

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 21, 2006

8:37 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members were present

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 20

Proposing an amendment to the section of the Constitution of the State of Alaska relating to marriage.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SJR 20

SHORT TITLE: CONST. AM: BENEFITS & MARRIAGE

SPONSOR(s): JUDICIARY

02/14/06	(S)	READ THE FIRST TIME - REFERRALS
02/14/06	(S)	JUD, FIN
02/16/06	(S)	JUD AT 8:30 AM BUTROVICH 205
02/16/06	(S)	<Pending Referral>
02/21/06	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Kevin Clarkson, Attorney

POSITION STATEMENT: Commented and answered questions on SJR 20

Steve Click

POSITION STATEMENT: Testified in opposition to SJR 20

Cheryl Humme

POSITION STATEMENT: Testified in opposition to SJR 20

Rick Solie

POSITION STATEMENT: Testified in support of SJR 20

Chuck O'Connell

POSITION STATEMENT: Testified in opposition to SJR 20

Andrea Doll

POSITION STATEMENT: Testified in opposition to SJR 20

Mary Graham

POSITION STATEMENT: Testified in opposition to SJR 20

Peter Nakamura

POSITION STATEMENT: Testified in opposition to SJR 20

Joan Hamilton

POSITION STATEMENT: Testified in opposition to SJR 20

Jeri Museth

POSITION STATEMENT: Testified in opposition to SJR 20

Jane Schlitter

POSITION STATEMENT: Testified in opposition to SJR 20

Brandon Maitlen

POSITION STATEMENT: Testified in opposition to SJR 20

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:37:12 AM](#). Present were Senators Gene Therriault, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

SJR 20-CONST. AM: BENEFITS & MARRIAGE

[8:37:51 AM](#)

CHAIR SEEKINS announced SJR 20 to be up for consideration.

KEVIN CLARKSON, attorney, introduced himself as a past legal counsel for the Alaska State Legislature in 1998 and one of the drafters of the amendment to Article 1, Section 25 of the Constitution of the State of Alaska [AS 25.05.013].

He reported the history behind SJR 20 was because of a challenge to the ratification of the Marriage Amendment. In response to a decision by the Superior Court in Anchorage in a case called

(indisc) versus the Bureau of Vital Statistics [Feb 28, 1998], the Superior Court ruled that a person has the right to choose their mate. This ruling included the right to marry a person of the same sex. The plaintiff in that case sought marriage as a doorway to the benefits and privileges attached to the relationship, Mr. Clarkson said.

[8:39:04 AM](#)

The plaintiff argued there were 115 privileges and benefits created by Alaska law that were attached only to the married relationship of a man and a woman. Once married, the Superior Court noted, the state provides benefits to spouses and dependants. The original pretenses of the proposed Marriage Amendment of 1998 were, "To be valid or recognized by the state, a marriage may exist only between one man and one woman."

[8:42:41 AM](#)

MR. CLARKSON advised the committee that the primary impetus for SJR 20 was the "ACLU versus the State of Alaska" litigation. In that case the plaintiffs argued for a separation of marriage status from marriage benefits as a way to seek another doorway to compensation benefits. The Superior Court of Alaska ruled that the Marriage Amendment did not constitutionally bar domestic partnership benefits, literally telling the people of Alaska that they voted in favor of rights of benefits to unmarried, same-sex couples.

[8:44:52 AM](#)

[Due to difficulty in hearing the testimony of Mr. Clarkson, Senator Guess asked for a faxed copy of his testimony.]

[8:46:52 AM](#)

MR. CLARKSON hypothesized that the implication of "ACLU versus the State of Alaska" will cause an equal protection claim and mandate private employers to provide domestic partnership benefits for their workforce.

[8:49:13 AM](#)

SENATOR THERRIault asked Mr. Clarkson whether the language of SJR 20 was adopted from language tested in other state's courts.

MR. CLARKSON said yes. It is similar to an amendment that is pending in California.

SENATOR THERRIault expressed interest in receiving information regarding the issue where the courts have weighed in.

MR. CLARKSON said he was unaware of any court that has ever thrown out an amendment that was passed by the Legislature and ratified by the people.

SENATOR THERRIAULT clarified he was looking for any deliberation where the courts have decided whether the language as proposed in SJR 20 was considered internally inconsistent. He said Alaska privacy law is very strong but often contended.

[8:51:51 AM](#)

CHAIR SEEKINS asked Mr. Clarkson whether he is aware of a proposed federal amendment that is briefer than what is currently on the table in SJR 20.

