

MINUTES
SENATE FINANCE COMMITTEE
March 9, 2006
9:06 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:06:07 AM](#).

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Bert Stedman

Also Attending: SENATOR RALPH SEEKINS

Testifiers are identified in the body of the minutes.

SUMMARY INFORMATION

SJR 20-CONST. AM: BENEFITS & MARRIAGE

The Committee heard from the sponsor, a consultant and took public testimony. The resolution was held in Committee.

#SJR 20

[9:06:38 AM](#)

SENATE JOINT RESOLUTION NO. 20
Proposing an amendment to the section of the Constitution
of the State of Alaska relating to marriage.

This was the first hearing for this resolution in the Senate Finance Committee.

[9:07:59 AM](#)

SENATOR RALPH SEEKINS, sponsor of the resolution, testified this resolution would allow Alaskans to address the fundamental issue of marriage. The rulings of several court cases challenge Alaska's right to limit marriage to a union between one man and one woman. The legislature had believed that this matter was settled in 1996 with the passage of an amendment to the Alaska Constitution, commonly referred to as the Defense of Marriage Act. However, the court cases have challenged the issue. The most recent was a decision rendered in October 2005 in which the court held that the marriage amendment did not specifically address limits of benefits.

Senator Seekins ascertained that to many Alaskans, that reasoning conflicts with their understanding of their vote on the 1996 constitutional amendment. None had believed that the amendment would provide that spousal benefits would be extended to couples not legally married.

Senator Seekins reported that a substantial number of Alaskans have requested that their original vote be clarified. This right belongs to the people.

Senator Seekins explained that this resolution would provide that to receive spousal benefits, a couple must be legally married.

[9:12:25 AM](#)

KEVIN CLARKSON, Attorney retained by Legislative Counsel, made the following presentation to the Committee. [Note: A copy of the testimony is on file, which contains materials referenced in footnote format.]

I would like to thank the Co-Chairs of the Committee, Senator Green and Senator Wilken, the Vice Chair of the Committee, Senator Bunde, and the members of the Committee, Senators Dyson, Hoffman, Olson, and Stedman, for the opportunity to speak today regarding SJR 20, a proposed amendment to the Alaska Constitution to preserve the attributes, benefits and privileges of marriage to married couples.

By way of introduction, I was legal counsel for the Alaska Legislature in 1998 in the legal action that related to whether the Marriage Amendment, Art. I, Section 25 of the

Alaska Constitution, would remain on the general ballot so that the People of Alaska could vote to ratify it. I also represented the Alaska Legislature in the original same-sex marriage case itself, and I was one of the primary drafters of the Marriage Amendment.

HISTORICAL BACKGROUND

In order to understand the significance of SJR 20 it is essential to understand the history that has lead up to its introduction in the Legislature at this time. Relevant history includes events in the United States Congress, the Lower forty-eight states, and also in Alaska.

I. The Federal Defense of Marriage Act

In 1996, Congress adopted the federal Defense of Marriage Act (DOMA). Pub. L. 104-199, 100 Stat. 2419 (Sept. 21, 1996). Congress passed DOMA because of a decades-long assault that had been made in various courts challenging the definition and constitutionality of marriage, and particularly in response to a Hawaii court decision that suggested there might be a right to same-sex "marriage" in the Hawaii Constitution. The legislative history of DOMA reflects a congressional concern about the effect that legalizing same-sex "marriage" in Hawaii would have on other states, federal laws, the institution of marriage, traditional notions of morality, and state sovereignty. H.R. Rep. No. 104-664 at 1-18 (1996), reprinted in 1996 U.S.C.C.A.N. 2905-23. DOMA has two sections, one defining "marriage" for purposes of federal law, and the other affirming federalism principles under the authority granted by Article IV, Section 1 of the Constitution, the Full Faith and Credit Clause. The first section states that for purposes of federal law, marriage means a legal union between a man and a woman.

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word marriage means only a legal union between one man and one woman as husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife.

Pub. L. 104-199, sec 1, 100 Stat. 2419 (Sep. 21, 1996), codified at 1 U.S.C. 7 (1997). The second section reaffirmed the power of the states to make their own decisions about marriage:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Pub. L. 104-199 sec. 2, 100 Stat. 2419 (Sep. 21, 1996), codified at 28 U.S.C. 1738C (1997).

By way of DOMA, all of the various attributes, benefits, and privileges of marriage that are created or assigned by federal law, are assigned or provided only to (1) "marriages," which are limited to only legal unions between one man and one woman as husband and wife and (2) "spouses," which is defined as a person of the opposite sex who is a husband or a wife. None of the various attributes, benefits and/or privileges of marriage that exist under federal law are available to any unmarried couples, whether same-sex or opposite sex.

II. The Alaska Marriage Amendment

The Alaska Marriage Amendment, Art. I. Section 25, was ratified by the People, on a vote of 68%-32% in November, 1998. The Alaska Marriage Amendment can be said to have its origin in reaction to a specific judicial decision. The Marriage Amendment was ratified in response to a decision by a state superior court judge in a case called Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). On February 28, 1998 this superior court judge ruled that the Alaska Constitution provided a fundamental right to marry someone of the same sex.

A. The Evolution of Alaska's Marriage Statute

The origin of Alaska's marriage statute, AS 25.05.011, is a territorial law: "Marriage is a civil contract, which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years." After statehood in 1959, this law was slightly revised to read: "Marriage is a civil contract requiring both a license and solemnization which may be entered into by a male who is 21 years of age or older with a female who is 18 years of age or older." In 1970, the statute was modified to reduce from "21" to "19" the age at which a man could marry. Up to this point in time Alaska's marriage statute clearly restricted marriage to one man and one woman.

Something very interesting, and also very unintended, occurred in 1974. The Alaska Revisor of Statutes set upon the task of rendering Alaska's Statutes "gender neutral" in language and in the process made two unintended substantive changes to the marriage statute, one clear and express and the other implicit. The express substantive change which the Revisor of Statute's made was to change the age of permissible marriage for both genders to "19" from the previous "19" for men and "18" for women. The second substantive change, which was only implicit in effect was to eliminate the words "man" and "woman" from the statute and insert the word "person" in their place. While this "gender neutrality" goal may have seemed "noble" and "appropriate" in the context of the codification of Alaska's statutes, from the standpoint of the substantive meaning and effect of the marriage law the result was drastic. By eliminating the words "man" and "woman" from the marriage statute the Revisor's "gender neutral" language had the appearance of changing Alaska's definition of marriage to a civil contract which could be entered into between any two "persons" (presumably of any combination of either gender) age 19 years or older.

The statute was again modified in 1975, this time by the Alaska Legislature itself, to reduce the legal age of marriage to "18" for both men and women. Apparently unaware of the prior apparent substantive change, the Legislature retained the "gender neutral" language without the slightest comment. The marriage statute remained unchanged and unchallenged in this form for the next twenty-one (21) years until 1996.

B. Related Gay Rights Controversies

Previous to the Marriage Amendment drama, a number of controversies regarding similar issues had already been played out in Alaska. The earliest case was decided in 1978. In 1976, the mayor of Anchorage deleted from a draft of the 1976-77 Anchorage Blue Book, reference to the Alaska Gay Coalition. The Coalition subsequently sued claiming their First Amendment speech rights had been violated because they were not allowed to access the public forum created by the Blue Book. The superior court initially granted the Coalition a temporary injunction prohibiting distribution of the Blue Book, but later decided against the Coalition after a trial. The Alaska Supreme Court reversed, holding that the Blue Book was a public forum and that the mayor had improperly denied the Coalition its First Amendment rights because of disapproval of the Coalition's aims by not allowing their message to be printed in it.

A few years later, the issue of "sexual orientation" was raised in a family law setting. In *S.N.E. v. R.L.B.11*, a father sought to have the custody of his child changed so as to give him custody. The father alleged that the mother was a lesbian and that the child's best interests, therefore, demanded that he be the primary custodian of the child. The superior court ruled in favor of the father and the mother appealed. The Alaska Supreme Court reversed, holding that that there was no evidence that the mother's lesbianism "has or is likely to affect the child adversely" and that any perceived stigma on the child because of the mother's lifestyle could not justify a change of custody.

In January 1993, the Anchorage City Assembly enacted an ordinance that banned discrimination based on sexual orientation in public employment over the veto of Mayor Tom Fink. A group called Citizens to Repeal the Homosexual Ordinance immediately began collecting petition signatures to subject the matter to a vote in the April elections. Within a month, the group submitted 20,000 signatures, even though only 5,700 were needed. The city clerk certified the initiative and a group of plaintiffs sued to challenge the certification. The superior court denied a stay, but that decision was appealed to the Alaska Supreme Court, which granted the stay on April 14, 1993. Following the

stay, the superior court found that the "referendum petition presented the ordinance in a biased and partisan light" because its title read: "Referendum Petition to Repeal a Special Homosexual Ordinance." Focusing on the disagreement between the ordinance's opponents and supporters about whether or not the ordinance granted "special rights" the superior court held that the petition's characterization was misleading because of its partisanship. The Alaska Supreme Court took this characterization as accurate and held that inaccurate referendum petitions are not "legally acceptable." The basis for this decision was the court's belief that an inaccurate petition undercuts the screening function provided by the requirement that a referendum petition have a certain number of signatures to be certified. Thus, the Alaska Supreme Court invalidated the petition and the ballot initiative was not the subject of a vote.

