

## **Selecting Judges Based on Merit**

### **What are fair & impartial courts, and why do they matter?**

Judges should decide the cases before them based on the law and the facts, not because of politics, money, religion, or the judge's personal beliefs. When people come to court to resolve their disputes, they should feel confident that the judge will decide their case in a neutral manner, treating everyone the same and making evenhanded decisions. Fair and impartial courts protect everyone's rights to the fundamental promise of our justice system: equal justice under the law.

We expect that our elected representatives, like the governor and senators, will consider politics, the views of their constituents, and popularity as part of making decisions. But courts are different. Everyone in Alaska has the constitutional right to a fair legal process with a judge who acts fairly, impartially and in accordance with the rule of law. Every Alaskan who goes to court should be able to trust that justice will be determined by the law and the facts of their case, after everyone involved – regardless of their social status, income, race, beliefs or other factors – has had a fair and equal opportunity to be heard. Nobody should be afraid that they will not get a fair shake in court because the judge cares more about politics, money, or political pressure than about deciding their case fairly.

A fair and impartial judicial branch also is part of the careful balance of power among the three branches of government in the Alaska Constitution. Judges have the power and duty to invalidate laws that violate the federal or Alaska constitutions. To do that, they must be independent and feel safe making difficult decisions. The judicial branch was designed to be as insulated as possible from politics and public pressure, so that judges can focus on making the right decisions even if they are not popular.

### **Who gets to be a judge? Are some ways of choosing judges better than others?**

How judges are chosen affects how fair and impartial they can be. The main duty of every judge is to understand the law and to apply the law correctly and fairly. A good judge is smart, kind, fair, and has a lot of experience with the law and courts in Alaska. Sometimes, judges must make decisions that are legally correct but might not be popular. A judge is supposed to apply the law correctly every time, even if other people might not agree with their decision.

Some states elect judges by popular vote. This gives people a direct voice in who gets to be a judge. But it also means that judges may be concerned about re-election when they are making decisions about the cases in front of them. Even if elected judges try

hard to be fair, they may worry about whether their decisions will be popular just as much as whether those decisions are fair and right. An elected judge may fear that they will lose their job by making an unpopular decision and hesitate to do so. If judges are elected, it also means that who can be and stay a judge depends in part on how much money a person has or can raise. A judge might be unwilling to make an unpopular decision if it means that the judge may not be able to raise enough money for an election campaign.

In other states, only the governor or another elected official chooses who becomes a judge. This eliminates the need for judges to be influenced by election politics and money. But an elected politician has good reasons to choose judges for political reasons rather than to choose judges who are the most well-qualified and evenhanded; for example, the governor might focus on picking judges who are likely to agree with controversial laws they hope to pass, even if they are not experienced or knowledgeable about the law and even if those proposed laws might be unconstitutional.

### **How does Alaska make sure its judges are fair and impartial?**

The framers of Alaska's constitution wanted to avoid the problems that result when judges are either elected or appointed. They picked a middle ground system that focuses on choosing the most *qualified* judges, regardless of political affiliations, money, or personal beliefs. Many scholars consider Alaska's system, called a "merit selection" system, to be the best and fairest way to choose judges. This system has resulted in Alaska having an exceptionally qualified, fair, and impartial slate of judges since statehood.

### **How does Alaska's merit selection process work?**

As the name suggests, Alaska's judicial selection process focuses on merit—choosing the best, most qualified person for the job. To do that, Alaska's constitution establishes an independent citizen's commission called the Alaska Judicial Council. The Judicial Council is made up of a mix of non-lawyers and lawyers from all around the state. Half are chosen by the governor and the other half are not.

Lawyers who want to be judges apply for the job by submitting a detailed job application, including references from judges and other lawyers. The Judicial Council evaluates those applications. It surveys judges and lawyers across the state about the applicants' competence, experience, intelligence, and temperament; and it interviews all the applicants. The Judicial Council then chooses the most qualified applicants from the pool and submits those names to the Governor, who chooses the new judge from the list of nominees.

This system works well because the Judicial Council's non-political nature and process allows it to focus on which applicants are likely to make the very best judges, without needing to consider politics or money.