MR. CLARKSON said yes.

CHAIR SEEKINS asked Mr. Clarkson whether he could give a reason as to why the federal amendment language was so brief in terms of the rights, benefits, obligations, qualities and effects of marriage.

MR. CLARKSON responded he would have to refer to the list of 115 rights and privileges listed in the (indisc) litigation.

CHAIR SEEKINS informed Mr. Clarkson that people contacting his office believed their vote on the marriage amendment was also intended to limit the rights and benefits of marriage to same-sex unions. He asked whether the drafters of that amendment meant to contain within the marriage union the rights and benefits of marriage.

[8:56:20 AM](#)

MR. CLARKSON reiterated his earlier testimony and suggested Chair Seekins' constituents were right in that the recent amendment should have addressed the issue once and for all. He said the Marriage Amendment, which the Legislature passed and the people ratified, presupposed that marriage and the accompanying benefits were exclusively linked. He said the state argued that the only avenue available for unmarried people was legislation properly enacted by the Legislature.

[8:59:04 AM](#)

CHAIR SEEKINS said the people wish to be given the opportunity to vote on the issue.

MR. CLARKSON pointed out that the Legislature is empowered to give the people the opportunity to amend the Constitution.

CHAIR SEEKINS said in viewing the ACLU opinion, one thing the Alaska Supreme Court said is "We must give effect to every word, phrase and clause of the Alaska Constitution." He asked whether passing of SJR 20 would confine the 115 marriage benefits to opposite-sex married couples.

MR. CLARKSON said yes.

CHAIR SEEKINS asked Mr. Clarkson whether SJR 20 could be effectively challenged.

MR. CLARKSON said there might be a challenge but not an effective one.

[9:03:00 AM](#)

CHAIR SEEKINS claimed he heard several opinions on the topic over the weekend. He asked whether SJR 20 would affect dependent relationships and preclude dependents from being protected on an insurance policy.

[9:06:24 AM](#)

MR. CLARKSON did not know. Currently there are many relationships that do not receive the equivalent benefits that married couples do. He said SJR 20 would preserve the status quo.

CHAIR SEEKINS asked whether SJR 20 would preclude collective bargaining units from offering extended benefits.

MR. CLARKSON said no. He said private companies would not be affected. He said Alaska Communications Systems (ACS) currently extends benefits to same-sex partners and that SJR 20 would not change that.

SENATOR GUESS disagreed and said ACS does not offer benefits to domestic partners.

CHAIR SEEKINS noted that the University of Alaska offers domestic partner benefits but that the employee has to meet several hurdles. He asked whether the proposed legislation would invalidate their policy.

MR. CLARKSON did not know.

[9:08:13 AM](#)

CHAIR SEEKINS said the intent was not to bar any collective bargaining unit from bargaining for domestic partnership benefits. He called for public testimony.

[9:09:24 AM](#)

CHUCK O'CONNELL testified in opposition to SJR 20. He said since statehood the State of Alaska has always recognized equal pay for equal work. The contents of SJR 20 would take the state backwards in terms of progress. He accused the legislators of attempting to limit the Alaska State Constitution, which they once swore to uphold. He said that violated Article 1, Section 15, which prohibits the Legislature from making a law granting special privileges for immunity. He said he also sees the resolution as an infringement on Section 22, which is the right to privacy.

MR. O'CONNELL said he has a 30-year history with collective bargaining and he felt SJR 20 would change the benefits from a mandatory subject of bargaining to a permissive subject of bargaining.

[9:12:32 AM](#)

MR. O'CONNELL asked the committee to reconsider the resolution.

CHAIR SEEKINS asked Mr. O'Connell to explain what he meant by equal pay for equal work.

MR. O'CONNELL explained that benefits are part of the compensation package and make up part of the pay for the work.

CHAIR SEEKINS asked Mr. O'Connell whether he believes there is a compensation disparity for employees who have fewer dependents and therefore less insurance coverage than an employee with a large family.

MR. O'CONNELL said no. Similarly, an employee who has a serious illness would not necessarily receive more compensation than another.

CHAIR SEEKINS added SJR 20 is not an example of the Legislature creating law. The final vote would be with the people.

[9:16:15 AM](#)

SENATOR THERRIault commented that a legislative committee considering a change to the Alaska State Constitution was not unconstitutional nor was it a breach of the duty of legislators.

