



February 4, 2021

Sent Via Electronic Mail

The Honorable Michael Dunleavy
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811
janice.mason@alaska.gov

Re: Alaska Judicial Council

Dear Governor Dunleavy,

The Alaska Federation of Natives (AFN) writes to call your attention to a provision in the Alaska Constitution that is being frustrated by your naming Kristie Babcock to the Alaska Judicial Council (Council), and to respectfully ask you to withdraw her name from Legislative consideration to better comply with the mandate for 'area representation' outlined in Article 4, Section 8.

As you know, Article 4 establishes the Judiciary and adopts the Missouri Plan (Plan) for selecting and retaining state judges. Under the Plan, which Alaska follows in its original form, the Council screens and nominates at least two judicial candidates to the Governor when a vacancy occurs. See Art. IV, Sect. 5. The Governor then appoints one of the candidates to the judgeship. See Art. IV, Sect. 6. The judge then stands for retention by Alaska voters at regular intervals which coincide with general elections. See Art. IV, Sect. 8. The process is the preferred best practice because of the transparency and accountability it provides to the public, which is rooted in the membership of the Council.

Specifically, Article 4, Section 8 provides for a seven member, non-partisan Council, including three attorneys appointed by the Alaska Bar Association (ABA), three non-attorneys appointed by the Governor and confirmed by the Legislature, and the Chief Justice of the Alaska Supreme Court, who serves in an ex-officio capacity. That same provision mandates that Council appointments, whether by ABA or the Governor, '. . . **shall** be made with due consideration to **area representation**' (emphasis added). Area representation is achieved when all four Alaska judicial districts are represented on the Council.

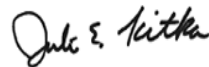
According to the Council's current membership roster, the 'area representation' mandate outlined in Article 4, Section 8 is presently satisfied. ABA appointments have resulted in attorney members from the first, third, and fourth judicial districts, while gubernatorial appointments have resulted in non-attorney members from the second and third judicial districts. Thus, all four Alaska judicial districts are represented on the Council.

Regrettably, the seat that is currently occupied by Lorretta Bullard of Nome—a non-attorney from the second judicial district—expires next month, and you have signaled your intent to replace her with Ms. Babcock of Soldotna, which is in the third judicial district. This presents a problem because for the first time in the state's history: (1) all four judicial districts will not be represented on the Council; and (2) all three non-attorney members will be from the same district, which in this case consolidates undue power and influence in the urban, non-Native third judicial district to the detriment of the more rural, Native second judicial district. Moreover, the unintended consequences of failing to provide fair 'area representation' could be devastating.

Council membership is balanced by design. It reduces the likelihood of politicizing the bench and increases the quality of judicial applicants. By choosing to appoint Ms. Babcock, instead of an equally qualified non-attorney from the second judicial district, the constitutional requirement for 'area representation' is being undermined, and the functionality of the Alaska Court System, which has a reputation for fairness and impartiality, is being called into question.

As such, on behalf of our membership, including 8 regional Native for-profit corporations, 12 regional Native not-for-profit organizations (or tribal consortia), 164 village Native for-profit corporations, and 165 federally recognized Alaska Native tribes—several of which are from the second judicial district—we respectfully ask you to reconsider appointing Ms. Babcock to the Council. We are confident that you can find a number of qualified second judicial district non-attorneys to fill Ms. Bullard's seat, or simply reappoint her, to better comply with the Council's mandate for 'area representation' set out in Article 4, Section 8. Please contact me directly if you have any questions regarding the content of this letter.

Sincerely,



Julie Kitka
President

Cc: B. Stevens, Chief of Staff
G. Ritacco, Boards and Commissions Director
M. Baker, Legislative Director
House and Senate Members, 32nd Alaska State Legislature
AFN Co-Chairs and Board Members