HB

226

HB

227

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Official Business

MEMORANDUM

State Capitol
Juneau, AK 99801-1182

To: Representative Jeannette James
Chair, House State Affairs Committee

From: Representative Pete Kelly
Representative Norman Rokeberg

Re: HB 226 and HB 227

Date: March 8, 1995

We respectfully request that the House State Affairs Committee schedule a concurrent hearing on HB 226 and HB 227. The two bills complement each other, and we feel it will benefit the committee members to have both bills heard on the same day.

Thank you for your consideration in this matter. If you have any questions, please either one of us.

226 - Repeal Marriage regs
227 Same sex Marriage prohibt

Alaska State Legislature

REPRESENTATIVE
PETER KELLY
Mailing Address:
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161

While in Juneau
State Capitol
Juneau, Alaska
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House District 31

House Of Representatives

Sponsor Statement

House Bill 226

A recent court decision ordered the University of Alaska to extend health insurance coverage and benefits to domestic partners. HB 226 addresses this decision by reasserting the rights of employers, including the state, to exclude domestic partners from health insurance benefits, unless they choose otherwise.

Various labor and union contracts negotiate pension funds and health benefits as a part of the compensation package for workers. Now we find the workers benefit package is targeted for distribution to an unknown panoply of partners not recognized by existing contractual relationships, such as marriage.

HB 226 also intends to reduce the uncertainty employers now face in planning their group insurance program. Without HB 226, the court suggests employers in Alaska "could simply refuse to provide health care coverage for spouses." Or, their "health care plan could be rewritten to indicate that health care coverage would be available for all employees domestic partners."

The court decision leaves unclear who is, and who is not, entitled to family benefits. Employers may find themselves in court determining how many "partners", roommates, cohabitants, associates, boy or girl friends, acquaintances, or relatives have the same status as married persons. HB 226 seeks to close the door on a possible onslaught of domestic partnerships created just to gain benefits.

I urge your support of House Bill 226.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 226

Revision Date:
Title: An Act permitting the provision of different retirement and health benefits to employees based on marital status.
Sponsor: Kelly, Rokeberg
Requestor: State Affairs, Health, Education & Social Services....

Department Affected: All State Agencies
BRU: All State Agencies
Component: All State Agencies
COMPONENT SERIAL NO. 64

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: $ zero

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The state's health insurance plan extends coverage by statute [AS 39.30.090(a)(2)] to employees, their spouses, and their eligible dependent children. Domestic partners are not considered to be eligible for health insurance benefits. This bill would reinforce the rights of employers, including the state, to exclude domestic partners from health insurance benefits despite a recent court decision, which ordered the University of Alaska to extend health insurance coverage insurance benefits to domestic partners. This decision has been appealed.

Prepared by: Robert F. Stalnaker — Janet L Parker for
Division: Retirement & Benefits
Phone: 465-4470
Date:

Approved by Commissioner: Mark Boyer — Mark Boyer
Agency: Department of Administration
Date: 3/13/95

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Rev: 01/95

Sec. 18.80.220. Unlawful employment practices (a) It is unlawful for

(1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

(2) a labor organization, because of a person's sex, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental disability, color, or national origin, to exclude or to expel a person from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against a person because the person has opposed any practices forbidden under AS 18.80.200 — 18.80.280 or because the person has filed a complaint, testified, or assisted in a proceeding under this chapter;

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business, or type of work in the same locality; or

(6) a person to print, publish, broadcast, or otherwise circulate a statement, inquiry, or advertisement in connection with prospective employment that expresses directly a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(b) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state person-

nel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public. (§ 6 ch 117 SLA 1965; am § 4 ch 119 SLA 1969; am § 1 ch 237 SLA 1970; am §§ 5, 6 ch 42 SLA 1972; am § 1 ch 119 SLA 1974; am § 9 ch 104 SLA 1975; am § 9 ch 69 SLA 1987)

Cross references. — For original jurisdiction of the superior court over suits arising under this chapter, see AS 22.10.020.

Opinions of attorney general. — An employment decision not to hire one who lives with a person of the opposite sex does not come within the prohibition against employment decisions based on marital status. January 4, 1980 Op. Att'y Gen.

Subsection (a) preserves the nonassociational rights of those public employees whose sincere and conscientious beliefs forbid union membership but who, because they are not members of an organized religion, do not come within the coverage of AS 23.40.225. January 13, 1984 Op. Att'y Gen.

A state employee in a collective bargaining unit who does not belong to an organized religion is entitled to an accommodation of his religious opposition to the payment of union dues. January 13, 1984 Op. Att'y Gen.

Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, this section and AS 18.80.255 make it clear that an employer, including the state or any of its political subdivisions, may not discriminate against a potential or existing employee because that person is not a citizen of the United States. April 14, 1975 Op. Att'y Gen.

All questions on employment applications which inquire as to alienage or United States citizenship must be affirmatively stricken as legally impermissible questions; furthermore, should this information become available through a source other than by application, no use may be made of it. April 14, 1975 Op. Att'y Gen.

It is the opinion of the attorney general that State Deferred Compensation Plan options calculated by gender-based actuarial tables unlawfully discriminate against women employees. June 2, 1980 Op. Att'y Gen.

Subsection (b) should be interpreted to require the commission to keep confidential information from a survey for records maintained to administer civil rights laws and regulations until it is presented at public hearing unless the information is released in a format which does not identify individual responding employers or unions. May 14, 1979 Op. Att'y Gen.