Just a year before the marriage amendment was adopted, the Alaska Supreme Court heard a case involving two employees of the University of Alaska who wanted health insurance for their same-sex partners. The employees challenged the University's decision not to extend the benefits, claiming a violation of the state Human Rights Act's prohibition of marital status discrimination. The superior court ruled in favor of the plaintiffs and held that the University would have to either stop offering benefits for spouses, or provide benefits to the same-sex partners of employees. The University chose to offer the benefits. While the appeal of the superior court's decision was pending, the Alaska Legislature amended the state discrimination law to allow employers to offer different benefits to employees with spouses and children than those without. Thus, at the conclusion of the appeal, the Alaska Supreme Court could only rule that the University had violated the pre-amendment act.

Each of these decisions contributed to the highly charged atmosphere in which Alaska's marriage statute was challenged in the Brause case.

C. Alaska's Defense of Marriage Act

As referenced above, in early 1995, in addition to the Brause litigation filed in superior court in Anchorage and discussed below, which challenged the traditional opposite-

sex definition of marriage, a separate action filed in Superior Court in Fairbanks challenged the University of Alaska Fairbanks' ("UAF") policies limiting spousal benefits to the "husbands" or "wives" of its married employees. A superior court judge in Fairbanks set loose a firestorm when she ruled that UAF could not legally limit spousal benefits to traditional "husbands" and "wives," basing her decision in part upon the Revisor of Statutes' 1974 bill and Senate Judiciary Committee "gender neutral" amendment, tinkering with the marriage statute so as to eliminate the words "man" and "woman" from the definition of marriage and defining "marriage" as a civil contract between two "persons."

Suddenly at that time, the Alaska Legislature was aware of the potential substantive change (and to at least a portion of the Alaska Judiciary a very real substantive change) which had been made to the marriage statute. In March, 1995, Representative Norman Rokeberg introduced House Bill 227, which was designed to amend the Alaska marriage statute to specify that (1) only one man and one woman can legally marry in Alaska, and (2) no out-of-state marriage between individuals of the same-sex would be recognized as valid in Alaska. At about the same time, Representative Pete Kelly introduced HB 226 proposing very similar changes to the Alaska marriage statute.

When asked for its comments regarding HB 227, the Alaska Department of Law offered the opinion that the legislation was unnecessary. Assistant Attorney General John Gaguine offered the Department of Law's opinion to Representative Rokeberg to the effect that the Alaska Supreme Court would most likely find that the 1974 revisions to the marriage statute were not intended to allow legalized same-sex marriage. Mr. Gaguine explained that oddly enough, this event was not unique to Alaska. Prior to 1970, the State of Washington's marriage statute (RCW 26.04.010) provided that only "males" and "females" could marry each other. In 1970, however, Washington's marriage statute was amended to make the age of consent for marriage the same for both genders, and in these same changes (just as had occurred in Alaska) the words "male" and "female" were eliminated and replaced with the word "persons."

Mr. Gaguine explained that the Washington Court of Appeals had been required to review the changes to Washington's marriage statute in 1974 in a case called Singer v. Hara, and in that case concluded that the changes were not intended to allow same-sex marriage. In reaching this conclusion the Washington Court of Appeals noted that 1972 changes to Washington's community property laws had retained references to "husband" and "wife," therefore, indicating a lack of intention by the Washington Legislature to allow same-sex marriage.

Mr. Gaguine also explained that Courts from other states and jurisdictions in addition to Washington had also concluded that same-sex marriages were not authorized by "gender neutral" language changes to marriage statutes. The courts in these cases decided the question presented to them regarding same-sex marriage upon the simple basis of reviewing the dictionary definition of "marriage" which refers to a relationship between a "man" and a "woman" or between members of "opposite sexes." To these courts, the simple use of the word "marriage" and nothing more signaled legislative intent to limit the marriage relationship to a contract between one man and one woman.

In light of the superior court's ruling in Tumeo, however, the Alaska Legislature was not willing to simply entrust the marriage statutes to the Alaska Judiciary. Accordingly, the Legislature went forward with its proposed changes to the marriage statutes. The changes had two ultimate goals: (1) to clearly provide that for purposes of legal recognition and status, marriage in Alaska could only exist between one man and one woman; and (2) to clearly prevent any same-sex marriage, which might at some time be recognized as valid in another state (at that time, potentially Hawaii), from receiving the legal status and recognition of marriage in Alaska simply because the participants in that possible same-sex marriage moved their residence to Alaska.

As finally amended, the Alaska marriage statutes provide as follows: "Marriage is a civil contract entered into between one man and one woman that requires both a license and solemnization."

D. The Brause v. Bureau of Vital Statistics Case

The Plaintiffs in the Brause case sought marriage as a doorway to the benefits and privileges that the law bestows upon married couples. The Plaintiffs in Brause argued repeatedly that there are some 115 benefits and privileges available to married couples under Alaska law, which they could not access. The Plaintiffs in Brause sought to use the status of marriage as a doorway by which they could access the various benefits and privileges of marriage, and attach them to their same sex relationship. The Brause litigation treated marital status and marital benefits as being inseparable. In Brause the Plaintiffs specifically sought benefits based on marital status. In fact, the superior court's ruling in Brause treated marital status and benefits as being inseparable. "Once married," the superior court noted, "the state provides benefits and imposes duties that are significant and valuable to society as well as to the individual members of the marriage." Brause, 1998 WL 88743 at * 2. Put another way, the superior court's ruling treated the benefits, privileges and duties of marriage as being entirely consequent upon marital status.

The Marriage Amendment presupposed this context. The Marriage Amendment was specifically designed to close marital status as a doorway by which same-sex couples, or any combination of opposite sex individuals other than "one man and one woman," might access the benefits and privileges of marriage. The Marriage Amendment as it was originally introduced in the Legislature as SJR 42 contained three sentences:

To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this Constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex. Additional requirements related to marriage may be established to the extent permitted by the Constitution of the United States and the Constitution of the State of Alaska.

The third sentence of the Marriage Amendment was dropped by the Legislature during the legislative process.

Before the popular vote, a group of citizens including the Alaska Civil Liberties Union challenged the constitutionality of the proposed amendment in two actions. *Bess v. Ulmer*, Case No. 3AN-98-7776 Civil (Alaska Super. Ct. 1998); and *Dodd v. Ulmer*, Case No. 3AN-98-8114 Civil (Alaska Super. Ct. 1998). The Alaska Supreme Court consolidated the cases and then in its decision allowed the Amendment to proceed to a vote, with one change. The Alaska Supreme Court, rightly or wrongly, deleted the second sentence of the Marriage Amendment because the Court viewed the sentence as being "superfluous." See *Bess v. Ulmer*, 985 P.2d 979, 995 (Alaska 1999).

The first sentence of the Marriage Amendment was presented to the People of Alaska for ratification and it was ratified by a vote of 68%-32%. See Liz Ruskin, *Limit on Marriage Passes in Landslide*, Anchorage Daily News, November 4, 1998, § A, p. 1.

Following ratification of the Marriage Amendment, the Brause case did not end. Confirming that their primary focus in that case was the benefits and privileges that are attached to marriage and not marriage itself as a status, the Plaintiffs in Brause continued their quest in that case to receive the 115 benefits and privileges that are attached to marriage. Because marriage status had been foreclosed to them by way of the Marriage Amendment, the Brause Plaintiffs sought to require the State to give them all of the various attributes, benefits and privileges of marriage outside of marriage. The Brause Plaintiffs' claims were dismissed, however, because their claims for marriage benefits and privileges were not ripe. See *Brause v. Bureau of Vital Statistics*, 21 P.3d 357, 358 (Alaska 2001).

III. The ACLU v. State Case

Another case, the ACLU v. State litigation, began shortly after the Marriage Amendment was ratified. In this new case, the ACLU and eighteen individuals who alleged that they comprised nine lesbian or gay couples (hereafter referred to collectively as "the ACLU") filed suit against the State of Alaska and the Municipality of Anchorage. The ACLU complained that the state and the municipality maintained employee benefits programs that offer valuable benefits to their employee's spouses that are not offered

to the same sex partners of lesbian and gay employees. In other words, the ACLU argued to the effect that when nearly seventy percent of Alaskans voted to ratify the Alaska Marriage Amendment they voted to command government to give marriage benefits to same sex couples, just as if they were married. The ACLU also argued that those same Alaskans' vote was part of an invidious discriminatory scheme against lesbian and gay people. According to the ACLU, because the Marriage Amendment was created as part of an invidious discriminatory scheme, and because it foreclosed the option of marriage to same sex couples, the Alaska Constitution had to be interpreted to command government to treat same sex couples just as if they were married. The ACLU argued that public employees with same sex partners were being singled out and treated differently due to "sexual orientation" or "gender," because unlike an unmarried male/female couple who can choose to get married if they want to, the same sex couple "can't get married." And thus, the Amendment that was designed to end the constitutional debate in Alaska over same sex marriage, became the force of the claim that same sex couples must be treated "just as if they are married," even though they are not. Most Alaskan's heads were spinning upon hearing this argument.

The state superior court dismissed the ACLU's claims. See *ACLU v. State*, 3AN-99-11179 Civil (Alaska Super. Ct. 1999). The superior court reasoned that public employees with same sex partners are denied marriage benefits, not because of their sexual orientation or their gender, but instead simply because they are not married. The court concluded that no sexual orientation discrimination existed because same sex couples are treated exactly the same as every unmarried heterosexual couple, who also do not qualify for marital benefits. Finally, the superior court concluded that no gender discrimination existed because men and women equally receive marital benefits for their spouses. The ACLU appealed to the Alaska Supreme Court and on October 28, 2005 the Supreme Court reversed the superior court's decision. *ACLU v. State*, 122 P.3d 781 (Alaska 2005).

