

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 17, 2007
1:15 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Andrea Doll
Representative Mike Kelly
Representative Gabrielle LeDoux
Representative Scott Kawasaki

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 9
Proposing an amendment to the section of the Constitution of the State of Alaska relating to marriage.

- MOVED CSHJR 9(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 213

"An Act relating to an aggravating factor at sentencing for crimes committed at certain shelters and facilities."

- BILL HEARING POSTPONED TO 04/20/07

PREVIOUS COMMITTEE ACTION

BILL: HJR 9

SHORT TITLE: CONST. AM: BENEFITS & MARRIAGE

SPONSOR(S): REPRESENTATIVE(S) COGHILL

02/12/07 (H) READ THE FIRST TIME - REFERRALS

02/12/07 (H) STA, JUD, FIN
 03/27/07 (H) STA AT 8:00 AM CAPITOL 106
 03/27/07 (H) Moved Out of Committee
 03/27/07 (H) MINUTE(STA)
 03/27/07 (H) STA RPT 4DP 2DNP 1NR
 03/27/07 (H) DP: JOHNSON, JOHANSEN, COGHILL, LYNN
 03/27/07 (H) DNP: DOLL, GRUENBERG
 03/27/07 (H) NR: ROSES
 04/17/07 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JEAN M. MISCHEL, Attorney
 Legislative Legal Counsel
 Legislative Legal and Research Services
 Legislative Affairs Agency (LAA)
 Juneau, Alaska

POSITION STATEMENT: Spoke as the drafter of HJR 9 and a legal opinion requested by Representative Gruenberg.

LIN DAVIS
 Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

JIM MINNERY, President
 Alaska Family Council
 Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

KAREN WELLS
 Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

BILL TUNILLA
 Worldwide Marriage Encounter
 Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

MARSHA BUCK
 Parents, Families and Friends of Lesbians and Gays (PFLAG)
 Juneau
 Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and suggested that its passage be stopped.

SHAHARRIET HOUCHINS

Worldwide Marriage Encounter
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

JAMES HOUCHINS

Worldwide Marriage Encounter
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

VICTORIA DANCE

Auke Bay, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

JOE LARIVIERE

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

JOHN ALCANTRA, Director

Government Relations

Alaska Branch

National Education Association (NEA-Alaska)

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HJR 9.

LES SYREN

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

JAMES STEVEN REESE, Member

Juneau Human Rights Commission

Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

ROBERT BIRD

(No address provided)

POSITION STATEMENT: Testified in opposition to HJR 9 but stated agreement with those in favor of HJR 9.

ARCHIBALD CAMPBELL

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

MICHAEL "WES" MACLEOD-BALL, Executive Director
Alaska Civil Liberties Union (AkCLU)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and urged the committee to stop the resolution.

CHRISTOPHER KURKA
Eagle River, Alaska

POSITION STATEMENT: Provided a comment during discussion of HJR 9 and asked members to vote for the resolution.

THERESA SYREN
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

PAUL ADASIAK
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HJR 9.

JOY DAVIDSON
(No address provided)

POSITION STATEMENT: Provided comments during discussion of HJR 9.

CHERYL HUMME
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HJR 9.

JOHN FLEMING
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

MARY BISHOP
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HJR 9.

KATHY COTTON
(No address provided)

POSITION STATEMENT: Provided comments during discussion of HJR 9.

JEANNE LAURENCELLE

Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and asked the committee to vote against it.

JUSTIN COTTON

(No address provided)

POSITION STATEMENT: Testified in support of HJR 9.

STEVEN JACQUIER

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and asked that it be tabled.

DEBBIE JOSLIN, President

Eagle Forum Alaska

(No address provided)

POSITION STATEMENT: Provided comments during discussion of HJR 9.

RICHARD COLLINS

Fairbanks, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and asked the committee to vote "no" on it.

LONNIET KURKA

Eagle River, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

ROLANDO RIVAS

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and asked that it be tabled.

CHRISTINE KURKA

Eagle River, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and urged its passage.

SHIRLEY RIVAS

Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9 and asked members to vote "no."

STEPHEN GINGRICH

Eagle River, Alaska

POSITION STATEMENT: Provided comments during discussion of HJR 9.

KEVIN G. CLARKSON, Esq., Attorney at Law
Brena, Bell & Clarkson, PC
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HJR 9.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at [1:15:43 PM](#). Representatives Lynn, Holmes, Gruenberg, Dahlstrom, and Ramras were present at the call to order. Representatives Samuels and Coghill arrived as the meeting was in progress. Representatives Doll, Kelly, LeDoux, and Kawasaki were also in attendance.

HJR 9 - CONST. AM: BENEFITS & MARRIAGE

[1:16:25 PM](#)

CHAIR RAMRAS announced that the only order of business would be HOUSE JOINT RESOLUTION NO. 9, Proposing an amendment to the section of the Constitution of the State of Alaska relating to marriage.

[Following was a brief discussion regarding how the committee would be proceeding.]

CHAIR RAMRAS relayed that a legal opinion dated 4/2/07 written by Jean M. Mischel, Legislative Legal and Research Services, would be provided to members.

REPRESENTATIVE GRUENBERG mentioned that the bill has a small fiscal note and a referral to the House Finance Committee. He also mentioned that he'd written the letter requesting the aforementioned legal opinion.

[1:24:02 PM](#)

JEAN M. MISCHEL, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), offered that HJR 9 proposes to put before the voters a proposed amendment to the Alaska State Constitution; that proposed amendment, should it be adopted by the voters, would in part add to Article I, Section 25, the following

language: "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."

MS. MISCHEL characterized that language as fairly lengthy and deceptively simple in the context of related limitations to the state's current prohibition on marriage [being anything other than between one man and one woman]. She noted that there are a lot of legal issues raised by HJR 9, one of which, as was pointed out by Representative Gruenberg in his aforementioned request for a legal opinion, is whether HJR 9 might constitute a revision of the Alaska State Constitution rather than a mere amendment to it. She said it is her opinion that the language in HJR 9 as currently written may well constitute a revision, which may not be proposed via a legislative resolution; a revision of the Alaska State Constitution requires that a constitutional convention be convened, and then, if passed by the convention, the voters would then have an opportunity to ratify that decision.

MS. MISCHEL explained that the Alaska Supreme Court has already considered once the question of whether a proposed amendment - [in the form of Senate Joint Resolution 42, which passed the legislature in 1998] - to Article I, Section 25, of the Alaska State Constitution constituted an amendment or a revision. In that case - Bess v. Ulmer - although the court opined that the second sentence of that particular resolution may have been a revision, the appellees characterized it as surplusage and it was therefore withdrawn from the resultant ballot measure on those grounds. She characterized that second sentence of Senate Joint Resolution 42 as similar to and narrower than the language being proposed via HJR 9.

MS. MISCHEL opined that in that prior decision the court gave a pretty good idea of how it would view a revision as opposed an amendment, though it did not give a bright-line rule; therefore, although she could be wrong, she acknowledged, HJR 9 looks like a revision because of its substantial effect on many other provisions of the Alaska State Constitution and because of the breadth of its proposed language, which encompasses a whole lot more than marriage. She said, "It's interesting that it's characterized in the catch phrase as, 'related limitations' to marriage," because the aforementioned second sentence that was at issue in Bess related only to marriage, whereas the language

that HJR 9 proposes to insert relates to any union and any recognition in this state of a union.

MS. MISCHEL noted that there is also some question regarding whether HJR 9 would affect private enterprise in this state, and this question is not resolved by the language in the resolution. Normally, she relayed, the Alaska State Constitution only applies to state action, but in HJR 9, use of the phrase, "in this State" is a very significant departure from the phrase used in the aforementioned second sentence of Senate Joint Resolution 42 - "the State".

[1:30:57 PM](#)

MS. MISCHEL mentioned that that second sentence read: "No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex." This language, she opined, obviously dealt with marriage and with actions by the state, whereas the language of HJR 9 does more than that. She again acknowledged that she is not sure what the Alaska Supreme Court would do, should a "revision" challenge be raised against HJR 9, because use of the term, "union" goes way beyond intimate partnerships or even same-sex partnerships. In Bess, the court held that the first sentence of Senate Joint Resolution was not a revision but rather simply an amendment.

MS. MISCHEL noted that while reviewing that first sentence, the Alaska Supreme Court said that maybe the privacy interest of a person would be affected by it, and so the court looked at what, if any, effect it had on other provisions of the Alaska State Constitution and whether it affected the fundamental governmental structure of the state. Also in Bess, in upholding the first sentence as an amendment rather than a revision, the court said:

In our view the first sentence of the resolve is not so broad in scope that it is impermissible as an amendment. It potentially affects the meaning of the equal rights clause contained in article I, section 1. Article I, section 3 is not affected, for it does not specify sexual preference as a suspect classification. Further, it is unclear whether the right to privacy is affected, for the first sentence is concerned with recognition of marriage as an official relationship, not with private relationships.

MS. MISCHEL reiterated that the language in HJR 9 is concerned not only with the official relationship of marriage but also with any union and prohibits the recognition, in this state, of a union, whether private, intimate, or publicly recognized.

REPRESENTATIVE COGHILL, speaking as the sponsor of HJR 9, opined that in Bess, the second sentence of Senate Joint Resolution 42 was deleted only because it was surplusage. He also opined that the phrase used in HJR 9, "rights, benefits, obligations, qualities, or effects of marriage" clarifies that this new language only applies to marriage and shouldn't be construed as affecting anything else. He said he finds it hard to envision that a court would find otherwise.

CHAIR RAMRAS referred to a memorandum dated 4/17/07 by Kevin G. Clarkson of Brena, Bell & Clarkson, P.C.

REPRESENTATIVE COGHILL offered his belief that the Alaska Supreme Court ruling in the 2005 Alaska Civil Liberties Union v. State & Municipality of Anchorage case went contrary to the "1998 marriage amendment" to the Alaska State Constitution when it determined that the benefits of marriage should be provided to those that are forbidden to marry, adding that he disagrees with the court's view that to not do so raises an equal protection issue. He opined that HJR 9 deals only with the single issue of marriage and thus constitutes an amendment rather than a revision, adding, though, that if it is true that the proposed amendment does address more than one issue, then it is equally true of the court's recent finding in Alaska Civil Liberties Union - that it has the effect of revision.

[Following was a brief discussion regarding how the committee would be proceeding.]

[1:44:12 PM](#)

MS. MISCHEL said the Bess case gave a good idea of what the court would look at in deciding whether a proposed change to the Alaska State Constitution constitutes an amendment or a revision. In Bess the court applied a hybrid test, she explained, that is essentially a sliding scale: if the proposed change has a substantial effect qualitatively, then the number of sections affected appears to be less significant; if the effect on the Alaska State Constitution or the structure of the state's government is somewhat less substantial or insubstantial, then the court looks at how many other provisions of the Alaska State Constitution would be affected by a proposed

change. So, in the Bess case, although the court acknowledged the effect of the first sentence - which was held to be an amendment - on the equal protection clause, the court said it wasn't clear whether sexual preference was a suspect classification.

MS. MISCHEL said, "We have a lot more information about what the [Alaska Supreme Court] would do with same-sex partner benefits in the [Alaska Civil Liberties Union] case" wherein the court found that the statute limiting employment benefits to married couples was unconstitutional and discriminatory and could not be otherwise validated through a substantial state interest under the equal protection clause. "So now we know," she remarked, that the effect of limiting employment benefits - which HJR 9 certainly proposes to do - has a substantial effect on "our" equal protection rights in Alaska. "We also know," she added, that privacy interests are implicated under Article I, Section 22, and, under Article I, Section 7, "our due process rights" are also implicated, as are perhaps freedom of religion rights and the retirement clause pertaining to no reduction in benefits since there are current beneficiaries under the [state benefit] system.