NOTES TO DECISIONS

Discrimination need not be purposeful to be unlawful under paragraph (a)(1) of this section. Instead, unlawful discrimination may result as an "accidental byproduct of a traditional way of thinking about females." Alaska USA Fed. Credit Union v. Fridriksson, 642 P.2d 804 (Alaska 1982).

Coverage of anti-discrimination law is not limited to inhabitants. Adams v. Pipeliners Union 798, 699 P.2d 343 (Alaska 1985).

Consideration of federal decisions. — In the past, when considering the parameters of the Alaska anti-discrimination statute, the supreme court has examined the relevant federal Title VII decisions for guidance. Alaska State Comm'n for Human Rights v. Yellow Cab, 611 P.2d 487 (Alaska 1980).

Federal credit union is "employer". — A federal credit union with membership open to military and civilian personnel at Elmendorf, Adak and Shemya military bases, members of the Air National Guard, senior members of the Civil Air Patrol, shareholders in 10 native regional corporations, and employees of certain contractors of Alyeska Pipeline Service Company was held to be an "employer" within the meaning of AS 18.80.300(4) and not entitled to an exclusion as a "fraternal organization." Alaska USA Fed. Credit Union v. Fridriksson, 642 P.2d 804 (Alaska 1982).

Section applicable to unions. — This section, like 42 U.S.C. § 2000e et seq.,

3181 Anella AV.
Fairbanks, AK 99709
14 January 1995

Representative Pete Kelly
State Capitol
Juneau, AK 99801-1182

Dear Mr. Kelly:

The recent decision by Judge Greene in Fairbanks saying that unmarried couples are entitled to the same benefits as accorded to married couples opens Pandora's box to litigation and regulation writing about who is and who is not entitled to family benefits. More important, I view the decision as another step in the dissolution of the fabric that holds our society together.

The next generation of responsible citizens should be recruited from the stable families formed by committed heterosexual couples. The continuation of our society is dependent on the formation of families.

We have all lamented the social ills that have accompanied the breakdown of family life. The State therefore has a compelling interest in formation of families, and is thereby justified in adopting policies that provide special benefits to traditional families. I would therefore urge the adoption of legislation that clearly states that spousal benefits for any state employee shall apply to only those who are legally married. I would further urge that no unmarried person may use the state courts to sue for family benefits.

According to the January 13 *News Miner* article Judge Greene referred to the precedent set by an Equal rights Commission ruling that landlords cannot refuse to rent to unmarried cohabiting heterosexual couples. I would further urge that adoption of legislation asserting the unconditional rights of landlords to evict or refuse to rent to unmarred heterosexual partners.

Please do not construe this letter as being anti-homosexual. I have backed homosexual rights. My interest in writing this letter is that I think it is time for us to send a message to the coming generation that the formation of families is good, and promiscuity and having children out of wedlock is bad.

I thank you for your consideration.

Sincerely yours,

Daniel W. Swift

Daniel W. Swift

Alaska State Legislature

REPRESENTATIVE
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House District 31

House Of Representatives

House Bill 226

Briefing Paper

The Human Rights Act and Marital Status

The Alaska Human Rights Commission was created in 1965. The Commission was given the power to accept, hear, and issue orders of compliance on complaints regarding discrimination throughout Alaska. The act established as unlawful employment practices the refusal of employment, or discrimination "in compensation or in a term, condition or privilege of employment because of his race, religion, color or national origin, or because of his age when the reasonable demands of the position do not require age distinction."

In 1969 the statutes empowering the Human Rights Commission were amended to include the goals of eliminating "discrimination because of race, religion, color, national ancestry, physical handicap, age, or sex." Employers were bared from discriminating for the reasons established in 1965 plus "age, physical handicap, or sex when the reasonable demands of the position do not require age, physical handicap of sex distinction."

The statutes were further amended in 1972. The 1972 act established that the "opportunity to obtain employment, public accommodations, housing accommodations and property without discrimination because of sex, race, religion, color, or national origin is a **civil right.**"

In **1975** the prohibition against discrimination on the basis of **marital status or changes in marital status** was added to the statutes on human rights. It became "unlawful for an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood."

Human Rights Commission Decisions re: Marital Status.

The Alaska Human Rights Commission is the first point of referral for complaints of discrimination relating to the Human Rights Act. The Commission received eight complaints based solely on discrimination regarding marital status in 1993, four cases in 1992, and four cases in 1991. Of the 1,660 complaints filed during 1991, 1992 and 1993, 40 included marital status as a portion of the complaint.

Since the enactment of the marital status portion of the Human Rights Act in 1975, the Human Rights Commission has completed four decisions in which Marital Status played a part of the basis for the initial complaint of discrimination. Marital Status is clearly not a large portion of the case load of the Human Rights Commission.

Analysis of Human Rights Commission decisions on marital status.

1) Marie Scholle vs. City of Fairbanks, City Ordinances found irreconcilable with the Human Rights Act, 1977.

Marie Scholle argued that the City of Fairbanks discriminated in employment practices "because of a City ordinance prohibiting employment of a person when such person's spouse is employed by the City." The Commission found that the discrimination did not occur against Mrs. Scholle, because her complaint preceded the 1975 addition of the Marital status clause to the Human Rights statutes. The Commission did find, however, that the City "ordinances must be declared invalid and unenforceable as inconsistent with and contrary to State Law." It is clearly a violation of the Human Rights Act to refuse to hire someone because they are married.

