

Delivered via email

November 19, 2020

Governor Mike Dunleavy  
PO Box 110001  
Juneau, Alaska, 99811-0001

RE: Objection to List of Nominees Selected by Alaska Judicial Council Based on Discriminatory Practices

Dear Mr. Dunleavy:

As you know, earlier this week the Alaska Judicial Council (“AJC”) nominated 3 candidates for your appointment to the newly created position on the Alaska Court of Appeals. The selection process utilized by the AJC was flawed in two areas, including racial discrimination, as described in greater detail herein.

It is requested you stay your appointment to the Court of Appeals until the AJC corrects these deficiencies and provides you with a list of nominees that 1) have been properly vetted using data reflecting the opinions of Alaska Natives, and 2) have been voted on only after a properly conducted public meeting.

The legal authority for staying the appointment should be simple enough. The AJC did not follow their own guidelines in providing you the list of nominees. The data upon which its nominations were made violated the AJC’s prohibition against discriminatory practices. Public comments in support of racial equality in the selection process were cut off arbitrarily and unfairly by Chief Justice Bolger.

The product of a tainted selection process is invalid. The AJC has failed to provide you with a valid list and is therefore required to re-advertise the position.

As you are aware, the Court of Appeals primarily handles criminal cases and is often the last forum for Alaska Natives to have their constitutional rights upheld. The Alaska prison statistics bear out the failure of the state appellate judges to honor their oaths.

Adult Alaska Native women comprise 44% of all female prisoners despite representing less than 10% of the general population. Even worse, while the number of incarcerated Alaska Native women has increased in the past decade, the number of incarcerated white women has declined by 30%. Alaska Native male adults comprise 39% of all male prisoners but also less than 10% of the general population.

This substantial and growing racial disparity in the prisons makes Alaska Natives an important stakeholder in the judicial selection process. The fatal deficiencies in the list of nominees the AJC has provided you are as follows:

First, the required public hearing was a sham. Chief Justice Bolger refused to allow public participants the opportunity to complete their remarks, and to yield their arbitrarily allotted time to other participants. He stifled comments he didn’t agree with. He ignored the suggestion that the comments created a conflict of interest for him and didn’t recuse himself from a public hearing which he converted to a courtroom proceeding and assumed the dual role of judge and jury.

When Mr. Bolger made his adverse “rulings” there was at least one-half hour remaining in the hour of time that the AJC had posted for public comments. There were no other members of the public waiting to be heard other than those who wanted a fair chance to convince at least 3 of the Council members to

postpone their vote so that the AJC could collect the necessary survey results. Most of the public participants wanting this chance were Alaska Native women.

Mr. Bolger evidently did not wish the Council members to hear specific evidence of how he and other selections of prior Councils have demolished the Alaska Constitution when it comes to protecting the rights of Alaska Natives to a fair trial in criminal cases. That Council members need to scrutinize applicants not on what they say but what they have done.

Mr. Bolger prevented the Council members from being reminded that the Alaska judges they nominate must be “peculiarly sensitive to racial discrimination” according to former Chief Justice Rabinowitz. Mr. Bolger prevented the Council members from hearing the acknowledgment of former Chief Justice Boney that urban Alaskans are not sensitive to vast cultural differences in the villages.

These comments would have helped establish the point that the top priority for Council members should be to nominate only those applicants who have shown a prior commitment to protecting at all costs the constitutional rights of Alaska Natives to an impartial jury and a fair trial. Self-serving statements by applicants in their interviews are insufficient proof. Observations of non-Native attorneys are insufficient proof. The missing and necessary proof is in the opinions of Alaska Natives – those who bear the daily grief of having their sons, daughters, brothers and sisters unjustly taken away from them.

Mr. Bolger also cut off comments that would have shown Council members that their reliance on insufficient data resulted in a poor decision for a similar vacancy two years ago. One of their 2018 nominees was responsible for blatantly trampling on the constitutional rights of an innocent Alaska Native who was not given a fair trial nor tried by an impartial jury, resulting in a prison sentence of 50 years.

