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House Judiciary Committee

CSHJR 33 (JUD) Sectional Analysis

Section 1: Raises the total membership of the Alaska Judicial Council to ten members by adding three additional non-attorney members. The chief justice of the Alaska Supreme Court serves as the Council's tenth ex-officio member and chairman. All attorney and non-attorney members (excluding the chief justice) are subject to confirmation by the Alaska State Legislature. Actions taken by the Judicial Council require the concurrence of five or more members and according to rules which the Council adopts.

Section 2: Staggers the newly added non-attorney members' terms.

Section 3: Places CSHJR 33 (JUD) before the Alaska voters at the next general election.

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House Judiciary Committee

HJR 33 ver. A to CSHJR 33 (JUD) ver. U Explanation of Changes

CSHJR 33 (JUD) added the requirement that all Judicial Council members (excluding the chief justice) be subject to confirmation by the Alaska State Legislature. The committee substitute changed HJR 33's original requirement that the Council act by a concurrence of a majority of its members who are participating in a vote back to the original Constitution of the State of Alaska language with the modification of *four* being increased to *five* to reflect the Judicial Council's increased membership.

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House Judiciary Committee

Historic Make-Up of Members of the Alaska Judicial Council

Even though the Constitution directs that “appointments shall be made with due consideration to area **presentation and without regard to political affiliation**” that has not been the outcome. **Attorney members have all come from 4 cities** – Anchorage with 12, Fairbanks with 14, Juneau with 10, and Ketchikan with 3.

Public members have predominately come from the same 4 four locations over the history of the Judicial Council – Anchorage with 10, Fairbanks with 8, Ketchikan with 6, and Juneau with 5.

Other locations only represent a single member or at most 2 in the history of the council. You have to go back to 1987-1993 to find the one public member from Barrow – the last time someone from the bush was selected. A public member from Sitka was last appointed in 1991.

Public makeup:

1. Anchorage -10
2. Fairbanks – 8
3. Ketchikan – 6
4. Juneau – 5
5. Locations with 2: Homer, Sitka, Wasilla, Seward
6. Locations with 1: Kotzebue, Barrow, Petersburg, Kenai

Attorney make up:

1. Fairbanks – 14
2. Anchorage – 12
3. Juneau – 10
4. Ketchikan - 3

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Alaska Judicial Council Constitutional Duties

Alaska Const. Article IV, Section 8. Judicial Council

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Alaska Const. Article IV, Section 5. Nomination and Appointment

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Excerpts from Constitutional Convention discussion of Article IV:

“What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office.”

“The whole theory of the Missouri Plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers.”

“The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerists the best are the men engaged in the same type of occupation.”

“The theory on the lay members on the confirmation, they represent the public and they represent the predominant political thought. The theory on the lawyer members of the council, they represent the profession,.... they represent a desire to have the best judges on the benches.”

- Delegate McLaughlin

Alaska Const. Article IV, Section 9. Additional Duties

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Selected Alaska Judicial Council Statutory Duties

AS 15.58.050. Information and recommendations on judicial officers

No later than August 7 of the year in which the state general election will be held, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law and 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.

AS 22.05.100. Approval or rejection

Each supreme court justice is subject to approval or rejection as provided in AS 15. The judicial council shall conduct an evaluation of each justice before the retention election and shall provide to the public information about that justice and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the retention election....

AS 22.07.060. Approval or rejection

Each judge of the court of appeals is subject to approval or rejection as provided in AS 15. The judicial council shall conduct an evaluation of each judge before the retention election and shall provide information to the public about the judge and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the election....

AS 22.10.150. Approval or rejection

Each superior court judge is subject to approval or rejection as provided in AS 15. The judicial council shall conduct an evaluation of each judge before the retention election and shall provide to the public information about the judge and may provide a recommendation regarding retention or rejection. The information and any recommendation shall be made public at least 60 days before the retention election....

AS 22.15.195. Approval or rejection

Each district court judge is subject to approval or rejection as provided in AS 15. The judicial council shall conduct an evaluation of each judge before the retention election and shall provide to the public information about the judge and may provide a recommendation regarding retention or rejection. The information and the recommendation shall be made public at least 60 days before the election....

Alaska Judicial Council

Members

Ken Kreitzer – Juneau (2011 – 2017)

Mr. Kreitzer has many years of public safety experience, including work as an airport safety officer, a corrections officer, a firefighter, EMT, a police officer and a court security officer. He was appointed by Governor Parnell.

Dave Parker – Wasilla (2013 – 2019)

Mr. Parker has been a law enforcement officer in Alaska since 1995. Prior to that he was a pastor in Alaska, France, Washington State, Ivory Coast, and Oregon. He began his professional career as a teacher in Washington State and Yemen. He was appointed by Governor Parnell.

Kathleen Tompkins-Miller – Fairbanks (2009 – 2015)

Ms. Tompkins-Miller is a schoolteacher. She was appointed by Governor Palin.

Aimee Oravec – Fairbanks (2012 – 2018)

Ms. Oravec has practiced law since 1998, and is a shareholder in Oravec Law Group.

Kevin Fitzgerald – Anchorage (2008 – 2014)

Mr. Fitzgerald is a partner in Ingaldson, Maassen & Fitzgerald and is a second generation Alaskan.

Julie Willoughby – Juneau (2010 0 2016)

Ms. Willoughby is in private practice in Juneau. She has practiced law since 1998 and is a second generation Alaskan.

Alaska Judicial Council
Details of Judicial Nomination Votes 1984 - 2013
February 20, 2014

Vacancy Location, Year, and Level of Court	Number of Candidates Voted on (1,136 votes)	Number of Nominees	Appointed	Vote Detail (Given for attorney-nonattorney splits)	CJ Vote Yes/No* (68 votes)
Valdez Superior 5/84	2	2	Bosshard, John III		
Juneau Dist 5/84	7	4	Asper, Linn H.		Yes
Anch Superior 9/84	10	6	Gonzalez, Rene J. Katz, Joan M.		Yes
Anch Dist 9/84	11	5	Stemp, Ralph D. Beckwith, Martha White, Michael N. Stewart, David C.		Yes
Fairbanks Dist 12/84	7	4	Zimmerman, Chris E.		Yes
Fairbanks Superior 12/84	10	2	Greene, Mary E.		
Anch Superior 12/84	7	4	Michalski, Peter A.	Votes were unanimous on 1 applicant 5-1 on 3 applicants 4-1 on 1 applicant (with an abstention), and CJ voted "yes" (with the nonattorneys) on E. Murphy	No, Yes*
Wrangell Superior 3/85	6	3	Jahnke, Thomas M.		Yes
Bethel Superior 4/86	6	3	Fratles, Gail Roy	Votes were unanimous on one applicant 5-1 on 1 applicant 4-2 on 2 applicants, and CJ voted twice: "no" on Otto (with the attorneys), and "no" on Stearns (mixed vote)	No, No*
Fairbanks Superior 3/87	7	4	Saveli, Richard D.		Yes
Palmer Dist 6/87	5	2	Ashman, Peter G.		Yes
Fairbanks Dist 7/88	11	4	Zervos, Larry C.		Yes
Fairbanks Superior 7/88	8	2	Steinkruger, Niesje J.		
Anch Superior 7/88	11	3	Fabe, Dana A.		Yes
Anch Dist 7/88	11	3	Wolverton, Michael L.	Votes were unanimous on 8 applicants 5-1 on 2 applicants, and CJ voted "no" on Cray (with the attorneys)	No*
Anch Superior 5/89	14	5	Reese, John		Yes
Juneau Dist Ct 5/89	7	2	Froehlich, Peter		
Bethel Superior 11/89	6	3	Curda, Dale O.		Yes, Yes
Kenai Superior 6/90	5	3	Link, Jonathan		
Juneau Superior 6/90	6	4	Weeks, Larry R.		Yes, Yes
Sitka Superior 8/90	7	2	Zervos, Larry C.		No, Yes
Court of Appeals 8/90	3	3	Mannheimer, David		
Fairbanks Dist 8/90	6	3	Pengilly, Charles R.		
Kodiak Superior 11/90	7	3	Hopwood, Donald D.		
Homer Dist 11/90	9	5	Neville, M. Francis		Yes, Yes

Anch Dist 1/91	11	3	Lohff, John R.		
Anch Superior 1/91	15	4	Andrews, Elaine M.		
Kotzebue Superior 2/91	4	2	Eric, Richard H.		
Anch Dist 6/91	12	5	Motyka, Gregory J.		Yes
Valdez Superior 10/91	4	2	Anderson, Glen C.		
Anch Dist 5/92	22	8	Rhoades, Stephanie Murphy, Sigurd E.	Votes were unanimous on 14 applicants 5-1 on 4 applicants 4-2 on one applicant, and CJ voted three times: "yes" on Cossman (with the nonattorneys), "yes" on Rhoades (mixed vote), and "no" on Lindeman (with the attorneys)	Yes*, No*, Yes
Fairbanks Superior 9/92	5	3	Beistline, Ralph R.		Yes
Fairbanks Dist 12/92	10	3	Wood, Mark I.		
Ketchikan Superior 12/92	7	2	Thompson, Michael A.		
Anch Dist 6/93	10	5	Wanamaker, James N.		
Anch Superior 8/93	12	4	Card, Larry D.		Yes
Supreme Ct 1/94	12	5	Eastough, Robert L.	Votes were unanimous on 6 applicants, 4-2 on one applicant, and CJ voted "yes" on Wade (with the nonattorneys) 5-1 on 4 applicants	Yes*
Anch Dist 9/94	13	4	Joannides, Stephanie		Yes
Ketchikan Dist 5/95	7	5	Collins, Patricia A.		
Supreme Ct 1/96	5	5	Fabe, Dana		Yes
Nome Superior 1/96	3	2	Esch, Ben		
Kenai Superior 3/96	6	2	Brown, Harold M.		No
Palmer Superior 3/96	11	5	Smith, Eric		
Valdez Dist 1/96	2	0	No nominees		
Anch Superior 6/96	13	7	Sanders, Eric		No
Dillingham Superior 10/96	6	2	Torresi, Fred		
Anch Superior 10/96	32	13	Wolverton, Michael Tan, Sen K. Hensley, Dan A.		No, No, No
Supreme Ct 12/96	9	2	Bryner, Alex		
Court of Appeals 5/97	4	3	Stewart, David		
Palmer Dist 5/97	11	5	Lombardi, Suzanne		Yes
Valdez Dist 5/97	10	4	Bolger, Joel H.		Yes
Fairbanks Superior 9/97	7	4	Pengilly, Charles		
Fairbanks Dist 3/98	6	2	Funk, Raymond		
Supreme Ct 9/98	4	2	Carpeneti, Walter L.		
Juneau Superior 2/99	4	2	Collins, Patricia A.		
Anch Dist 7/99	10	5	Adams, Sam		Yes, Yes
Ketchikan Dist 7/99	5	2	Miller, Kevin		
Anch Superior 2/00	8	3	Joannides, Stephanie		
Ketchikan Superior 6/00	4	2	Stephens, Trevor N.		Yes
Anch Superior 9/00	7	3	Rindner, Mark		Yes
Anch Dist 9/00	5	1	Only 1 person nominated		
Bethel Dist 9/00	3	1	Only 1 person nominated		
Anch Superior 1/01	8	2	Gleason, Sharon L.		