The State of Alaska, Department of Law, argued that the Marriage Amendment foreclosed the ACLU's claim that the Alaska Constitution mandated the extension of marriage benefits and privileges to unmarried same-sex partners. The

Alaska Supreme Court rejected the State's argument. ACLU, 122 P.3d at 786-87. The Court reasoned that:

The Marriage Amendment could have the effect of foreclosing the present challenge only if it could be read to prohibit public employees from offering benefits to their employees' same-sex domestic partners. ...That the Marriage Amendment effectively prevents same-sex couples from marrying does not automatically permit the government to treat them differently in other ways.

Id. Because the Marriage Amendment did not foreclose the legislative and executive branches of government from voluntarily choosing to extend benefits to same sex partners, the Court concluded that the Marriage Amendment stood as no barrier to the ACLU's claim that the Alaska Constitution commanded the legislative and executive branches of government to extend benefits to same sex partners. Interestingly, the Court did not address another possible interpretation of the Marriage Amendment, which would have simply construed the Amendment to foreclose any judicially commanded extension of marriage benefits and privileges to unmarried same-sex couples under the guise of constitutional interpretation. Id.

The Court, like the ACLU, used the Marriage Amendment as the driving force for its decision that the Alaska Constitution commands government to treat unmarried same sex couples just as if they are married, even though they are not. Id. at 787-88. The Court explained:

We agree with the [ACLU]...that the proper comparison is between same-sex couples and opposite sex couples, whether or not they are married. The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners. In comparison, public employees in committed

same-sex relationships are absolutely denied any opportunity to obtain these benefits because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying. The programs consequently treat same-sex couples differently from opposite-sex couples.

Id. at 788. In other words, the governments' employee benefits programs that denied marriage benefits to unmarried same-sex couples were discriminatory, and thus in violation of the Equal Protection Clause of the Alaska Constitution, only because the Marriage Amendment forecloses marriage to same-sex couples.

Put another way, according to the Alaska Supreme Court, the Marriage Amendment required the Court to command government to extend marriage benefits to unmarried same-sex partners. Id. The Court put this very conclusion into words in footnote 38 of its Opinion:

We recognize that the benefits programs became discriminatory only after the legislature acted in 1996 and 1998 and the electorate adopted the Marriage Amendment in 1998.

Id. at 789 n. 38. Thus, apparently, according to the Alaska Supreme Court, when 68% of Alaskans voted to ratify the Marriage Amendment in 1998 they voted to command government to treat unmarried same-sex couples just as if they are married, even though they are not.

IV. Future Impacts of ACLU v. State

A. All of the Benefits and Privileges of Marriage Will Be Required to Be Given to Same Sex Relationships

Although ACLU v. State technically addresses only employment benefits in the context of public employment, State, Borough, or Municipal, the impact of the decision stretches much further. Based upon the logic of ACLU v. State, virtually every distinction that exists in Alaska

law and public policy between married couples and unmarried same-sex partners will eventually fall to an equal protection challenge under the Alaska Constitution. There is no logical basis upon which to limit the reach of the ACLU v. State decision to simply public employment benefits. Effectively, the Alaska Supreme Court decision is a first step in the direction of constitutionally mandated domestic partnerships in Alaska just as was imposed upon the State of Vermont by the Vermont Supreme Court in Baker v. State, 744 A2d 864, 886-89 (Vt 1999).

If Alaska Supreme Court believes that unmarried same-sex partners are unconstitutionally discriminated against because the government denies them the employment benefits that are extended to married men and women, it appears a foregone conclusion that the Court will believe that the state unconstitutionally discriminates against same-sex partners when it denies them other benefits and privileges of marriage, including, but not necessarily limited to, (1) the right of intestate succession; (2) the privilege of not being required to testify against a spouse; (3) the right to receive workers' compensation benefits on the death of a partner; (4) the right to maintain a legal action for loss of consortium, or a wrongful death action for the death of a partner; and/or (5) the right to receive spousal support on the dissolution of a relationship.

B. Private Employers must Extend Marriage Benefits to the Same Sex Partners of Their Employees

It is not a correct statement that the impact of ACLU v. State will be felt only in the context of public employment. The logic of the ACLU v. State decision reaches into private employment as well as public employment. Under Alaska law, every private employment contract between employer and employee contains an implied covenant of good faith and fair dealing. Charles v. Interior Regional Housing Auth., 55 P.3d 57, 62 n. 29 (Alaska 2002); Holland v. Union Oil Co. of Ca., Inc., 993 P.2d 1026, 1032 (Alaska 2000); Belluomini v. Fred Meyer of Alaska, Inc., 993 P.2d 1009, 1012-13 (Alaska 1999). One of the things that the implied covenant of good faith and fair dealing requires is that employers treat "like employees alike." Charles, 55 P.3d at 62 n. 29; Holland, 993 P.2d at 1032; Fred Meyer, 993 P.2d at 1012-13. The legal concept of treating "like

employees alike" is much akin to the equal protection concept of not discriminating between "similarly situated individuals." Thus, it requires no stretch of logic to predict that the Alaska Supreme Court will conclude that a private employer violates the implied covenant of good faith and fair dealing when that private employer extends employment benefits to the spouses of its married employees but not to the same-sex partners of its "like" gay or lesbian employees.

V. SJR 20

SJR 20 is designed to allow the People of Alaska the opportunity to address the ACLU v. State decision. SJR 20 is also designed to allow the People of Alaska to decide whether they agree or disagree with the Alaska Supreme Court's interpretation of the meaning and effect of the Marriage Amendment. SJR 20 would add a second sentence to Art. I, Section 25 that would state:

No other union is similarly situated to a marriage between a man and a woman and, therefore, a marriage between a man and a woman is the only union that shall be valid or recognized in this state and to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned.

The first phrase of SJR 20 is designed to eliminate the fundamental basis for any equal protection claim, in any context, that involves an effort to compare married couples to unmarried same-sex partners, or for that matter to any unmarried combination of opposite sex individuals. The following language of SJR 20 is designed to confirm that marriage benefits and privileges, qualities, effects and obligations, are limited to marriage relationships as previously defined by the Alaska Constitution. The word benefits is designed to address such things as employment benefits. The word privileges is designed to address such things as the spousal privilege regarding court testimony. The words qualities and effects are designed to address the various legal qualities and effects of marriage under Alaska law. The word obligations is intended to address such obligations as spousal support in a divorce context.

Nothing in SJR 20 would prohibit private employers from voluntarily deciding to extend marriage like benefits to employees with same-sex partners. A few private employers have decided to voluntarily extend employment benefits to the same-sex partners of their employees. SJR 20 would have the effect of precluding a public employer from extending employment benefits to unmarried same-sex partners. However, in this regard, it is important to note that AS 25.05.013(b), passed by the Alaska Legislature in 1996, already prohibits any public employer from extending marriage benefits to same-sex partners. Any public employer who currently extends marriage benefits to the same-sex partners of employees does so in violation of Alaska law.

VI. MARRIAGE AMENDMENTS ACROSS THE COUNTRY

States With Marriage Amendments:

1. Alaska (1998 by 68%)
2. Arkansas (2004 by 75%)
3. Georgia (2004 by 77%)
4. Hawaii (1998 by 69%)
5. Kansas (2005 by 70%)
6. Kentucky (2004 by 75%)
7. Louisiana (2004 by 78%)
8. Michigan (2004 by 59%)
9. Mississippi (2004 by 86%)
10. Missouri (2004 by 71%)
11. Montana (2004 by 66%)
12. Nebraska (2000 by 70%)
13. Nevada (2002 by 67%)
14. North Dakota (2004 by 73%)
15. Ohio (2004 by 62%)
16. Oklahoma (2004 by 76%)
17. Oregon (2004 by 57%)
18. Texas (2005 by 76%)
19. Utah (2004 by 66%)

States where Amendments Are Expected to Be Voted On In 2006:

1. Alabama
2. Arizona
3. Colorado
4. Idaho
5. Indiana
6. New Hampshire
7. South Carolina

8. South Dakota
9. Tennessee
10. Virginia
11. West Virginia
12. Wisconsin

When marriage related Amendments are presented to the People for a vote they routinely pass by overwhelming margins. Marriage amendments voted on by the people across the country have passed by an average pass rate of 71%, ranging from 57% in Oregon to 86% in Mississippi. SJR 20 would have the effect of bringing Alaska's Marriage Amendment into line with marriage amendments that have passed in other states. Eleven of the nineteen existing marriage related amendments that have been passed in other states contain provisions similar to those of SJR 20 and specifically prohibit the extension of marriage benefits and privileges to unmarried same-sex partners. Seven amendments prohibit same-sex domestic partnerships and also prohibit the extension of marriage benefits to same-sex partners. Four other amendments have the effect of prohibiting the extension of marriage benefits to same-sex partners by prohibiting same-sex domestic partnerships.

A. Amendments That, Like SJR 20, Specifically Foreclose the Extension of Marriage Benefits and Privileges to Same-Sex Partners

The Georgia Amendment provides in part that:

. . . . No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage...

GA CONST Art. I, Sec. IV.

The Kansas Amendment provides in part:

No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage...

The Louisiana Amendment provides in part:

...No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status

identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized...

The North Dakota Amendment provides in part:

...No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

The Ohio Amendment provides in part:

...This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

OH CONST. Art. XV, Sec. 11.

The Oklahoma Amendment provides in part:

...Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

OK CONST. Art. 2, Sec 35.

The Utah Amendment provides in part:

...No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect...

UTAH CONST Art. 1, Sec. 29.

B. State Amendments That Foreclose the Extension of Marriage Benefits to Same-Sex Partners by Foreclosing the Creation or Recognition of Same-Sex Domestic Partnerships or Civil Unions

Some state amendments foreclose the extension of marriage benefits and privileges to same-sex partners by foreclosing the recognition of same-sex domestic partnerships or civil unions.