MS. MISCHEL, referring to the aforementioned memorandum by Mr. Clarkson, surmised that Mr. Clarkson's approach seems to be that the striking of Senate Joint Resolution 42's second sentence occurred simply because it was surplus language. She said she doesn't quite agree with that view, however, because the appellants in the Bess case argued quite strenuously that that sentence constituted a revision and the court was concerned about that and did speak to that issue. In response, Mr. Clarkson - attorney for the appellees in the Bess case - conceded that the court had the authority to strike it as surplus language, "so we don't really know how far the court would have gone with that particular question," she remarked.

[1:49:07 PM](#)

REPRESENTATIVE COGHILL said he'd introduced HJR 9 in response to the controversy that surrounds the Alaska Supreme Court case, Alaska Civil Liberties Union v. State & Municipality of Anchorage, wherein the court found that when the voters approved the 1998 marriage amendment limiting marriage to between one man and one woman and thereby created a special class of people - those who are forbidden to marry - it also created a duty for the state to pay benefits to [employees with same-sex partners] that are the same as those given to [employees] who are married.

In addition to that opinion, the Alaska Supreme Court required the Alaska Superior Court to order the State to [provide such benefits] via regulation. Representative Coghill opined that the court's decision thwarted the will of the people, who, when voting on the 1998 marriage amendment, didn't think that it created a relationship similar to and with the same authority as marriage.

REPRESENTATIVE COGHILL offered his belief that AS 25.05.013(b) - [which says, "A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage."] - prohibits a public employer from extending marriage benefits to same-sex partners. This is a policy call made by the legislature, he remarked, adding his belief that AS 18.80.220(c)(1) - [which says, "an employer may, without violating this chapter, provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees;" - grants an employer the right to give benefits to married people because of the value generally placed on marriage. The aforementioned 1998 marriage amendment came about in response to the Alaska Superior Court's decision in Brause v. Bureau of Vital Statistics, about which he remarked, "What this does is it says the institution of marriage, then, cannot be its own standing unit; it must be shared by those who society, generally in Alaska, have said, 'No, we don't want it shared.'"

REPRESENTATIVE COGHILL opined that the benefits of marriage were thought of as a societal good, particularly after World War II because the stability of society was thought to stem from the nuclear family, and so employers began offering benefits as part of an employment package, which, at the time, mostly supplemented single income households. He said he didn't understand why limiting such benefits only to [married couples] is considered discriminatory, and opined that the recent court cases have continually attempted to "break that unit" and diminish things that he sees as being of value to society.

REPRESENTATIVE COGHILL said he doesn't think that giving married couples a special place is dishonoring anyone else. The question in Alaska, he opined, is whether the benefits of marriage should be afforded to same-sex couples, and whether the relationship of a same-sex couple should even be thought of as a marriage. According to voters in 1998, the answer to the latter question was, "No." With regard to the former question - should the benefits of marriage be afforded to same-sex couples - the court has said that they should because such couples are

similarly situated to married couples; he opined, however, that similarly situated means "equal to" and thus same-sex couples shouldn't be afforded the benefits of marriage. He surmised that those who voted to restrict marriage to one man and one woman would agree with him and disagree with the court.

REPRESENTATIVE COGHILL, referring to the Brause Case, offered his belief that [the plaintiffs] wanted the benefits, attributes, and privileges of marriage and viewed the right to marry as the gateway to the benefits of marriage. Currently the court has ordered the State to pay benefits to same-sex couples, but there are other provisions of statute, he opined, that give [extra] privileges to married people. He also opined that there is also a constitutional issue involved because the court is forcing the State to implement regulations offering benefits to same-sex couples, and surmised that this will be construed as a mandate on private businesses to provide such benefits as well.

REPRESENTATIVE COGHILL said he proposed HJR 9 because he would like to see what the voters really want. He opined that the courts have continually pushed "the agenda to have ... same-sex partners legitimately have marriage relationships and/or take over the benefits of marriage." Characterizing this issue as a civil matter, he said the courts have overruled statutes, the voters, and the administration by forcing the State to promulgate regulations to provide same-sex couples with benefits. He indicated that the only recourse is to put this question before the voters because he disagrees with and wants to challenge the courts on this particular issue as a matter of societal policy.

[Following was a brief discussion regarding how the committee would be proceeding.]

[2:04:00 PM](#)

LIN DAVIS, after mentioning that she is a state employee and one of the plaintiffs in Alaska Civil Liberties Union, said that she and her partner are thrilled to have the health benefits and survivor benefits provided by the state because now her partner can receive her last paycheck [should something befall her.] In January [of 2007], Alaska became the 12th state to offer same-sex domestic partner benefits; 11 other states have been offering such benefits for years, some since the early '90s. For these states, [providing such benefits] is "mainstream," and it has been a good business practice and good public policy to include more people under health insurance and survivorship

benefits. Furthermore, over half of the "Fortune 500" companies offer [same-sex domestic partner] benefits, with the percentage of such companies increasing every quarter, and, now, more small businesses are offering them as well; "this" is increasingly a mainstream practice.

MS. DAVIS said:

[House Joint Resolution 9], however, is in the business of taking away health and survivor benefits from an ever-widening circle of groups of people; it would remove them from me and from other gay state workers who recently acquired them, and then it would prevent new gay ... [state employees] from obtaining them. And now we're beginning to hear some new twists and troublesome angles because it appears to also target unmarried people, and the ramifications of that are unknown and appear troublesome. The "doctor letter" that ran in the [Juneau Empire] continues to be helpful [with] ... - before the April 3 [2007] vote - 40 doctors signing, saying that it's a state health crises to widen the circle of groups that are targeted for no benefits; Juneau doctors do not want the health of Alaskan families harmed by this unfair and undemocratic state legislation.

MS. DAVIS said that HJR 9 appears to prevent private employers from providing work-related, merit-based benefits that they deem necessary, and appears to tangle with the rights of employers. This doesn't sound like good public policy to her, she opined. Currently there are 18 companies in Juneau, in addition to the City & Borough of Juneau (CBJ) and the University of Alaska Southeast (UAS), that offer same-sex domestic partner benefits, she relayed, listing them, and adding that it is [good] to see how mainstream offering same-sex domestic partner benefits has become, particularly with those companies who are attempting to recruit good employees.

MS. DAVIS remarked that the statewide advisory vote held on April 3, 2007, was close and clear; there is no traction in Alaska for further discrimination against gays or other target groups. Governor Palin, Ms. Davis noted, agreed that the result of that advisory vote did not constitute a mandate. Ms. Davis went on to say:

So let's end this undemocratic effort to isolate us gay people in order to keep us financially and

socially vulnerable. As [President] Lincoln said, "When you trample on the rights of others, you lose your own genius for independence." Let's save our genius capacities for setting up a gas pipeline, and let's get back to the larger good work that we are all meant to do.

MS. DAVIS, in response to a question, agreed to provide the committee with further information regarding the final results of the aforementioned advisory vote.

REPRESENTATIVE COGHILL, after offering his understanding regarding some of the results of the advisory vote as well as another ballot measure, suggested that the advisory vote not be discussed further.

[Following was a brief discussion regarding how the committee would be proceeding.]

REPRESENTATIVE COGHILL, acknowledging that some private employers do offer same-sex domestic partner benefits, remarked that HJR 9 is intended to address a larger societal question.

[2:13:33 PM](#)

JIM MINNERY, President, Alaska Family Council, after indicating that he would be testifying in support of HJR 9, mentioned that the Alaska Family Council is a state-wide, pro-family, public-policy organization representing a growing list of Alaskans with a dedicated interest in preserving and defending traditional values regarding the family. Regardless of where individual legislators stand on this issue, he opined, the results from the aforementioned advisory vote are indisputable - the majority of Alaskans [who voted] "once again," voted to protect marriage and state clearly that marriage is a unique relationship that should receive distinct status, privilege, and recognition.

MR. MINNERY relayed that the Alaska Family Council spent the last several months working very hard to educate Alaskans regarding this issue. Characterizing the debate that ensued from these efforts as a healthy one, he said that "our side" simply didn't buy the argument that this was about health benefits because, if it were, why weren't health benefits being sought for all Alaskan's instead of just for those involved in homosexual relationships. Mr. Minnery then offered his understanding that a prominent gay activist and professor has said:

Our best strategy for securing this social endorsement, i.e. marriage under the name marriage, is first to secure the legal incidents, then people will look at our civil unions, realize that they are virtually indistinguishable from marriages, start calling them marriages, and gradually forget why they objected to doing so before; that's what's happened in Scandinavia and it's happening elsewhere in Europe.

MR. MINNERY surmised from this quote that the issue [for same-sex couples] is simply one of public affirmation of a lifestyle, a lifestyle, he opined, that the majority of Alaskans [who voted] have said should not be equated with marriage. He opined that legislators, even those who believe that same-sex couples should be treated via public policy just as if they are married, shouldn't strive to prevent all other Alaskans from voting on the issue, particularly given that [the majority of those who cast their advisory vote in April] said they wanted an opportunity to vote on this issue. The fact that there was low voter turnout in April and only a narrow margin of victory is irrelevant and shortsighted, he opined, and spoke briefly about the voting margins associated with some of Alaska's other ballot initiatives. In conclusion, he asked the legislature to not deny the people the opportunity to vote on this matter, and to move HJR 9 forward to the floor for a full vote.

[2:17:26 PM](#)

KAREN WELLS first relayed that she is grateful to the state and to its fishermen, the people whom she has served for more than 28 years. She went on to say:

As I prepare to retire next week, I am reflecting back over 28 years at who I was, who I am now, and who I take myself to be. I was young back then, eager, ignorant, scared, ambitious, wanting to find a mate - someone to love and somebody I could love - no different than any other person. Being public about being a lesbian was not something I thought of much as I lived my life, made friends, played sports, and followed my heart's desire. Twenty-eight years later, a lot has happened, a lot has changed; some of what has changed is my willingness to sit here, be visible in the world as a woman who has courage ... and seeks the truth at all costs - for the truth is all we have.

The truth as I see it is that this [resolution] ... has absolutely nothing to do with marriage. Why its proponents keep saying this is about marriage seems an untruth to me, a lie, or something they just don't understand. The people voted to deny gays and lesbians the right to marriage. I have no possibility of marrying in this state. I don't question it, I take it as the vote. But what are the rights of marriage? Marriages happen in churches; in the eyes of certain religions marriage means one thing, where in other religions it can mean something entirely different.

Who am I to judge what doctrines various churches follow? However, when those religious doctrines become involved in city and state personnel policies, I take notice. There is a reason for separation of church and state, as our esteemed governor noted during her campaign. I have enormous respect for her integrity in stating that the April 3 vote was not a mandate of the people. The ... [Alaska State Constitution] guarantees equal protection under the law; all state employees are to receive the same benefits. This [resolution] ... is saying that I am undeserving of the benefits my married coworkers receive. This is discrimination at its best.

MS. WELLS continued:

I ask you why you are pursuing this [resolution] ... after the vote with such a slim margin between "yes" and "no." I ask you why you are not trying your best to ensure that every man, woman, and child in this great state has medical coverage. I ask you why you were willing to spend \$1.2 million of the people's money to produce a vote that had no real effect on anything. I do not believe for one minute that your opposition to same-sex partners receiving benefits has anything to do with dollar amounts, as the dollars spent are so small - the saying, "Beating a dead horse" comes to mind - the vote did not produce the results you were expecting.