Anch Dist 1/01	13	2	Nolan, Nancy	
Anch Superior 9/01	6	2	Christen, Morgan	
Anch Superior 1/02	5	3	Morse, William	
Bethel Superior 1/02	4	2	Devaney, Leonard R.	
Fairbanks Superior 7/02	3	2	Wood, Mark	
Anch Superior 9/02	17	6	Suddock, John Volland, Phillip	Yes
Anch Dist 12/02	12	5	Clark, Brian K. Smith, Jack	
Fairbanks Dist 3/03	4	2	Burbank, Winston	
Fairbanks Superior 3/03	5	3	Olsen, Randy	
Palmer Dist 5/03	10	3	Estelle, William	
Kodiak Superior 7/03	6	3	Bolger, Joel H.	
Kenai Superior 7/03	4	3	Huguelet, Charles T.	
Palmer Dist 11/03	10	4	Heath, Gregory Louis	
Anch Superior 8/04	9	3	Stowers, Craig F.	
Kenai Dist 10/04	5	3	Landry, David S.	
Palmer Dist 10/04	8	4	Wolfe, John W.	Yes
Valdez Dist 12/04	8	4	Schally, Daniel	Yes
Anch Dist 12/04	12	6	Hanley, Pat	Yes
Juneau Dist 12/04	7	4	Levy, Keith B.	
Homer Dist 2/05	9	5	Murphy, Margaret	
Fairbanks Superior 3/05	5	4	Downes, Robert B.	
Anch Dist 2/05	13	8	Swiderski, Alex	Yes, Yes, Yes
Anch Superior 10/05	14	7	Aarseth, Eric A. McKay, Patrick	
Bethel Superior 10/05	4	1	Only 1 person nominated	No
Bethel Dist 10/05	3	3	Cummings, Dennis P.	Yes
Fairbanks Superior 1/06	5	3	Blankenship, Douglas	
Anch Superior 10/06	18	7	Spaan, Michael Smith, Jack	
Palmer Superior 10/06	20	6	Kristiansen, Kari White, Vanessa	
Kenai Superior 1/07	6	2	Moran, Anna M.	
Bethel Superior 1/07	4	2	Hamilton, Marvin Charles	
Fairbanks Superior 4/07	8	4	MacDonald, Michael A.	
Anch Dist 4/07	10	4	Postma, Richard W. Jr.	Yes
Kenai Dist 4/07	7	3	Illsley, Sharon A.S.	
Kenai Superior 6/07	7	4	Bauman, Carl	Yes
Juneau Superior 6/07	7	5	Pallenberg, Phillip	
Sitka Superior 9/07	7	3	George, David	
Supreme Ct 10/07	13	4	Winfree, Daniel E.	Votes were unanimous on 4 applicants 5-1 on 4 applicants 4-2 on 4 applicants, and CJ voted "yes" on Christen (with the attorneys).
Fairbanks Superior 1/08	7	4	Lyle, Paul	Votes were unanimous on 4 applicants 5-1 on 2 applicants, and CJ voted "yes" on Lyle (with the nonattorneys)
Barrow Superior 4/08	2	2	Jeffery, Michael	
Anch Dist 4/08	10	3	Easter, Catherine	

Court of Appeals 7/08	13	3	Bolger, Joel		
Ketchikan Spr 10/08	4	2	Carey, William		
Anch Dist 11/08	7	4	Wallace, David		
Supreme Ct 2/09	6	2	Christen, Morgan		
Kodiak Superior 2/09	4	2	Cole, Steve		
Fairbanks Dist 6/09	5	3	Hammers, Patrick		
Fairbanks Superior 6/09	7	5	McConahy, Michael		Yes, Yes
Palmer Superior 6/09	7	3	Heath, Gregory		Yes
Anch Superior 9/09	10	5	Pfiffner, Frank A.		
Supreme Ct 10/09	16	7	Stowers, Craig		
Anch Dist 12/09	7	3	Olson, Paul		
Palmer Dist 12/09	8	3	Zwink, David L.		
Kotzebue Superior 5/10	4	3	Roetman, Paul A.	Votes were unanimous on 3 applicants, and the CJ voted "yes" on Roetman (with the nonattorneys).	Yes*
Anch Superior 5/10	9	4	Guidi, Andrew		Yes
Anch Dist 8/10	9	4	Washington, Pamela		
Juneau Dist 8/10	5	3	Nave, Thomas G.		
Anch Superior 11/10	5	2	Miller, Gregory		
Anch Dist 4/11	8	4	Chung, Jo-Ann M.		
Juneau Superior 4/11	3	2	Menendez, Louis James		
Dillingham Superior 11/11	6	3	Douglass, Pat	One non-attorney Council member was absent. Votes were unanimous on 4 candidates, 4-1 on one candidate, and CJ voted "yes" on Provost (with the attorneys).	Yes*
Bethel Superior 11/11	3	1	<i>Only 1 person nominated</i>		
Fairbanks District 12/11	7	4	Seekins, Ben		
Anch Superior 1/12	22	13	Saxby, Kevin M. Olson, Paul E. Easter, Catherine M.		
Bethel Superior 5/12	5	4	Ray, Chuck		
Supreme Ct 6/12	12	2	Maassen, Peter	Votes were unanimous on 4 applicants 5-1 on 3 applicants 4-2 on 4 applicants, and CJ voted no on MacDonald (with the attorneys)	No*
Bethel Dist 5/12	2	0	<i>No nominees</i>		
Fairbanks Superior 8/12	6	2	Harbison, Bethany		
Bethel Superior 6/12	3	2	McConnell, Dwayne		Yes
Anch Superior 8/12	13	5	Marston, Erin	Votes were unanimous on 4 applicants 5-1 on one applicant 4-2 on 6 applicants CJ voted "no" on Clarkson (with the attorneys) for the 13th candidate the vote was 4 "no", one "yes" and one abstention	No*
Anch District 10/12	18	4	Dickson, Leslie Henderson, Jennifer Stuart		

Court of Appeals 10/12	10	6	Allard, Marjorie		
Supreme Ct 12/12	12	4	Bolger, Joel H.	Votes were unanimous on 4 applicants 5-1 on 3 applicants 4-2 on 2 applicants; CJ voted "no" on Guidi (with the attorneys) and MacDonald (with the attorneys), and for the 12th candidate the vote was 3 "no", 2 "yes" and one abstention	No*, No*
Nome Superior 1/13	4	2	Dooley, Tim		
Fairbanks Superior 1/13	10	3	Kauvar, Jane F.		
Court of Appeals 6/13	7	2	Kossler, Doug		
Fairbanks District 10/13	11	3	Christian, Matthew	Votes were unanimous on 10 applicants; CJ Voted "no" on Temple (with the attorneys)	No*
Bethel Dist 10/13	7	2	Peters, Nathaniel		
**Number of candidates voted on			*Indicates attorney-nonattorney split vote (N = 15)		

**ALASKA JUDICIAL COUNCIL
VOTING STATISTICS – APPLICATIONS FOR JUDICIAL POSITIONS**

Six Council Members: three appointed by Bar Association Board of Governors, three appointed by the Governor. Chief Justice is ex officio and votes only when the members do not have a four-person consensus. Alaska Const. art. IV sec. 8.

1984 – 2013: past 29 years [all years for which data is available]

Total votes taken on judicial applicants:	1,136
• Number that were unanimous :	704/1,136 (62%)
• Number that were unanimous or “unanimous except for 1” votes:	920/1,136 (81%)
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	68/1,136 (6%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	51/68 (75%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	15/1,136 (1.3%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	7/15 (46%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	10/15 (66% of splits); 10/1,136 (.8% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	5/15 (25%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	2/10 (20%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor for consideration:	8/1,136 (.7% of total)

2010 – 2013: past four years [subset of above 29-year stats]

Total votes taken on judicial applicants:	201
• Number that were unanimous:	110/201(55%)
• Number that were unanimous or “unanimous except for 1” votes:	151/201 (75%)
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	9/201 (4.5%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	4/9 (44%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	7/201 (3.5%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	2/7 (28.5%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	6/7 (86% of splits); 6/201 (3% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	1/7 (14%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	1/7 (14%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor :	5/201 (2.4% of total)

2006 – 2009: previous four years [subset of above 29-year stats]

Total votes taken on judicial applicants:	225
• Number in which the Chief Justice voted, usually because of a 3-3 tie:	7/225 (3%)
▪ Number of those in which CJ voted to send the name to the Governor for consideration:	7/7 (100%)
• Number in which the vote was tied, with the attorneys and non-attorneys split:	2/201 (1%)
▪ Number of those splits in which CJ voted to send the name to the Governor for consideration:	1/2 (50%)
▪ Number of those splits in which the CJ voted with the attorneys, not with the public members:	1/2 (50% of splits); 1/201 (1% of total)
▪ Number of those splits in which the CJ voted with the public members, not with the attorneys:	1/2 (50%)
▪ Number of those split votes in which the CJ voted with the attorneys, such that the name was sent to the Governor for consideration:	1/2 (50%)
• Number in which the vote was tied, with attorneys and non-attorneys split, and the CJ’s vote was with the attorneys not to send the name to the Governor:	0/225 (0% of total)

For Senate Judiciary Committee

SJR21

February 20, 2014



The top line is the number of votes taken by the Council.

The bottom, dashed line is the number of votes taken by the Chief Justice.

The chart shows that the frequency of the Chief Justice voting has remained relatively steady over time, even though the total number of votes taken by the Council has fluctuated a lot over time.

Notes

Total Votes During This Period:

1,136

Total Number of Votes by Chief Justice:

68 (6% of all votes)

Submitted by Sponsor

Alaska Judicial Council
Voting Information
For the Senate Judiciary Committee
Feb. 20, 2014

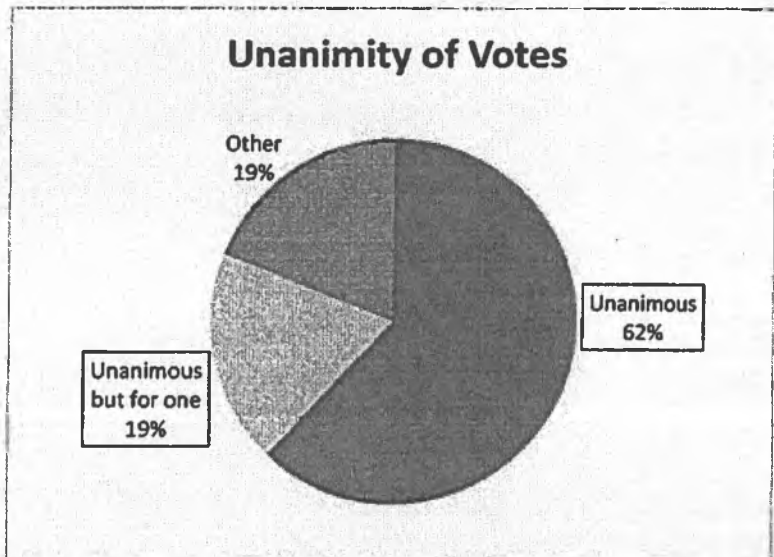
The Council members voted on 1,136 applications between January 1, 1984 and December 31, 2013. This fact sheet shows how some of those votes were taken.

- **Council members have a high rate of agreement about nomination decisions**

Historically, most Council votes have been unanimous (62%).

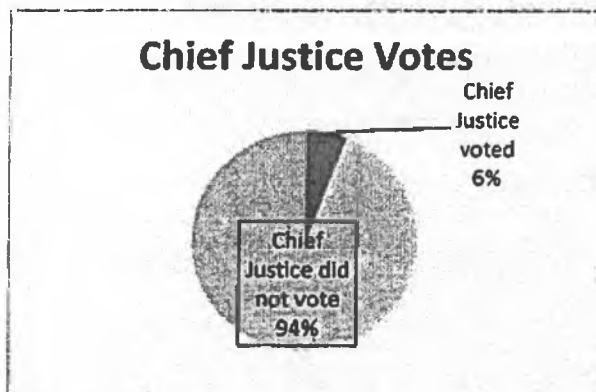
In an additional 19% of all votes, only one person voted differently from the others.

Thus, in 81% of the votes, Council members have been unanimous or nearly so in their assessment of whether an applicant's name should be forwarded to the governor.



- **Attorney/nonattorney vote splits are rare**

Our records show only 15 times (out of 1,136) votes in which disagreements about nomination decisions broke along attorney-nonattorney lines. This situation occurred in less than 2% of all votes.



- **The Chief Justice rarely votes**

The Chief Justice votes only when to do so would change the outcome. Over the past 29 years, chief justices have voted only 68 times. Thus, 94% of the time, the chief justice does not vote.

When called upon to vote, the chief justices usually forward the name in question to the governor.

75% of the time, chief justices voted "yes" to forward the name in question to the governor.

- **The Council usually forwards more than two names to the governor**

In about seventy-three percent (73%) of all judicial selections, the Council members forward more than two names to the governor. Instances in which the Council sends fewer names often occur on vacancies in small rural areas.

Bylaws of the Alaska Judicial Council

Article I Policies

Section 1. Concerning Selection of Justices, Judges, and Public Defender

The Judicial Council shall endeavor to nominate for judicial office and for public defender those judges and members of the bar who stand out as most qualified based upon the Council's consideration of their: professional competence, including written and oral communication skills; integrity; fairness; temperament; judgment, including common sense; legal and life experience; and demonstrated commitment to public and community service. The Council shall actively encourage qualified members of the bar to seek nomination to such offices, shall endeavor to prevent political considerations from outweighing fitness in the judicial and public defender nomination processes, and shall consistently strive to inform the public of Alaska's Judicial Council selection process.

Section 2. Concerning Retention of Judges

Pursuant to the provisions of Alaska Statutes Titles 15 and 22, the Council may recommend the retention in judicial office of incumbent justices and judges found to be qualified through appropriate means of judicial performance assessment; and may recommend against retention of justices and judges found to be not qualified through assessment processes. The Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention recommendation process.

Section 3. Concerning Administration of Justice

The Council shall initiate studies and investigations for the improvement of the administration of justice. These studies and investigations may be conducted by the entire Council, by any of its members or by its staff as directed by the Council. The Council may hire researchers and investigators and may contract for the performance of these functions. A topic for any study or investigation may be proposed at any meeting of the Council by any member without prior notice.

Article II Membership

Section 1. Appointment; Limitation of Term

Members of the Council shall be appointed and shall serve their terms as provided by law; however, a member whose term has expired shall continue to serve until a successor has been appointed. Council members may be appointed to successive terms; however, no Council member should serve more than two full terms or one unexpired term and one full term.

Section 2. Effective Date of Appointment

(A) Non-Attorney Members. The effective date of a non-attorney member's appointment to the Council shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the gubernatorial letter of appointment, if appointed after that date. Non-attorney members shall have full voting rights effective upon the appointment date, unless and until denied confirmation by the legislature.

(B) Attorney Members. The effective date of an attorney member's appointment shall be the day following the effective date of the vacancy in the seat to which appointed, if appointed before that date; or the date of or specified in the letter of appointment from the board of governors of the Alaska Bar Association, if appointed after that date.