2) Mikka Powell vs. Jacks Food Mart; Dismissed, Oct. 1980.

Mikka Powell asserted "that she was terminated in whole or in part because she was unmarried and pregnant, which charges, if true, would constitute illegal discrimination in violation of AS 18.80.220(1)." The Commission found against the complainant, finding evidence of continued tardiness, walking off the job for extended periods of time, and other reasons which could have been the sole reason for the termination. However it would be a violation of the Human Rights Act to discriminate by retaining a person who is married and pregnant, but fire someone who is not married and pregnant.

3) Anne Miller vs. Golden North Motel; Dismissed, Feb. 1980.

Anne Miller alleged the Golden North Motel discriminated in her firing, because one of the reasons given for her termination was a company policy preferring married personnel in her position.

The Commission found against the complainant, for reasons other than the allegation, which if true would have been a discriminatory practice. A policy that establishes a preference for married personnel over unmarried personnel is a clear violation of the Human Rights Act.

Attorney General's Opinion on a marital status case, January 4, 1980.

The Attorney General has issued one opinion on marital status discrimination in Alaska. This opinion discussed "cohabitation." The noted that "cohabitation per se. however, is not covered by the Alaska human rights law and it would appear, therefore, that the Commission cannot provide relief for discriminatory conduct based upon one's cohabitation without benefit of marriage when employment policy is applied across the board to all applicants."

The Attorney General opinion went on to caution against a simple interpretation in the specific case at hand, giving an example of a case from another state in which cohabiting was found to be an "espoused relationship, i.e., sharing bed and board, having children, sharing financial, recreational and social activities together plus the normal cares and woes of raising a family." If the Commission were to find cohabitation to be marital status for the purposes of AS 18.80.220(a) then it might be best for the Commission to amend its regulations "to include this espoused relationship in its definition of marital status."

Summary and relevance to Tumeo & Wattum vs. UA:

Tumeo and Wattum seek a court ruling for the establishment of medical benefits for "domestic partners." The litigants did not bring this issue before the legislature for addition to the Human Rights Act, nor for addition of domestic partners to Alaska Statutes 39.30.090(a)(2) which specify provisions for the state's health insurance plan. The University is free to negotiate a plan which includes domestic partners. Rather than successfully negotiate this form of compensation the litigants have gone to court seeking a solution outside the democratic process.

Tumeo and Wattum did not choose to have their case heard by the Human Rights Commission. It is difficult to speculate on difference in the outcome of their case had they chosen to place their complaint with the Human Rights Commission. Expansion of the marital status provision to include individuals who were not married, and were not raising a family, might well have been more difficult before the Human Rights Commission.

The Alaska Human Rights Act precludes discrimination based upon marital status. Clearly prohibited are employment preferences excluding persons from employment because they are or are not married. Single persons may not be preferentially hired over married persons. Married persons may not be preferentially hired over unmarried persons. A person who is unmarried and pregnant has the same employment of someone who is married and pregnant.

The cases to date are fairly straight forward interpretations of the Human Rights Act. The Tumeo & Wattum vs. UA case is not as straight forward. Tumeo & Wattum are not legally married. They are alleging that their "domestic partners" should receive the compensation benefits package granted to married individuals because each has submitted an "affidavit of marital equivalency" to the University.

It is difficult to see how Tumeo & Wattum have a case establishing discrimination based on marital status. Although neither Tumeo nor Wattum's domestic partnership is illegal, they are clearly not relationships with the legal recognition, certification and status of marriage. The Greene decision would expand the Human Rights law to protect or reward a relationship which lacks the legal and social stamp of recognition similar to those afforded by society to the institution of marriage.

1993 Case Processing Statistics

Analysis of Filings By Complainant's Sex

Female	324
Male	274
Total Filings	598

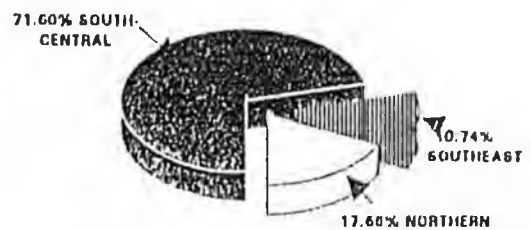
Analysis of Filings By Complainant's Race

Caucasian	295
Black	120
Alaska Native	52
Hispanic	46
Unknown	35
Asian	20
American Indian	16
Other	14
Total Filings	598

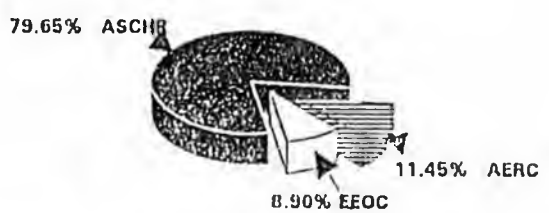
Analysis of Filings By Type

Employment	537
Public Accommodation	21
Housing	20
Government Practices	15
Finance	3
Multiple	2
Total Filings	598

Origin of Complaints Filed with ASCHR for Initial Processing (By Region)