I am a state employee and I exist. Whether you agree with my choices or not does not mean that I can or should be treated differently than my coworkers. I'm not going away, nor am I going to be silent on issues

that discriminate against people I love and people in minorities. In fact, I feel my strength rising, my ability to speak up and articulate issues becoming clearer ... [with] each time I get a chance to testify before you folks - and I'm getting a lot of opportunities. Do the right thing and treat all state employees fairly. This is a personnel matter, not one that should be put to [a] vote. I ask you to represent all Alaskans, not just ones you favor or ones that go to your church. As the Rutgers' women's basketball champion said to Don Imus, "Get to know us before you make judgments and criticisms against us."

MS. WELLS concluded:

When standing on the corner holding a sign, people passed and were mostly friendly, but some gave me the finger and some name-called. Is hate what you want to promote in letters to the editor? I have read some letters to the editor and wept with utter joy for the support that the people of this state have given gays and lesbians. I have also been about as angry as [a] person could be when people tell lies about who I am and who I should love. One thing is for sure, the issue is front and center, and, as in all discrimination, it takes public awareness and conversation to see change. In that regard, I thank you for allowing me to testify and communicate with the people of this state.

REPRESENTATIVE GRUENBERG noted that two legal issues have thus far been presented: the question of whether the amendment proposed via HJR 9 is so broad as to constitute a revision and hence violate Bess v. Ulmer; and the question of whether [the amendment proposed via HJR 9] violates the federal equal protection clause as outlined in the U.S. Supreme Court case, Romer v. Evans, which is referenced in footnote 20 of the Alaska Civil Liberties Union Alaska Supreme Court opinion. He said he is interested in receiving further information about those two issues.

[2:24:13 PM](#)

BILL TUNILLA, Worldwide Marriage Encounter, said he and his wife support marriage as being between one man and one woman. Marriage is a sacrament between man, woman, and god, and can never be just a legal contract between two people of the same

sex. Marriage is a holy covenant, he remarked, with its holiness deriving from sexuality and man and woman's ability to create children. He went on to say:

Today there are many wars on many fronts. One of those wars is the war on the traditional American family. Sherry and I feel like our beliefs are being destroyed and are under attack, and that our ability to freely worship and parent our children may be forever changed. Sherry and I grew up in an America where most families had both a dad and a mom - a husband and a wife. We grew up in a time where marriage was still a respected state between man and woman, where couples looked forward to having children and continuing to raise those children to respect the law and to respect church teachings. A time where giving to your neighbors was just a normal part of life.

I was proud to serve in the military, and served my country; proud to be married and to be given the gift of five children and to volunteer my time in church and the community and often giving of the gifts I have been given. America still valued the American dream when I grew up, and I still do; we still value modesty and truthfulness, compassion. And it was a time that no one questioned what happened in the parents' bedrooms or felt a need to know about anyone else's sexuality. It was [a] time of innocence, and it was a time of matter left up to our parents and the creator of the universe. It certainly wasn't on public display as it is today. And people did not use their sexuality as a reason for getting special favors. In my heart, I believe that homosexual men and woman today are publicly asking for their sexuality to [be] viewed as a means to receive special favors.

MR. TUNILLA concluded:

In closing, I also believe that if allowed, ... these special favors will cost our society greatly. Not only are they in direct violation of god's laws, and those of nature, but for ... our tax payors as well. I can think of better ways to spend my tax dollars. I have read that in Massachusetts, ... they have had a cutback on elderly, disabled, and children's programs to make way for ... a special group of people. Our

children, our parents, and the disabled deserve better than this. Before my tax money is to be used for their special needs, then I would expect our lawmakers to consider far greater needs than the marriage of those of the homosexual community. Thank you.

2:27:28 PM

MARSHA BUCK, Parents, Families and Friends of Lesbians and Gays (PFLAG) Juneau, after relaying that she would also be speaking as a parent, noted that spoke to this committee just last spring asking members to vote "no" on House joint Resolution 32 because of the negative effect it would have had on her daughter and other wonderful people. She went on to say:

I was very surprised and actually incredulous that I have to be back again, today, to testify on a resolution that appears to propose even greater inequality and greater discrimination to even greater numbers of Alaskans than ... [House Joint Resolution 32 did]. I'm sure that you are aware that HJR 9 before you would no longer simply affect my daughter and others like her but would negatively affect the health benefits of family members of most Alaskans. When you consider family members and friends, most Alaskans - most of your constituents - are going to be affected by HJR 9 and affected negatively. It would also affect Alaskan businesses and virtually all of Alaska's educational institutions, and would affect them negatively.

And HJR 9 isn't going to "fix" ... anything. I'm afraid that supporting it will only make you, as a group, look out of step with mainstream Alaskans who support health benefits and support families. I know Representative Coghill doesn't want us to talk about the advisory vote, but I think that gave us some good information; ... that showed us that there is no mandate for removing employment benefits or health benefits from a portion of Alaskans. I think it's bad public policy to pass a resolution that would only exacerbate [our] growing health insurance crises, and I'm not sure why you'd want to appear unreasonable and uncompassionate as a legislature to do so.

I think it's time that we do more homework like we heard in the legislative legal report. We need

leaders in Alaska, ... not decision makers who waffle or ... flip-flop from saying things like, "We're looking for an overwhelming majority" and then, "No, we want to go ahead no matter what we get from the vote." I think it's time that the legislature get back in step with Alaskans and say "no" and stop ... HJR 9 in committee.

MS. BUCK, in closing, offered some of the latest statistics from the April 3 advisory vote.

2:31:02 PM

SHAHARRIET HOUCHINS, Worldwide Marriage Encounter, relayed that she and her husband would be speaking in support of HJR 9. She said that as an Alaska Worldwide Marriage Encounter presenting team and as sacramental married Catholics, she and her husband uphold god's moral law that the bond of marriage is only between a man and a woman, adding that she and her husband voted in the affirmative during [the advisory vote] because they don't want homosexual relationships to be treated the same as marriages between men and women. Neither do she and her husband, she remarked, want any homosexual union to be recognized or validated in Alaska, nor extended or assigned the rights, benefits, obligations, qualities, or effects of marriage. Ms. Houchins went on to say:

We are the parents of nine children, and by our example and their exposure to the examples of couples who feel as strongly as we do, we have fought hard to be the moral compass and example of what marriage is truly about. We want you, our elected officials, to help us cement this example by 100 percent protection of the only marriage that can really be - a man and a woman. We invest in our marriage daily and always want to exemplify what god wanted when he raised the level of marriage at the wedding of Cana. A husband and wife procreate with god, and the world continues. It is imperative you uphold this most sacred union. We must stand up for the family, the family unit is the most precious unit we have. Our children need to see us as committed married parents that weather storms and celebrate triumphs, so they can see what they will grow up to parallel. Our nation's future depends on the future ... [and] we are raising that future now. We, when our four-year old ask us to kiss and revel in the pure innocent joy that we do, we know

she is understanding our positions in her life and in god's world.

I'm a nurse by trade but I'm a domestic engineer daily; I'm in charge of nurturing futures. Every mother shows her daughter how to be the bride, the wife, and the mother of the family, and every father shows his son how to be the groom, the husband, and the father of the family. Together we show our children, when we sit as a family at mass and other public events, how to be a family - mom, dad, and children. As we present our Worldwide Marriage Encounter weekends to couples, they see how our deep commitment is to preserve marriage between one man and one woman. As a mother they saw me united with their dad, even when he was serving our country during Desert Storm and Desert Shield in his active duty career. They themselves understood our bond and their place in the family unit as they sacrificed their time with him while he served our country. They see our bond as marriage commitment as we work together at their schools - their dad on the board of Holy Rosary Academy, and myself as vice president of the parents organization.

JAMES HOUCHINS, Worldwide Marriage Encounter, said he believes the issue is not about benefits. Noting that he has served his country in the military for 20 years, he said that one of the principles he held dear was the sanctity of a healthy family between a man and a woman and children if god saw fit to grant them. He added: "We want you, our elected officials, to truly hear us and be our voice. Don't bow to pressure to compromise, and say what needs to be said for the good of the family. Please listen to the voters and bring this to a vote ... [of] the people in 2008."

[2:34:47 PM](#)

VICTORIA DANCE said she would be speaking to the committee about equal rights, but opined that she oughtn't have to, because she didn't understand the [Alaska State Constitution] to say that she would have to in order to defend her rights. She went on to say that she [was] married to a man for 10 years, has been in a partnership with a woman for 23 years, and has raised a son. Therefore, she knows that what happens in a marriage has very little to do with sex but a lot to do with holding, nourishing, and supporting the other person. Remarking that the legislature

has much more important issues to take care of, she asked that the legislature not destroy further the rights that are in the [Alaska State Constitution] by proposing amendments such as HJR 9. Whether someone who works and contributes to the gross national product (GNP) is married is not a problem, she opined, pointing out that the Alaska Supreme Court didn't think it was a problem either.

MS. DANCE opined that Alaska Supreme Court ruled as it did because its job is to protect the people, and recalled the similar struggle prevalent during the 1960s; banning domestic partner benefits raises issues similar to those raised during the civil rights movement. There is the same effort to undermine the ability of groups to achieve civil equality and, with it, fulfilling their lives and families and their communities. Yet banning benefits [for same-sex partners] is different because, unlike during the civil rights movement, gays and lesbians are not just relegated to the back of the bus but are not allowed on the bus at all. What would have happened to this country if, rather than following the U.S. Supreme Court ruling to desegregate schools, Alabama had put the question on the ballot: "Should blacks have equal rights?" Does anyone doubt how that vote would have gone? Would it have been shameful? Yes. Can people be counted on to remember or vote the right thing? Not always.

MS. DANCE pointed out that even with laws, equality remains an issue for blacks, as illustrated by the comments made by Don Imus. Everybody needs all the help they can get for a place in the sun, she remarked, opining that the court overruled the State because the court's job is to defend the Constitution. Noting that even Thomas Jefferson was culturally blinded in that when helping to write the Constitution and speaking about equal rights he still kept slaves, she questioned how much society today is culturally blinded when discussing the issue of equal rights/benefits for gays and lesbians. The efforts spent on making equal pay for equal work a problem or writing a constitutional amendment for this imagined problem is time and money taken away from solving truly difficult issues.

MS. DANCE said she simply feels very passionately that [the legislature] has better things to do than attack a particular group of people. With regard to the comment that extra support was given to nuclear families after World War II, she said she questioned whether that was actually constitutional - why should only families get benefits.

[2:40:05 PM](#)

JOE LARIVIERE said that for him, the issue is the sacredness of marriage; to him, marriage is the nucleus of the family and "our" society. He opined that what is occurring is that the family is being attacked on all different sides, and he feels that if these attacks continue, it will result in a breakdown of the nucleus of society, and therefore he feels that the proposed constitutional amendment should be put to the people because it addresses a societal matter and thus the people should be the ones to decide what to do.

[2:41:25 PM](#)

JOHN ALCANTRA, Director, Government Relations, Alaska Branch, National Education Association (NEA-Alaska), relayed that he would be speaking in opposition to HJR 9, adding that NEA-Alaska opposes any legislation that discriminates against Alaskans. House Joint Resolution 9 is about denying benefits to Alaskans that currently have them, and would prevent equal pay for equal work and deny equal rights and opportunities to Alaskans. On February 2, 400 NEA-Alaska delegates met at the 51st annual NEA-Alaska Delegate Assembly and set the policy that NEA-Alaska would adamantly oppose this type of discriminatory legislation. With 25 pieces of legislation currently assigned to the House Judiciary Standing Committee, he remarked, and with less than one month remaining in the session, he is perplexed that valuable time is being spent on this issue, particularly given that over the next 29 days the legislature has real business to conclude - the gas line, retirement funding, and the budget must all still be addressed.