SENATOR GUESS stated for the record that committee bills are not put in by the entire committee; a majority member puts them in. She explained that she does not support the resolution, nor was she consulted on it.

CHAIR SEEKINS clarified the resolution was placed in the committee by request.

Testimony at timestamp 19:19:00 was unintelligible. Chair Seekins asked the LIO to work on the feed. The committee returned to the Fairbanks LIO at 9:38:00.

[9:20:57 AM](#)

STEVE CLICK, retired teacher, testified against SJR 20. He is currently living with his domestic partner in California. Under California state law, gays receive many, but not all, of the rights and responsibilities of marriage because of federal legislation. The amendment to the Alaska State Constitution would affect many families and children. One goal of the government should be stability of and respect for all families. He took issue of a reference to the "gay lifestyle." He said his lifestyle is one of family, community service, longtime member of the Kiwanis Club, and taxpayer.

He questioned how his relationship would adversely affect the civil rights and privileges of others. He suggested the Alaska State Constitution should be written to include protection of minority groups of people. He urged the committee to vote against SJR 20.

[9:24:10 AM](#)

CHAIR SEEKINS asked Mr. Click whether he thought the people of the State of Alaska would vote for the amendment.

MR. CLICK said if the information were correctly disseminated to the people, it would not pass.

CHAIR SEEKINS asked whether he thought the people of Alaska should have the right to vote on the issue.

MR. CLICK referred to a recent vote in California where the people passed a marriage law that the governor vetoed. There are currently cases in both the California Supreme Court as well as in the lower courts. He contended that there are times when the Legislature must overrule the popular vote in favor of doing the right thing.

[9:27:28 AM](#)

SENATOR HUGGINS asked Mr. Click his opinion of how far the bounds of society norm could be stretched.

MR. CLICK said the world is constantly changing and society changes from moment to moment. He urged the committee members to be more accepting of others with different beliefs.

[9:31:32 AM](#)

SENATOR HUGGINS expressed support for letting the people of Alaska vote on the issue.

MR. CLICK responded the civil rights of all citizens must be held up even if the majority votes against a group.

CHAIR SEEKINS questioned whether the recent Alaska Supreme Court ruling, in effect, negated AS 25.15.013. He asked Mr. Click whether he agreed that Alaskan citizens, not the courts, had the responsibility of creating laws.

[9:36:31 AM](#)

MR. CLICK said he partly agreed with that. He reiterated his earlier statements that it is the responsibility of the state to protect the civil rights of all its citizens. If the court needs to step in and do that then that is part of their responsibility, he said.

[9:38:02 AM](#)

BRANDON MAITLEN testified in support of SJR 20. He expressed support for allowing citizens to vote on the issue.

[9:41:01 AM](#)

CHERYL HUMME testified in opposition to SJR 20. She took issue with Senator Huggins reference that sharing a bond with a same-sex partner was not normal. She challenged the resolution as being highly discriminatory.

[9:41:51 AM](#)

SENATOR FRENCH joined the committee.

MS. HUMME continued by saying she does not believe the resolution should go before the people for a vote. She claimed that scare tactics would be used to persuade voters to support an amendment.

[9:44:34 AM](#)

CHAIR SEEKINS asked for clarification that Ms. Humme was fearful of a media campaign.

MS. HUMME agreed.

CHAIR SEEKINS asked whether she had faith that the people in the State of Alaska would do the right thing.

MS. HUMME charged that the resolution was about money and that a fully funded media campaign would distort the issues. She said she would gladly testify in support of a bill that ensures medical coverage for every Alaskan.

[9:46:02 AM](#)

RICK SOLIE testified in support of SJR 20. He said the majority of Alaskans, when voting on the Marriage Amendment in 1998, singled out marriage as a union that gave benefits to society. He said the recent court decision negates that amendment and the people should be able to vote on the issue to further clarify their stance.

[9:49:05 AM](#)

CHAIR SEEKINS asked Mr. Solie whether he thought the majority of Alaskans would vote in favor of limiting the benefits of marriage to a union between a man and a woman.

MR. SOLIE said yes. It is his feeling from speaking with community members that they would vote in support of a clarifying amendment.

[9:50:57 AM](#)

SENATOR HUGGINS aired surprise at hearing witnesses say they were opposed to allowing people to vote on the issue. He asked Mr. Solie whether he shared the same concern.

MR. SOLIE said yes.

