

JUSTICE NOT POLITICS ALASKA

PROTECTING IMPARTIAL COURTS:

WHY LAWYERS ON THE ALASKA JUDICIAL COUNCIL SHOULD NOT FACE POLITICAL TESTS

Over half a century ago, Alaska's Constitutional Convention adopted a Judiciary Article that calls for Alaska's judges to be selected based on merit through a process involving the nonpartisan Alaska Judicial Council. To balance the goal of ensuring that judges reflect the highest standards of the legal profession against the goal of ensuring public input, the framers provided that the council would have seven members: three appointed by the Alaska Bar Association, three appointed by the Governor and confirmed by the legislature, and the Chief Justice, serving ex-officio. Resolutions have been considered in the last three legislative sessions that would amend the Judiciary Article in a manner that would greatly disrupt this balance. The constitutional amendments have called for doubling the number of gubernatorial appointees on the council and requiring that all council members meet legislative approval. We believe both changes unwisely increase the role of politics and undermine the role of merit in Alaska's judicial selection process. Here, we address why legislative confirmation of lawyer members of the council is unwise and unwarranted.

- 1. OUR CONSTITUTION'S FRAMERS CONSIDERED LEGISLATIVE CONFIRMATION OF THE ALASKA JUDICIAL COUNCIL'S LAWYER MEMBERS AND REJECTED IT.** The delegates to the constitutional convention spoke directly to the suggestion that the lawyer members of the council be approved by the legislature. Judiciary Committee Chair McLaughlin said: "If you require a confirmation of your attorney members (by the legislature) you can promptly see what will happen...No longer is the question based solely on the qualification of the candidate for the bench...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."
- 2. THE ALASKA JUDICIAL COUNCIL IS NOT A REGULAR BOARD OR COMMISSION BUT AN INTEGRAL PART OF AN INDEPENDENT BRANCH OF GOVERNMENT.** The Judicial Council is not just another board or commission whose members the legislature traditionally approves; it is an integral part of the constitutional structure of the third branch of government. Legislative efforts to control its membership reflect overreach into the workings of the independent and co-equal judicial branch and ignore the delicate balance of power delegates sought to establish by strictly limiting the extent to which the political branches of government could influence the judicial selection process.
- 3. THERE IS NO PARALLEL WITH THE ALASKA COMMISSION ON JUDICIAL CONDUCT WITH RESPECT TO LAWYER CONFIRMATION.** Efforts to equate confirmation of the lawyer members of the Judicial Council, which is not required by the constitution, with confirmation of the lawyer members of the Alaska Commission on Judicial Conduct, which is, overlook several facts. First, the Conduct Commission was created by constitutional amendment in 1968, long after the Judicial Council was established. Unlike the Judicial Council, whose powers and duties were spelled out in the constitution, the Conduct Commission's powers and duties were established by law, or legislative action. Given the legislature's greater authority over the Conduct Commission's conduct and activities, it makes sense that it would have a role in confirming the commission's membership. But this logic does not apply the Judicial Council, which was designed to remain more independent of legislative oversight.
- 4. LAWYER MEMBERS ARE ELECTED BY MEMBERS OF THE PROFESSION AND HAVE FACED ADEQUATE EVALUATION AND SCRUTINY.** The Board of Governors of the Alaska Bar Association bases its appointments to the council on the results of contested elections. To serve on the council, a lawyer must receive a majority of the votes cast for the vacancy in question. Those chosen are competent and trusted to perform the task of evaluating the merit of judicial applicants. Requiring confirmation by the legislature opens the door for capable candidates to be disapproved on strictly political grounds - an outcome that would gravely threaten the council's ability to focus on merit, not politics, in the judicial selection process.
- 5. JUDICIAL RETENTION ELECTIONS ENSURE A MORE DIRECT PUBLIC VOICE THAN LEGISLATIVE CONFIRMATION OF LAWYER MEMBERS OF THE JUDICIAL COUNCIL.** Proponents of legislative confirmation suggest that such a step is necessary to ensure public accountability and to "democratize" judicial selection. Yet this overlooks the much more direct public role in judicial accountability afforded by judicial retention elections. At regular intervals established by the framers, judges are evaluated by the council and stand before the voters. This component of our system provides a much stronger democratic check than legislative confirmation of lawyer members, without sacrificing the independence of a co-equal branch of government.

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