MR. ALCANTRA, referring to the April 3 advisory vote, pointed out that it cost the State [over] \$1 million and only illustrated that the Alaskans [who voted] are basically split on the issue. He said that NEA-Alaska agrees with Governor Palin when she said that it's hard to characterize the results of the advisory vote as a mandate. In conclusion, he said that NEA-Alaska respectfully requests that the House Judiciary Standing Committee hold HJR 9 and make this the last hearing on this divisive issue.

[2:45:02 PM](#)

LES SYREN relayed that he would be speaking in favor of HJR 9. He offered the following quotes from a book written in 1970 by Carl Wittman called Refugees from Amerika: A Gay Manifesto

[original punctuation provided along with some formatting changes, and edited for content]:

Marriage: Marriage is a prime example of a straight institution fraught with role playing. Traditional marriage is a rotten, oppressive institution. Those of us who have been in heterosexual marriages too often have blamed our gayness on the breakup of the marriage. No. They broke up because marriage is a contract which smothers both people, denies needs, and places impossible demands on both people. And we had the strength, again, to refuse to capitulate to the roles which were demanded of us.

Heterosexuality: Exclusive heterosexuality is ... up. It reflects a fear of people of the same sex, it's anti-homosexual, and it is fraught with frustration. Heterosexual sex is ... up too; ask women's liberation about what straight guys are like in bed. Sex is aggression for the male chauvinist; sex is obligation for the traditional woman. And among the young, the modern, the hip, it's only a subtle version of the same. For us to become heterosexual in the sense that our straight brothers and sisters are is not a cure, it is a disease.

MR. SYREN characterized those passages as hateful and intolerant, and opined that today, 37 years later, marriage in Alaska is still under attack despite two votes wherein the majority of those voting voted to protect it. He posited that HJR 9 is really about whether the people will be allowed to decide the future of marriage itself, and asked that the public be given the chance to vote on it.

[2:49:00 PM](#)

JAMES STEVEN REESE, Member, Juneau Human Rights Commission, after relaying that he has two children in the public school system, said that he and his wife are members of the Church of Jesus Christ of Latter Day Saints, which, he opined, is the same church that financed the 1998 marriage amendment. He went on to say:

A simple democracy, where decisions are made based solely on majority opinion without regard for the basic rights of each citizen, has been described as three wolves and two sheep voting on what to have for

dinner. Just because a majority may feel it's okay to give certain groups less rights, less protection, or less compensation for the same work, doesn't make it okay. In fact, our government was established in part to protect the minority from the tyranny of the masses. Even if you write discrimination into the [Alaska State Constitution], it will still be discrimination. To state in one place that we are all equal, and then amend that to say that some are more equal than others, only makes this document as self-contradicting as the scriptures from which you selectively choose your values. This legislation is another embarrassing waste of our time and money that protects no one and rather victimizes ... many at a great cost to us all. It hurts families. It hurts children. It hurts our healthcare system.

If our Christian heterosexual marriages need special protection, why should we stop at gays and fornicators? Isn't adultery a much greater sin and a far greater threat to the sanctity of marriage? Jesus Christ said, "Whoever shall put away his wife and shall marry another, committeth adultery, and who so marrieth her that is put away doth commit adultery." Why not, then, take away benefits from adulterers and married couples in which either partner has had a previous marriage? Doesn't our tolerance of their adultery pose a greater threat to our monogamous marriages? As a part of the United States and as Christians we're obliged to protect the human rights of every person which include freedom of religion and equal treatment, even for those who don't sit on the same pew with us on Sunday. Thank you.

REPRESENTATIVE GRUENBERG asked Mr. Reese whether he is suggesting that there may also be establishment clause issues raised by HJR 9; the U.S. Constitution prohibits the State establishment of a religion.

MR. REESE said yes, opining that HJR 9 is pushing a religious belief on families, on people, saying that if a person doesn't conform to heterosexual marriage, then he/she will be treated as a second-class citizen.

REPRESENTATIVE GRUENBERG suggested that this issue should also be explored further.

2:52:42 PM

REPRESENTATIVE DAHLSTROM said that she too is a member of the Church of Jesus Christ of Latter Day Saints, which, she opined, absolutely believes that marriage consists of one man and one woman.

REPRESENTATIVE COGHILL opined that it is a stretch to argue that HJR 9 raises establishment clause issues. "To have moral views in America does not establish a religion," he remarked, reiterating his belief that the goal of HJR 9 is to bring the public to the debate. He added, "We've established marriage as a civil law."

REPRESENTATIVE GRUENBERG countered, "I think we've established that it's an issue."

2:54:18 PM

ROBERT BIRD said that although he agrees with those speaking in favor of HJR 9, he would be speaking in opposition to it. After mentioning that he's been a teacher for 33 years and teaches constitutional law at both college and high school, he said:

Things that are no longer recognized, it seems, are concepts that are in the Declaration of Independence such as natural law and common law. And for those who ... want a wide open definition of marriage, they are ignoring the fact that natural law can and will be recognized by court systems and it's translated into common law. Common law is unwritten law recognized by the courts, and common law, certainly, if it recognizes homosexual activities at all, does not look upon it very favorably. And natural law is easily ... understood; in fact, the natural outcome of a heterosexual union is in fact children and there has never been a child, to my knowledge, that's ever come about out of a homosexual union.

The idea that a state cannot interfere with a definition of marriage really puts the lie to history because Utah was not permitted into the Union until 1890 when it ended polygamous marriage. And so we'd have to make an awful lot of apologies to the LDS Church for not permitting Utah into the Union - [Utah] certainly would have been admitted far earlier but for polygamous marriage, which was their attempt to

redefine marriage outside of common law and natural law. But I am going to just tell you that this whole idea of having to amend the constitution ... every time the supreme court goes cross-eyed, as it were, is to me self-defeating because we all know how ... a constitution is to be amended, and that is, in our state, we have a process and it has to go to the people after, I believe, it passes the House and the Senate. ...

It is saying, then, that the legislature and the people have to go through a torturous process to redefine the state constitution. But all the supreme court has to do is to just pass an opinion, and then all of a sudden the state constitution has been changed. Now if you look at Article IV, Section 1, it says the jurisdiction of courts shall be prescribed by law. That means that the courts are under the control of the legislature, and to my knowledge, the legislature has never given the courts permission to redefine the constitution any way any time they want to feel like it, even when outside common or natural law or even, arguably, the recently passed definition of marriage ... amendment ... from 1998.

Secondly, the whole problem is saying that the legislature cannot reign in the courts, when in fact the impeachment of a justice for malfeasance, which would probably mean bribe-taking, or misfeasance in the performance of his official duties, and misfeasance would mean they're misconstruing and reaching for powers that don't exist -- so to constantly go to the democratic or public opinion process to have confirmed what is really a legislative responsibility, to me, is, in the end, self defeating. Natural law and common law are not susceptible to public opinion polls; they are susceptible only to god.

And, finally, the governor has the authority to restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency. This authority shall not be construed to authorize any action or proceeding against the legislature. So when the courts ordered the legislature to somehow amend the constitution to give these benefits, there is no ... power of the

courts to demand this of the legislature, and the governor need not enforce it. The courts don't control the governor or the legislature, and yet by holding these hearings, you are admitting they can change the constitution any time where they feel like it, while we have to go through this incredibly torturous process. And so I would ... vote against this amendment because the responsibility lies with the ... executive and the legislature in reigning in the judiciary, not with the people.

2:59:28 PM

REPRESENTATIVE COGHILL noted that in order for a proposed constitutional amendment to be placed on the ballot by the legislature, a joint resolution must first pass both bodies by a two-thirds vote.

MR. BIRD said that makes it even more difficult to get such a proposed amendment to the people.

REPRESENTATIVE COGHILL said that although Mr. Bird is probably right in that the administration didn't have to respond [to the court's decision], it chose to anyway.

MR. BIRD remarked, "And I would say that the legislature ought to pass a resolution to [this] effect rather than diddling and dithering with the people, here, to try and pass through something that probably had ... an 18 percent voter turnout."

3:00:09 PM

ARCHIBALD CAMPBELL, after relaying that he is a local pastor, a husband, and a father of five, said it is concerning to him that Alaskans have now voted twice to protect marriage yet it seems that that decision is not being respected. He urged passage of HJR 9 out of committee for a full vote on the floor. He said he agrees with many of the comments in support of moving HJR 9 from committee, and referred to Proverbs 22:28, wherein, he offered, King Solomon says, "Do not move an ancient boundary stone set up by your forefathers." He opined that written human history declares marriage between one man and one woman to be an ancient boundary stone. He again urged passage of HJR 9 so that the people of Alaska can vote on the proposed constitutional amendment, thereby preventing the moving of an ancient boundary stone.

3:02:46 PM

MICHAEL "WES" MACLEOD-BALL, Executive Director, Alaska Civil Liberties Union (AkCLU), relayed that the AkCLU was the proponent of the suit that resulted in the Alaska Supreme Court's October 2005 decision which in turn has generated much of the discussion over the last year and a half. He said he would like to respond to earlier comments such as the comments pertaining to the role of the judiciary. He said:

The comments of those who advance this [proposed] amendment would seem to suggest that the judiciary can only decide cases based upon how the majority of Alaskans would decide an issue which means that the judiciary has no role whatsoever. What is the judiciary to do? The judiciary has the responsibility of interpreting our constitution, at a bare minimum. I should also remind you that this was not one person's decision; it was a unanimous decision of a five person court written by the most conservative justice on that court. This is not just some offhanded decision that was made.

I'll also say that the issues that were put before you by Representative Coghill and by [Ms. Mischel] essentially mimic what we have been saying all along about this particular proposal, that the language of this measure is quite ambiguous. It could be interpreted very, very broadly, in which case, it might run afoul of the federal Constitution, or it could be interpreted very, very narrowly, in which case I think it would not accomplish what the proponents intend it to accomplish. And so I think there are some real problems just with the language of the ... [resolution].

MR. MACLEOD-BALL said he would be happy to comment on the [opinion] issued by Ms. Mischel another time. Indicating that he wished to correct a couple of comments made previously by others, he said:

Representative Coghill talked about the decision of the court creating a special class. In fact, it did not create a special class; the court decided that same-sex couples were not in a special class - they did not have to reach that decision - rather, they said there was no rational basis for the

classification system that had been in place at that time. So, there was no special class created.

Also, I think Representative Coghill, in his opening comments, said that the court created a duty to pay these employment benefits. In fact, the court said no such thing. ... The court said that you have to provide this same set of employment benefits. Whether you choose to pay the employment benefits to all people equally, why, that would be fine; if you choose to pay none of the benefits to none of the people, that would also be fine. The point is that you have to treat people equally: equal protections, equal rights, equal opportunities. That's what the [Alaska State Constitution] ... says in Article I.

And then also there have been a number of comments about exceeding to the will of the majority. A majority can be as little as 50.001 percent or even less. Does this mean that 50.1 percent will decide all rights that are held by the other 49.9 percent? I don't think so, and the reason that ... there is a more complicated process for amending our constitution is to say that under the kind of democracies that work, the majority does not always rule - the rights of the minority are sacrosanct - and it is up to you, the legislature, to help protect the rights of the minority.