[9:54:25 AM](#)

JANE SCHLITTLER, retired school nurse and president of the local Parents, Friends and Family of Lesbians and Gays (PFLAG) chapter, testified against SJR 20. She informed the committee that there are over 500 PFLAG chapters in the United States, four of which are in Alaska. She said she is tired of having her children discriminated against and pushed down to second-class citizenship. She expressed agreement with the recent Alaska Supreme Court ruling.

CHAIR SEEKINS asked Ms. Schlitter whether she thought Alaskan voters would pass the proposed amendment.

MS. SCHLITTLER said yes. The civil rights movement would not have progressed if people had been allowed to vote on the issues of equality.

[9:57:03 AM](#)

JOAN HAMILTON testified against the resolution. She agreed that the amendment, if put before the voters, would be voted in. She said the people also voted in "English only", which prevented many Alaskan Natives from participating in Alaskan government because they couldn't speak English. She questioned the fairness of that. She said the local government decided her earlier education for her and since she did not have "refined features" was forced to attend a "lesser school" and therefore had limited opportunities.

MS. HAMILTON expressed concern that when legislators do not agree with an Alaska Supreme Court decision they change the Constitution. She strongly opposes legislation that treats a part of the population as second-class citizens and maintained that the resolution would be anti-progressive.

CHAIR SEEKINS announced a brief recess at [10:01:54 AM](#).

[10:07:38 AM](#)

CHAIR SEEKINS brought the meeting back to order.

[10:08:09 AM](#)

ANDREA DOLL testified in opposition to SJR 20. She said as a teacher she was well acquainted with American history. Our forefathers came to this country because in their land of origin, they were a minority and had no rights or protections.

When they had the opportunity to draw up the Constitution of the United States, they made every effort to protect the rights of the minority over the abuses, judgments and decrees of the majority. The same situation exists today, she said. The majority feels they have the right to impose their morality on the minority. She referenced Alabama in the 1960s when local authorities used dogs and fire hoses to keep civil rights activists from demonstrating. She said if the civil rights issued had been put forth to the voters back then, it would have negatively affected the movement. The United States Government took the higher ground back then and the Alaska State Legislature should do the same, she stated.

SENATOR HUGGINS advised Ms. Doll that his neighbors and other people he has talked to tell him they did not intend to vote for domestic partnership benefits. He said people might be surprised at the outcome of the public vote. He said he is very supportive of allowing the people the chance to vote on issues.

10:12:18 AM

SENATOR FRENCH wanted to clarify some points that were raised by Ms. Doll. He said most people believe that the majority rules but that is not always true. The Constitution of the United States of America contains strong anti-majority aspects, written specifically to protect minority populations.

CHAIR SEEKINS asked Ms. Doll whether she has studied government and whether she knew of a single state that has voted to change the definition of marriage.

MS. DOLL said she has studied government but does not know of any state that has voted to change the definition of marriage.

CHAIR SEEKINS said:

But yet, there have been several courts that have used ... where the courts have ruled that defining a marriage that way violates state constitutional, equal protection, due process clauses. Is that correct?

MS. DOLL said:

I understand the direction of your question and you're talking about judicial versus legislature versus executive powers here and what represents the people. I believe that is the direction of your question, is that not right?

CHAIR SEEKINS said:

Basically I'm trying to get at one thing. Is it your opinion that the courts should legislate or that the people should speak on matters of this nature?

MS. DOLL said she believes in a system of a higher ground to justice. She referenced the civil rights movements in the 1960s and said:

We must rely on the higher natures of our legislators and our court people. I also regard this body as having the ability to see the higher, broader field, to see the future, to see where we must go as a nation and as a people. Not only within this nation, but the

importance of this tolerance to the climate as a whole. It is absolutely imperative that we leave our moral discriminations behind us and embrace humanity.

10:16:22 AM

CHAIR SEEKINS asked Ms. Doll whether it was immoral to define marriage as between one man and one woman.

MS. DOLL responded that has very little to do with people's nature and goodness. Forming unions is a personal decision and it should not be within the power of the state to define it, she stated.

10:17:13 AM

MARY GRAHAM identified herself as a state employee who took personal time off to testify on the resolution. She disagreed with previous testimony that suggested when the people of the State of Alaska voted on the Marriage Amendment, they also voted to deny domestic partnership benefits. She said that issue was only about the word "marriage" being reserved for a union between one man and one woman. She stated this is not an issue to put before the majority because it is a function of government to protect minorities.

10:20:23 AM

MS. GRAHAM said the Legislature set up an unequal system that said the only way homosexual couples could be compensated the same as heterosexual couples is to be married, an avenue that is closed.