The Kentucky Amendment provides:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

The Arkansas Amendment provides:

Section 1. Marriage.

Marriage consists only of the union of one man and one woman.

Section 2. Marital status.

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

ARK CONST Amend. 83.

The Nebraska Amendment provides in part:

...The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.

The Texas Amendment provides in part:

...This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage...

TX CONST Art. 1, Sec. 32.

VII. Potential Federal Constitutional Challenges to SJR 20

Generally speaking, if a law bears a rational relation to a legitimate end, it will be upheld against a federal constitutional challenge. Yet in 1996, using only rational basis review, the United States Supreme Court struck down a Colorado constitutional amendment which classified on the basis of "homosexual, lesbian or bisexual orientation." This case, *Romer v. Evans*, is the most likely basis for a challenge to SJR 20. It was specifically mentioned by the Alaska Supreme Court in *ACLU v. State*.

Romer invalidated the following Colorado Constitutional Amendment, that was put on the ballot by initiative:

No Protected Status Based on Homosexual, Lesbian, or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any

statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.

The United States Supreme Court interpreted this text not merely as repealing ordinances passed by municipalities prohibiting discrimination on the basis of "sexual orientation," but also as prohibiting "all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians." The Amendment "imposes a special disability upon those persons alone." Therefore, the Court explained:

We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

Amendment 2 was "at once too narrow and too broad." It was too narrow because it characterized a class of people by "a single trait." It was too broad because, on the basis of that single trait, it "then denie[d] them protection across the board." Based on this combination of targeting and potentially limitless breadth, the Court concluded that Amendment 2 could not possibly be justified by the State's purported reasons (i.e., conserving resources, respecting associational privacy). It was not only irrational, it was evil. The rationale of Amendment 2 was "inexplicable by anything but animus toward the class it affects."

Romer has a narrow and a shallow bite:

It is narrow in the sense that the Court decided only the case before it and avoided creating broad rules that courts might apply in other cases. The decision is shallow in the sense that the Court's reasoning was

almost subrational--there is more reflex than reason in Justice Kennedy's opinion in Romer.

Romer is far more notable for what it did not do than for what it did do. Romer would have come out the same way had the Amendment been targeted at any "narrowly defined" group. The Court, seemed more concerned about suspect laws than suspect classifications. It was "the extreme overbreadth of Amendment 2--not the identity of the class of persons covered by the Amendment--that concerned Justice Kennedy and his colleagues in the Romer majority." This can be seen by the fact that Romer left *Bowers v. Hardwick* standing, and did not hold that sexual orientation is a suspect classification. In sum:

It was the 'sheer breadth' of Amendment 2, not any perceived 'widespread animus against gays,' that undermined the state's attempt to provide an innocent explanation in support of the law. Romer is not a 'gay rights' case; it is a case about a purposeless and unlimited legal disability.

The "rule of Romer," is something like the following: (1) does a law narrowly target a specific group, and impose upon it a broad and undifferentiated disability? (2) do the justifications offered by the State patently fail to offer a rational purpose for the law? (3) if the answers to (1) and (2) are yes, then one may infer the presence of irrational "animus." One does not begin, in other words, by searching the public record for "evidence" of "animus." In any heated debate, both sides are likely to hurl some dirt. Instead, one looks at the law itself and the justifications offered for it, and only infers "animus" if these first two conditions are not met.

"Those who wish to use Romer and the rational basis test to overturn conventional marriage laws are tilting at windmills." This is so because:

Laws defining marriage as a relationship between one man and one woman do not target a class of persons and deny that class the opportunity to protect itself politically against a limitless number of discriminatory harms and exclusions. Marriage laws define and regulate the institution of marriage, but

they do not forbid any individual or group that seek the law's protection against any kind of public or private discrimination.

Rather than being based upon "animus," marriage laws and laws limiting the benefits and privileges of marriage to married couples have a variety of rational purposes, including, but not limited to (1) encouraging childbirth within marriage, (2) offering and encouraging the advantages of dual-gender parenting, (3) providing positive educative effects, and (4) avoiding a slippery slope whereby marriage becomes anarchic and incoherent.

[9:33:22 AM](#)

Senator Seekins stated this resolution is intended to clarify the people's intent. The people wrote the Alaska Constitution and the people should decide how to interpret the constitution.

[9:34:07 AM](#)

PETE NAKAMURA, MD, retired physician and former Director of the Division of Public Health, Department of Health and Social Services testified in Juneau about his 40-year marriage and two successful children. Despite a prior commitment to deliver Meals on Wheels to senior and disabled residents, he had determined that speaking to this resolution was also important. He continued reading testimony into the record as follows.

...Upon reviewing SJR 20, I cannot help but view it as a hateful proposal to target a minority group based on prejudicial beliefs. If enacted, SJR 20 will target individuals whose beliefs and lifestyles are different from that of the originators of this bill as well as that of a cadre of their constituents. I recognize and appreciate that we are all different but those individuals targeted are similar in many ways to the proponents of this bill. They are not "bad Alaskans," "nonproductive contributors to our society and state," or pose an "endangerment to their neighbors". They are not targeted because they are criminals or leeches upon society. Just like you and I, they have a mix of ambitions, needs, educational attainments, personal dreams, contribute to society in different ways, and are good neighbors and friends.

Amending the constitution to achieve the goal of denying defined privileges to a targeted minority group is not only a misdirected cost of time, money, and energy, but a real danger. If successful, it will open Pandora's box to the prejudicial targeting of any minority group resulting in the denial of privileges and benefits. No minority rights will be safe. I believe that it is our constitution, with the interpretation of our higher courts, that these rights are intended to be protected.

The question often proposed by the proponents of this bill is whether the total population of this State should be given the opportunity to vote on this issue. There are times and issues where the vote of the populous is not needed and the judgment of our judicial system is to be held responsible for protecting the rights of the few. Voting on highly emotional or volatile issues is often based on prejudicial feelings and not on what is right. The situation in Palestine and Iraq are current examples of the democratic vote gone awry. At a hearing before the Senate Judicial Committee, I responded to this question by wondering if civil rights for Blacks would have been achieved if left to the vote of the residents of the South. I pondered if the fate of my family interned behind barbed wire fences might have been worse if it had been put to the vote of the public: a public which expressed their opinions with bricks and rocks through store front windows. With their children dying in Pacific battlefields, who could have expected parents to be concerned about the rights of my family and me? At times, the outcome is as important as the process.

It is only my opinion but I did want to go on record as opposing SJR 20, an unfair, unjust, and harmful proposal. Will you, Alaska, or I be any better if the proposed amendment is successful? I doubt it. Will some good citizens be harmed? Absolutely!

[9:39:55 AM](#)

Co-Chair Green cited Mr. Clarkson's testimony claiming that this resolution would not prevent private employers from providing benefits for same-sex partnerships.

[9:40:13 AM](#)

Dr. Nakamura acknowledged this, but countered that it would encourage disproportionate treatment.

9:40:28 AM

M.V. LEE BADGETT, PhD., Professor of Economics, University of Massachusetts, and visiting professor at University of California, Los Angeles School of Law, testified via teleconference from an offnet location. She asserted that including employees' domestic partners in public employers' health care and other benefits would have positive effects on state and local government employers in Alaska. The possibility of cost increases is usually high on the list of concerns, although a great deal of evidence suggests that cost increases would not occur. Just as important are the benefits that the State of Alaska would realize. She anticipated certain benefits based on her research and that of other academics. She continued outlining her written testimony as follows.

1. Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by \$0.8-1.1 million per year.

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners - either same-sex or different-sex partners - are much more likely to be uninsured or on Medicaid than are married people (Ash and Badgett, 2005). That study finds that if employers offer domestic partner benefits, some people who are currently uninsured are likely to receive insurance. Overall, calculations using Census data and other government data suggests that the State of Alaska could save \$0.8-1.1 million dollars per year if public employers offer health care coverage to all domestic partners.

Census data show that 326 same-sex couples and 3398 different-sex unmarried couples in Alaska include one public employee (Census data analyzed by Gary Gates, Ph.D.). Those couples have a total of 4,500 children under 18 living with them. National data suggest that 14% of the same-sex partners and 23% of the different-sex partners will be uninsured, so Alaska will cut the number of

uninsured by 1,300 - 1,800 people by offering partner benefits, depending on how many children of these couples are uninsured. If uninsured partners of public employees sign up for an employee's health plan, then the state will save money on state-supported health care programs since uninsured people still require health care but often cannot pay for it. The state and local government contribution to uncompensated care averaged \$276 per uninsured person according to a recent study (Hadley and Holahan, 2003, in 2005 dollars). Providing insurance to 1,300-1,800 people will reduce state and local expenditures for uncompensated care by one-third to one-half million dollars.

In addition, 2% of the same-sex partners and 4% of the different-sex partners are likely to be on Medicaid, suggesting that partner benefits could cut the number of Medicaid recipients by 242-333 people. Since the State of Alaska will pay half of the average Medicaid spending of \$2,927 per child and \$3,861 per adult, partner benefits could save the state \$0.5 to 0.6 million per year. (These figures come from State Health Facts, www.kff.org, and are adjusted for inflation.)

Putting the two effects together-less uncompensated care and fewer Medicaid recipients-shows that the state could save \$0.8-1.1 million per year in current health care-related expenditures. If the state covers only same-sex partners, the savings will be much smaller, approximately \$50,000 per year.

[9:44:04 AM](#)

2. Current employees will be healthier, more satisfied, and less likely to leave their jobs.

A growing body of research shows that offering domestic partner benefits has several positive effects on current employees. These effects on employees would likely benefit public employers in Alaska.