So the majority doesn't rule in all cases, and to use this catch phrase - the will of the majority - somehow is intended to give an aura of special-ness to what is trying to be achieved through this constitutional amendment. And what this constitutional amendment is trying to do is to restrict the impact of the equal protection clause of the [Alaska State Constitution]. Although it's amending the marriage provision of the [Alaska State Constitution], its effect will be to make it so that some people, in the state of Alaska, will not have the full protection of the equal protection clause.

MR. MACLEOD-BALL concluded by urging the committee to stop HJR 9 now, and for members to do their duty as legislators to protect the rights of the minority in Alaska. In response to a request, he agreed to furnish the committee with the AkCLU's written legal opinion on all the points discussed thus far. Then, in

response to comments, he explained that when the Alaska Civil Liberties Union case was sent from the Alaska Supreme Court back to the Alaska Superior court, the first thing the Alaska Superior Court did was issue instruction to the defendants asking them to submit their own plan for coming into implementation, and it was the choice of the State of Alaska, through the executive branch, to say that it was going to "draft and go through the rule-making process" to implement the plan that has been in effect since 1/1/07; the Alaska Superior Court had issued an affirmative order that that plan had to include certain criteria, and this was overruled by the Alaska Supreme Court in December of 2006. Again, it was the administration's choice to implement the October 2005 decision by going through the rule-making process.

[3:12:06 PM](#)

CHRISTOPHER KURKA said he disagrees with [Mr. Macleod-Ball] and questions the statement that homosexuals are being discriminated against, adding that homosexuals have the same rights as heterosexuals and can simply marry someone of the opposite sex. He offered his understanding that all committee members but one are from districts that voted in the affirmative during the April 3 advisory vote. In conclusion, he adjured the members to vote for HJR 9.

[3:13:33 PM](#)

THERESA SYREN surmised that anyone who wants to limit the benefits of marriage to only those people who are married is then portrayed as a homophobe or a bigot, offering her mother as an example of someone who's written articles stating that same-sex unions are not the same as marriages. In one of her mother's article, Ms. Syren relayed, her mother said that the courts are not only wrong on this issue, they are demonstrating an arrogance that is truly frightening, and therefore the legislature needs to protect the [Alaska State Constitution] from judicial activism. Referring to the comment that HJR 9 might be establishing a religion, she offered her understanding that Thomas Jefferson, in the Declaration of Independence, referenced the laws of nature and nature's god.

MS. SYREN offered her belief that the 1998 marriage amendment did not forbid homosexuals from marrying but instead simply recognized that marriage is between a man and a woman and is a procreative union. Even if the majority of [those who've voted] had not, twice, indicated that they wish to recognize the laws

of nature and live by them, she remarked, the legislature has the obligation to protect the rights of everyone to live under the laws of nature. The "gay lobby," she opined, has indicated that it wishes to overturn marriage completely, and offered the following partial quote from an article in Out magazine written by Michelangelo Signorile in 1994:

... to fight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, to demand the right to marry not as a way of adhering to society's moral codes but rather to debunk a myth and radically alter an archaic institution ... the most subversive action lesbians and gay men can undertake ... is to transform the notion of "family" entirely.

MS. SYREN concluded by characterizing that quote as an establishment of religion.

[3:18:40 PM](#)

PAUL ADASIAK relayed that he would be speaking against HJR 9. He said he has been pondering what he could possibly say to convince members to vote "no" on HJR 9. Five members of the House Judiciary Standing Committee voted "yes" last year on House Bill 4002 - approving the April 3 advisory vote - and in the districts of each of those members, at least half of those who voted, voted "yes"; therefore, "your integrity," he remarked, "would seem to demand your 'yes' vote." He went on to say:

Short of persuading you that authorizing the advisory vote was a mistake, I can probably do little to encourage you now to vote "no." However, I can take away one cowardly excuse for a "yes" vote, and ask you to face up to what you may be voting for. Representative Mike Kelly has gone on the record, saying, "I don't see how any legislator could vote to deny the people their vote on this issue." Earlier in this session, Representative Coghill said, "I would like the people of Alaska to have a chance to chime in." In expressing these sentiments, they show a poor understanding of the legislature's role in constitutional amendments. They seem to think that the legislature's job is to allow any amendment proposed to be approved by a majority of the popular vote.

But that is not our process. Our constitution shows more wisdom than that. First, amendments must be passed by the legislature. This body is presumed to have greater knowledge of state need, a broader perspective, and the longer view than the average voter. Second, amendments to the state constitution require a two-thirds vote - not a simple majority - of each house of the legislature. It was made thus to allow only persistent, pressing needs to be placed into the constitution. If you place any stock in the results of the April 3 advisory vote, with 52.8 percent voting "yes," you cannot believe that Alaskan citizens are clamoring for a constitutional amendment. And if you compare that number to the 68 percent majority who voted for the marriage amendment in 1998, you cannot believe that this concern is pressing. If anything, this concern is fading.

Do not argue that you're voting for HJR 9 because "the voters should get to decide." With constitutional amendments, your job is to use your best judgment for long term interests of the state, not to act as a rubber stamp. There is only one reason to vote for this amendment: because you think that denying constitutionally mandated healthcare and retirement benefits to the unmarried partners and step-children of public employees is a good thing. Are you willing to say that? Please do not let an increased burden on families be your legacy. It is not too late to change course. For Alaskan families, I urge you to vote "no."

[3:22:07 PM](#)

JOY DAVIDSON, after relaying that she is a mother of three children, said she doesn't believe that the issue raised by HJR 9 is about equal rights, nor that [the efforts to oppose it] have any similarity to the [suffragist] movement or the civil rights movement. Instead of discriminating against people, she remarked, [proponents of HJR 9] are simply saying that a marriage is between a man and a woman, and that a same-sex relationship is not a marriage. She opined that it is a red herring to say that the issue is one of equal rights or health benefits. She offered:

If we move in this direction of saying that our criteria for giving health benefits is that essentially you have an intimate relationship with someone for a long time, instead of it being between a man and a woman, I see no reason for denying health benefits to people who have intimate relationships between two men and a woman or between a brother and a sister. I see ... no logical or philosophical basis for that not ... being the case ... 30 years from now, us arguing, "Well why are we being discriminatory against this ... intimate relationship between two men and a woman." ... I have seen cases in Germany and in Sweden going on right now - in Germany a brother and a sister want to be acknowledged as married, and in Sweden two women and a man. So I just want us to really look at what we're doing here. And ... when we take away the "man and woman" definition, do we realize what could very well happen? Even if we have no problem morally with homosexual relationships, do we see what could, philosophically, easily happen in 20-30 years in our state? ... Thank you.

[3:25:04 PM](#)

CHERYL HUMME relayed that she would be testifying in opposition to HJR 9. It's the court's job to look at what the [Alaska State Constitution] says, and although [a two-thirds vote in each body of the legislature] is required to get an amendment [to the Alaska State Constitution on the ballot,] this information was not provided in the voter pamphlet pertaining to the April 3 advisory vote. She said she wishes the legislature would stop wasting time in continued conversations about this issue. She then expressed disfavor with the committee's choosing to alternate testimony between those opposed to HJR 9 and those in favor of it because it then appears that the testimony is balanced, and this is misleading. In conclusion, she said she opposes HJR 9 and hopes the committee will vote "no" on the question of moving the resolution from committee, particularly given that it won't garner the required two-thirds majority vote needed to put the proposed amendment on the ballot. In response to a question, she opined that it would have been better for the committee to take testimony in the order that people signed up to testify, regardless of their position on the resolution.

[3:28:11 PM](#)

JOHN FLEMING said that for him, marriage is a union that historically goes beyond the bond of a relationship based on personal pleasure. Marriage in most every culture, he opined, involves a commitment that usually includes giving birth to and subsequently raising a family. He also opined that this "unique" aspect of marriage guarantees the civil- and socially-ordered continuance of the human race. If one accepts the premise that marriage between man and woman fulfills this "special" role, he remarked, then the benefits designed to support the married should only be available to the married man and woman, and not shared with those who are physically unable to practice procreation.

[3:29:42 PM](#)

MARY BISHOP said that as a registered Republican and a Catholic, she opposes HJR 9 in good conscience. She explained that her marriage of 46 years is not threatened by her friends' same-sex union, nor is any other marriage. Imitation is the most sincere form of flattery, she remarked, adding that she is thankful when gay couples value the same sort of commitments found in [some] heterosexual marriages. House Joint Resolution 9 would disallow all spousal rights for all non-married couples - gay or straight - regardless of how long-standing their commitment to each other is; they would be denied rights to visit a hospitalized partner, end-of-life healthcare, child custody, and other state-provided spousal rights. Equal rights under the [Alaska State Constitution] would take a big hit in all kinds of ways yet to be litigated.

MS. BISHOP pointed out that the New Jersey Supreme Court recently ruled that New Jersey must provide benefits to same-sex domestic partners; instead of proposing a discriminatory amendment to its state constitution, the New Jersey legislature simply created a civil-union law allowing committed domestic partners to receive the same benefits as married couples. She said:

I urge our legislators to do likewise. Our societal norm should spell out standards for similar benefits and responsibilities for both gay and straight couples who make serious commitments to one another. Alaska's gay youth should not have to look forward to dealing with a hostile society as they mature. We've got to get past the fear, the disinformation, the myths, and [the] discrimination that understandably result in anger and retaliation, drugs, alcohol, family despair,

and even suicide. ... I've been trying to wrap my head around this issue for 60 of my 69 years. For 30 years or so I mostly hid my head in the sand, and I can appreciate anyone's desire to do so.

But it won't work anymore. Gay and lesbian "happens" to the best of families, to the best of kids. Today's kids know it, and they won't go back in the closet, and they will act responsibly, especially if we straight people show them respect and equal treatment for doing so. Most gays recognize the social and cultural value of a stable, loving, and monogamous relationship. I want Alaska's gay youth to look forward to that kind of stable, loving relationship, and to have those unions accepted in our society. Thank you for your attention, and please oppose HJR 9.

[3:33:26 PM](#)

KATHY COTTON relayed that she had voted "'yes' for marriage" on April 3, 2007, and surmised that the majority of those voting did so as well. She went on to say:

I want the [legislature] to bring up this constitutional amendment to the vote of the people of Alaska. I believe the advisory vote showed that, and that the majority of Alaskans want that. I thought our state constitution seems clear enough, and I voted in 1998 to clarify that marriage was between one man and one woman; I believe it does now need further clarification like what is written in this proposed amendment. I believe that marriage is the basic unit of society in that it's designed not by narrow-minded men or women, but by god our creator and designer - like several people mentioned, the natural laws. Therefore, I think that we should protect and honor and encourage marriage between one man and one woman. I think the voters of this state ... [have] shown that they want the right to vote. And I just encourage you guys in the committee to keep this thing going. I also would say to ... the committee that you letting us vote does not take away benefits from anyone, it just allows us to vote. And I just thank you for hearing me

[3:35:32 PM](#)

JEANNE LAURENCELLE relayed that she is a mother, a university employee, and a former naval officer. Remarking that the United States was conceived in liberty and dedicated to the notion that all men are created equal, she opined that HJR 9 is designed to take away rights and benefits from unmarried Alaskan citizens; that it proposes to take healthcare away from children and retirees; that it corrupts the constitution's promise of equality for all Alaskans; that it undermines the public employer's ability to recruit and retain talented employees; and that it undermines the private employer's ability to offer competitive benefits. Furthermore, the sweeping language in HJR 9 will invite costly lawsuits.