(C) Chief Justice. When the supreme court elects a new chief justice, the newly elected chief begins serving as a member and chair of the Council immediately upon assuming the office of chief justice.

Section 3. Oath of Office

The chair of the Council shall administer the oath of office to each new member, following a determination by the Council that the person selected has met the qualifications for membership as set forth by law.

Section 4. Vacancies

At least 90 days prior to the expiration of the term of any Council member, or as soon as practicable following the death, resignation, or announced intent to resign of any Council member, the executive director shall notify the appropriate appointing authority and request that the appointment process be initiated immediately to fill the vacancy.

Section 5. Disqualification

(A) Candidacy of Council Member. Any member of the Judicial Council who seeks appointment to a judicial office or the office of public defender must resign from the Council as of the date of the application and should not accept reappointment to the Council for a period of two years thereafter.

(B) Attendance at Regular Meetings. Council members shall attend all regular meetings of the Council unless excused by the chair for good cause. If a member is absent without good cause for two consecutive meetings, the chair shall formally request the resignation of that member.

Section 6. Expenses; Compensation

Council members shall be reimbursed for travel and other expenses incurred while on Council business and may receive compensation as otherwise provided by law.

Article III Officers

Section 1. Officers Specified

(A) The officers of the Council shall be the chair, vice-chair and executive director.

(B) **Chair.** The Chief Justice of the Alaska Supreme Court is the chair of the Alaska Judicial Council.

(C) **Vice-Chair.** The vice-chair will be the member of the Judicial Council whose current term will first expire.

(D) **Executive Director.** The Council by concurrence of four or more of its members may designate an executive director to serve at the pleasure of the Council.

Section 2. Duties and Powers

(A) **Chair.** The chair shall preside at all meetings of the Council and perform such other duties as may be assigned by the Council. In the absence of an executive director or acting director, the chair will serve as acting director.

(B) **Vice-Chair.** The vice-chair shall preside at meetings of the Council in the absence of the chair. The vice-chair shall perform such other duties as usually pertain to the office of the chair when the chair is unavailable to perform such functions.

(C) **Executive Director.** The executive director shall keep a record of all meetings of the Council; shall serve as chief executive officer of the Council; shall be responsible to the Council for planning, supervising and coordinating all administrative, fiscal and programmatic activities of the Council; and shall perform such other duties as may be assigned. The executive director may receive compensation as prescribed by the Council and allowed by law.

(D) **Acting Director.** In the event of the incapacity, disability, termination or death of the executive director, the Council may appoint an acting director, and may impose such limits on the authority of said acting director as it deems advisable, until such time as a new executive director can be found, or until such time as the incapacity of the executive director can be cured. Should the Council choose not to appoint an acting director or otherwise fail to appoint, the chair of the Council will, ex officio, serve as acting director until a replacement can be found.

Article IV Meetings

Section 1. Public Sessions; Public Notice

All meetings of the Judicial Council shall be open to the public, except as specifically provided. At least three days before any meeting to be held in Anchorage, Fairbanks, or Juneau, public notice of date, time, and place of the meeting and of general topics to be considered shall be

given through paid advertisements in major newspapers of general circulation in all three cities; for meetings to be held elsewhere in the state, paid public notice shall be provided at least three days in advance in the newspaper or newspapers of general circulation in such other areas as well as in the newspapers of general circulation in Anchorage, Fairbanks, and Juneau. Absent sufficient funding or when the notice requirements of this section are determined by the Council to be unreasonable, the Council is authorized to meet after such other period and utilizing such other form of public notice as it deems reasonable under the circumstances and which are consistent with the Council's legal obligations.

Section 2. Participation by Telecommunications

The Judicial Council shall meet in person when practicable. The Council may conduct a teleconference between regularly scheduled meetings with the consent of the chair. A teleconference conducted between regularly scheduled meetings is subject to the notice requirements in Article IV, Section 1 and Article IV, Section 8.

A member may participate telephonically in a regularly scheduled meeting only if the chair has found good cause to excuse the member from attending in person. A member may only participate telephonically if the member has had a substantially equal opportunity to evaluate all meeting materials, testimony, and other evidence related to the meeting.

Teleconferencing may be used to receive public input and to establish a quorum. At least one member or staff person must be present at the time and location publicly announced for any meeting or teleconference conducted by the Council.

Section 3. Regular Meetings

The Council shall hold two or more meetings per year, at times designated by the Council, to consider problems that may affect the Council and concern the administration of justice in the State of Alaska.

Section 4. Special Meetings

When a vacancy in the office of justice, judge, or public defender actually occurs or is otherwise determined to be impending, the chair shall call a special meeting of the Judicial Council within the time-frame required by law. The chair shall also call a special meeting of the Council upon the request of four or more members to consider business specified in the request; at that meeting, the Council may also consider other business that may come before the Council with the consent of four or more of the members present. The chair shall fix the time and place of such meeting not more than thirty days from the date of receipt of such request.

Section 5. Public Hearings

The Council may hold public hearings on all matters relating to the administration of justice as it deems appropriate and in such places as it determines advisable.

Section 6. Executive Sessions

The Council may decide as permitted by law whether its proceedings will be conducted in executive session. The Council may make this decision by concurrence of four or more members in a session open to the public. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session, unless auxiliary to the main question. The Council may not vote in an executive session.

Section 7. Place of Meeting

To the extent practicable, meetings should be held in the area of the State most directly affected by the subject matter under consideration.

Section 8. Notice of Meeting: Waiver

Notice of each meeting and teleconference shall be sent to all members of the Council as far in advance as practicable but in any event not less than five days before the date of the meeting or teleconference. Presence at a meeting or teleconference without objection shall constitute waiver of notice. When this notice requirement is determined by the chair to be unreasonable, the Council may meet on shorter notice.

**Article V
Voting and Quorum**

Section 1. Voting

All members of the Council present shall be entitled to vote on all matters coming before the Council, except as provided in Section 2 of this article and except that the chair shall only vote when to do so could change the result. The Council shall act by concurrence of four or more members. All votes shall be taken in public session. Any member can vote in the affirmative or negative or abstain on any matter. A member who wishes to abstain shall indicate the intention to do so prior to the question being called and shall disclose the reasons for the proposed abstention.

Section 2. Conflict of Interest; Disqualification

No member may vote on any matter in which he or she has a substantial personal or pecuniary interest. Any member who believes that his or her personal or business relationship to any applicant for a judicial or public defender vacancy or to any judge or justice being evaluated for retention purposes might prevent the member from fairly and objectively considering the qualifications of such person, or might otherwise involve a conflict of interest or create the appearance thereof, shall disclose the circumstances of the actual or apparent conflict to the Council

and shall disqualify himself or herself from discussing or voting on the nomination or retention of that person.

Section 3. Quorum

Four members of the Council shall constitute a quorum for the transaction of business at any meeting.

Section 4. Rules of Order

Robert's Rules of Order Revised will govern the meetings of the Council to the extent that they do not conflict with these bylaws.

**Article VI
Committees**

Section 1. Standing Committees

The Council may establish such standing committees from time to time when it finds them useful to conduct Council business. The chair may make standing committee assignments annually. The function of each committee shall be to monitor Council activities between meetings, to provide guidance and advice to staff, and to report to the Council at regularly scheduled meetings about the committees' areas of oversight. Each committee shall include at least one attorney and one non-attorney member. To the maximum extent possible, Council members should be permitted to serve on the committee or committees of their choice.

Section 2. Ad Hoc Committees

The chair may create ad hoc committees from time to time as needed. Ad hoc committees shall report to the Council on their activities and may make recommendations for Council action.

**Article VII
Procedure for Submitting Judicial and Public Defender Nominations to the
Governor**

Section 1. Notice of Vacancy; Recruitment

Whenever a vacancy to be filled by appointment exists, or is about to occur, in any supreme court, court of appeals, superior court, or district court of this state, or in the office of public defender, the Council, by mail or by such other publication means as may be appropriate, shall notify all active members of the Alaska Bar Association of the vacancy, and shall invite applications from qualified judges or other members of the bar of this state for consideration by the Council for recommendation to the governor. Council members may also encourage persons believed by such members to possess the requisite qualifications for judicial or public defender office to submit their applications for consideration and may cooperate with judicial selection committees of the state or

local bar associations or of such other organizations as may be appropriate in the identification and recruitment of potential candidates.

Section 2. Application Procedure

Each applicant for a judicial or chief public defender position shall obtain and complete an application for appointment provided by the Council and shall comply with all the requirements therein. Such application may request such information as deemed appropriate to a determination of qualification for office, including but not limited to the following: family and marital history; bar and/or judicial discipline history; criminal record; involvement as a party in litigation; credit history; physical and mental condition and history; community activities; academic and employment history; military record; and representative clientele.

Section 3. Evaluation and Investigation of Applicants' Qualifications

(A) Judicial Qualifications Polls. The Judicial Council may conduct judicial qualifications polls in such form and manner as may be prescribed by the Council and cause the same to be circulated among the members of the Alaska Bar Association. The poll should be relevant to criteria listed in Article 1, Section 1 of these bylaws. If the Alaska Bar Association conducts a qualifications poll satisfactory to the Council, the Council may recognize such poll. The Judicial Council may conduct such other surveys and evaluations of candidates' qualifications as may be deemed appropriate.

(B) Investigation. The Council and its staff shall investigate the background, experience, and other qualifications of an applicant under consideration for a judicial or a public defender vacancy, and may call witnesses before it for such purposes.

(C) Candidate Interviews; Expenses. The Council may, when and where it deems desirable, conduct a personal interview with one, some, or all applicants for any judicial or public defender vacancy. Candidates requested to appear before the Council for such interviews shall appear in person; when, however, a candidate for good cause shown is unable to personally attend such interview, the Council may arrange for an interview by telephone or other electronic communication means with such applicant, and such alternative interview as may be appropriate, including but not limited to interview of such candidate by a committee of the Council at such other time and place as may be convenient. A candidate may choose to be interviewed publicly or in executive session, to protect the candidate's privacy interests consistent with Alaska's Open Meetings Act. The choice to interview publicly or in executive session will have no bearing on the Council's evaluation of the candidate's qualifications.

A candidate's expenses for judicial or public defender office are that candidate's responsibility. The Council may reimburse candidates for travel expenses in the Council's discretion. The cost of a telephone interview requested by the Council shall be paid by the Council.

Section 4. Nomination Procedure; Recommendation of Best Qualified Candidates

The Council shall select two or more candidates who stand out as the most qualified under the criteria set out in Article I, Section 1 of these bylaws, considering (a) other candidates who have applied; (b) the position applied for; and (c) the community in which the position is to be located. The names of the selected candidates shall be submitted to the governor in alphabetical order; but if the Council's vote does not result in selecting at least two applicants who are sufficiently qualified, the Council shall decline to submit any names and will re-advertise the position.

Section 5. Reconsideration

The Council will not reconsider the names submitted to the governor after the nominees are submitted unless the disability or death of one or more nominees leaves the governor with less than two names for filling a judicial vacancy. If the governor requests additional nominees in such a situation, the Council will submit additional names so that the governor has at least two nominees for each vacancy. The Council may select additional names from the original applicants for the position or may re-advertise for the position.

Section 6. Publication and Review of Procedures

The Council shall establish and follow written forms and procedures for the nomination of attorneys who apply to be justices, judges, and public defender. The Council shall publish the bylaws and procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to applicants. The Council shall review these procedures at intervals not to exceed three years.

**Article VIII
Review of Judicial Performance**

Section 1. Retention Election Evaluation

Prior to each general election in which one or more justices or judges has expressed the intention to be a candidate for retention election, the Council shall conduct evaluations of the qualifications and performance of such justices and judges and shall make the results of evaluations public. Evaluations may be based upon the results of a judicial performance survey conducted among all active members of the Alaska Bar Association and other members, retired or inactive, that the Council chooses. Evaluations also may be based upon such other surveys, interviews, or research into judicial performance as may be deemed appropriate, including but not limited to, any process that encourages expanded public participation and comment regarding candidate qualifications.

Section 2. Recommendation

Based upon the evaluative data, the Council may recommend that any justice or judge either be retained or not be retained. The Council may actively support the candidacy of every incumbent

judge recommended to be retained, and may actively oppose the candidacy of every incumbent judge whom it recommends not be retained. The Council shall publicize its recommendations.

Section 3. Judicial Performance Evaluation

The Council may conduct such additional evaluations of judges, other than at the time of retention elections, at such times and in such a manner as may be appropriate, and make the results of such additional evaluations public.

Section 4. Publication and Review of Procedures

The Council shall establish and follow written procedures for the evaluation of justices and judges. The Council shall publish the procedures in its biennial report to the Alaska Supreme Court and legislature, post them on its website, and provide them to justices and judges. The Council shall review these procedures at intervals not to exceed four years.

**Article IX
Extra-Council Communications**

Members of the public may wish to communicate their thoughts about the qualifications of applicants and the performance of judicial officers to individual Council members. All written communications between a Council member and any other person or organization regarding the qualifications of any applicant or the performance of any judicial officer should be forwarded to all other members; all oral communications regarding such matters should be shared with other members. Council members may encourage people to communicate with the Council in writing or at a public hearing.