Location of Cases at Year End Including Filings Under Worksharing Agreements



Analysis of Filings By Basis

Basis	Single Basis Complaint	Multiple Basis Complaint
Race/Color	119	55
Sex	100	80
Physical Disability	81	42
Age	45	46
National Origin	44	27
Retaliation for Filing	14	6
Pregnancy	12	12
Retaliation	9	52
Marital Status	8	17
Mental Disability	6	6
Parenthood	2	5
Religion	2	8
Multiple Bases	156	0
Total Filings	598	356

Analysis of Filings By Issue

Issue	Single Issue Complaint	Multiple Issue Complaint
Discharge	142	173
Failure to Hire	83	20
Terms & Conditions	79	153
Other	32	31
Denied Service	19	0
Sexual Harassment	8	54
Failure to Rent	6	0
Failure to Promote	2	10
Pay Equity	2	11
Eviction	1	2
Demotion	0	15
Harassment	0	33
Multiple Issue	224	0
Total Filings	598	502

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

Daily News - Miner

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SAM BISHOP
Editorial Page Editor

Defining 'domestic partners'

Judge Mary Greene, who ruled last week that the university cannot discriminate on the basis of marital status when providing health benefits, has made a legally correct but politically untenable decision.

Two university employees—Mark Tumeo and Kate Wattum—sued the institution because it would not extend health benefits to their same-sex domestic partners. They said the university was discriminating against them, and Greene agreed.

The judge's decision seems unassailable from a legal standpoint. The university pays part of the health insurance bill for employee spouses. That means a married employee is "paid" more than an unmarried employee. That's discrimination on the basis of marital status, and that's illegal under state law.

The university used some convoluted reasoning to obscure the essential issue. It argued that married people have a legal obligation to support their spouses, so the university can help them with health benefits. But Greene noted that under the university's logic "a single person might be paid $50 for a job for which a married person might be paid $100. Such a result would plainly be unlawful . . ."

So what happens next?

Judge Greene suggested a few options for the university. It could stop subsidizing health benefits for spouses of university employees. Or it could extend benefits to anyone who signs an "affadavit of spousal equivalency," as Tumeo and Wattum have done with their partners.

Neither option is politically realistic.

Barring employer subsidies of health benefits for married couples would create a huge uproar.

But formally accepting an "affadavit of spousal equivalency" would create a greater outcry because it essentially would recognize gay and lesbian marriages. Currently, that idea is in legal limbo, Greene noted. It likely will stay there, given the threat to strong, healthy families that many people believe such marriages represent.

There is another, broader option not expressed by Greene. We could make a decision that, as a society, we want our laws to encourage heterosexual marriages by allowing employers to pay such couples better. However, such an effort could require statutory and constitutional amendments at the state and federal level. And it is fraught with risk—do we really want government to enter the business of deciding (with apologies to Dr. Seuss) "who's better than who?"

Greene's decision could have immense ramifications because her reasoning may be applied to any government or private employer.

And any action spurred by the decision will be extremely controversial. This issue has been simmering for some time. Judge Greene, in defining the dispute precisely, just brought it to a boil.

Judge rules unmarried couples should get benefits

UAF cannot deny health insurance to same-sex partners

By MICHAEL DREW
Staff Writer

A Superior Court judge has ruled that unmarried couples living together should be offered the same employee health benefits at the University of Alaska Fairbanks as married couples.

The Wednesday ruling by Fairbanks Judge Mary Greene could have implications beyond the UAF campus, possibly extending to all University of Alaska campuses and eventually to all state departments, said Assistant Attorney General John Gaguine.

Greene ruled in favor of Mark Tumeo, an associate professor of engineering, and Kate Wattum, a university public affairs assistant in Fairbanks. The two sued the university in January 1994 after being denied health care benefits for their same-sex partners.

In a brief written statement Thursday, Tumeo and Wattum said they are pleased with Greene's decision.

"We think that the judge endorsed the idea that there should be equal pay for equal work and that people should receive the same pay, regardless of whether they are married or single," the statement said.

Tumeo and Wattum claimed they were discriminated against based on marital status since the university provides health care benefits to its employees' spouses but not to employees' domestic partners, regardless of sex.

Greene agreed, saying discrimination against unmarried couples, even when they are of the same sex, constitutes discrimination based on marital status. But she stopped short of defining "domestic partner."

In her ruling, Greene said the university, by offering health care coverage to spouses of married employees but not to partners of unmarried employees, "is compensating married employees to a greater extent than it compensates unmarried employees."

Greene's ruling does not require the university to offer coverage to the unmarried partner of an employee. But it does prohibit the university from using marital status to determine whether to offer the coverage.

Greene said it is irrelevant to her decision whether Tumeo and partner Bruce Anders and Wattum and partner Beverly McClendon are able to obtain a marriage license in Alaska.

While the state does not issue same-sex marriage licenses, Tumeo and Anders have signed an "Affidavit of Spousal Equivalency." The affidavit explains their relationship, saying Tumeo and Anders

See RULING, Page A-8

RULING: Judge rules that health coverage cannot be denied on basis of marriage

Continued from Page A-1

are "jointly responsible for each other's common welfare and financial obligations."

For now, the ruling is limited to the university system, said Gaguine. But if the university appeals to the Alaska Supreme Court and loses, the ruling would apply to other state agencies.

"If it's upheld they will have to review their policies regarding the new law," Gaguine said.

Bill Kauffman, the university's attorney on the case, was out of town Thursday and unavailable for comment. Whether UAF would appeal was unknown.