SENATOR FRENCH thanked the witness for her presence. He said he felt the issue was whether it was constitutional to pay gay employees less, in terms of employee benefits, than their co-workers who are married.

CHAIR SEEKINS asked Ms. Graham how she felt the people would vote on the issue.

MS. GRAHAM hoped that reasonable heads would prevail. She said there is economic discrimination for gay employees who are domestic partners and also for those raising families. She stated that people did not vote to treat their neighbors unequally. Money, mis-information, and the media will become involved in the ballot question and hate will enter into it. She said the State of Alaska does not need that.

10:24:13 AM

MS. GRAHAM said there is a point where the government needs to step up and protect all of the people.

[10:24:55 AM](#)

PETER NAKAMURA, retired director of public health for the State of Alaska, testified that SJR 20 would be used as a weapon that has already instigated much pain and would continue to do so against many valued citizens. The resolution comes from the conclusion of some citizens that a certain lifestyle needs to be punished. The rights, benefits, and qualities of a same-sex relationship are denied because they do not conform to the long accepted definition of marriage as one strictly involving one man and one woman.

MR. NAKAMURA related his personal experience of having his family transported from their home in Oregon to a barbed-wire compound during World War II. He stated that it is not always the correct solution to allow a public vote on an issue because of past proven discriminations against a minority group.

[10:29:11 AM](#)

Discrimination against African Americans in the South and Native American rights on traditional lands are only a few of the examples of situations resolved by official actions and not the vote of the public. Alaska fishing rights would be significantly restricted if left to the vote of the public.

MR. NAKAMURA proposed filing SJR 20 into the wastebasket to avoid promoting greater pain and injury to a group of people who already suffer from bigotry and discrimination.

[10:31:03 AM](#)

CHAIR SEEKINS asked Mr. Nakamura his opinion of the current definition of marriage in the statutes.

MR. NAKAMURA said if the intent is to restrict the rights and benefits of people who deserve them then the definition is not a good one.

CHAIR SEEKINS asserted that many people would prefer to vote on the issue to clarify the intent of the 1998 amendment.

MR. NAKAMURA said there is no reason to meddle with the Alaska State Constitution.

CHAIR SEEKINS said AS 25.05.013(b) says that a same-sex relationship may not be recognized as being entitled to the benefits of marriage.

MR. NAKAMURA said he believes in separation of powers and that the judicial system is there to make interpretations of the law.

CHAIR SEEKINS asked Mr. Nakamura whether the people have no right to challenge a judicial decision.

MR. NAKAMURA emphasized there are times when the rights of some minorities need be protected. He asserted that many instances of discrimination would still be happening today were it not for the Constitution of the United States and the judicial system's interpretation that has allowed the people to make changes for the betterment of the people as a whole.

[10:35:23 AM](#)

SENATOR FRENCH said Chair Seekins' question brings an issue to mind. He referred the committee to Page 10 of the Alaska Supreme Court decision and quoted, "...nor have we been referred to any legislative history implying that the Marriage Amendment should be interpreted to deny employment benefits to public employees of same-sex, domestic partners." He said at least three attorneys were working on the state government side of the brief and at least the same on the other side. The search for any official pronouncement regarding the purpose of the marriage amendment might be in vain.

SENATOR HUGGINS said he did not share Mr. Nakamura's confidence in the judicial system. He said the Ninth Circuit is commonly overruled and perhaps should be broken up because of the rulings of some judges.

SENATOR GUESS clarified it wasn't "some judges" but the entire Alaska Supreme Court.

CHAIR SEEKINS speculated about the intent of the people who voted for the Marriage Amendment. He suggested there was validity in putting the question on the ballot.

[10:40:22 AM](#)

MR. NAKAMURA expressed respect for the intent of the people but said there are times when there is a need to go beyond that and do what is right.

[10:41:56 AM](#)

JERI MUSETH testified in opposition to SJR 20. She expressed doubt for swaying the intent of the committee and said she feels the majority has already made the decision to pass SJR 20 out. She took issue with the suggestion that the court was "legislating from the bench," and said they interpreted the Alaska State Constitution, which correlated to their decision. She read the definitions of "discrimination" and "prejudice" from Webster's dictionary.

[10:45:44 AM](#)

CHAIR SEEKINS held SJR 20 in committee. There being no further business to come before the committee, he adjourned the meeting at [10:48:03 AM](#).