MS. LAURENCELLE said of HJR 9: it's a bad business from start to finish, embarrassing and detrimental to the state, in opposition to the founding principles of the nation, and flat bad for businesses operating in Alaska. The justification for presenting this amendment is the protection of marriage, and while some evangelical Christians believe this, many mainstream Christians believe the opposite, she remarked, and offered the following quote from Michael Keys, now serving as the Bishop of the Alaska Synod of the Evangelical Lutheran Church in America: "God does not need us to protect our definition of marriage; I believe Jesus calls us to ask, 'How are we called to heal others,' not wound them." She pointed out that the Alaska Supreme Court has said: "Denying benefits has no demonstrated relationship to the interest of promoting marriage."

MS. LAURENCELLE observed that the marriage issue has already been decided, and that the definition of marriage is locked into the Alaska State Constitution. A new amendment that proposes to take rights and benefits is just that, an amendment to take rights and benefits; it wastes the state's time and money, gives no protection to marriage, and harms Alaskans. In conclusion she asked, "Please vote against the proposed amendment."

[3:38:23 PM](#)

JUSTIN COTTON said he supports HJR 9. Acknowledging that the April 3 advisory vote did not result in two-thirds of the voters voting "yes," he pointed out that such is not necessary - all that is required to approve a ballot item is a simple majority vote. Having garnered such a vote, the proposed constitutional amendment should go on to a vote of the people, he opined, regardless that the vote was close - it was still a victory for proponents of this proposed amendment pertaining to marriage. He said he feels that HJR 9 should go on and be placed on the

ballot, adding that it seems reasonable, once advice via an advisory vote has been given, to follow that advice. In conclusion, he said he appreciated the references prior speakers made to "natural rights" and "natural law."

[3:40:32 PM](#)

STEVEN JACQUIER relayed that he would be speaking on behalf of himself, his partner, and their children. He said:

I am one of the 62 people in the state whose health insurance benefits HJR 9 seeks to withdraw and deny. This divisive effort has been the root of so much radical rancor. For example, here in Anchorage supporters of the recent advisory vote were trespassing without permission onto public schools and posting their campaign signs on school grounds even when asked not to engage in this illegal activity. For the record, by the way - since there seems to be a misunderstanding on some people's part - gay and lesbian people can and do procreate, as well as [provide] excellent parenting to orphaned children.

I join Chairman Ramras in wishing there were no hatred in Alaska, but my friend Gene's experience indicates otherwise: Gene was murdered by a zealot who burst into his home and smashed in Gene's skull with a hammer for being, quote, "an abomination in the sight of the lord." [House Joint Resolution 9] is inflaming these flames of hatred in Alaska. This issue being addressed today is entirely about fundamental issues of fairness as regard [to] equal pay for equal work.

Just as both our leaders and average people alike eventually came to realize the fundamental malignant wrongness of prejudicial discrimination in slavery, in preventing women from voting, and in denying partners of different colors the right to marry, we trust time is on the side of reason and justice with this issue as well. [House Joint Resolution 9] is like a throwback to territorial days, when some people felt quite righteously justified in posting signs ... [saying], "No dogs or Natives allowed." My family and I have faith this, too, shall pass. Sooner or later justice will prevail and equal work for equal pay will stand uncontested as the law of the land for all people, as it is now, today, here in Alaska thanks to

the wisdom of our founding fathers and the Alaska State Constitution.

As time moves forward and younger, more diverse, better educated voters replace those whose [irrational] fears would block equal justice for all, the question will change from, "Should the same-sex partners of state employees be barred from equal access to benefits?" to, "How, in 2007, could the legislators and people of this great state ever have sullied themselves with attempting to change the state constitution so as to implement such ugly discrimination?" If this [resolution] ... moves forward today, then history will recall this moment with distaste, just as we recall with embarrassment and shame the irrational prejudices of decades past.

The question remains of just how much cost and harm to families unlike their own, as well as to the taxpayers, institutions, and reputation of Alaska as a whole, some legislators are willing to inflict on others based upon their personal religious beliefs. Evidence in abundance shows there is no fiscal justification for this prejudicial [resolution.] To quote the great scholar and statesman, President John Adams, "Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence."

Indeed, the more the evidence of reason is willfully ignored and the more extremist, reactionary, and intolerant the Republican Party allows itself to become of the actual diversity in our society, the more irrelevant it will be and, accordingly, the less influence it will have in future. Please make a better choice today and table HJR 9.

MR. JACQUIER, in conclusion, relayed that he would be faxing the balance of his testimony to the committee and would remain available to answer questions.

[3:44:57 PM](#)

CHAIR RAMRAS expressed disagreement with the concept that discussion of this issue will trigger violence.

MR. JACQUIER, in response to questions, spoke briefly about his experience in adopting a child, and offered his belief that had language such as is being proposed via HJR 9 been in the Alaska State Constitution at that time, he would have experienced prejudice in the adoption process because it would have been demonstrable that he and his partner would not have been able to provide the same quality of care as they can now via his partner's state health insurance benefits.

[3:47:16 PM](#)

DEBBIE JOSLIN, President, Eagle Forum Alaska, after saying that she is representing over 1,000 families and all of those who voted "yes" on April 3, posited that they all want HJR 9 to pass the legislature. She went on to say:

Since the "yes" vote won on April 3, we've been marginalized and told that our vote doesn't count because we didn't win by a large enough margin. Guarantee you that if [those voting "no"] had won, we would have said that "no" won. After being outspent more than three to one and having the people of Alaska told that this vote had nothing to do with marriage, people of Alaska went out anyway on an April day with no other reason to vote, and they said ... with their vote that they want marriage to be set apart from other relationships and they do not want partners of same-sex relationships to be given marriage benefits.

I think we'll agree that our society is in a moral decline and that the state of the family in America and in Alaska is weak today. And I'm here to ask you to not deal another blow to family by suppressing the people's right to vote on this constitutional amendment. Yes, there are blended families and there are homes with children living with two lesbians or two male [homosexuals], but that's not the preferred way bringing up [children]. Studies show that the best, healthiest possible environment for children is to grow up [with] their mom and dad. That's not always possible, however, it is what's best for children. If we treat same-sex partnerships the same as marriage, [we] are saying that one is as good as another, [and] that simply is not true.

[Our] children are faced with so many confusing messages today, and we need to be sure that we're not

adding to their confusion by validating same-sex relationships as being equal to marriage. Now we're being told that HJR 9 is possibly a revision to the constitution and not an amendment. In the truest sense of the word, HJR 9 isn't even an amendment; it's simply a clarification of the original [intent] of the founding fathers of the Alaska State Constitution. There are some [still] alive today and we can ask them - I have. Never in their wildest dreams did our founding fathers envision the need for HJR 9 or, for that matter, the '98 amendment. ...

MS. JOSLIN continued:

The thought [that] HJR 9 is a revision is disingenuous; HJR 9 merely returns us to the original intent of the constitution. During the weeks leading up to the advisory vote that was put together by the legislature, we heard over and over again about what a waste [of money] it was to hold an advisory vote. This is a very important matter, and the [people] of Alaska deserve an opportunity to weigh in on it. However, if after going to the expense [and trouble] of holding an advisory vote the legislature intends to ignore the will of the people, then it was a waste.

If our legislators have no intention of honoring the will of the people of Alaska, then the advisory vote was nothing more than political trickery and the legislature has (indisc. - teleconference audio faded out) to the voters of Alaska. Surely this is not true. Surely the members of our state legislature have a deep held (indisc. - teleconference audio faded out) respect for the people of Alaska. Your passage of HJR 9 will show that to be true. Thank you.

[3:50:56 PM](#)

RICHARD COLLINS relayed that he has been partnered with a man for over 10 years. He elaborated:

In 1996 we celebrated our partnership with our families in a church service, and on that day we signed our wills and powers of attorney and had them witnessed by members of the congregation. Since then, we have established our lives in Fairbanks, we have bought a home together, and accumulated probably too

much joint property. I am very concerned that HJR 9 will undermine the joint property and powers of health and financial attorney that we have established.

[House Joint Resolution 9] will not change the definition of marriage in the constitution. Recognizing that we will not have the opportunity to legally marry, Patrick and I have used the tools of everyday law to create a framework that makes sense for our lives. I fear that HJR 9 is a blunt tool and a broad brush that will revise common property and personal law. It establishes a special class of second-class Alaskans. Thank you for your time and please vote "no" on this in committee.

MR. COLLINS, in response to a question, relayed that he is not qualified to speak on issues related to estate planning law. He said his concern is that since marriage has already been defined, HJR 9 instead seems to be doing something that will affect many aspects of health, power of attorney, and custody issues; again, HJR 9 seems to be a very broad brush.

[3:53:13 PM](#)

LONNIET KURKA said she would be speaking in favor [of HJR 9]. She opined that the issue of health and retirement benefits could have been dealt with in a different way, and perhaps should have been, rather than giving the courts the opportunity to say that same-sex relationships are similarly situated. That's one reason why she likes the language currently in HJR 9, she relayed, because it does say that marriage is different. She went on to say that although her marriage isn't threatened by giving benefits [to same-sex partners], doing so does threaten marriage as an institution. She added: "I think it's very important that we protect and value that for our culture and for the continuation of values and ... decency, and so I would really like to be able to vote on this issue, and I think we need this added to the amendment. Thank you."

[3:55:09 PM](#)

ROLANDO RIVAS remarked that HJR 9 is being pushed through the legislature by a few highly-conservative legislators who feel the need to press their agenda on a segment of Alaska's population. The resolution has nothing to do with marriage, but has everything to do with equal rights under the Alaska State Constitution. He said he cannot understand how it was that the

legislature felt the need to spend over \$1 million of the state's tax dollars to [have an advisory vote] to find out how some of Alaska's citizens felt, particularly given that it would have been just as easy and a lot cheaper to hire an agency to run a poll. Given that less than 18 percent of the populace voted on the advisory vote, he said he can't see the value of [having had the vote] or in calling those who voted "yes" a majority of Alaskans.

MR. RIVAS asked the committee to do the right thing. The Alaska State Constitution was written in order to afford equal rights to all Alaskans, not just those that some feel are worthy of its protection. He added:

Yet here we are again, testifying against what has become yet another hot button issue for those who feel that they are potentially better than the person sitting next to them in the workplace. What is it that makes you feel that you have the right to deny medical benefits to a segment of the population because they do not fit the mold that you have laid out? [House Joint Resolution 9] will not just affect those who have been waiting for medical benefits but potentially denying those rights already afforded them by their employers. Where is the justification, I ask you?

If you, our legislature, continue to pass this [resolution] up the ladder, it will be a sad day for all Alaskans. What will come next? ... Will we some day again start to deny rights to our Alaskan Natives or other segments of our population, as we did, not so very long ago, by an all white legislature? Because perhaps we might feel that they just are not quite fitting the mold that we have come to expect? So I ask you again to do ... the right thing, not ... something [that] some of you might feel ... would get you more votes at some point, but to do what is just and equal for all Alaskans, and that is to table HJR 9.

[3:58:44 PM](#)

CHRISTINE KURKA said that as a young unmarried woman and an Alaskan voter, she urges the committee to pass HJR 9 out of committee. The majority of those who voted during the April 3 advisory vote want the opportunity to vote in the 2008 election

to amend the Alaska State Constitution to keep the unique benefits of marriage to those who are married. Although legislators may ignore what these voters want, she remarked, members will be held accountable by both their constituents and by "your creator." She offered that she is not saying that homosexual people are less valuable, merely that it is the duty of government to say what it will allow and promote.