In her decision, Greene referred to two Alaska Supreme Court cases involving violations of the Alaska Human Rights Act. Tumeo and Wattum had argued the cases support their case against the university.

In the 1989 case of Foreman v. Anchorage Equal Rights Commission, an unmarried woman attempted to rent an apartment for her baby, the baby's father and herself. The landlords, the Foremans, refused to rent because she and the baby's father were not married. The court ruled against the Foremans, saying the Human Rights Act was intended to protect unmarried couples.

In a 1994 case, Swanner v. Anchorage Equal Rights Commission, the landlord refused to rent to unmarried couples living together. The landlord, Swanner, claimed he was not discriminating on marital status but rather on conduct. A judge ruled the landlord could not discriminate against unmarried couples.

Greene said the university has several options.

It could refuse to provide health care coverage for spouses, or it could rewrite its benefit plan to define "dependent" as a person for whom an employee provides the majority of financial support.

Or, Greene said, the benefit plan could be rewritten to indicate that health care coverage would be available for all employees and their domestic partners, provided the employee and partner are willing to sign the Affidavit of Spousal Equivalency.

UAF's Human Resources director, Patty Kastelic, said she couldn't comment on the case until she had an opportunity to review the judge's decision.

FAX MESSAGE PAGE 1 OF 1
465-2381

March 15, 1995

Representative Jeannette James:

I would like to share my thoughts on HB-226 and HB-227, currently before you for consideration. I am quite saddened, though not surprised to see these bills introduced and discussed; it seems there will always be those who seek to consolidate their own positions of power by denying equal benefits to others. In the past it has been women and people of color, now it is heterosexual people who choose to remain outside the legal structure and lesbian women and gay men who do not even have the option of becoming part of the legal structure. Regardless who is affected, it is wrong to deny the full benefits of a society to its fully participating members.

It is clear that recent the decision against the University of Alaska for withholding health benefits and the State of Hawaii allowing same sex marriages are the basis for these two bills even though proponents of these bills say their position is not aimed at any particular group. Their actions are clearly focused on non-married heterosexual people and lesbian women and gay men, all groups that remain outside the prevalent power structure. Regardless of these groups choices or orientations, it is wrong to restrict their choices to have the full lives we all deserve.

Thank you for your time.

Artemis BonaDea

Artemis BonaDea
Box 22582
Juneau, AK 99802

586-8056

9 March, 1995

The Honorable Pete Kelly
State Capitol, Room 513
Juneau, Alaska 99801-1182

Dear Representative Kelly:

I am writing to ask that you consider a modification to House Bill 226 (HB-226) which you have introduced to the Legislature. I hope I am correct in assuming that the main goal of your legislation is to promote long lasting, committed relationships, to avoid church/state conflicts, and to promote equality and civil rights without regard to marital status. While I do not agree that the recent Superior Court decision opens the door for an explosion of benefit costs, I would support legislation that would prohibit frivolous or insincere applications for domestic partner benefits.

My concern with HB 226 as it stands is that it creates "special rights" for a closed group of people. By encoding the right to discriminate on the basis of marital status, the law guts the Human Rights Act of the State. It sets a precedent that the majority can create special rights for a select group at the expense of others. I do not believe this was your intent, but it is the end result of the legislation as written.

Attached you will find draft language for a proposed amendment to HB 226. I hope you will agree that with the proposed language, all parties are protected from an open onslaught of frivolous domestic partnerships set up to gain benefits that are not deserved. With the proposed amendment, all individuals who enter a legally binding and long-term financial commitment with another adult are treated equally without regard to marital status. This furthers the intent of the Human Rights Laws of Alaska, protects the State and businesses from an explosion in benefits costs, and promotes stable, long-lasting committed relationships that are beneficial to society.

I hope you will seriously consider amending your bill as suggested. I stand ready to discuss this issue in detail with you if you so desire. I can be reached in Fairbanks at my office at 474-6090.

Thank you for your time and consideration in this matter.

Sincerely,

Mark A. Tumeo, Ph.D.

Proposed Amendments

1. Strike "based on marital status" from the title.

2. After the words "not legally married to" in Section 2(c)(1) [line 30, page 2] add the following:
"or a domestic partner of, as defined in section (c)(3) below)"

3. After the words "not legally married to" in Section 2(c)(2) [line 3, page3] add the following:
"or a domestic partner of, as defined in section (c)(3) below)"

4. Add the following to the proposed bill as section (c)(3):

(c)(3) a domestic partner shall be defined as any two individuals who

(i) are each other's sole domestic partner and intend to remain so indefinitely;

(ii) are not married;

(iii) are at least 18 years of age and are mentally competent to consent to contract;

(iv) are not related by blood to a degree that would prohibit legal marriage in Alaska;

(v) reside together in the same residence and intend to do so indefinitely;

(vi) are jointly responsible for each other's common welfare and financial obligations, as proved by at least five of the following:

(a) A legally binding domestic partnership agreement ;
(b) Joint deed, mortgage agreement, or lease;
(c) Joint ownership of a motor vehicle;
(d) Joint bank account;
(e) Joint credit account or other liabilities;
(f) Co-parenting agreement or adoption decree;
(g) Designation of domestic partner as primary beneficiary on life insurance;
(h) Designation of domestic partner as primary beneficiary of retirement contract;
(i) Designation of domestic partner as primary beneficiary in will;
(j) Durable property or health care power of attorney.