Council members may discuss their individual views about the qualifications of applicants and the performance of judicial officers with members of the public, including the applicants and judicial officers. Council members may not publicly discuss the views of other Council members about the qualifications of applicants and the performance of judicial officers. Communications and deliberations among Council members that occur in executive session, including discussion about the qualifications of an applicant or the performance of a judicial officer shall be kept confidential in accordance with the law and Council bylaws.

**Article X
Access to Council Records**

Section 1. Public Records

All records of the Judicial Council, unless confidential or privileged, are public as provided in AS 40.25.110. The public shall have access to all public records in accordance with AS 40.25.120.

Public Records include:

1. Council bylaws and policy statements;
2. Minutes of Council meetings;
3. Final Council reports;
4. Financial accounts and transactions;
5. Library materials; and
6. All records other than those excepted in this bylaw.

Section 2. Right to Privacy

Materials that, if made public, would violate an individual's right to privacy under Art. I, Section 22 of the Alaska Constitution shall be confidential. Confidential materials are not open for public inspection and include:

1. Solicited communications relating to the qualifications of judicial or public defender vacancy applicants, or judicial officers;
2. Unsolicited communications relating to the qualifications of a judicial or public defender applicant or judicial officer, where the source requests confidentiality;
3. Those portions of the "application for judicial appointment" and "judge questionnaire" that reveal sensitive personal information entitled to protection under law;
4. Investigative research materials and internal communications that reveal sensitive personal information entitled to protection under law; and
5. Contents of Council employees' and members' personnel records, except that dates of employment, position titles, classification and salaries of present and/or past state employment for all employees are public information. In addition, application forms, resumes and other documents submitted to the Judicial Council in support of applications for any position with the Council grade 16 or above are public information.

Section 3. Deliberative Process

Materials that are part of the deliberative process of the Judicial Council, including those prepared by Council employees, are privileged and confidential if their disclosure would cause substantial and adverse effects to the Council that outweigh the need for access. These materials generally include drafts and computations prior to final document approval, internal memoranda conveying personal opinions, and other pre-decisional documents not incorporated into public records under this bylaw.

Section 4. Other Information

Information required or authorized to be kept confidential by law is not a public record.

Section 5. Privileged Communications

Communications that are legally privileged are not public information. These communications include but are not limited to communications between the Council and its attorney made for the purpose of facilitating the rendition of professional legal services to the Council.

Section 6. Release of Information

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information will be disclosed. Information that otherwise would not be disclosable may be released to the subject of that information or to the public if it is in a form that protects the privacy rights of individuals and does not inhibit candid debate during the decision-making process.

**Article XI
Office of Judicial Council**

The Council shall designate an office of the Council in such location as it deems appropriate. Records and files of the Council's business shall be maintained by the Executive Director at this location.

**Article XII
Appropriations**

The Council will seek such appropriations of funds by the Alaska Legislature and other funding sources as it deems appropriate to carry out its constitutional and statutory functions.

**Article XIII
Bylaw Review and Amendment**

The Council shall review these bylaws at intervals not to exceed six years. These bylaws may be altered or amended by the Judicial Council by concurrence of four or more members, provided reasonable notice of proposed amendments has been provided to all Council members.

These bylaws adopted by the Alaska Judicial Council, this 15th day of February 1966; amended November 10, 1966; June 18, 1970; March 30, 1972; February 15, 1973; May 26, 1983; December 10, 1986; March 19, 1987; January 14, 1989; November 2, 1993; June 26, 1996; December 9, 1996; September 23-24, 1997; July 6-7, 1998; July 15, 2002; September 22, 2005; November 28, 2005; January 31, 2006; October 14, 2006; January 22, 2012; October 9, 2013.

**Historical Roster of
Alaska Judicial Council Members**

	Residence	Appointment Effective	Expiration of Term
Chairperson¹			
Chief Justice Buell A. Nesbett		11/29/59	06/18/70
Chief Justice George F. Boney		06/18/70	11/16/72
Chief Justice Jay A. Rabinowitz		11/16/72	11/16/75
Chief Justice Robert Boochever		11/16/75	11/16/78
Chief Justice Jay A. Rabinowitz		11/16/78	11/16/81
Chief Justice Edmond W. Burke		11/16/81	09/30/84
Chief Justice Jay A. Rabinowitz		10/01/84	09/30/87
Chief Justice Warren W. Matthews		10/01/87	09/30/90
Chief Justice Jay A. Rabinowitz ²		10/01/90	09/30/92
Chief Justice Daniel A. Moore, Jr.		10/01/92	09/30/95
Chief Justice Allen T. Compton ³		10/01/95	07/01/97
Chief Justice Warren W. Matthews		07/02/97	06/30/00
Chief Justice Dana Fabe		07/01/00	06/30/03
Chief Justice Alexander O. Bryner		07/01/03	06/30/06
Chief Justice Dana Fabe		07/01/06	06/30/09
Chief Justice Walter L. Carpeneti		07/01/09	06/30/12
Chief Justice Dana Fabe		07/01/12	06/30/15
Attorney Members			
E.E. Bailey ²	Ketchikan	02/24/59	02/24/62
E.E. Bailey	Ketchikan	02/24/62	02/24/68
Frank M. Doogan ³	Juneau	10/15/68	04/73
Michael L. Holmes ⁴	Juneau	05/73	02/24/74
Michael L. Holmes	Juneau	02/24/74	02/24/80
Walter L. Carpeneti ⁵	Juneau	02/24/80	02/81
James B. Bradley ⁴	Juneau	04/81	02/24/86
William T. Council	Juneau	02/24/86	02/24/92
Thomas G. Nave	Juneau	02/24/92	02/23/98
Geoffrey G. Currall	Ketchikan	02/24/98	02/23/04
Douglas Baily	Juneau	04/27/04	07/18/07
Louis James Menendez ⁴	Juneau	07/19/07	02/23/10
Julie Willoughby	Juneau	04/27/10	02/23/16
Robert A. Parrish ²	Fairbanks	02/24/59	02/24/64
William V. Boggess ⁵	Fairbanks	02/24/64	04/64
Michael Stepovich ⁴	Fairbanks	05/64	02/24/70
Michael Stepovich	Fairbanks	02/24/70	02/24/76
Michael Stepovich ³	Fairbanks	02/24/76	08/78
Marcus R. Clapp ⁴	Fairbanks	08/78	02/24/82
Mary E. Greene ³	Fairbanks	02/24/82	04/82
Barbara L. Schuhmann ⁴	Fairbanks	07/82	02/24/88
Daniel L. Callahan	Fairbanks	02/24/88	02/24/94
Christopher E. Zimmerman ⁵	Fairbanks	04/14/94	07/17/97
Paul J. Ewers	Fairbanks	07/18/97	02/23/00
Robert B. Groseclose	Fairbanks	04/05/00	02/23/06
James H. Cannon	Fairbanks	02/24/06	02/23/12
Aimee Oravec	Fairbanks	04/10/12	02/23/18

**Historical Roster of
Alaska Judicial Council Members**

	Residence	Appointment Effective	Expiration of Term
Attorney Members (Continued)			
Raymond E. Plummer ^{2,3}	Anchorage	02/24/59	09/26/61
Harold Butcher ⁴	Anchorage	11/61	02/24/66
George F. Boney ⁵	Anchorage	02/24/66	09/68
Lester W. Miller, Jr. ⁴	Anchorage	10/15/68	02/24/72
Eugene F. Wiles ³	Anchorage	02/24/72	03/75
Joseph L. Young ⁴	Anchorage	04/75	02/24/78
Joseph L. Young	Anchorage	02/24/78	02/24/84
James D. Gilmore	Anchorage	02/24/84	02/24/90
Mark E. Ashburn	Anchorage	03/23/90	02/23/96
Robert H. Wagstaff	Anchorage	03/22/96	02/23/02
Susan Oriansky	Anchorage	03/14/02	02/27/08
Kevin Fitzgerald	Anchorage	04/28/08	02/23/14
Non-Attorney Members			
Elmo LeRoy "Roy" J. Walker ²	Fairbanks	05/18/59	05/18/61
John Cross	Kotzebue	05/18/61	05/18/67
Thomas K. Downes ³	Fairbanks	05/18/67	Mid-1968
V. Paul Gavora ⁴	Fairbanks	10/15/68	05/18/73
Thomas J. Miklautsch ³	Fairbanks	05/28/73	12/10/74
Robert H. Moss ⁴	Homer	12/10/74	05/18/79
Robert H. Moss	Homer	05/18/79	05/18/85
Dr. Hilbert J. Henrickson	Ketchikan	08/13/85	05/18/91
David A. Dapceovich	Sitka	05/19/91	05/18/97
Mary Matthews ³	Fairbanks	05/19/97	08/23/98
Sandra Stringer ⁴	Fairbanks	08/24/98	07/12/99
Katie Hurley	Wasilla	07/13/99	05/18/03
Bill Gordon	Fairbanks	05/19/03	03/01/09
Kathleen Tompkins-Miller	Fairbanks	03/01/09	03/01/15
Jack E. Werner ²	Seward	05/18/59	05/18/63
Jack E. Werner	Seward	05/18/63	05/18/69
Ken Brady	Anchorage	06/28/69	05/18/75
Ken Brady	Anchorage	05/18/75	05/18/81
Mary Jane Fate	Fairbanks	05/18/81	05/18/87
Leona Okakok	Barrow	07/31/87	05/18/93
Janice Lienhart	Anchorage	05/19/93	05/18/99
Gigi Pilcher	Ketchikan	03/21/00	05/18/05
Christena Williams	Ketchikan	05/19/05	03/01/11
Donald J. Haase ³	Valdez	03/01/11	04/07/11
Ken Kreitzer	Juneau	07/29/11	03/01/17

Historical Roster of Alaska Judicial Council Members			
	Residence	Appointment Effective	Expiration of Term
Non-Attorney Members (continued)			
Dr. William M. Whitehead ^{2,3}	Juneau	05/18/59	12/06/62
Charles W. Kidd ^{4,3}	Juneau	04/63	01/64
H. Douglas Gray ⁴	Juneau	04/64	05/18/65
H.O. Smith ⁶	Ketchikan	05/18/65	06/65
Pete Meland ⁴	Sitka	01/66	05/18/71
Oral Freeman ³	Ketchikan	11/22/71	01/73
Lew M. Williams, Jr. ⁴	Ketchikan	04/73	05/18/77
John Longworth	Petersburg	05/18/77	05/18/83
Renee Murray	Anchorage	08/08/83	05/18/89
Janis Roller ³	Anchorage	09/01/89	02/14/91
Dr. Paul Dittrich, M.D. ^{4,3}	Anchorage	04/06/91	10/03/91
Jim A. Arnesen ⁴	Anchorage	10/04/91	05/18/95
Vicki A. Otte ³	Juneau	05/31/95	11/21/00
Eleanor Andrews ⁴	Anchorage	11/15/00	05/18/01
Eleanor Andrews	Anchorage	05/18/01	03/01/07
Charles M. Kopp ³	Kenai	03/02/07	07/13/08
William F. Clarke ⁴	Anchorage	10/16/08	03/01/13
Dave Parker	Wasilla	03/01/13	03/01/19

¹ The Judicial Council initially submitted nominations for the position of Chief Justice; the Constitution did not limit the Chief Justice's term. Chief Justice Nesbett and Chief Justice Boney were nominated and appointed in this manner. Voters amended the Constitution on August 25, 1970 to provide for the election of the Chief Justice by the justices of the Supreme Court for a three-year term; the amendment further provided that a Chief Justice may not be re-elected to consecutive terms.

² Appointed to initial staggered term.

³ Resigned during term.

⁴ Appointed to complete unexpired term.

⁵ Resigned during term to apply for judicial office.

⁶ Denied legislative confirmation.

Election

Partisan

Alabama
Illinois
Louisiana
New Mexico
Pennsylvania
Texas
West Virginia

Nonpartisan

Arkansas
Georgia
Idaho
Kentucky
Michigan
Minnesota
Mississippi
Montana
Nevada
North Carolina
North Dakota
Ohio
Oregon
Washington
Wisconsin

Democratic Appointment

Gubernatorial

California
Maine
New Jersey

Legislative

South Carolina
Virginia

Judicial Selection in State High Courts

The Federalist Society
for Law and Public Policy Studies

Hybrid

Connecticut
Delaware
Hawaii
Maryland
Massachusetts
New Hampshire
New York
Rhode Island
Utah
Vermont

Missouri Plan

Role for Bar

Alaska
Arizona
Florida
Indiana
Iowa
Kansas
Missouri
Nebraska
Oklahoma
South Dakota
Wyoming

No Role for Bar

Colorado
Tennessee



Democratic Appointment

Judges are appointed directly by a democratic body, or appointed by the governor with the advice and consent of some democratic body.

Hybrid

Judges are appointed by the governor after nomination by a commission and confirmation by a democratic body.

Missouri Plan

Judges are appointed by the governor after nomination by a commission.