First, a supportive workplace climate and supportive policies, including domestic partner benefits, increase disclosure, or "coming out", of lesbian, gay, and bisexual employees. (Badgett, 2001; Button, 2001; Driscoll, Kelly, and Fassinger, 1996; Griffith & Hebl, 2001; Ragins & Cornwell, 2001; Ragins & Cornwell, forthcoming; Rostosky & Riggle, 2002)

Second, this increase in disclosure has positive benefits to worker health. Using different measures of general anxiety or anxiety in particular contexts, several studies found either that people who were more out reported lower levels of anxiety and less conflict between work and personal life, or that more closeted people reported higher levels of anxiety (Jordan & Deluty, 1998; Day & Schoenrade, 1997; Griffith & Hebl, 2002; Hall 1989).

Third, lesbian, gay, and bisexual workers who are more out will be better workers. Several studies show that out workers report greater job satisfaction (Driscoll, Kelly, and Fassinger, 1996; Day & Schoenrade, 1997; Griffith & Hebl, 2002). In addition, Day & Schoenrade's survey participants who were more out also reported sharing their employer's values and goals more than workers who were more closeted.

However, some studies looked for but did not find this link (Ellis & Riggle, 1995; Ragins and Corwell, 2001). A study by Ellis and Riggle (1995) shows that more out workers report higher levels of job satisfaction with their co-workers. Finally, partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms (Ragins & Corwell, forthcoming).

[9:45:29 AM](#)

3. Domestic partner benefits will increase the competitiveness of public employers in recruiting and retaining talented and committed employees.

Many Alaskan employers already offer domestic partner benefits to employees, including Providence Health Systems Alaska, BP Exploration, Chevron, and Wells Fargo. Therefore, in order to remain attractive to employees who have or might someday have domestic partners, public employers will need to offer comparable benefits. In a national 2004 Harris Interactive/Witeck-Combs Communication poll, one third of heterosexual respondents believed that a law preventing employers from offering domestic partner benefits would have "quite a bit" or "a great deal" of an impact on employers' ability to recruit and retain the most qualified employees.

Indeed, evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found

that 6% of heterosexual workers reported that domestic partner benefits would be the most important factor in deciding to accept a new job-more than those who would look for on-site child care. In that study, almost half (48%) of lesbian, gay, and bisexual employees said that partner benefits would be their most important consideration if offered another job. Furthermore, 7% of heterosexual workers who actually changed jobs reported that partner benefits were the most important factor in that decision - a factor almost as common as changing jobs for better retirement benefits (12%).

Offering domestic partner benefits also sends an important positive signal to a much larger group of employees. A 2004 Harris Interactive/Witeck-Combs poll finds significant support for the principle of equal benefits for all employees: 64% of heterosexual employees agreed that "Regardless of their sexual orientation, all employees are entitled to equal benefits on the job, such as health insurance for their partners or spouses." A recent study by Richard Florida found that heterosexual employees, even those without unmarried partners, often look for domestic partner benefits as a signal of an employer that values diversity and creativity. In a follow-up study, Florida argued that regions that do not embrace the benefits of diversity-friendly policies risk alienating the creative workforce that is the key to gaining a competitive edge in the global market. Public recognition of these benefits sends a strong signal to the private sector.

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for public employers, therefore offering partner benefits could lower those costs.

[9:47:30 AM](#)

4. Health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.

The State of Alaska (and some local employers) provides employees with a "benefit credit" with which to pay for health insurance and other employee benefits. If an

employee's benefit costs exceed the credit, then the employee pays the difference. In 2005-6, the benefit credit ranged from \$705 to \$852 per month for state employees whose benefits were administered by the state rather than a union. This benefit credit was sufficient to pay for one of the health care plans offered by the state, but at least employees would need to pay some share of the premium. Most importantly, the state's contribution (and the employee's monthly health premium) does not depend on the number of dependents that the employee has. Therefore, in the short run, the state's (and similar local employers') extra cost for domestic partner benefits would be zero.

Over time, though, as domestic partners and their children sign up for coverage, the state plan and union plans will incur additional expenses. Because the state's Select Benefits medical plan is self-insured, the state plan would be responsible for paying those costs. The costs incurred by the state will depend on whether the state pays for the added costs by increasing the benefit credit or whether those added costs are shifted to employees by keeping the benefit credit fixed while premiums rise.

To estimate the total cost of providing health insurance coverage to the domestic partners of state and local government employees in Alaska, I use the State of Alaska Group Health and Life Fund (from FY 2005 financial report) as a proxy for all public employees affected. In 2005, the average annual health care expenses in this fund were \$9,945 per employee. If each employee has on average two dependents, then the health care costs per person were \$3,315. Multiplying that cost per person by the number of predicted partners gives the total cost increase to state and local employers. To calculate predicted partners we multiply the census figure for partners described earlier by the likely take-up rates for partners and children -- 19%-27% for same-sex partners and 26%-35% for different sex partners (Ash and Badgett, 2005) - since some partners will already have health insurance and others might not take up the coverage because employees will be taxed on any costs borne by employers. The number of new adults and children covered would be 2,100-2,800, adding \$7-9 million in costs to state health care plans, which corresponds to a 5-6% increase in health care costs. If public employers extended health insurance benefits to domestic partners and children of same-sex employees only, the added costs

would be \$400,000 to \$550,000, or a 0.3%-0.4% increase in health care costs.

9:49:08 AM

SARA GRAY, Juneau resident since 1988, and State employee testified in Juneau that she was fortunate to be "white, professional and heterosexual". Although the limitations of this resolution do not apply to her it affects her deeply, as an Alaskan citizen, because "it speaks to oppression". She did not want her state to be oppressive. Rather it should "make every effort to enliven and bring great nurturing and growth to any element of the human family condition of the state of Alaska." Alaska should lead the nation in this. As an employee of the State, she receives "wonderful benefits" and is treated respectfully by her employer. She has many colleagues who are also professional and serve the State well, some of whom would be oppressed if this resolution passed. Both those in same-sex and heterosexual relationships arrive to work and perform the duties assigned to them. Some of her co-workers who are in same-sex relationships have children and some of those are foster children. These co-workers take their children to the doctor, shop for necessities, pay mortgages, serve on community committees, and otherwise contribute to the community. She asked the Committee to stop action on this resolution and to "keep in mind that every time that you make any decisions that you make sure that you validate without oppression".

EDITH BAILY, heterosexual, retired commissioned officer, grandmother, and foster mother testified via teleconference from Anchorage, reading her written statement into the record as follows.

I am a heterosexual, retired commissioned officer, grandmother of five, mother of four, and foster mother of 45. Of those 45 foster kids, five identified themselves as gay or lesbian. I was with them when they struggled with their orientation, saying that they didn't want to be gay - gays are hated. It was through raising these teens that I came to truly understand that sexual orientation is not a choice. Since sexual orientation is not a choice, why consider denying rights based on it. It saves no money. If a person was not gay he or she could marry and would receive benefits for their spouse.

As a female, I value my right to vote. It was only in 1920 that we gained the right to vote. That was only 20 years before I was born. Probably few Americans now want to deny women the right to vote. It just sounds ridiculous to consider.

I was a young adult during the civil rights movement. We look back on those days and wonder why we denied individual rights based on the color of their skin. It was only 1964 that the 19th amendment was passed that assured the black vote. It seems so ridiculous when we look back. What were we afraid of?

Now we are standing at the pivotal point of rights for gay and lesbian. Let us not make those same stupid mistakes again. Forget about quoting the Bible. I remember Bible versus quoted that supported denying rights to both women and blacks at the time. We don't consider them to apply now.

It seems to be such a contradiction of the Republican ideology of "less government" to find that now there is a consideration that the government move into the bedroom and deny rights based on sexual orientation. Alaska prizes its right to privacy as expressed in its Constitution. Government must stay out of the private lives of the people.

My hope is to live long enough to see everyone treated equally. Please help realize this dream by voting no on SJR 20.

9:57:02 AM

SHERRY MODROW, President, Unitarian Universalist Fellowship of Fairbanks, testified via teleconference from Fairbanks against this resolution as follows.

I'm here to speak against SJR 20 because it would discriminate against families. My faith advocates equal treatment under the law for all people in committed relationships. The Unitarian Universalist denomination has been on record as supporting equity for bisexual, gay and lesbian people for over 35 years. We feel it is appropriate, just and right that people who have built

their lives together should share benefits offered by their employers.

As Unitarian Universalists, we affirm and support the value and dignity of each person and of all families. We oppose using the constitution of this state to promote certain religious doctrines over others. This resolution discriminates against my religion and against my religious beliefs.

Ms. Modrow stated that she is the co-owner of a small business that chose to provide health care benefits to all its employees. This proposed constitutional amendment has the potential to eliminate her option to do this and force her to discriminate based on marital status. She continued as follows.

This resolution makes poor business sense. This Act would invite, and it might require, discrimination based upon misconceptions, stereotypes and certain religious beliefs.

The proposed amendment ignores the substantial amount of literature documenting that family members overwhelmingly have longer lives, better health, greater chances of economic success and more successful children than do single people, regardless of how the family is constructed.

SJR 20 is poor public policy and it blurs the lines between religion, privacy and the proper role of the state of Alaska.

[10:00:08 AM](#)

CHARLES NORTHRUP testified via teleconference from an offnet location that he has been away from Alaska for the past six years helping to develop independent media in Croatia and Bosnia as part of a U.S. agency for international development program. These efforts have similarity to earlier work he did in assisting in bringing public broadcasting to rural Alaska. He was hired to manage the first public station in Alaska and moved to Fairbanks in 1963. He quickly learned about the "Alaska spirit", which provided that the only thing that mattered was his performance. His youth, inexperience or appearance was not factored into whether he was accepted.