Facts on Domestic Partnership Benefit Programs

Domestic partnership benefits are not only politically feasible, they are a reality in over 50 cities and municipalities around the country. Three states, Massachusetts, Vermont and New York, offer state workers domestic partnership benefits. Over 100 companies, from Levi Strauss employing over 30,000 to small businesses, offer benefits to domestic partners the same as to married couples. Over 60 Universities offer some sort of domestic partnership benefits, including Harvard, The University of Iowa, The University of South Dakota, the University of Colorado, The State Universities of New York, and Duke University.

Benefit packages are traditionally used to attract and retain good employees, and domestic partnership benefits are doing just that. In the cases where domestic partnership benefits have been approved for only same-sex partners, the average increase in enrollment is less than 0.3%. In those instances where domestic partner benefits were offered to same-sex and different sex couples, the average increase is approximately 2%. This indicates that predominantly different sex couples benefit from the institution of domestic partnership benefits. In 16 organizations surveyed (5 companies, 5 municipalities, 5 universities and 1 hospital), only 3 indicated there had been a premium increase associated with the establishment of a domestic partnership benefits program.

** PROPOSED AMENDMENTS TO **

HOUSE BILL NO. 226

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLY, Rokeberg

Introduced: 3/3/95
Referred: State Affairs, Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act permitting the provision of different retirement and health benefits to employees [redacted]"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.80.220(a) is amended to read:

(a) Except as provided in (c) of this section, it [IT] is unlawful for

(1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

(2) a labor organization, because of a person's sex, marital status,

New Text Underlined [DELETED TEXT BRACKETED]

changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental disability, color, or national origin, to exclude or to expel a person from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against a person because the person has opposed any practices forbidden under AS 18.80.200 - 18.80.280 or because the person has filed a complaint, testified, or assisted in a proceeding under this chapter;

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business, or type of work in the same locality; or

(6) a person to print, publish, broadcast, or otherwise circulate a statement, inquiry, or advertisement in connection with prospective employment that expresses directly a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color, or national origin, unless based upon a bona fide occupational qualification.

* Sec. 2. AS 18.80.220 is amended by adding a new subsection to read:

(c) Notwithstanding the prohibition against employment discrimination on the basis of marital status under (a) of this section,

(1) an employer may refuse to provide benefits to a person because the person is not legally married to an employee of the employer without violating this chapter; and

or a domestic partner of, as defined in Section (3) below.

(2) a labor organization may negotiate to preclude or may directly preclude the provision of benefits to a person because the person is not legally married to a member of the labor organization, an employee of the labor organization, or an employee represented by the labor organization without violating this chapter.

or a domestic partner of, as defined in section (3) below

(c)(3) a domestic partner shall be defined as any two individuals who

(i) are each other's sole domestic partner and intend to remain so indefinitely;

(ii) are not married;

(iii) are at least 18 years of age and are mentally competent to consent to contract;

(iv) are not related by blood to a degree that would prohibit legal marriage in Alaska;

(v) reside together in the same residence and intend to do so indefinitely;

(vi) are jointly responsible for each other's common welfare and financial obligations, as proved by at least five of the following:

(a) A legally binding domestic partnership agreement ;
(b) Joint deed, mortgage agreement, or lease;
(c) Joint ownership of a motor vehicle;
(d) Joint bank account;
(e) Joint credit account or other liabilities;
(f) Co-parenting agreement or adoption decree;
(g) Designation of domestic partner as primary beneficiary on life insurance;
(h) Designation of domestic partner as primary beneficiary of retirement contract;
(i) Designation of domestic partner as primary beneficiary in will;
(j) Durable property or health care power of attorney.

Date: 3-15-95

Fax to: Rep. Jeannette James **Fax:** 465-2381

From: Sara Boesser **Total:** 19 pages including this page

Re: HB 226: Restricting UA Health Benefits

fax: (907) 789-7450 phone: (907) 789-9604

Rep. James:

Enclosed is a letter opposing HB-226

and

a copy of the Superior Court Ruling that found the University's policy of giving health benefits only to married spouses illegal.

This is the court ruling behind both HB-226 & HB-227.

- Sara Boesser

Committee for Equality
PO Box 34202
Juneau, AK 99803

CFE is a statewide organization.
Call Sara Boesser at 586-5230 (w);
789-9604 (h); 789-7450 (home fax).

Representative Jeannette James
Chair, House State Affairs Committee
Alaska Legislature

March 15, 1995

Re: HB-226; Restricting University Health Benefits (to married spouses only)

HB-226 Discriminates on the basis of marital status, and the courts have already found its approach illegal:

therefore please stop it in House Affairs, or amend it to include domestic partners.

Dear Representative James:

I hope your committee will put a quick end to HB-226 as written, either by stopping it in its tracks, or by amending it as recommended by the Alaska Superior Court to include benefits for financially responsible domestic partners.