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Article 4 - The Judiciary

§ 1. Judicial Power and Jurisdiction

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

§ 2. Supreme Court

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office. [Amended 1970]

§ 3. Superior Court

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

§ 4. Qualifications of Justices and Judges

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

§ 5. Nomination and Appointment

The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

§ 6. Approval or Rejection

Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

§ 7. Vacancy

The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

§ 8. Judicial Council

The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex-officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

§ 9. Additional Duties

The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

§ 10. Commission on Judicial Conduct

The Commission on Judicial Conduct shall consist of nine members, as follows: three persons who are justices or judges of state courts, elected by the justices and judges of state courts; three members who have practiced law in this state for ten years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of the members of the legislature in joint session; and three persons who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. In addition to being subject to impeachment under section 12 of this article, a justice or judge may be disqualified from acting as such and may be suspended, removed from office, retired, or censured by the supreme court upon the recommendation of the commission. The powers and duties of the commission and the bases for judicial disqualification shall be established by law. [Amended 1968 & 1982]

§ 11. Retirement

Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

§ 12. Impeachment

Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

§ 13. Compensation

Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State. [Amended 1968]

§ 14. Restrictions

Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

§ 15. Rule-Making Power

The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

§ 16. Court Administration

The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system. [Amended 1970]

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Anch.

VOTE TALLY SHEET
SUPERIOR COURT, THIRD JUDICIAL DISTRICT
DECEMBER 18, 1984

Candidates	Council Members						
	Bradley	Fate	Moss	Murray	Schuhmann	Gilmore	Rabinowitz ²
Edward Burton	Yes	Yes	Yes	Yes	No	Yes	
Gail Fraties	Yes	Yes	No	No	No	Yes	No
William Fuld	No	No	No	No	No	Yes	
Peter Michalski	Yes	No	Yes	Yes	Yes	Yes	
Eugene Murphy	No	Yes	Yes	Yes	No	No	Yes
Benjamin Walters	Abstain ⁴	No	Yes	Yes	Yes	Yes	
Thomas Yerbich	No	No	No	No	No	No	

1 Staff was directed to transmit the names of the four nominees for this position to the Governor.

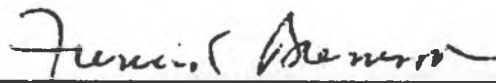
Chief Justice Rabinowitz relinquished the chair to Mr. Moss for the balance of the meeting. The Council then turned to consideration of its business agenda.

-
- 2. The Chief Justice votes only when to do so could change the result.
 - 4. Mr. Bradley abstained from voting on the candidacy of Mr. Walters, who is currently a party in litigation involving Mr. Bradley's law firm.
-

VOTE TALLY SHEET
SUPERIOR COURT, FOURTH JUDICIAL DISTRICT (BETHEL)
APRIL 8, 1986

CANDIDATES	COUNCIL MEMBERS						
	Council	Fate	Gilmore	Henrickson	Murray	Schuhmann	Rabinowitz*
Gail Roy Fraties	No	Yes	Yes	Yes	No	Yes	
James D. Ginotti	No	No	No	No	No	No	
L. Ben Hancock	Yes	No	No	Yes	Yes	Yes	
Laurie H. Otto --	Yes	No	Yes	No	No	Yes	No
Bryan E. Schuler	Yes	Yes	No	Yes	Yes	No	
Timothy H. Stearns	Yes	No	Yes	No	Yes	No	No

Staff were directed to transmit the names of the three nominees for this position to the Governor. The meeting was adjourned at 5:20 p.m.



Secretary

* The Chief Justice votes only when to do so could change the result.

VOIR TALLY SHEET
DISTRICT COURT, THIRD JUDICIAL DISTRICT (ANCHORAGE)
JULY 17, 1988

CANDIDATES	COUNCIL MEMBERS						
	Callahan	Council	Gilmore	Henrickson	Matthews*	Murray	Okakok
Louis E. Aqi S-1	NO	NO	YES	NO		YES	NO
Jacob H. Allmaras U	YES	YES	YES	YES		YES	YES
James A. Cray	NO	NO	NO	YES	NO	YES	YES
Dennis P. Cummins U	NO	NO	NO	NO		NO	NO
John E. Duccan U	NO	NO	NO	NO		NO	NO
Monte Encel U	NO	NO	NO	NO		NO	NO
John T. Maltas UA	NO	NO	NO	NO		NO	NO
James Ottinger S-1	YES	NO	YES	YES		YES	YES
John A. Soukanec U	NO	NO	NO	NO		NO	NO
John W. Sivertsen, Jr. UA	NO	NO	NO	NO		NO	NO
Michael L. Wolverton U	YES	YES	YES	YES		YES	YES

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~~* The Chief Justice votes only when to do so could change the result.~~

Vote Tally Sheet

**Anchorage District Court, Third Judicial District
 May 10-12, 1992**

CANDIDATES	COUNCIL MEMBERS						
	Arnesen	Ashburn	Callahan	Dapcevich	Naye	Okakok	Rabinowitz*
Jacob H. Allmaras	✓ Yes	Yes	Yes	Yes	Yes	Yes	
Lynn H. Christensen	No	No	No	Yes	No	No	
Paul Cossman	Yes	No	No	Yes	No	Yes	Yes
James A. Farr	✓ No	No	No	No	No	No	
Shannon D. Hanley	✓ No	No	No	No	No	No	
Stephanie E. Joannides	Yes	Yes	Yes	Yes	Yes	Yes	
Carolyn E. Jones	No	Yes	Yes	No	No	No	4
Michael J. Lindeman	Yes	No	No	Yes	No	Yes	No
Allison E. Mendel	✓ No	No	No	No	No	No	
Bruce Moore	✓ No	No	No	No	No	No	
Sigurd E. Murphy	Yes	Yes	Yes	Yes	Yes	No	5
Joseph D. O'Connell	✓ No	No	No	No	No	No	
Diane Taylor O'Gorman	✓ No	No	No	No	No	No	
Stephanie Rhodes	Yes	Yes	Yes	No	No	No	Yes
Mitchel J. Schapira	✓ No	No	No	No	No	No	
John A. Scukanec	No	Yes	Yes	Yes	Yes	Yes	
Valerie VanBrocklin	No	No	No	No	Yes	No	
Stephen J. Van Goor	No	Yes	Yes	Yes	Yes	Yes	
James N. Wanamaker	Yes	Yes	Yes	Yes	Yes	Yes	
Daniel Weber	No	No	No	Yes	No	No	1
Roy V. Williams	✓ No	No	No	No	No	No	
Teresa B. Williams	✓ No	No	No	No	No	No	

* The Chief Justice votes only when to do so could change the result.

Vote Tally Sheet
Alaska Supreme Court
January 9-10, 1994

CANDIDATES	COUNCIL MEMBERS						
	Arnesen	Ashburn	Callahan	Dapcevich	Lienhart	Nave	Moore*
James R. Blair	No	No	No	Yes	No	No	
Robert E. Congdon	No	No	No	No	No	No	
Robert L. Eastaugh	Yes	Yes	Yes	Yes	No	Yes	
Cynthia M. Hora	No	No	Yes	No	Yes	No	
Karen L. Hunt	Yes	Yes	Yes	Yes	Yes	Yes	
Thomas M. Jahnke	Yes	Yes	Yes	Yes	Yes	Yes	
William K. Jermain	No	No	No	No	No	No	
Douglas D. Lottridge	No	No	No	No	No	No	
Peter A. Michalski	No	No	No	No	No	No	
Joseph J. Perkins, Jr.	No	No	No	No	Yes	No	
Hugh G. (Jerry) Wade	Yes	No	No	Yes	Yes	No	Yes
Donna C. Willard	Yes	Yes	Yes	No	Yes	Yes	

* The Chief Justice votes only when to do so could change the result.



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EXECUTIVE DIRECTOR
Larry Cohn

NON-ATTORNEY MEMBERS
Bill Gordon
Charles M. Kopp
Christena Williams

ATTORNEY MEMBERS
James H. Cannon
Louis James Menendez
Susan Oriansky

Alaska Judicial Council Vote Tally Sheet Alaska Supreme Court October 10, 2007

CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

Candidates	Council Members						
	Cannon	Gordon	Kopp	Menendez	Oriansky	Williams	Fabe*
Joel H. Bolger	Y	Y	Y	Y	Y	Y	
Susan M. Carney	N	Y	N	N	N	Y	
Morgan Christen	Y	N	N	Y	Y	N	Y
Joanne Grace	N	Y	Y	N	N	N	
Andy Harrington	Y	Y	N	Y	Y	Y	
Peter J. Maassen	N	N	N	N	N	N	
Allison Mendel	N	N	N	N	N	N	
Frank A. Piffner	N	N	Y	N	N	N	
Mark Rindner	N	N	N	Y	Y	N	
Wayne Anthony Ross	N	N	Y	N	N	N	
Eric Smith	N	N	N	Y	Y	N	
Daniel E. Winfree	Y	Y	Y	Y	Y	Y	
Mark I. Wood	N	Y	Y	N	N	N	

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Christena Williams

ATTORNEY MEMBERS
James H. Cannon
Louis James Menendez
Susan Orlansky

Alaska Judicial Council Vote Tally Sheet Fairbanks Superior Court January 5, 2008

CHAIR, EX OFFICIO
Dana Fabe
Chief Justice
Supreme Court

Candidates	Council Members						
	Cannon	Gordon	Kopp	Menendez	Orlansky	Williams	Fabe*
Lori M. Bodwell	N	N	N	N	N	N	
R. Poke Haffner	N	N	N	N	N	N	
Bethany Spalding Harbison	Y	Y	N	Y	Y	Y	
Jane F. Kauvar	Y	Y	Y	Y	Y	Y	
Paul Lyle	N	Y	Y	N	N	Y	Y
Michael P. McConahy	Y	Y	Y	Y	Y	Y	
Zane D. Wilson	N	N	Y	N	N	N	

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EXECUTIVE DIRECTOR
Larry Cohn

NON-ATTORNEY MEMBERS
William F. Clarke
Kathleen Tompkins-Miller
Christena Williams

ATTORNEY MEMBERS
James H. Cannon
Kevin Fitzgerald
Julie Willoughby

CHAIR, EX OFFICIO
Walter L. Carpeneti
Chief Justice
Supreme Court

Vote Tally Sheet Kotzebue Superior Court

May 24, 2010

Candidates	Council Members						
	Cannon	Clarke	Fitzgerald	Tompkins-Miller	Williams	Willoughby	Carpeneti*
Bruce L. Brown	N	N	N	N	N	N	
R. Poke Haffner	A	Y	Y	Y	Y	Y	
Robin L. Koutchak	Y	Y	Y	Y	Y	Y	
Paul A. Roetman	N	Y	N	Y	Y	N	Y

* The Chief Justice votes only when to do so could change the result.

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Vote Tally Sheet Dillingham Superior Court

November 1, 2011

Candidates	Council Members						
	Cannon	Clarke	Fitzgerald	Kreitzer	Tompkins -Miller	Willoughby	Carpenetti
Pat Douglass	Y	Y	Y	Y	Absent	Y	
Susan Mitchell	N	N	N	N	Absent	N	
Chris Provost	Y	N	Y	N	Absent	Y	Y
Tina Reigh	Y	Y	N	Y	Absent	Y	
Gregory G. Silvey	N	N	N	N	Absent	N	
Matthew Widmer	N	N	N	N	Absent	N	

• *The Chief Justice votes only when to do so could change the result.*



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Vote Tally Sheet Alaska Supreme Court

June 22, 2012

Candidates	Council Members						
	Clarke	Fitzgerald	Kreitzer	Oravec	Tompkins-Miller	Willoughby	Carpeneti*
✓ Joel H. Bolger	N	N	Y	N	Y	N	
✓ William Grant Callow	N	N	N	N	N	N	
Kevin G. Clarkson	Y	N	N	N	Y	N	
Jeffrey Friedman	N	N	N	N	N	N	
Andy Harrington	Y	Y	N	Y	Y	Y	
Peter J. Maassen	Y	A	Y	Y	Y	Y	
Michael A. MacDonald	Y	N	Y	N	Y	N	N ←
Don McClintock	N	Y	N	N	Y	N	
Frank A. Pfiffner	N	N	N	N	Y	N	
Eric Smith	N	N	N	N	N	N	
Terry L. Thurbon	N	N	N	N	N	N	
✓ Daniel Westerburg	N	N	Y	N	Y	N	

* The Chief Justice votes only when doing so would change the result.



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Vote Tally Sheet Anchorage Superior Court

August 10, 2012

Candidates	Council Members						
	Clarke	Fitzgerald	Kretzer	Oravec	Tompkins-Miller	Willoughby	Fabe*
✓ Sidney Kay Billingslea	N	Y	N	Y	Y	Y	
Elizabeth Brennan	Y	Y	Y	Y	Y	Y	
Kevin G. Clarkson	Y	N	Y	N	Y	N	N
Suzanne Cole	N	Y	N	N	Y	N	
Roberta C. Erwin	Y	Y	Y	Y	Y	Y	
Michael Gershel	N	N	N	N	N	N	
Joy Green-Armstrong	Y	A	N	N	N	N	
✓ Erin B. Marston	N	Y	N	Y	Y	Y	
✓ Mark P. Melchert	Y	N	Y	N	N	N	
✓ Robert P. Owens	Y	N	N	N	Y	N	
✓ Gregory G. Silvey	Y	N	N	N	Y	N	
Alex M. Swiderski	Y	N	N	N	N	N	
Jonathan Woodman	Y	Y	Y	Y	Y	Y	

* The Chief Justice votes only when doing so would change the result.