Second, the Council refused to delay their vote to extend the scope of their surveys to include the opinions of Alaska Natives. In advance of the AJC’s meeting, only members of the Alaska Bar Association were invited to respond to surveys rating the judicial applicants. Responses were categorized by type of practice, length of practice, area of practice and gender, but not by race.

The Council members knew how each sex graded the applicants but had no way of knowing how Alaska Native members of the Bar Association graded applicants. To include data based on gender while excluding data based on race is discriminatory – there’s no way around that truth which is underscored by the racial disparity in Alaska’s prisons.

As you know, there are not a lot of Alaska Native lawyers admitted to the Bar and even less in the Alaska Court System. To provide further reliable data points, the public participants requested the AJC to seek responses from the 231 recognized tribes as a group separate and distinct from members of the Alaska Bar Association.

This was a very reasonable request for the AJC because they’ve already established the precedent of soliciting responses from multiple groups for superior and district court positions. The comments in support of this proposition were cut short by Mr. Bolger and the Council proceeded to vote using data stemming from racially discriminatory practices.

The AJC may contend that the voice of Alaska Natives is represented by two of the members of the Council. This contention fails for a few reasons, previously pointed out to the AJC, but demonstrates how deeply racial discrimination is rooted in the AJC. On one hand, the opinions of thousands of Alaska Natives

through the 231 tribes are not sought and must be filtered through two individuals who aren't elected representatives. On the other hand, the opinions of hundreds of mostly white attorneys are sought, not filtered, and given exclusivity in the data. The process smacks of colonialism.

I want to conclude this letter by making some overall observations that point to the bigger picture.

Mr. Bolger's boldness in asserting unbridled dominion over the public's limited voice should be the final straw in breaking what many believe is a very specious process for selecting Alaska judges. The public has no right to determine who can become a judge. The public doesn't even have the right to elect the members of the Council.

Deliberations of the Council are held in private without public access. Does Mr. Bolger strong arm the other Council members like he did the public participants? What goes on behind the scenes when the Council is not in session? What political influence does the Alaska Bar Association have on its four Council members, who always have a monopoly over Council decisions and thus establish the talking points. Who within the ABA has "open door" access to their Council members and who does not?

The proponents of the "Missouri Plan" claim this system cuts down on politics. Hogwash. Evidence exists of political influence being heightened and easily manipulated because the power is held by so few. It's completely naïve to believe that positions of power craved by attorneys who want to climb ladders won't be subject to politics. The power needs to be spread out and the process needs to be transparent. Constitutional rights should not be bargaining chips at ABA-member dominated cocktail parties.

The power to elect non-partisan judges should be given to the people. If judges don't apply the Constitution, the public should have the opportunity to vote them out. No system is worth throwing away the lives of innocent people or even the rights of guilty ones. Anyone who thinks otherwise should volunteer to trade places with those Alaska Natives who have been wrongfully convicted or forced to take unfair plea bargains because they know the Alaska Court System doesn't protect their rights.

It may take a constitutional amendment to change the Missouri Plan, but it doesn't take a constitutional amendment to require the AJC to consider the opinion of Alaska Natives. That requirement already exists in the Alaska Constitution. It's firmly rooted in the concept of equality.

Based on the foregoing, the appointment of the next Court of Appeals judge should be stayed until the AJC complies and includes Alaska Native tribes in their surveys regarding the qualifications of judicial applicants. I am joined in this request by the family of Thomas Jack Jr., of Hoonah, AK as well as other Alaskans, Native and Non-Native.

Yesterday I notified the Executive Director of the AJC, Ms. Susanne DiPietro, that I would be lodging this objection and she has been copied with this letter.

Thank you for your consideration,

David Ignell  
Forensic Journalist, [www.poweredbyjustice.com](http://www.poweredbyjustice.com)  
Public Advocacy And Justice For All Alaskans

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