The Alaskan Superior Court has already found the University's attempt to grant health benefits *only* to married couples to be illegal discrimination on the basis of marital status. Thus **since the Alaska Superior Court has already ruled that this legislation as written is illegal, it is unconscionable for the legislature to pass a law they already know violates Alaska law.**

The court decision is attached for your review. I have not forwarded it to all House State Affairs members due to its length, but would be happy to do so upon any member's request. When you read it you will see the Court made several options available so that *not all* couples who live together must be provided benefits. What the court ruling says instead is that the University can discriminate based on couples who do, or do not, have a legal financial responsibility for one another. On page 17 the Superior Court **ruling clearly lays out one such legal option, stating:**

> **"The [University] health care plan could be rewritten to indicate that health care coverage would be available for all employees and for employees' domestic partners, provided the employee and the partner were willing to sign an affidavit such as [the plaintiffs] Tumeo and Anders' affidavit.** Certainly, married couples would be willing to sign such an affidavit. However, **the plan would be nondiscriminatory because an unmarried employee could also sign the affidavit if he or she were in a domestic partnership involving financial interdependence.**

The Court goes on to say that such an option "would not result in radical, sweeping changes in the University's existing [health benefits] policy. Further, the administrative problems associated with these options would likely be minimal. Finally, and perhaps most importantly, the University would not be in a position in which it would have to engage in intense scrutiny of its employees' relationships."

Since the University's current policy of health benefits for only married couples is ruled illegal, and HB-226 is therefore illegal since it attempts to reimplement the marriage-based benefits, our organization urges you to either:

1) Stop the bill as written in this committee, or
2) Amend HB-226 as recommended by the Court.

Once again, this is in no way the wild picture painted in newspapers and radio stories of any two people who live together being able to get health benefits. Rather, this is only for those employees who are in committed relationships to the degree that they have taken on legal responsibility for one another -- either by marriage or other legal means. The court is clear that such responsibility exists under a variety of contracts, for a variety of kinds of couples. Marriage is not the sole method to provide for one's significant other. **Please do what you can to uphold the Court decision, and to follow its guidance and extend the University benefits to all financially responsible domestic partners.**

Thank you,

Sara Boesser

Sara Boesser, Board Member

cc: Bruce Botelho, Attorney General
House State Affairs Committee
Sponsors, HB-226

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

MARK TUMEO AND KATE WATTUM,

Appellants,

vs.

UNIVERSITY OF ALASKA,

Appellee.

Case No. 4FA-94-43 Civil

MEMORANDUM DECISION AND ORDER

The appellants, Mark Tumeo and Kate Wattum, challenge the decision of University of Alaska President Jerome B. Komisar dismissing their grievances. Tumeo and Wattum had grieved the University's denial of their requests to enroll their same-sex domestic partners in the University's health care program. Tumeo and Wattum maintain that the University's refusal to include their domestic partners when the University includes husbands and wives violates Board of Regents policies because (1) the health plan discriminates against employees on the basis of marital status, (2) the health plan discriminates against employees on the basis of sex, and (3) the health plan is not merit-based and is arbitrary and capricious.

I. FACTS

Tumeo and Wattum are both University of Alaska employees. Tumeo is Associate Professor of Engineering at the University of Alaska Fairbanks. Wattum is Publications Assistant, Statewide Public Affairs in Fairbanks. R. 33.

Both Tumeo and Wattum have applied for health insurance coverage for their same-sex domestic partners. R. 1, 3.

Tumeo's partner is Bruce Anders ("Anders"). R. 2. Tumeo and Anders have jointly executed an "Affidavit of Spousal Equivalency". R. 2. The affidavit sets out in detail the nature of the Tumeo/Anders relationship, essentially asserting that Tumeo and Anders are same-sex domestic partners who are "jointly responsible for each other's common welfare and financial obligations." R. 2. It indicates that Tumeo and Anders provided the University's Benefits Office with the affidavit "for the sole purpose of demonstrating (their) eligibility for spousal benefits." R. 2.

Wattum's partner is Beverly McClendon ("McClendon"). R. 1, 7. When Wattum grieved the University's September 17, 1993, decision denying benefits to McClendon, she offered "to provide alternative documentation of the committed nature of my relationship [with McClendon]." R. 20. There is no evidence in the record that the University responded to this offer. However, the record is similarly devoid of evidence that the University challenged the committed nature of Wattum's relationship with McClendon.

The University provides employer-funded health coverage for its employees and for the employees' "dependants." R. 72-73. The University defines "dependant", in part, as "your spouse (husband or wife)." R. 71. Tumeo and Wattum claim that the University is subsidizing at least part of the cost of health care coverage of

an employee's spouse.[1] The University has not disputed this claim, but instead it argues that such a subsidy is not unlawful.

II. ADMINISTRATIVE PROCEEDINGS

The University denied both Tumeo's and Wattum's applications for health care coverage for their partners, stating that "the health care plan does not allow for coverage of a domestic partner." R. 5. Tumeo and Wattum grieved the University's decisions not to provide health care benefits to their partners. R. 6, 7.

Tumeo and Wattum argued in their grievance that because the University provides health care benefits to employees' spouses and not to employees' domestic partners, the University is discriminating on the basis of marital status, in violation of state law and University regulations. Additionally, they argued that the University provides health care coverage to an employee's partner only if the partner and the employee are of different sexes, in violation of state law and University regulations forbidding discrimination on the basis of sex. In upholding its decision to deny health care coverage to Anders and McClendon, the University stated that it "is under no obligation to provide health insurance coverage for same sex partners." R. 8.

The University's Grievance Council stated that there was "not

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[1]Apparently, the value of this subsidy is at least $150 per . R. 31.