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Vote Tally Sheet Alaska Supreme Court

December 10, 2012

Candidates	Council Members						
	Clarke	Fitzgerald	Kretzer	Oravec	Tompkins -Miller	Willoughby	Fabe*
Joel H. Bolger	N	Y	Y	Y	Y	N	
Susan Cox	Y	Y	Y	Y	Y	Y	
Jeffrey Friedman	N	N	N	N	N	N	
Andrew Guidl	Y	A	Y	N	Y	N	N
Andy Harrington	Y	Y	N	Y	Y	Y	
Michael A. MacDonald	Y	N	Y	N	Y	N	N
Phillip Pallenberg	N	N	Y	N	Y	A	
Eric Smith	N	Y	N	N	Y	N	
Trevor N. Stephens	Y	Y	Y	Y	Y	Y	
Terry L. Thurbon	Y	N	N	N	N	N	
Daniel Westerburg	N	N	N	N	Y	N	
Russ Winner	N	N	N	N	N	N	

* The Chief Justice votes only when to do so could change the result.



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Vote Tally Sheet Fairbanks District Court

October 10, 2013

Candidates	Council Members						
	Fitzgerald	Kretzer	Oravec	Parker	Tompkins -Miller	Willoughby	Fabe*
Brent Ellison Bennett	N	N	Absent	N	N	N	
JB Brainerd	N	N	Absent	N	N	N	
David Buettner	N	N	Absent	N	N	N	
James Cannon	Y	Y	Absent	Y	Y	Y	
Matthew Christian	Y	Y	Absent	Y	Y	Y	
Karen L. Jennings	N	N	Absent	N	N	N	
Mama L. Kranenberg	N	N	Absent	N	N	N	
Scott Alan Oravec	N	N	Absent	N	N	N	
Thomas I. Temple	N	Y	Absent	Y	Y	N	N
Nelson Traverso	Y	Y	Absent	Y	Y	Y	
James Bryan Wright	N	N	Absent	N	N	N	

* The Chief Justice votes only when to do so could change the result.

9440 Patricia Pl.
Juneau, AK 99801

March 6, 2014

Representative Wes Keller
Chairman, House Judiciary Committee
Alaska State Representatives
Juneau, AK 99801

Dear Representative Keller:

Your efforts to increase the transparency and accountability of the Alaska Judicial Council through HJR33 are appreciated. Although I don't believe the Council's process is broken, I do believe it can be improved.

During the Constitutional Convention, there was great effort to maintain integrity in selecting judges for the State. I believe the Constitutional framers wanted to balance individual merit with the political concerns of gubernatorial appointment. The simplest way to rectify any appearance of overweighting Judicial/lawyer influence over which names are forwarded to the Governor for consideration, is that whenever there is a tie vote between the attorney and public members, the Supreme Court Justice is not put in the position of breaking that tie. The applicant's name would simply be forwarded to the Governor. Rather than remove the Supreme Court Justice completely as a tiebreaker, he or she could articulate his or her recommendation reasons (either to support the nominee or not) to the Governor where there is a tie vote. This public recommendation would be submitted to the Governor with the forwarded name. I see no downside to providing a Governor with the few additional names that will result from these tie votes.

I don't believe there is a need to increase the membership of the Council for many of the same reasons former Justice Carpeneti stated in his comments. Increasing members would dilute or degrade the vetting process. The vetting process allows each member to question each applicant in depth. With many more members, this process would become superficial and not in depth as it is now.

I have recommended the Council be more vigilant and open in its business. In this regard, we could make all of our votes public and post the votes on our web page.

You might consider removing the restriction prohibiting a state or federal employee as a member on the Council.

The number of applicants we receive per judicial opening has increased substantially. I believe there is a need to amend our Constitution to allow the Council to forward the names of more than two applicants to the Governor when there are more than eight applicants for a judgeship. In my time on the Council and the recent past, there has been controversy over the current requirement that the Council forward at least two names.

Whatever changes may be made to the Alaska Judicial Council, I will uphold my responsibilities under the Constitution and statute to serve my fellow Alaskans.

Sincerely,

Ken Kreitzer

cc: Members of the Alaska Judicial Council

TESTIMONY OF DAVID JENSEN on SJR21

My name is David Jensen, I live at 11533 Tanglewood Lakes Circle, Anchorage, AK 99516

I am testifying in regard to SJR21. I have been an executive in Alaska for 40 years, most of that time with private, for-profit corporations.

I am business executive with no connection to the legal system and no involvement with politics. It is from the viewpoint of a business executive that I offer my testimony regarding SJR21.

I think that SJR21 is a bad idea, and will be bad for private business in Alaska, and here is why. As a business executive, I tried to keep the affairs of the companies that I ran out of court. But sometimes there was no alternative, and when that happened, all I expected was a judge who was impartial and professional.

I was not disappointed by the Alaska court system, because every time that I did have to go to court, I got a judge who was impartial and professional, with no private agendas or axes to grind. I did not agree with every decision made by every judge in every case I was involved in, but I always felt that the judge was impartial and professional.

It was always a comfort to me to know that the judges in Alaska get to be judges in part because they are well regarded by their fellow professionals. I would never go to a doctor unless I knew that he was well regarded by his colleagues in the medical profession, and I feel the same way about lawyers and judges.

The practical effect of SJR21 will be to remove professional qualifications from the selection of judges and to substitute political loyalty for it. In making appointments to the Judicial Council, the governor will appoint people who are loyal to him, to his party, and to his way of thinking. Those people will owe their appointment to him, and will repay him by sending him the names of judicial candidates who are loyal to, and allied with, the governor. And he will appoint those people,

based on their political loyalties instead of their professional qualifications.

In a complicated commercial dispute, I could care less about a judge's political leanings: I want a judge who is smart enough, and well regarded enough in the profession, to sort through the complicated commercial tangle and come up with a decision that gives certainty to businessmen who are trying to run a business, plan their investments, and make a profit. What I do not want, is a political hack who has no professional qualifications other than that he is a friend of the governor.

If SJR21 is approved and the constitution amended, the effect will be to centralize power over the judiciary into the governor's office. The checks and balances that the framers built into the constitution will be weakened because the judiciary will no longer be a truly independent branch of government.

Finally, the supporters of SJR21 need to remember that the tides of politics come and go. The pendulum will swing one day, to a different group of political thinkers and leaders. When that happens, if power over the judiciary is centralized in the governor's office, the judiciary will change as well.

The private sector is best off if it has professionalism, neutrality and certainty in the judicial system. A judicial system that changes with the changing winds of political thought is a drag on the economy and destructive of true prosperity. When I was the Vice President at Reeve Aleutian Airways, I had occasion to deal with a political judiciary, because Reeve ran routes to Russia. And I bear the scars to prove that the political nature of the Russian judicial system made for an incredibly difficult business environment. Let's not move in that direction here.

Thank You



DORSEY

ROBERT C. BUNDY
(907) 257-7853
FAX (907) 276-4182
bundy.robert@dorsey.com

March 6, 2014

VIA EMAIL: Representative.Max.Gruenberg@akleg.gov

Representative Max Gruenberg
Committee Member
House Judiciary Committee

Re: HJR 33 Public Testimony

Dear Rep. Gruenberg:

I write in opposition to proposed House Joint Resolution 33 (HJR 33) which would seek to amend the Alaska Constitution to increase the number of members on the Judicial Council.

My name is Robert Bundy. I am an attorney who has practiced law in Alaska since 1972. I served the Alaska Department of Law as Chief Assistant District Attorney in Anchorage and District Attorney in Nome. I served as United States Attorney for the District of Alaska from 1994 to 2001. I have been in private practice in Anchorage since 1984 representing individuals and companies in complex federal and state civil and criminal litigation.

Over the last 42 years I have tried over 200 cases to juries in Alaska and have appeared in countless hearings, arguments, settlement conferences and other proceedings before Alaska judges in all four judicial districts. I have had a ring-side seat to observe the quality of judges who passed through the Alaska Judicial Council since statehood and who were appointed by all of Alaska's governors. I have to say, with a few notable exceptions, the quality of men and women before whom I have appeared has been extraordinary. Of course, I didn't always agree with the way the judge interpreted the law or the facts in any particular case, but I never had any reason at all to doubt the judge's overall legal acumen, integrity, work ethic and commitment to the rule of law. Over all, it would be hard to imagine how a better group could have been chosen.

I think the lion's share of credit for the quality of our judiciary can be given to the Alaska Judicial Council and its rigorous screening process. The Council looks not just to the applicant's academic qualifications and breadth of experience, both of which are very important, but also to the other important qualities such as lack of arrogance, judgment, work ethic, life experience in finding not just good candidates, but the best. The result of the Council's rigorous screening is a first rate judicial branch.

It seems to me that the proposal to expand the size of the Council would only serve to politicize and hamper the Council's work. Once politics and ideology enter consideration, the critical focus on the proven characteristics of a good judge become obscured. During my over 15 years as a prosecutor in the courts of Alaska, I was at times unhappy that the Council did not pass to the Governor more people I thought would better understand the prosecutor's

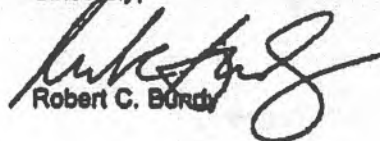
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DORSEY

**Representative Max Gruenberg
March 6, 2014
Page 2**

perspective, but over time I have come to appreciate the wisdom of the Council's approach of sending the names of the most qualified applicants to the Governor. The proof is in the pudding: we in Alaska have an excellent judiciary. We should not change the way we have achieved that goal by short term political thinking.

Sincerely,


Robert C. Burdy

RCB:snu

DORSEY & WHITNEY LLP

Ernest Prax

From: Rep. Wes Keller
Sent: Wednesday, March 05, 2014 7:29 AM
To: Ernest Prax
Subject: FW: Testimony on HJR 33

From: Alison Arians (<mailto:alisonarians@gmail.com>)
Sent: Tuesday, March 04, 2014 11:39 AM
To: Rep. Wes Keller; Rep. Bob Lynn; Rep. Neal Foster; Rep. Gabrielle LeDoux; Rep. Charisse Millett; Rep. Lance Pruitt; Rep. Max Gruenberg
Subject: Testimony on HJR 33

Dear Members of the House Judiciary Committee,

Thank you for taking public testimony on HJR 33. I'm a small business owner in Anchorage. Just for the record, I'm not an attorney, and I'm testifying against HJR 33.

As a small business owner, I appreciate efficiency, a limited bureaucracy, and expert advice. I agree with the way our Judicial Council works now. Adding more people to the group will add significant expense to the travel budgets of this group, especially when they travel to places like Bethel.

I'm comfortable with asking people with law degrees to evaluate their peers. The combination seems efficient the way it is. I respect the Chief Justice's opinion, if necessary for him to vote, to know whether a judge is well qualified for a job. Also, I think the citizen members on the group deserve a little more credit for being able to make good recommendations to their group, and to back up their opinions. It's only been 15 times out of 1,100 votes when the Chief Justice sided with the attorney group against the public members. It seems to me that the group works very well, since 99% of the time, that's not happening!

For several years I volunteered as a Court-Appointed Special Advocate. I acted as a volunteer *guardian ad litem* for children. The only experience I have in front of a judge is acting as a *guardian ad litem*. When I vote, I want to be able to know that the judges I vote for are well-qualified, and I believe that the committee as it stands is effective and efficient at doing just that.

Alison Arians

Owner, Rise & Shine Bakery

Anchorage, AK

677-3712

748-3712

Prepared Testimony in Opposition to HJR 33 to House Judiciary Committee from Nancy Meade, General Counsel for the Alaska Court System. [Prepared Notes; not a transcript of remarks actually given to committee]

As this committee knows, the Court System works closely with the legislature on many bills, but we rarely take any position on proposed legislation. We only oppose a bill (or resolution) when it has the potential to affect the administration of justice, and would therefore impact a core aspect of the judicial branch. I am now opposing HJR 33 because, unfortunately, it is one of those bills. The court does not take this step lightly – taking a position in opposition to a bill or resolution is only done at the express direction of the Supreme Court.

BACKGROUND – ROLE OF COURT

First, I'd like to be clear about the Court's role and why I am testifying. The Judicial Branch of government actually is made up of three entities: (1) the Court System, which is, of course, the principal entity, and two very small ones, (2) the Judicial Council and (3) the Commission on Judicial Conduct. "The Court System" is often used interchangeably with "the Judicial Branch," and this is understandable and nearly always perfectly clear in context – after all, the other two entities are small, with defined authority, few employees, and small budgets. The Court System is NOT the Council – the Council has separate offices, separate employees, and separate duties. I've never been in the Judicial Council offices in the ten years I've worked for the court.

Nonetheless, the Court System's functions and mission depend very much on the work that the Council is tasked with performing: the Council screens judicial applicants to ensure they're qualified, and we need highly qualified judges to maintain the public's trust and confidence in our work. We, the Court System, want and need the Council to do a thorough, fair job with screening applicants for judgeships, so that we continue to have a top-notch group of sitting judges. No one wants judges that are not fairly chosen or that are anything short of the best, most ethical, respectable

professionals in the legal field. It is because the Court depends on the Council's work that I am testifying against this resolution.