Mr. Northrup asked the Committee to consider this in deliberating on SJR 20. This resolution would create two classes of employees. He requested that employees not be treated differently from their colleagues for non-work related reasons.

Mr. Northrup informed that he has two sons; one is married with two children. The other son and his partner adopted children. Both sons have provided him with grandchildren. He requested that the Committee "please let the court decision stand."

[10:04:20 AM](#)

SHIRLEY RIVAS testified via teleconference from Anchorage to ask the cost of the proposed constitutional amendment.

[10:04:57 AM](#)

Co-Chair Wilken cited the figure from fiscal note #1 from the Office of the Lieutenant Governor, Division of Elections at \$1,500.

[10:05:19 AM](#)

Co-Chair Green clarified this would be the cost to include the question on the ballot of the next general election.

[10:05:27 AM](#)

Ms. Rivas commented this amount seemed low. She asked who was paying for the testimony of Mr. Clarkson.

[10:05:43 AM](#)

Co-Chair Green responded that the Legislative Counsel contracted with Mr. Clarkson.

[10:05:51 AM](#)

Ms. Rivas asked if the State of Alaska is therefore paying the cost.

Co-Chair Green did not answer and directed the witness to provide her testimony.

[10:06:07 AM](#)

Ms. Rivas indicated she had several other questions. She was totally opposed to SJR 20. She is the mother of a gay son. Homosexuality is not a choice but a biological fact. It is wrong to penalize citizens that this legislative body is also supposed to be representing.

10:07:25 AM

JAMES JOHNSON, Vice President, Faculty and Staff Relations, University of Alaska, testified in Juneau as follows.

I am here today representing the University of Alaska, an employer of approximately 4,700 full-time faculty and staff across the state. Including employees and their dependents, the university now covers approximately 10,000 lives with health and other benefits. Over the years the university has provided benefit programs that meet the needs of our employees and that, through aggressive management, are very cost effective.

As an employer, the university desires to protect an important benefit it now provides to its employees who are financially interdependent partners. Under the university's program, financially interdependent partners who meet at least thirteen criteria are provided health, tuition, and other benefits comparable to those provided to our married employees. As of November 2005, 111 employees had 147 dependents under the program.

The university wants to protect this benefit because we think it is in the best interest of the university and our employees. While most of our employees are Alaskans when they are hired, by necessity most of our faculty are recruited from a national and international market. In order to compete in that market for the top faculty and staff, we must offer a market competitive compensation package. Since close to half the universities across the nation provide domestic partner benefits, we believe it is critical that we provide similar benefits, for if we do not, we would limit considerably the pools of candidates for our positions.

At the same time this benefit is important for recruitment and retention, it is very inexpensive. The cost is less

than 1.5% of the university's annual health benefits cost, under 1% of the university's overall benefits cost, and about one sixth of one percent of our overall compensation cost.

In closing, SJR 20, as currently conceived, would preclude the university from providing a benefit program that we believe is in the interest of our employees. We therefore respectfully request that you protect the university's strong interest in maintaining our financially interdependent partner benefits program.

10:10:32 AM

JEANNE LAURENCELLE, United Universalist Fellowship of Fairbanks, Social Action Committee, testified via teleconference from Fairbanks reading a statement into the record as follows.

Unitarian Universalists affirm the inherent worth and dignity of every person. Our record is one of opposing slavery when it was a divisive issue. Unitarians supported women's suffrage when it was a divisive issue. We supported civil rights when other denominations shied away. History bears us out. I am here today to testify on behalf of all unmarried couples, gay and straight. History will bear us out.

We absolutely reject the call to "let the people decide" in this matter. We assert that the rights of a minority should never be subject to the vote of a majority. This is a matter of justice.

We are proud that our constitution guarantees every Alaskan equal rights, opportunities, and protections under the law. This also is a matter of justice, which should not be undermined by legislation such as the proposed constitutional amendment - an amendment which was crafted with the express intent of depriving a group of Alaskans of rights and benefits.

I am pleased to report that the opinions of Lutherans, Episcopalians, Methodists, Presbyterians are evolving to a greater recognition that gays and lesbians are valued individuals created and loved by God. A local example: Fairbanks Lutheran Church has adopted a resolution

welcoming and valuing all people...regardless of sexual orientation. Gays are welcomed to fully participate in the life of the congregation.

Even Dr. James Dobson of Focus on the Family, who strongly opposes gay marriage and civil unions, is now supporting a benefits bill in Colorado that includes unmarried and same-sex couples. A February 19th article in the Christian Post quotes Dr. Dobson as calling it a "fairness bill". Further it states that "Focus believes the 'reciprocal beneficiary' bill they support will address the issue of benefits separately from marriage."

We are right there with Dr. Dobson. We too believe that this is a matter of fairness; and we too believe that benefits can be addressed separately from marriage.

If benefits for unmarried couples and gays are morally acceptable to the Christian Right in Colorado, they must be morally acceptable in Alaska too.

As I am sure you know, the cost of implementing benefits for state workers is miniscule. This is not a financial issue.

Focus on the Family endorses benefits legislation to include unmarried couples and same-sex couples in Colorado, so this cannot be a moral issue.

The Alaska Supreme Court found unanimously that the state must provide partner benefits for gay employees, so this is not a legal issue.

By process of elimination it seems that this must be an issue simply of discomfort and dislike, prejudice, driving a push to deprive others of rights and benefits.

I urge you to oppose SJR 20, an unabashed attempt to discriminate against Alaskans.

[10:14:09 AM](#)

DEBBIE JOSLIN, President, Eagle Forum Alaska, testified via teleconference from offnet location in Glennallen on behalf of

the over 1,000 members of the organization. She read testimony into the record as follows.

I want to start by thanking the legislature for introducing this bill. We appreciate your giving the people of Alaska an opportunity to weigh in on this. In 1998, the people of Alaska voted by a majority of almost 70 percent to add to the State Constitution, that marriage is only between one man and one woman. In October 2005, the Alaska Supreme Court was asked to decide whether homosexual couples were being discriminated against because they were denied one of the privileges of a married couple.

While the answer was clearly no, our constitution stated that marriage was something that can only be entered by one man and one woman. The Alaska Supreme Court decided that case in favor of the plaintiffs based on their own personal opinions. Their decision was in direct violation of the will of the people of Alaska and our constitution.

The question before the legislature today is whether or not to allow the people of Alaska to have a chance to clarify what was put into the constitution in 1998. We thought the wording was clear, but the Court ignored the marriage amendment. There is ample evidence to believe that the people of Alaska do not agree with the Court.

You are elected representatives to this government have been appointed to represent the will of the people and as such we ask you to allow us to weigh in on this subject.

The people who are testifying against this bill are not hurt by its passage. They will have the right to voice their opinions on the November ballot too.

You're being told that the issue here is discrimination because of the equal protection clause. That is clearly wrong. No one is being discriminated against. Our society has always held that marriage is for the public good. Marriage has been the preferred relationship since the beginning of man. It is in marriage that children are born and reared in the best ways possible for society. Marriage is for the good of our children and should be protected along with its rights, privileges and responsibilities.

Children raised by a mother and father are healthier and happier.

State statutes holds that certain criteria must be met before issuing a license to practice medicine or law in this state. Am I being discriminated against because I am not allowed a license to practice law or medicine? Certainly not. My equal protection is not being infringed on. I do not possess the qualifications for these licenses and neither do homosexual couples possess the qualifications of marriage. Nor should they be entitled to its benefits.

That is not a discrimination fact. It's just merely a fact. This legislature is duty bound to uphold the will of the people. The people spoke loud and clear in 1998 and we wish to have the opportunity to reiterate what we said then.

Please pass SJR 20 and allow us that right.

[10:17:10 AM](#)

DAVE BONSON testified via teleconference from Anchorage in support of SJR 20. Focus on the Family is not in support of benefits for same sex couples. Rather the organization recently began a campaign in support of this resolution. A small vocal minority is propelled by the American Civil Liberties Union in Alaska to stop this. The issue is solely the right of the people to vote to support what they affirmed in 1998 with the marriage amendment, which passed with a 68 percent majority.

Mr. Bonson expressed that the limited number of testifiers speaking in favor of this resolution is not an issue, as 68 percent of voters supported the constitutional amendment.

Mr. Bonson spoke as a husband and father, that he was disappointed with the situation of not only recognizing bad behavior but also rewarding it. To suggest that homosexuality is innate and this is supported by science is completely wrong. Rather the science is clear that this is elected behavior, although some may have less resistance than others. However, some may have less resistance to alcohol and drug abuse, but those people are discriminated against in that they are not allowed to fly planes or drive cars.

[10:19:55 AM](#)

BILL DEAN testified in Juneau he is married with four sons. He believed this resolution would allow Alaskans to express their opinion in the polls. He encouraged its passage from the Committee. It has been made clear that the majority of Alaskans desire to reflect the Judeo-Christian ethics in how we do business and in the way laws are passed.

10:21:36 AM

SEAN BROWN, attorney, small business owner, Christian and resident of Bethel testified via teleconference from an offnet location that he and his same sex partner of seven years call Alaska home. The issue is not as Senator Seekins and Mr. Clarkson would assert, about same-sex marriage. That matter has already been settled. But rather the issue is whether the State of Alaska could provide benefits to the family members of its employees, who are working in schools, colleges, law enforcement, judiciary, Department of Law, and numerous other areas.

Mr. Brown informed that his partner works for the University of Alaska and as a member of his family, Mr. Brown receives benefits through the University. He would be directly affected by passage of this resolution. Notwithstanding the constitutional amendment that prohibits marriage between same-sex couples, the fact that the University provided benefits made them feel a welcome part of the Alaskan community. They became active in the community by volunteering, opening a business and investing in the state. They are but one example of a same-sex couple contributing to the state, many others exists in Bethel and elsewhere in Alaska, who raise families, attend churches, open business, etc. The State should support these family units. This resolution is unquestionably discriminatory and is not in line with the spirit of Alaska he has come to love. He requested the Committee not vote in favor of its passage.