MS. CHRISTINE KURKA expressed agreement with the testimony of Mr. Bird that the legislature was responsible for dealing with this issue and should have had the courage to do so, to firmly say that the benefits of marriage remain to those who are married. If this discussion was really about equal pay for equal work or equal rights, she opined, people would be discussing why a state employee who lives with his/her father, for example, shouldn't be able to [extend state medical benefits to his/her father]. Instead the discussion revolves around people who are sexually active with one another and live together - not really a good reason for giving the same benefits as are given to those that are married, she concluded.

[4:01:12 PM](#)

SHIRLEY RIVAS relayed that she has been staying awake nights trying to figure out how denying her son health insurance from his partner's employer is going to defend or protect either hers or anyone else's marriage. She went on to say:

This makes no practical sense to me. We are just fine. My son and his partner do not threaten our marriage or that of anyone else. If anything, they enrich our lives. They have been together three years and are just as devoted and loving to each other as are our heterosexual children and their spouses. We feel greatly blessed by all of our children and all their families. I do, however, see a threat on [my] personal horizon if HJR 9 should pass into law; for instance, if, because of HJR 9, our son should lose his health insurance and suffer a major accident or illness, the financial obligation of this catastrophe will fall on the shoulders of his partner and their extended family - that would be us, his parents and his brother and sisters.

Please know, without any doubt, this [resolution] will definitely not just affect the people you so easily hate and dismiss, but also those you profess to

protect. [House Joint Resolution 9] is a hideous hate crime based on homophobia, which is based on fear or worse; HJR 9 is a political ploy to get out the vote of those people who are eaten alive with homophobia and fear. The crafters of this [resolution] will do anything for a vote, right down on to amending a perfectly good constitution, wasting time and money for political gain. The crafters of this [resolution] should be ashamed. Go back to your office, put on your thinking cap, open your hearts, and create legislation that will be useful to our society.

While you are wasting taxpayer time and money on amending the constitution to deny a minority population healthcare, you could be doing something really useful. What are you doing to improve the education of our children? What are you doing to improve the healthcare system for all Alaskans? What are you doing to end the plague of drug abuse? What are you doing to help the homeless? What are you doing to help end spousal and child abuse? What are you doing trying to pass legislation to deny people rights they have earned and are entitled to. The courts are correct. Vote "no" and stop this nonsense in this committee.

CHAIR RAMRAS characterized Ms. Rivas's testimony as intolerant.

REPRESENTATIVE LYNN remarked that not everybody who supports HJR 9 is a homophobe.

REPRESENTATIVE GRUENBERG surmised that the people who are testifying on this issue, regardless of their position, are simply speaking from the heart, adding his belief that the members appreciate everyone who's come forward to speak.

CHAIR RAMRAS concurred, but opined that tolerance should be practiced by all regardless of which side of an issue they are on.

[4:06:34 PM](#)

STEPHEN GINGRICH opined that a benefit ban benefits no one, adding that it is disappointing that some legislators are still pandering to bigotry in proposing what he characterized as another embarrassment to the Alaska State Constitution. It would be more decent of legislators to be spending time, effort,

and the people's money coming up with ways to ensure that as many Alaskans as possible have medical coverage; the lack of medical coverage is a major problem in the U.S., and HJR 9 would make that problem worse. He pointed out that lesbian and gay people have children at a rate close to that of straight people, and that HJR 9 would take away those children's coverage. The proposed amendment to the Alaska State Constitution is contrary to the principles of good government and democracy, he opined, adding that all citizens are constitutionally entitled to equal treatment by the government. And government would be failing in its responsibility if it allows the prejudice of the majority to deny equal rights to an unpopular minority.

MR. GINGRICH opined that legislators should have the professionalism to rise above personal prejudice and simply do what is right, just as the Alaska Supreme Court did. This resolution would require discrimination by private employers, and the \$1.25 million of the people's money that the legislature wasted on the advisory vote, which was effectively a tie vote, would more than likely have paid the first year's cost of the [same-sex partner benefit] program. He noted that the University of Alaska and the CBJ have had a policy of equal pay for equal work for a very long time, without doing harm to anyone. Prejudice is diminishing; what was a two-thirds majority in 1998 is now down to 52.8 percent, and thus it is likely that not even a simple majority of voters would vote to pass this proposed amendment, should it pass the legislature, by the time it came before the voters. The 1998 marriage amendment, he predicted, will eventually be ruled unconstitutional. In conclusion, he noted that reasonable conservatives, via editorials in the newspaper, have spoken against [HJR 9], and opined that HJR 9 could not be more anti-family.

[4:09:30 PM](#)

KEVIN G. CLARKSON, Esq., Attorney at Law, Brena, Bell & Clarkson, PC, confirmed that he had written the aforementioned memorandum dated 4/17/07.

CHAIR RAMRAS, after ascertaining that no other members of the public wished to testify, closed public testimony on HJR 9.

The committee took an at-ease from 4:10 p.m. to 4:32 p.m.

[Following was a brief discussion regarding how the committee would be proceeding.]

REPRESENTATIVE GRUENBERG relayed that he's received information from the administration regarding those who've applied for [same-sex partner] benefits: there are a total of 70 people enrolled - 53 retirees and 17 current employees - [less than one-fourth of 1 percent] of the State's current 29,732 employees/retirees.

REPRESENTATIVE LYNN, responding to prior testimony, opined that the legislature can't take away benefits that never existed to begin with; that those who favor HJR 9 are incredulous that some homosexual couples are demanding the same rights as legally married people; that the break down of traditional family and traditional marriage creates all manner of social and economic problems; that one's race is beyond one's control, whereas one's sexual behavior is always under one's control; that the focus of the National Education Association (NEA) should be on teachers' salaries, wages, and working conditions; and that the fact that some marriages are not perfect is a function of personal behavior not a function of the institution of marriage itself.

REPRESENTATIVE LYNN said that he agrees with the comment regarding not moving ancient boundary stones - especially as they pertain to marriage - and that he questions whether a father and son or mother and daughter or brother and brother or sister and sister living together could constitute a same-sex couple. He said he also agrees with the comment that [marriage] is a defining issue of society; as such, it is appropriate for the legislature to spend time discussing it. Furthermore, there can be no such thing as a spousal right unless one has a spouse, and [homosexual people] aren't allowed to be spouses. Anyone can designate who may visit him/her in the hospital, and who can get his/her property upon death. Allowing the people to vote won't take away the rights of anybody, and all unmarried state employees already receive benefits. If advice has been given - as with the April 3 advisory vote - he opined, that advice should be listened to.

REPRESENTATIVE LYNN expressed disbelief with the concept that gay and lesbian people can procreate, and with the argument that equal pay for equal work applies to this issue. He said he agrees with the comment that HJR 9 is more of a clarification than an amendment, and opined that it is certainly not a revision. He also said he agrees with the comment that it would be a waste of the advisory vote if people are not then afforded the opportunity to vote on the proposed constitutional amendment. In conclusion, he opined that everyone on the planet

has value and needs to be treated with respect and dignity regardless of his/her personal situation or sexual orientation.

CHAIR RAMRAS turned the committee's attention to the words, "in this State", found on page 1, line 9.

[4:43:24 PM](#)

REPRESENTATIVE COGHILL said he is wondering whether it is that wording that creates the possibility that HJR 9 would be considered a revision. He also raised the issue of reciprocity.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MS. MISCHEL said that the difficulty with the aforementioned language is that it creates an ambiguity, is perhaps broader than intended, could be interpreted to apply beyond State or public actions, and might be the subject of litigation. She said she is not sure, however, whether changing or deleting that language would resolve the question of whether HJR 9 proposes an amendment or a revision, adding that she is troubled by the breadth of that language from a legal perspective unless it is the intent of the committee to apply the prohibitions in the proposed amendment to private employers or anyone outside of public organizations. Even if that language is removed, she warned, the proposed amendment will still have fairly broad applications and could therefore still be considered a revision, though deleting the language will limit the amendment's potential applicability beyond public entities. She suggested changing the language from "in this State" to "by the State" or to "by the State and political subdivisions"; again, another option would be to delete the words, "in this State" altogether.

[4:46:45 PM](#)

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. CLARKSON opined that members should not be concerned that Article I, Section 25, of the Alaska State Constitution - either as it is currently or as HJR 9 is proposing to amend it - would impact private entities/individuals; constitutions only define relationships between government and citizens, not relationships between private citizens and private citizens. Also, regardless of whether the aforementioned language is deleted, the change proposed by HJR 9 won't require private employers to do anything differently with regard to how they "divvy out" their private employment benefits to their private employees. He also noted

that the phrase, "in this State" is already used in existing Article I, Section 25, and offered his belief that the point of using that phrase is that it "defines what a marriage would be that might be created within Alaska," and it "defines what relationships that might be created outside of Alaska that once they come to Alaska would be recognized as a marriage."

MR. CLARKSON said he agrees a bit with Ms. Mischel that the words, "shall be valid or recognized in this State and to which" are not necessary. He surmised that the proposed new language should simply say, "No other union is similarly situated to a marriage between a man and woman and, therefore, a marriage between a man and a woman is the only union that the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned."

REPRESENTATIVE GRUENBERG offered instead that the words, "that shall be valid or recognized in this State and" should be deleted, thus leaving the proposed language to read, "No other union is similarly situated to a marriage between a man and woman and, therefore, a marriage between a man and a woman is the only union to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned."

MR. CLARKSON concurred.

[4:51:58 PM](#)

REPRESENTATIVE GRUENBERG, referring to Mr. Clarkson's initial comments, opined that there actually are a number of constitutional rights that do apply in private situations; for example, the right of free speech and the limitation of libel lawsuits apply in disputes between private individuals. He said he wouldn't oppose an amendment deleting the words, "that shall be valid or recognized in this State and".

REPRESENTATIVE COGHILL said he will give consideration to that suggested change.

MR. CLARKSON, turning to the issue of whether HJR 9 constitutes a revision to the Alaska State Constitution or an amendment, opined that HJR 9 is simply proposing an amendment, not a revision, regardless of whether the aforementioned suggested change is adopted. He then noted that he'd served as counsel for the State in the Bess case, and that he'd argued in favor viewing the 1998 marriage amendment as an amendment rather than

a revision. After reading portions of Article XIII, Sections 1 and 4, of the Alaska State Constitution, he relayed that in the Bess case, the Alaska Supreme Court said that there are both qualitative and quantitative distinctions between an amendment to the constitution and a revision to the constitution. From a quantitative perspective, a proposed constitutional change is a revision if it directly effects a modification to numerous existing provisions of the constitution so as to constitute a change to the substantial entirety of the constitution, and from a qualitative perspective, a proposed constitutional change is a revision if it has the effect of creating a far-reaching change in the nature of Alaska's basic governmental plan.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. CLARKSON offered his understanding that in determining whether a proposed constitutional change is a revision or an amendment, the core question becomes whether the proposed change is so significant as to create a need to consider the constitution as an organic whole. In other words, in considering a proposed constitutional change, is one also required to reconsider the entire structure of the constitution? He opined that since the court already determined that the language that became the 1998 marriage amendment was just an amendment, then HJR 9 can be nothing other than an amendment.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

[5:01:09 PM](#)

MR. CLARKSON concurred with Ms. Mischel's statement that the second sentence of Senate Joint Resolution 42 was dropped by the court from the proposed 1998 ballot measure as being mere surplusage. He then offered his belief that HJR 9 would not affect Alaska's statutory divorce laws because a divorce decree creates obligations on and grants rights to only those who were once were married.