CONSTITUTIONAL BALANCE

HJR 33 has the potential to significantly change the judicial screening and selection process – even though that process has worked effectively for over 50 years. The current Council selects the *most qualified* applicants based on their *merit*, a merit selection process that is considered the Gold Standard in judicial selection, if what you want is a fair, impartial judge deciding your disputes. Merit selection means judges are screened based on their legal knowledge, skills (like writing and organizing), their ability to create cogent arguments, the ability to identify flaws and nuances in other people's arguments, their judicial temperament (ability to control the courtroom while being polite and firm in challenging situations, many of which are highly emotional for the parties), and experience (such as their past public and private sector jobs). As a result of the Council's focus on merit, the applicants most qualified to be *A JUDGE* are forwarded to the Governor for selection. We, the court system, and all Alaskans, benefit from having a bench made up of those people. As you've heard others testify, we have not experienced problems with judges that are involved in scandals in case decisions, or corruption, or kickbacks, for example. The Council's current makeup works.

But this resolution would unsettle the carefully considered balance between the non-attorney members, who bring the general public's perspective on what to look for in a judicial candidate, and the attorney members, who bring in a lawyer's perspective on what to look for in a judicial candidate. It is this even balance, this *equilibrium*, that makes the Council's system work so well. *Both* groups are crucial for merit-based decisions that the public can trust: the lawyers have direct experience with the applicant as another lawyer – how is the applicant's legal knowledge? Their writing skills? Their integrity during litigation? Do they comport themselves honorably and respectfully? How do they handle difficult or emotional cases? Do they have the respect of their peers? And the public members bring an equally valid perspective – what is the applicant's ability

to connect with people, to relate to non-attorneys in a meaningful way, and to keep the public's respect, as people and as decision-makers.

The current even balance that is set in the Constitution, with 3 attorney members and 3 non-attorney members (and four needed for any action), keeps the discussion and decisions focused on the merits and qualifications of the judicial applicants. Why? Because neither group can ignore the others' views, or prevail on any decision, without buy-in from at least one of the others. *That is KEY!* They have to, and nearly always in fact do, work together, through consensus.

COUNCIL VOTING DATA

I want to just briefly touch on the votes tallies that show, fairly unequivocally, that the Council operates well, and is not a group marked by factions or divisiveness or problems with attorney/non-attorney splits. In your packet is a summary fact sheet that I prepared for your consideration. The first page illustrates the vote tallies over the last 29 years (as far back as the Council has data), and page two pulls out the more recent years for a closer look. As you can see from page one, in over 60% of the 1,136 votes on applicants taken since 1984, the vote was unanimous, and in *over 80% of the cases, the council's vote was either unanimous or off by just 1.* Those are the statistics for the last 30 years! This is an impressive record of an organization that is cohesive and healthy –not one marked by divisiveness or a failure to function. Any group of 6 voting members that can reach unanimity, or near unanimity, over 80% of the time is not a dysfunctional group.

There was testimony last week about the times that the chief justice votes. That happens only when his or her vote is needed to decide whether a name gets forwarded to the governor – that is, when there's a 3-3 tie, or if there aren't 4 votes because someone abstained or was absent. Overall, since 1984, 94% of all applicants were agreed upon without a vote by the chief justice. *Of the 6% in which the Chief did have to vote (which was 68 of the 1,136 votes over the last 30 years), three-fourths of the time*

(51 of the 68), the Chief's vote was to forward the applicant's name to the governor.

Those 68 times the Chief had to vote were mostly because of ties among the members, but that is NOT the number of times the attorneys and non-attorneys tied at 3-3. That's a much lower number – *only 15*. So most of the split votes, 53 of them, have a mix of attorney/non-attorneys on both sides.

Now it is true, that of the 15 votes that were tied at 3 attorneys and 3 non-attorneys on opposite sides (remember, 15 out of 1,136!), the Chief voted with the attorneys more often than with the non-attorneys [10/15] - - but again, the numbers are so small (less than a percent of the over one thousand votes) that it isn't really justifiable to draw definitive conclusions from them. And, in those 15 cases, the Chief's vote ended up sending the applicant's name to the Governor 7 times. The fact is, an implication that the two groups of members are factions or cliques, or even natural divisions with the Chief always on the attorneys' side, just isn't supported by the voting statistics.

And let me mention just one more quick set of numbers. Since 2000, the system has actually worked even a *little bit better* than that. While overall, since 1984 the council has agreed without a tie 94% of the time, since 2000, so just taking the last 13 years rather than a 30-year look, the percentage has *increased* slightly to 96% of the time. Also since 2000, the percentage of the time that the chief justice votes to send the name to the governor has increased slightly from 75% to 77% of the time.

I don't mention this because the changes are monumental, but they are clearly at odds with the view that there is a growing problem. In fact, the change in percentages supports the opposite, and shows the system is more cooperative than ever.

I heard in the supporters' testimony no discussion of these numbers, this evidence, but there has been a suggestion that there is a growing tension between attorneys and non-attorneys, or that things are becoming somehow more lop-sided or skewed in recent years. To help you analyze

that, I have on the second page a breakdown of the most recent four years' worth of votes. You can see that it's still 75% unanimous or unanimous except for 1. You also see a split between attorneys and non-attorneys in 7 votes. Seven out of 201 for that time period, or 3.5%, is hardly evidence of factions or dysfunction. And this does show the statistics that others have mentioned, that the Chief Justice voted more often with the attorneys – in particular, in the most recent 5 split votes, the Chief voted with the attorneys with the result that the applicants' names did not go to the Governor.

But that is not a trend, or a drift, that requires a constitutional amendment. That may be a bump, but the raw number is so small, that one very reasonable *and probable* conclusion is that those 5 individuals were not qualified to sit on the courts that they applied to! Three of those were for seats on the Supreme Court, and two were actually the same individual who applied for two separate openings. This is simply not enough proof to establish that the constitutional balance that's worked fairly and efficiently for 50 years ought to be disrupted.

You can find a lot of information in the data, but the one thing you can't find is evidence of a problem.

PUBLIC INVOLVEMENT

But the supporters' justifications for this resolution have evolved from a focus on the votes and statements about the Council suffering from splits, to a focus on public involvement, and the Council being too small. Again, though, the Council is working as intended, and produces highly-qualified lawyers for the Governor to choose from in his appointments. If you nonetheless reach a policy determination that the Council ought to be bigger, to allow non-attorney participation, you could do that *without upsetting the balance that keeps the focus on merits* of applicants. You could make the Council four Governor appointees, and four attorneys, for example. Or even five of each. And you could insert some geographical diversity requirement – that wouldn't be difficult to draft.

But this version, with the governor's appointees having a majority, has the potential to, as former Chief Justice Carpeneti said, insert politics at a level of the judicial application process that has been, laudably, focused on credentials.

Again, if the balance were upset, as HJR 33 would do by having an unequal number of attorney and non-attorney members, and if the public members were to have a majority, the need for consensus would be diminished. Then if the majority is of a like mind, or unified in their thinking or approach, they need not consider the views of the other members at all. And the attorney members, who are in a very good position to know the professional competence of the applicants and the skills and abilities that make a good judge, could be excluded.

RETENTION AND POTENTIAL FOR CONTROL

Finally, we've focused on screening judicial applicants, but the Council also has a role in the retention of judges. They review, in great detail, a judge's work, they conduct surveys of jurors, law enforcement, court staff, and others, they collect public input, etc., and then the Council makes a recommendation, Yes or No, on a judge who is standing for retention. It's likely that a great many voters rely upon the recommendations, which are included in the official election pamphlet. Well, consider what happens if a judge issues an order in a case that is contrary to the Governor's wishes. This could be in an environmental case, or an oil tax case, or a subsistence or land use case . . . and the Governor appointees are in a position to determine what the Council's recommendation will be, a very important factor in whether that judge keeps his or her job. It's not difficult to see that there is a threat, a real potential, that the *impartiality of the judge would be questioned* – if the judge rules against the government in favor of a citizen, or an oil company, or a group seeking land use rights, that judge faces the real threat of getting a no recommendation, and losing his position. Would any of us trust that our case was being decided by an impartial judge in those circumstances? That's the situation this resolution creates, though, with a majority of Council members being Governor appointees.

I'd like to address one more issue directly. Some testifiers and members of other committees have acknowledged that they believe the current system doesn't work, because certain attorneys are unable to have their names sent to the Governor, and it's been said in particular that "conservatives" cannot be judges. I want to be clear: the Court System has 73 sitting judges that have come through the Judicial Council process, and they have come from *all sorts of backgrounds!*

There are dozens of sitting judges who had been district attorneys, many were public defenders, and they were attorneys who defended oil companies, insurance companies, the state, and children and parents on every side of family law cases. I cannot say who among our judges are "conservative" or "liberal," (because I truly do not know), but I can say that they are from all sorts of backgrounds. They're from public universities, military schools, private law schools, and Christian law schools. Their interests range from flying and fishing and snow machining, to gardening and athletics and Boy Scouts and church activities. A statement that a "conservative" attorney cannot become a judge, *because* that person is a conservative, is simply not supportable, and is contradicted by the facts about who IS a judge.

[More information on judges is available on the Court's web page, under the link: Alaska Judges.]

SUMMARY

The data, then, just doesn't support a conclusion that there is a problem with the decision-making of the Council. The increased public input and diversity that some supporters are seeking can be accommodated by many options for revisions to laws or policies, without upsetting the balance and inserting political considerations into a process that is currently focused on worthy credentials. The Resolution has the strong potential of causing the public to lose confidence in the impartiality of their court system. I suggest there may be other ways to address the *perception* that some people have that a problem exists -- the Council may

need to do more education and outreach for example -- short of this potentially very problematic constitutional amendment.

It is for these reasons that the Court System views HJR33 as having an impact on the administration of justice – a potentially very negative impact – and that the Court opposes the Resolution.

Thank you for hearing my testimony, and I'd be happy to answer any questions.

From: David Nees <davidneesak@gmail.com>
Date: March 7, 2014 at 15:23:10 AKST
To: <Representative.Max.Gruenberg@akleg.gov>,
<Representative.Charisse.Millett@akleg.gov>, Gabrielle LeDoux
<Representative.Gabrielle.LeDoux@akleg.gov>, <Representative.Wes.Keller@akleg.gov>
Cc: Alaska Policy Forum <info@alaskanolicyforum.org>
Subject: Testimony HJR33

I was unable to testify today,
so here is my testimony.

Benjamin Franklin noted when you have lawyers nominate judges they tend to nominate successful high earning lawyers, this allows them to takeover the gap in the practice when they moved to Judge.

Judge McLaughlin at the convention noted the Missouri plan, so named for the 1940 change in Judicial council appointment, was adopted by many states, and although Liberal in nature it worked.

This is our system.

He also noted Hawaii chose not to adopt the Missouri plan, they instead opted to use a checks and balance system

2 selected by Bar,

2 selected by House,

2 selected by Senate,

2 selected by governor,

1 selected by Supreme court justice.

no more than 4 members can be bar members

I think this system would serve ALASKA well

David Nees
Non-Lawyer
2542 Curlew Circle
Anchorage Ak 99502

My name is Mike Coons from Palmer and speaking for myself.

I fully support HJR 33 and HB 200.

As a voter, there is so little solid information on Judges. Over the years, the information from the Judicial Counsel has been lean and not helpful in helping me to make an informed decision on voting.

This amendment puts more citizen's than lawyers in the counsel which hopefully will add a better level of evaluation and scrutiny of the Judges, their history of decisions, how they sentence criminals, either lightly or heavily, etc. Criminal behavior and the resulting punishment, must be a deterrent vs the views of many on the left that prison is a place to learn to behave in civil society. I will vote, if I know any Judge who is lenient, the problem is the Counsel is mute on this issue.

Lastly I want to know if a Judge is following the Alaska Constitution and the US Constitution or is legislating from the bench. Those who legislate must be voted out. I do hope that my fellow citizens on the Counsel will let us the voters know whom these judges are.

I'm not asking for a "Hanging Judge" evaluation of the Judges, but I do want some clear history of what these judges are doing and frankly I do not believe a counsel like we have now is doing that with the lawyers making those determinations vs citizens.

Lastly, we must have a counsel that will follow the law itself and not endorse Judges. All I want is the information and I'll decide if Yes or No. Just for clarification, just about all my votes for all Judges because of poor information have been No.

Mike Coons
Palmer AK
745-6779

Testimony Re: HJR 33
House Judiciary Committee
Michael Pauley, Alaska Family Action
March 7, 2014

Thank you, Mr. Chairman, members of the committee, I'm Michael Pauley. I'm representing Alaska Family Action, which is the legislative advocacy arm of the Alaska Family Council.

Our organization supports more public involvement in the process by which we select, evaluate, and retain judges in Alaska. We support the goal of House Joint Resolution 33, which would increase the public's decision-making authority in that process.