10:24:10 AM

ANNA GAGNE-HAWES, University of Alaska student and daughter of a lesbian mother, testified via teleconference from Fairbanks to encourage the Committee to vote against SJR 20. Her mother's partner has been a part of her life since the age of six, which is literally as long as she could remember. She receives partial health insurance coverage from this mother. The proposed

constitutional amendment would divide her mothers, and only one would be legally able to provide her benefit coverage. This amendment does not only affect people whose lifestyles some may not agree with, it affects their families as well. She loves and respects her mothers and would be ashamed if the legislature passed this amendment that would punish not only partners, but their children and families as well.

[10:25:24 AM](#)

JEFF BOLTON, Alaskan Native, testified via teleconference from Anchorage against the resolution. A bill that supports discrimination need not be put to vote. Speaking as a non-Christian conservative, he asserted that same-sex unions provide equality and an opportunity to choose partnership for economic, emotional and other reasons. Past laws stipulated that Blacks and Whites could not marry each other. Gays should be encouraged to marry and to make binding commitments. He asked the legislature to protect his rights and equality.

[10:28:32 AM](#) AT EASE

Vice Chair Bunde chaired the remainder of the meeting.

[10:29:23 AM](#)

KAYT SUNWOOD testified via teleconference from an offnet site in Kivalina as a concerned citizen of Alaska and a financially interdependent partner. She has many colleagues and friends who are also in unmarried and financially interdependent partnerships. This resolution would eliminate hers and others' opportunity to pay for their own health care coverage for themselves and their families. She found it difficult to understand the sense of amending the constitution in such an ambiguous and discriminatory manner. It could prove financially disastrous to the state beyond the impact to State of Alaska employees. Some corporations and businesses in Alaska have anti-discrimination policies and mandates. A discriminatory amendment such as this could drive these businesses out of the state. She questioned the wisdom of gambling with Alaska's future in this manner. She directed the Committee to keep Alaska financially healthy and stop the progress of this resolution before it cost the state more than had already been expended.

[10:31:47 AM](#)

JANA PEIRCE, Unitarian Universalist Fellowship of Fairbanks, testified via teleconference from Fairbanks, on behalf of herself, her husband and the social action committee of the UUF in opposition of SJR 20 in order to protect the rights and benefits of all Alaskans. She continued reading the following statement into the record.

The proposed amendment violates my religious beliefs. Our principles affirm the inherent worth and dignity of every individual, and our faith has a long history of opposing religious and political intolerance. As people of faith we need to speak out against those who would make "tolerance" a dirty word.

This resolution is wrong because it would enshrine the religious beliefs of one group into the state's constitution. When we let our constitution be used as an instrument of intolerance, as an attempt to legalize discrimination, we can no longer celebrate it as an enlightened document as we have this past year.

But this is not fundamentally an issue of religion. It is an issue of fairness, which is why the Alaska Supreme Court ruled unanimously that to deny benefit to the same-sex partners of public employees is unconstitutional. Changing the constitution to categorically deny rights to one group of Alaskans does not make it more fair.

And because the bill is so broadly written it would not only discriminate against gay and lesbian couples and their children, it would deny equal compensation to heterosexual unmarried families as well.

But it is not just a question of equality under the law. It is also good business: Nearly three-quarters of Fortune 500 companies offer domestic partner benefits. And the number of private companies extending equal benefits to all employees has been growing steadily with an average of three employers per day adding domestic partner health coverage in 2003, and this trend has continued. Even Dr. James Dobson, head of the conservative Christian organization, Focus on the Family, supports a benefits bill that would include unmarried and gay families.

Bucking this trend will have direct economic consequences for public and private sector employers in Alaska. Even more than the anti-marriage amendment, this resolution would restrict competitiveness for companies. They may have to increase pay and other compensation to attract top candidates. They may have a harder time retaining existing workers, increasing their costs for hiring and training. We should leave Alaska employers the flexibility to define their benefits programs as their consciences and their business sense dictates. We should not tie their hands.

And finally, allowing this resolution to be put before the voters in a general election is bad governance. The rights of the minority should never be subject to a popular vote by the majority. The rights of minorities must be weighed by a group of reasoned and ethical men and women who have been charged to act in the public interest. That means our elected officials or the courts. I am asking this committee to discharge that duty - and to get it right, so the courts don't have to.

[10:35:01 AM](#)

LESLIE WOOD testified in Juneau that she and her domestic partner of eight years decided to have children and recently learned she was pregnant with twins. If this resolution passed, she would have to work to provide health insurance for her children. This would make her family unstable. She opposed this resolution because she did not want the stability of her family put to vote.

[10:36:45 AM](#)

CHUCK O'CONNELL testified via teleconference from Anchorage, reading his testimony into the record as follows.

I am a married 56-year Alaskan resident with five Alaskan children, and I am speaking in opposition to SJR 20 for all seven of us frequent voters.

The First Americans have lived on our continent for at least 30,000 years; Columbus got close in 1492; the Pilgrims arrived in 1620; the Declaration of Independence was signed by 56 delegates on July 4, 1776; and our

Constitution was ratified by fourteen states between 1787 and 1791.

Well guess what? Not one single person alive, during this entire period of our Nation's early history, had a marriage license that was issued by a government agency.

I am sure that the millions who were married during this historical period were recognized as married by their respective contemporaries. Why-oh-why is my country so caught up in this "marriage" debate? Marriage is not really a vital governmental issue, and it is time for politicians to back off...it is not a time to further limit the rights and benefits of citizens who share housing without a government marriage license. The marriage license, after all, was originally, and has always been a tyrannical way to legally oppress minorities.

People promoting this amendment are the same ideological purists who want to make some medical decisions between a woman and her doctor illegal, they want certain religious dogma in courthouses and schools, they brazenly interfere with the right to die, and they oppose enlightened scientific research with stem cells. For me nothing could be more threatening than this stupid continued interference in the personal privacy of some of Alaska's citizens with whom they do not agree.

This entire interference in marriage was created, in the first place, by government oppression of a consensual relationship between consenting adults of mixed race and now there are those in elective office who are seriously considering further limiting these constitutional rights and benefits based solely on who we live with. What the State should do is get out of the privacy of our homes and "provide for our public safety, and promote our general welfare".

Tyranny by the majority is extremely dangerous, remember we are all minorities in some degree!

Racial segregation, separate but equal, voting rights, equal access to educational opportunity, the right to Inter-racial marriage, striking down sodomy laws, and the constitutional right to equal benefits are all the result

of court decisions. Were it up to the tyranny of the majority, all of these enumerated rights would not exist.

Marriage has long been a vehicle used to oppress minority groups. I urge you to keep your oath of office and uphold the Constitution, don't turn your back and vote to limit it.

I urge you to oppose SJR 20.

10:41:13 AM

SYLVIA DEAN, Homemaker, Mother, testified in Juneau that she is sobered that the court might have a superior view over the rights of the people. Because the will of voters had already been voiced, the only fair way to uphold the welfare of the state would be to put this constitutional amendment proposal on the ballot.

10:42:00 AM

TIM STALARD testified via teleconference from Fairbanks, reading the following statement into the record.

...I own a travel business here in Fairbanks. I am here today to oppose SJR 20 because it is discriminatory, it will hurt our tourism industry, and it is bad for Alaskan families.

I know this resolution will hurt our travel industry from personal experience. In fact this resolution has already cost a Fairbanks businessman \$20,000 in lost business. I am arranging for an event for a large group this coming summer. Because of the possibility that the hotel owner might vote for this resolution, I decided to take my business elsewhere. I do not want to subject my customers to a business that might discriminate against them based on their marital status or who they love. Even discriminating against one of my clients is too many.

If our great state passes a discriminatory constitutional amendment, this will have negative repercussions across our travel industry. I think everyone has heard Las Vegas' travel slogan "what happens in Vegas, stays in Vegas". In other words, people go to Las Vegas - a very popular destination - to have fun and not to be judged. If Alaska

rolls out a conditional welcome mat that says "Visit Alaska as long as you are not unmarried, divorced, gay, etc.," less people will want to come here. Just like a politician's campaign message, our travel industry's marketing message needs broad appeal that does not alienate potential visitors. The obvious discrimination of SJR 20 will scare visitors away from our state.

I know on a personal level that this resolution is anti-family and will have devastating affects on family finances. In addition to my travel business, I also work at the University of Alaska (UA). My partner and I are enrolled in the domestic partner benefits program. Through this program I am able to provide health care and other benefits to our children. I don't think I need to emphasize the importance of health insurance to Alaskan families. But, I fail to see any public policy benefit to denying health insurance to Alaskan families. As you probably know, the domestic partner benefits program costs UA less than 2% of the total benefit program costs. So the cost is small, but the benefit to families and the employer are huge.

It is not UA who is out of touch with economic and social reality, it is the radical backers of this resolution. Approximately half of the Fortune 500 companies offer domestic partner benefits and more do each year. This includes companies such as Alaska Airlines, BP, Ford Motor Company, Home Depot, Motorola, and Wells Fargo. Offering domestic partner benefits is an industry best practice, which helps companies attract and retain the best, most creative employees.

My final point is that discrimination against non-traditional unmarried families is bad public policy. I am 32 years old and many in my generation are reluctant or wait a long time to get married. While my own parents have been married for more than 30 years, overall my parents' generation made a mess of marriage. Many of my friends don't want to get married because of their parents' rocky marriage relationships and ugly divorces. Also, many divorced parents are reluctant to marry their new partners. Regardless of the reasons that Alaskan parents are not married, it is personal and family business, not the State's.

