



PROTECTING IMPARTIAL COURTS:

WHY ATTORNEYS 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 of the Alaska Supreme Court, who chairs the council and serves ex-officio. The Chief Justice votes in rare instances, for example, in tie votes. After an extensive evaluation of each judicial applicant, which includes consideration of fairness and impartiality, temperament, professional competence and public input, the council provides a short list of the most highly qualified candidates to the Governor, who makes the final appointment. The second step of Alaska's merit-based judicial selection and retention process is voter retention. At specified intervals, every Alaskan judge appears on the general election ballot, where voters decide if a judge should be retained.

A resolution was recently introduced in the Legislature that would amend the Judiciary Article in a manner that would greatly disrupt this balance. The constitutional amendment requires that six of the seven council members meet legislative approval. We believe this change unwisely increases the role of politics and undermines the role of merit in Alaska's judicial selection process. Here, we address why legislative confirmation of attorney members of the council is unwise and unwarranted.

1. **OUR CONSTITUTION'S FRAMERS CONSIDERED LEGISLATIVE CONFIRMATION OF THE ALASKA JUDICIAL COUNCIL'S ATTORNEY MEMBERS AND REJECTED IT.** The delegates to the constitutional convention spoke directly to the suggestion that the attorney 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. **ATTORNEY 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, an attorney 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.
4. **JUDICIAL RETENTION ELECTIONS ENSURE A MORE DIRECT PUBLIC VOICE THAN LEGISLATIVE CONFIRMATION OF ATTORNEY MEMBERS OF THE JUDICIAL COUNCIL.** At regular intervals established by the framers of our constitution, 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 attorney members, without sacrificing the independence of a co-equal branch of government.

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