No person can serve as a judge or justice in Alaska without first being nominated by the Judicial Council. This concentrates an awesome amount of power in the seven members who serve on this panel. In fact, they have more power than any other single entity to determine who will hold the reins of power in one of our three branches of government.

If we look at other states, there's a wide diversity in the number of people who serve on judicial nominating commissions:

Colorado:	16
Arizona:	16
Florida:	9
Utah:	8
Iowa:	15
Oklahoma:	15
Tennessee	17

So, the proposal in HJR 33 for a 10-member Judicial Council is hardly radical or untried, and it's certainly mainstream as compared to other states. It's also important to note that the population of Alaska has at least tripled since the time of statehood, and the court system has grown along with it. Creating a larger Judicial Council seems appropriate as well, given its expanded workload and responsibilities.

But beyond the issue of the total membership on the Council, there's also a very crucial issue concerning what the proper balance should be on the Council between members who are there representing the interests of the state Bar Association vs. those members who are representing the general public.

Those who defend the Judicial Council's existing structure argue that it's perfectly balanced by having 3 attorneys and 3 public members. We strongly disagree with that view.

The attorneys on the Council are selected by the Board of Governors of the Bar Association – an entity with 4,212 members. They get to choose half the regular voting members of the Council, and they constitute ½ of 1 percent of the population of this state. The three public members are

there to represent non-attorneys – the other 731,000 Alaskans who are served by the Court system. Whatever one might call this system, it's not balanced. It shifts enormous power away from the general public and concentrates it in the hands of those who make a living practicing law in front of judges.

It's also important to remember that the Chief Justice is a dues-paying member of the Bar Association, and so in reality the Bar members have a majority of four of the seven seats on the Council.

Now some former attorney members of the Council have stated that they feel like they were representing all Alaskans, not just the Alaska Bar Association. That is an admirable sentiment – but the fact of the matter is that the Board of Governors of the Alaska Bar Association has exclusive control to determine which members of the Bar serve on the Council. This cannot be emphasized enough: The Bar members of the Council are NOT appointed by the Governor, and they are not required to be confirmed by the Legislature. In contrast, the non-attorney public members must appear before the House and Senate Judiciary committees, where they can be questioned and grilled about their backgrounds, their political beliefs, anything. But meanwhile, the Bar members – most of whom are skilled trial lawyers – get a free ride, and don't have to go through this occasionally tough process.

This is different from how we structure other commissions in government. We of course recognize that we should have physicians on the state Medical Board. But we don't let the Alaska State Medical Association appoint them! The Governor appoints the physician members AND the public members, and they both have to stand for legislative confirmation – doctors and lay people alike, they all get treated equally. The same holds true for the Board of Nursing and the Board of Pharmacy.

One reason we support adding more public members is that it will provide a valuable check on the ability of Bar Association members to vote as a bloc to prevent clearly qualified judicial applicants from being nominated for the Governor's consideration.

There have been five notable examples in just the last two years where all three public members of the Council voted YES to nominate a particular applicant for a judicial vacancy, but all the participating attorney members voted NO. In each of these cases, the Supreme Court Justice sided with the attorneys and voted NO – thus acting to defeat the nomination and shorten the list of nominees that would be sent to the Governor.

What is stunning is that three out of these five votes occurred with respect to vacancies on the Supreme Court. And so we have this unseemly situation where the Chief Justice's NO vote is directly influencing who will be chosen to sit with him or her on the High Court. The potential of the Chief Justice in these situations to alter the future philosophical direction of the Court is undeniable.

I'd like to discuss just one example of these split votes between public members and attorney members, because I think it speaks volumes about what is broken in our current system.

In June of 2012, the Council met to consider the vacancy created when Justice Morgan Christen left the high court. The Council had to vote on a very distinguished group of 12 applicants. The pool of talent included: one judge from the Alaska Court of Appeals; three judges from the Superior Court, one each from Fairbanks, Palmer, and Anchorage; and two administrative law judges, one from Anchorage and one from Juneau. Incredibly, not a single one of the candidates with prior judicial experience was nominated for the Governor's consideration.

Instead, out of this distinguished field of applicants, the Council chose to nominate just two individuals. One was an attorney in private practice who also happened to be a member of the Board of Governors of the Alaska Bar Association – the same group, of course, that selects the attorney members of the Council. The other nominee was the former director of the Alaska Legal Services Corporation.

On June 26, 2012, the *Alaska Dispatch* ran a story about these two applicants that the Council nominated to the Supreme Court.

The reporter, Amanda Coyne, decided to look at the political views of the two nominees. Among other interesting details, she reported that one of the nominees, Mr. Peter Maassen, was a registered Democrat and a contributor to numerous liberal candidates and causes. She also reported that the other nominee, Mr. Andrew Harrington, was registered as non-partisan, but was formerly a member of the ACLU.

Now, as a member of the public, upon reading this, you might naturally conclude that out of a field of 12 applicants, the Council had chosen to nominate two attorneys with left-of-center political views to the Supreme Court. Is this a problem? As a representative of a conservative political organization in Alaska, my answer may surprise you: No, it's not a problem that the Council chose to nominate these gentlemen.

Very few would doubt that both of these gentlemen possessed the qualifications to serve on the Alaska Supreme Court – but surely not to the exclusion of the many other qualified applicants with distinguished careers and prior judicial experience. The scandal here is not about who WAS nominated, it's about who WASN'T nominated. It's not the Judicial Council's job to nominate only liberals or only conservatives, it's the Governor's job – as an elected official – to weigh those subjective factors in a nominee.

Now, some of the more strident critics of HJR 33 have made the rather unflattering charge that the goal of this amendment is to allow the Governor to appoint political hacks to the Council, who will nominate only applicants to his liking, so the Governor can stack the courts as he or she wishes.

My argument would be: if you want to look at how future Gubernatorial appointees might vote, your best yardstick is to look at how the past ones have voted. Let's look at the June 2012 vacancy on the Supreme Court as an example. At that time, on the Council, there were two public members on the Council appointed by Governor Palin, and one appointed by Governor Parnell. So how did these three Republican appointees vote on the two rather liberal nominees to the Supreme Court? Well, the answer is, that in the case of Mr. Maassen, all three Republican

appointees to the Council voted YES to forward his name to the Governor. In the case of Mr. Harrington, two out of the three Republican appointees voted to forward his name to the Governor. So the evidence shows that the public members were being inclusive in who they chose to nominate.

But in stark contrast to this, there were three different cases in 2012 alone, where the public members voted unanimously to nominate certain applicants to the Supreme Court, while the attorney members, including the Chief Justice, voted as a bloc to prevent these applicants from being considered by the Governor. In all three of these cases, the dispute did not concern an applicant who was some "crazy right-wing activist," instead the applicants were sitting Superior Court judges who had already gone through previous vetting, and approval, by the Judicial Council. These were currently serving judges who were passed over, not crazy activists or sub-standard attorneys.

So in conclusion, I think it is grossly unfair to suggest that all public members, nominated by the Governor, and confirmed by the Legislature, would be political hacks who would threaten the impartiality of our Court system.

Now, the Judicial Council will tell you that the scenario I've described in my remarks about split votes between attorney members and public members is exceptionally rare. And that's true when you factor in the hundreds of votes over the years on District and Superior Court vacancies, which make up the bulk of the Council's work. But when you apply it to just the State Supreme Court, it's not all that rare – especially in just the last two years.

As we sit here today, two out of the five seats on Alaska's Supreme Court were filled by a process where the attorney members and the Chief Justice voted as a bloc to overrule the unanimous choice of the public members, and narrow the Governor's options for filling these vacancies. And the public has no clue why this is the case, because of course all the deliberations occur in secret, behind closed doors.

One of the reasons that HJR 33 represents good public policy is that it will make such tie votes even more rare, if not impossible. A larger commission with an odd number of regular voting members is much less likely, statistically speaking, to experience tie votes, unlike our current system where six persons are regular voting members.

The method of selecting judges in Alaska is the least democratic and least transparent of all the various processes and mechanisms that help determine the composition of the three different branches of state government. The addition of three more public members to the Council will not, in and of itself, cure all the shortcomings of this process. But it will be a step in the right direction, adding more voices and more votes from ordinary citizens who are not influenced by the insider politics of the Bar Association.

The most important words in the Alaska Constitution are found in Article I, Section 2, which is titled: "Source of Government." It states –

“All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”

We believe that HJR 33 is a proposal that is consistent with this constitutional heritage, and we urge your support of this measure.

Thank you very much.

###

Kathleen Tompkins-Miller
POB 83440
Fairbanks, AK 99708

February 20, 2014

Members of the State Legislature:

I am currently the longest serving public member of the Judicial Council for the State of Alaska. I am supportive of a constitutional amendment that would provide the governor with more qualified candidates from whom he can appointment judges. But I do have some concerns about adding too many members to the AJC.

As you know, the AJC is composed of three public members, three attorney members, and the Chief Justice of the Supreme Court. The Chief Justice casts a vote whenever there is a tie vote of the six attorney and public members.

It is routinely claimed, in defense of Chief Justice's and lawyers' roles on the AJC, that the Alaskan judicial system is free of political influence. That has not always been my experience. From the selection of specific judges – sometimes retired – to preside over politically-tinged cases to the judiciary's approach to election-related cases, the politicization of members of the judiciary is transparent. When the Chief Justice sides against the public members on the AJC in limiting the number of candidates for the Supreme Court or other judicial positions, a question of political bias naturally arises.

Additionally, the members of the Alaska bar have tremendous influence over the process. Starting with anonymous bar surveys, in which attorneys routinely disparage potential candidates who may have more traditional views, or toward whom they may otherwise have a personal vendetta, the process is simply slanted. It is shocking to see (sometimes) anonymous, degrading comments and scores come from members of a profession purportedly trained in the "rule of law."

This process also keeps many good attorneys from applying or they withdraw their name because of the poll being made available to the public. The fear of damaged reputations, and perhaps the loss of future income, is simply not worth it to some. Many with low bar scores likely feel they won't have the ability to get through the council. It can also be difficult to get a candidate through the process who would be considered by some to be "conservative" in their judicial philosophy.

Further, there have been occasions where candidates have been criticized for activities or ideas on one side of the philosophical divide, while members on the other side are routinely promoted. Regrettably, a candidate who has been actively involved in traditional "conservative" causes is likely to have what appears to be a more vigorous background investigation, disparaging comments, and poor bar scores.

While I love my service on the AJC and I have always tried to be as fair as possible in my duties, it has saddened me that the AJC has rejected some judicial candidates even though public members have unanimously voted to advance them to the Governor.

It is my position that the Governor should not be prevented from considering certain qualified candidates. Although there is also risk of political bias from members of the public, I'd feel much more secure with a council whose ultimate decision is within the sound discretion of the public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen Tompkins-Miller". The signature is written in dark ink and is positioned above the printed name.

Kathleen Tompkins-Miller



Alaska Federation of Natives
2014 Legislative & Litigation Committee
Resolution 14-1

- TITLE:** Opposition to SJR 21: Constitutional Amendment to Judicial Council Membership
- WHEREAS:** The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 151 federally-recognized tribes, 134 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs; and
- WHEREAS:** The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and
- WHEREAS:** The Alaska Judicial Council (Council) is an independent citizens' commission created by the Alaska Constitution to screen applicants for judicial vacancies, nominate the most qualified applicants for appointment to the bench by the governor, evaluate the performance of sitting judges, recommend to voters whether certain judges should be retained for another term, and conduct research to improve the administration of justice in Alaska; and
- WHEREAS:** The Alaska Constitution provides that the Council shall have seven members, including three attorneys appointed by the Alaska Bar Association, three non-attorneys appointed by the governor and confirmed by the legislature, and the chief justice of the supreme court, who serves as the Council's chairperson; and
- WHEREAS:** Alaska's Constitution is widely acknowledged as one of the best state constitutions; and, thus, there should be clearly demonstrated reasons to amend the Constitution before undertaking such a process; and
- WHEREAS:** There is no evidence to suggest that the Council has failed to function effectively or efficiently in performing its duties — in fact, Alaska's judiciary has been free of corruption, scandal, and other ills that have plagued other non-merit based systems; and
- WHEREAS:** SJR 21: Constitutional Amendment to the Judicial Council (SJR 21), seeks to triple the Council's membership to five attorneys, ten non-attorneys, and Alaska's Chief Justice, in an effort to purportedly increase regional representation, and guard against attorney dominance; and

WHEREAS: Nothing in SJR 21 addresses regional representation, let alone Alaska Native representation on the Council, and no evidence exists to support the proposition that attorneys out-will non-attorneys in the selection of Alaska judges; and

WHEREAS: SJR 21 would create numerous problems for the Council, including, without limitation, a politicized non-attorney membership that is philosophically and politically aligned with the governor — which will, in turn, tilt the balance in favor of the non-attorneys appointed by the governor, and likely result in the more conservative judges on Alaska's bench; and

WHEREAS: Historically, conservative judges have been less sympathetic to Alaska Native Tribes, tribal organizations, and individual Alaska Natives subjected to Alaska's criminal or civil judicial system; and

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Federation of Natives, Inc. that SJR 21 conflicts with our mission to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and

BE IT FURTHER RESOLVED that Alaska Federation of Natives strongly opposes SJR 21.



Julie E. Kitka

Julie Kitka
President