REPRESENTATIVE GRUENBERG offered his understanding that there was a case [Swanner v. Anchorage Equal Rights Commission] in which the courts held it was unconstitutional for a landlord to refuse to rent an apartment to a couple that wasn't married; HJR 9 would reverse that opinion and have an effect on the equal protection clause in that regard. Also, HJR 9 could potentially reverse the court's decision in a case involving workers' compensation benefits - SLW v. State; an unmarried couple conceived a child, the father was then killed at work, and the

question was whether the child was entitled to recover under the state's workers' compensation laws, which, at the time, only allowed "legitimate" children to receive workers' compensation benefits. In that case, the Alaska Supreme Court held that there were no illegitimate children, only illegitimate parents, and extended the benefits to that child. He opined that under HJR 9, that case would be reversed.

REPRESENTATIVE GRUENBERG said that there is also a question in his mind whether, under Alaska Civil Liberties Union, the statute that allows married couples to escape probate by creating a deed for tenancy by the entirety wouldn't apply to a same-sex couple who can't marry. If such is the case, [HJR 9] would have a profound effect and require same-sex couples to go through the expensive and oftentimes difficult probate procedure just to pass the family residence on to the surviving partner. Noting that the issue before the committee also pertains to retirement benefits, he pointed out that there are a number of people working for the University of Alaska and the Alaska Railroad Corporation (ARRC) whose rights may have vested and thus they may be entitled to those benefits under Article XII, Section 7. He remarked:

All of those constitutional provisions - equal protection, the right to contract with respect to the issue of tenancy by the entirety ..., the vested retirement benefits - ... are only three distinct constitutional protections that are implicated by this, and argue in my mind strongly for the conclusion that this is a revision, not just an amendment.

[5:08:15 PM](#)

MR. CLARKSON opined that HJR 9 will have no impact on the Swanner decision because that case dealt with statutory language [AS 18.80.240], not a constitutional provision, regarding who a private landlord may prohibit as a tenant. With regard to the SLW case, he opined that HJR 9 won't impact that case since it dealt with parenthood rather than marital status. With regard to the issue of deeds for tenancy by the entirety, he opined that neither the Alaska Civil Liberties Union case nor HJR 9 will have an impact because current law stipulates that an unmarried couple cannot hold property as tenants by the entirety, and same-sex couples cannot get married. With regard to the issue of retirement benefits for certain employees, he relayed that he has not yet looked at the issue of whether HJR 9 will take away vested rights.

REPRESENTATIVE GRUENBERG, on the issue of tenancy by the entirety, clarified that his point is that in view of the Alaska Civil Liberties Union case, a good argument could be made by a same-sex couple that they are denied equal protection [under] the law with respect to "that statute" because only a heterosexual married couple can take advantage of it and the same-sex couple is prohibited from marrying; "that's" subject to constitutional challenge now, but wouldn't be under HJR 9.

MR. CLARKSON agreed.

REPRESENTATIVE GRUENBERG opined that HJR 9 doesn't deal with same-sex couples only; it also deals with unmarried heterosexual couples and would deny them equal protection under the law as it is extended to married couples, both now and in the future.

MR. CLARKSON posited that although currently Alaska doesn't recognize common law marriage, he doesn't think that either the 1998 marriage amendment or HJR 9 would prohibit Alaska courts from recognizing those relationships as being between a man and a woman only and as marriages albeit sans ceremony. He said he agrees, however, that HJR 9 would prohibit the government from attaching the privileges of marriage to any other relationships.

[5:15:21 PM](#)

REPRESENTATIVE GRUENBERG posited that if a couple were to meet the requirements of common law marriage in another state, then the courts in Alaska would recognize that marriage because it was valid in that other state. He questioned whether that view would be changed by the passage of HJR 9.

MR. CLARKSON reiterated his belief that it wouldn't because a common law marriage is still a relationship between a man and a woman only.

CHAIR RAMRAS - surmising that Representative Gruenberg is of the opinion that the change proposed by HJR 9 would require a constitutional convention because it is a revision, and that Mr. Clarkson is of the opinion that HJR 9 is merely an amendment - asked Ms. Mischel for her view.

MS. MISCHEL said she doesn't share Mr. Clarkson's confidence that HJR 9 is not a revision. The legislature, however, has the authority to pass the resolution, and the Alaska Supreme Court can then sort out the question of whether it constitutes a

revision. In terms of property interests and divorce decrees and other issues that have been raised, she observed that there are constitutional implications in modifying or interfering with "those kinds of relationships"; HJR 9 is proposing to insert very broad language, she reiterated, much broader than the language of the aforementioned second sentence of Senate Joint Resolution 42.

CHAIR RAMRAS asked when a citizen would assert that HJR 9 warrants a constitutional convention.

MS. MISCHEL said that in the past such assertions were made after the passage of the resolutions and before their language was presented to the voters.

MR. CLARKSON concurred and offered some historical background regarding the challenges pertaining to Senate Joint Resolution 42 and other ballot measures addressed during that same election.

CHAIR RAMRAS surmised that should HJR 9 pass the legislature and a challenge be raised, it would be up to the Alaska Supreme Court to determine whether it is an amendment and thus suitable for placement on the ballot.

MR. CLARKSON concurred.

MS. MISCHEL, in response to a question, reiterated that she can't speak with certainty that the Alaska Supreme Court will view HJR 9 as an amendment. She herself, she offered, would not want to defend it as a mere amendment because the implications of its proposed language are very broad; therefore, unless the court modifies its analysis, the Bess case supports her opinion that HJR 9 appears to be a revision. She again acknowledged, however, that she could be wrong.

MR. CLARKSON disagreed.

[5:26:22 PM](#)

REPRESENTATIVE GRUENBERG referred again to Romer as referenced in footnote 20 of the Alaska Civil Liberties Union opinion, and asked Ms. Mischel to elaborate on her comments as presented in her 4/2/07 written opinion.

MS. MISCHEL offered that in Romer, the U.S. Supreme Court found that a proposed amendment to the Colorado State Constitution

violated the federal equal protection provision; although not directly related to the question of whether HJR 9 constitutes a revision, when a court is analyzing the substantive effects of HJR 9, the court may find that the federal equal protection provision is also implicated.

REPRESENTATIVE GRUENBERG posited that because [HJR 9] denies equal protection of the law to public employees with same-sex domestic partners, it violates the equal protection clause in the U.S. Constitution's Fourteenth Amendment. He said he also believes that there is some serious question regarding whether it will similarly cause problems in the Alaska State Constitution. Regardless of whether the latter point is true, if HJR 9 violates the federal Constitution, the federal supremacy clause takes precedence. He then read footnote 20 of the Alaska Civil Liberties Union opinion [original punctuation provided although with some formatting changes]:

Explicitly denying benefits to public employees with same-sex domestic partners would arguably offend the Federal Constitution. In *Romer v. Evans*, 517 U.S. 620 (1996), the United States Supreme Court struck down on federal equal protection grounds an amendment to the Colorado Constitution that repealed all local and statewide laws prohibiting discrimination based on sexual orientation. The Court explained that in addition to merely repealing state and local laws, the amendment "prohibits all legislative, executive, or judicial action at any level of state or local government designed to protect the named class...." *Id.* at 624. The Court invalidated the amendment under the rational basis standard of judicial review, reasoning that the amendment could not satisfy even the minimal level of scrutiny. *Id.* at 632. It explained that the amendment's "disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence.... A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." *Id.* at 633.

[5:33:56 PM](#)

REPRESENTATIVE GRUENBERG posited that a third challenge to HJR 9 could be that it could not be constitutionally applied to people

who've acquired any rights to pensions, including those that have acquired them as a result of the decision in Alaska Civil Liberties Union and previous retirement laws pertaining to the University of Alaska, the ARRC, and other entities protected under Article XII, Section 7, of the Alaska State Constitution.

MS. MISCHEL offered her belief that it is possible that HJR 9 would violate Article XII, Section 7, of the Alaska State Constitution. Should HJR 9 pass and survive a court challenge, the question of vested retirement rights must be reconciled with Article XII, Section 7, which prohibits the reduction of retirement benefits. Furthermore, there are people who've already qualified [for benefits] under the regulations adopted in response to Alaska Civil Liberties Union. She said she is not sure how a conflict between two sections of the Alaska State Constitution would be dealt with; normally the narrower, later amendment would supersede a broader, prior amendment. Again, though, this raises the issue of whether HJR 9 would have a substantive effect on "other legal rights" in the Alaska State Constitution.

REPRESENTATIVE COGHILL disagreed. Referring to the State's different tiers of retirement benefits, he pointed out that the benefits provided in one tier have been allowed to stand even when other tiers have been instituted. He surmised that the same would be true should HJR 9 pass the legislature and be approved by a majority of the voters. He offered his belief that HJR 9 would not affect Article XII, Section 7, and pointed out that the legislature is the policy-making body, not the courts.

REPRESENTATIVE GRUENBERG, in response to a question, posited that it would be up to the courts to determine whether a challenge asserting that HJR 9 causes two provisions of the Alaska State Constitution to conflict with each other would be sustainable.

MR. CLARKSON, in response to a question, reiterated that he has not yet looked at the issue of whether HJR 9 will affect vested rights. With regard to the equal protection issue raised in Romer, he noted that since the time that the Alaska Supreme court in Alaska Civil Liberties Union referenced Romer, the 10th Circuit Court of Appeals considered a legal challenge to Nebraska's marriage amendment and upheld a sentence virtually identical to language in HJR 9. He also pointed out that the constitutional amendment that was dealt with in Romer didn't just address marriage or marriage benefits, but instead

identified a class of people by a single trait - that being sexual orientation - and denied them societal benefits across the board; for example, one question that arose was whether the proposed Colorado amendment would have resulted in homosexuals being denied police protection. The court in Romer found the language of the Colorado amendment to be so broad as to be completely irrational. To compare the Colorado amendment to HJR 9 is not possible, he opined, given the difference in the impact of each.

REPRESENTATIVE GRUENBERG pointed out that the legislature shouldn't be looking only at how the courts would view HJR 9 but at how they as legislators would view it. A constitutional provision is unlike any other statute because if a constitutional amendment such as is being proposed via HJR 9 passes, it will authorize future legislatures to the ability to pass laws that are currently prohibited. Therefore, HJR 9 must be viewed through the lens of time, he remarked, and how it might be interpreted by future legislators and future courts. He asked Mr. Clarkson whether he believes that HJR 9 could allow a future legislature to deny unmarried couples police protection, for example.

MR. CLARKSON opined that [HJR 9] won't because it relates to the benefits, attributes, rights, obligations, qualities, and effects of marriage, and police protection is not divvied out based on one's marital status.

REPRESENTATIVE GRUENBERG said he would leave it to other committee members and members of the public to put the proposed language in the context of other laws that may be allowed.

[5:45:40 PM](#)

REPRESENTATIVE COGHILL made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 1, lines 8-9

Delete:

"that shall be valid or recognized in this State and"

CHAIR RAMRAS objected.

The committee took an at-ease from 5:46 p.m. to 5:49 p.m.

CHAIR RAMRAS removed his objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

5:49:32 PM

REPRESENTATIVE COGHILL moved to report HJR 9, as amended, out of committee with individual recommendations and the accompanying fiscal note.

REPRESENTATIVE HOLMES objected.

A roll call vote was taken. Representatives Lynn, Dahlstrom, Coghill, Samuels, and Ramras voted in favor of reporting HJR 9, as amended, from committee. Representatives Holmes and Gruenberg voted against it. Therefore, CSHJR 9(JUD) was reported out of the House Judiciary Standing Committee by a vote of 5-2.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:50 p.m.