The State's business is protecting children and that is why I ask you to kill this resolution in this committee. SJR 20 might save the state a small amount of money, while hurting our travel industry, and having devastating financial impact on Alaskan families.

[10:45:43 AM](#)

TIMOTHY DAVIS, 25-year Alaska resident, testified via teleconference from Anchorage, reading the following statement into the record.

...During this time, I have seen legislative issues come and go on the state and local levels that had various impacts on our quality of life in the Great Land. Never have I seen a more crucial issue come before us. The protection of marriage - traditional marriage in our state. It screams for a vote of the people.

Marriage between one man and one woman has always been the bedrock for American families and the cornerstone of American social stability. Meddling with this fundamental relationship is arrogant of the highest order.

Five Alaskan Supreme Court justices appear to have such arrogance. They have summarily usurped thousands of years of history and preempted the right of the people of this state to affirm what the majority of us know to be the right and true nature of marriage established by our creator, God: marriage between one man and one woman.

Further, they expect the majority to pay for the inordinate, sexual expressions of a few. The ludicrous nature of their actions can be illustrated. What if the Court had decided that polygamy was a valid alternative to our current legal understanding marriage? Would that be allowed to stand without coming before the people for a vote? Or what if since it does not seem to matter what the definition of marriage is, they from their vaulted posts deem prostitution or any other sexual expression as needing legal status?

Now these may seem ludicrous examples in their own right, but such an appearance is only one of degree. When you change the definition of marriage, which in effect is what

the Court did, as Dr. Nakamura alluded to Pandora's box earlier, I would say you open Pandora's box for a flood of other inordinate sexual expressions to be warranted.

I do not trust unelected officials to make such grandiose decisions for us. I do not trust imperialistic ACLU lawyers to have the moral rectitude to speak for me. I want to vote.

Please allow SJR 20 to pass and give the people you serve the opportunity to speak on this crucial issue. What I object to is judicial imperialism.

[10:48:26 AM](#)

KAREN TAFT WELLS, 27-year State of Alaska employee, testified in Juneau as follows.

The State Constitution supposedly says I have equal protection under the law.

What some of your colleagues have proposed to do is to take that right away from a certain class of people and say everyone in the state is protected except for gays and lesbians. By placing an initiative on the fall ballot you will be asking for discrimination against a certain class of people. I am one on those people. I sit before you to ask that you stop this bill right now.

The Supreme Court was right in their unanimous determination that same sex domestic partners should be entitled to State employee benefits. The Alaska constitution bars us from marrying and without that particular document, we are not able to receive the same benefits as our married co-workers and are being discriminated against.

Do you really believe the people of this state can navigate the legal waters better and more fairly than the Alaska Supreme Court? I don't. I think the wording of this initiative is mean spirited and seeks to discriminate against a class of employees that you, as the body that represent us, are responsible for protecting. Or, are you going to concur with these mean spirited people and say, yes, everyone in the state is equally protected except for

gays and lesbians. A better question would be fairer if you asked the voters if they want to limit the equal protection clause so that it no longer applies to unmarried individuals.

Please stop this initiative today by keeping it in this committee. Please see that I am human, just like you, that love arises in me the same as it does you and that there is no difference in that quality of love. Who cares if my love is for a woman rather than a man, what business is it of yours or the people of this state to judge who and how I love? It is just love, a source of energy available to me that adds to the goodness in the world and takes nothing away. It is pure, it is beautiful and worthy of the same treatment my married co-workers receive. I work side-by-side employees who are allowed to marry, thus qualifying for benefits. Those people receive benefits for their spouses and children. Since I am legally barred from marrying, I should be entitled to receive those same benefits from the state through domestic partnership criteria. Otherwise as I see it, you will be discriminating against me.

And lastly, what scares me the most is that amending the constitution for this purpose will set a standard for any other group that is not in the majority. Because I am a part of a minority group, should not lessen my value or worth as an employee. What group will be next? I bet you dare not speak it for you would be accused of an "ISM" or a "phobia". Why is homophobia ok, why are special interest groups coming from Colorado to widen the gap of intolerance and fear? Do you see what this is doing to me, to those I love, to the people of this state, the country, the world? We need tolerance of one another's capacity for tolerance through leadership and not allow hate and fear to taint our communities. I will end with my favorite quote "If you bring forth what is within you, what you bring forth will save you, if you do not bring forth what is within you, what you do not bring forth will destroy you." Gospel of St. Thomas Logan.

[10:52:06 AM](#)

LISA FITZPATRICK testified via teleconference from an offnet location in opposition to SJR 20. She is married with two

children and she appreciates the values that occur with marriage. She believes in family values and teaches those to her children.

Ms. Fitzpatrick informed that she is also a lawyer and she places a high value on the integrity of the constitutions, both the Alaska and US constitutions. She automatically approaches with caution and distrust, attempts to modify the constitutions. The proposed amendment would write discrimination into the Alaska Constitution. It would target a minority group for the purpose of denying equal protection of the law based solely on their status. She asked where the line would be drawn. A professor in law school taught her that once the rights embedded in the constitution were tampered with, you embark on a slippery slope. This proposed resolution would put the state down a slippery slope of discrimination.

Ms. Fitzpatrick's receipt of benefits would not be personally affected by the passage of this constitutional amendment; however she would be personally affected. In raising children, one of the core values she teaches them is tolerance of other people and their lifestyles. A discriminatory amendment such as this would send the opposite message. As a practical matter, if this resolution passed and the proposed amendment were put before the people, she could only begin to imagine the polarization that would ensue and the infighting and hate that would follow.

Ms. Fitzpatrick was proud to be an Alaskan and proud of the heritage and the recognized right to privacy. Private lives are just that: private lives. This should not be changed.

Ms. Fitzpatrick disagreed with the reasoning of putting the rights of a minority group to a popular vote. The legislators' duty is to stop these types of resolutions. Allowing such votes leads to tyranny by majority.

Ms. Fitzpatrick quoted Lillian Helman from testimony before a US Congressional committee during the commonly referred to McCarthy hearings, "I won't cut my conscience to suit today's fashion." Ms. Fitzpatrick applied the statement to her assessment of this resolution and would not discriminate in this fashion because a number of interest groups that believes strongly in fundamental Christian values. This resolution does not represent Christian values.

10:55:32 AM

Senator Bunde announced that Committee must recess for a session of the full Senate. Although he had not conferred with Co-Chair Green, he was certain that due to the volume of interest in this resolution, it would be scheduled again. Ample notice would be provided to allow those unable to testify at this meeting an opportunity to do so.

10:56:07 AM

BRENDA BRAY testified via teleconference from Anchorage that she has voted consistently in all elections and would continue to do so. This issue should be brought to a vote of the people. Not all issues before State government require this, but this issue is one that does need to reflect the will of the people.

Ms. Bray did not view this resolution as oppressive and brutal in that it does not forbid employers from offering benefits for domestic partnerships. Instead, it prevents employers from being required to provide the benefits.

Ms. Bray spoke as a person with family members who lived together without marriage she wondered how big the net has to be in which employers must provide benefits. She has housed many international students who did not have health benefits, they became as much a part of her family as her natural children and she has maintained contact with them. Yet she was unable to include them in her health care coverage.

Ms. Bray encouraged the Committee to allow the issue to be voted upon to allow the State to move forward.

10:58:04 AM

SCOTT MILLER testified in Juneau, reading from the following statement.

This bill is playing with fire, and could be hugely expensive. From the fiscal note, the State apparently hasn't analyzed the cost of having same-sex families covered by employer-provided insurance versus serving them under, for example, Medicaid, which is largely State funded. Or the extra cost of being forced by lack of

insurance to postpone care until it requires an emergency room visit. These are tangled questions, but only the tip of the iceberg.

Of course, the financial impacts on the men, women and children in same-sex families of being denied health and other benefits can be severe, and I'm sure that many testifying here will describe those impacts. I'm not gay, and I have no first-hand experience being denied employment benefits on the basis of my personal identity.

I do, however, have personal experience growing up in a country divided by discrimination, and I think it's important to confront the costs of that. Surprising, as it may seem today, when I was in high school, interracial marriage was illegal in most of the US. That was the will of the people. Blacks and whites were not free to marry until a unanimous decision of the Supreme Court in 1967. I'm not arguing in favor of gay marriage; that point is settled in Alaska. I'm talking about the incalculable costs, in family dissolution, poverty, bad schools, high crime, disproportionate access to health care, etc., etc. of trying to create and enforce a group of second-class citizens. And I'm talking about the spiritual cost of injustice.

SJR 20 fuels ignorance and divisiveness. Putting this measure on the ballot invites the same types of costs as racial discrimination, and there are many more gays in Alaska than there are blacks. Further, public opinion is changing. Time Magazine recently cited a poll that showed only eleven percent of Americans think that gays are exercising a conscious choice. Sixty percent of all women and thirty-nine percent of men already understand that sexual orientation is innate - a quality that a person is born with - like skin color.

SJR 20 targets Alaskans and their children based on who they are. I would like to see some analysis of the implications of that, fiscal and otherwise, and I hope you would too. To get a qualitative idea of the cost of anti-gay discrimination, as a member of the Perseverance Theatre board of directors I invite you to our spring production of The Laramie Project, a play about the real-life hate-murder of a gay college student in Wyoming in 1998.

[11:00:53 AM](#)

Senator Bunde noted the meeting would technically RECESS to allow the Committee to reconvene the following day for consideration of other legislation.

#

ADJOURNMENT

Vice-Chair Con Bunde adjourned the meeting at [11:01:00 AM](#)