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a reasonable likelihood that the matter complained of was a violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation or an abuse of discretion arising from the administration of such policy or regulation as applied to the grievants." R. 10. It explained, in part:

> [T]he Council concluded that since [the University] denied in equal measure, health care benefits sought by both a male and a female on behalf of their same sex partners, a male and a female, that the denial of benefits were [sic] made without regard to the sex of the applicants or the putative dependents for whom benefits were sought, and thus did not discriminate based upon sex and thus are not in violation of regent's policies which prohibit discrimination based upon sex.

R. 12. As to the plaintiffs' marital status argument, the Council stated, in part:

> The Council concluded that only if Alaska state law (which must be followed under the Regent's policy invoked by the grievants) provided for same-sex marriages could there be a reasonable likelihood the respondent violated, misinterpreted, or improperly applied Board of Regents. policy in this regard. . . . The Council concluded that same-sex marriage is not recognized by Alaska law and hence the marital condition of being married is not fulfilled by the grievants and hence there was not a reasonable likelihood that respondent violated, misinterpreted, or improperly applied Board of Regents policy with regard to the marital status of the grievants. Only if grievants, not being in the marital status of marriage under state law, had been denied benefits only available to those falling under the marital states [sic, status?] of being single (or unmarried), could the grievants, unmarried under state law, be considered to have been discriminated against because of their marital condition.

R. 13-14. It was the recommendation of the Grievance Council that the President dismiss the grievances. R. 11.

The University's President, Jerome Komisar, accepted the recommendation of the Grievance Council and dismissed Tumeo and Wattum's grievances. R. 32. In so doing, the President stated that he did not "fully agree[] with the stated rationale offered by the Grievance Council in support of its recommendation that the grievances be dismissed." R. 32. However, he indicated that he did "agree with the Council's conclusion that there is not a reasonable likelihood that the matters complained of in the grievances constitute a violation, misinterpretation, or improper application of a Policy of the Board of Regents . . . ." R. 32. This appeal followed.

III. DISCUSSION

A. Standard of Review

The appropriate standard of review for this appeal is the "substitution of judgment" or "independent judgment" standard. Because this appeal involves questions of contract law, constitutional law, and statutory interpretation, the court need not give any weight to the University's conclusions with regard to the appellants' claims but must instead apply its own independent judgment in assessing the claims. E.g., Zualsdorf V. University of Alaska, 794 P.2d 932, 934 (Alaska 1990); Earth Resources Co. of Alaska v. State Department of Revenue, 665 P.2d 960, 965 (Alaska 1983).

The court is restricted to reviewing the University's

interpretation of law; the court may not review the wisdom of the University's action. Groh v. Egan, 526 P.2d 863, 866-67 (Alaska 1974). That is, the court has the authority to review the lawfulness of the University's action but may not "substitute its judgment as to the sagacity of a regulation." Groh, 526 P.2d at 866.

B. Existance of a "Grievance"

The University argues that the "appellants' complaint did not constitute a 'grievance' within the meaning of the University's grievance policy." Appellee Br. at 9. The court disagrees.

Board of Regents ["BOR"] Policy 04.08.08(II)(A) defines "grievance" as:

> an allegation or complaint by an employee or a group of employees of the University that there has been a violation, misinterpretation or improper application of a policy of the Board of Regents or a University regulation, or abuse of discretion arising from the administration of such a policy or regulation which adversely affects the employee or group of employees.

R. 33. According to the University, in order for the appellants' complaint to constitute a "grievance", there must be "a likelihood" that the University violated, misinterpreted, or improperly applied a BOR policy or a University regulation. Appellee Br. at 9.

Obviously, the University's own definition of "grievance" does not include a "likelihood" requirement. Rather, the definition indicates that a grievance exists when an employee merely alleges or complains that there has been a violation of a law or a

University regulation.[2]

In this case, Tumeo and Wattum allege that the University violated: (1) article I, sections 1, 3, and 7 of the Alaska Constitution; (2) article XII, section 6 of the Alaska Constitution; (3) AS 18.60.220; (4) BOR Policy 01.01.04; and (5) BOR Policy 04.03.01. Because this amounts to an allegation that "there has been a violation, misinterpretation or improper application of a policy of the Board of Regents or a University regulation, or abuse of discretion arising from the administration of such a policy or regulation", their complaint is a "grievance" within the meaning of BOR Policy 04.08.08.

The University appears to have confused the definition of "grievance" with the actual basis on which the Grievance Council recommended dismissal, viz., that "there [was] not a reasonable likelihood . that the matter complained of was violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation or an abuse of discretion arising from the administration of such policy or regulation as applied to the grievants." R. 10. This is not a determination that the purported grievance was not a "grievance"; it is a determination made before hearing of no reasonable ground of

[2]If the court were to accept the University's "likelihood" requirement, an employee would have to prove he or she was "likely" to succeed on appeal in order to gain access to the appellate process. If the employee could not show that his or her complaint or allegation was "likely" to succeed on appeal, the complaint would cease to be a "grievance".

success. BOR Policy 04.08.08(IV)(C) provides, in pertinent part:

> The chair of the grievance council shall promptly provide a copy of the request for hearing and all other documentation submitted with the request to the respondent. Copies shall also be provided to the university general counsel, the campus personnel director, and the system human resource executive director. Within ten (10) working days of receiving the request for a hearing, the grievance council shall meet to determine whether there is a reasonable likelihood that the matter complained of was a violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation, or abuse of discretion arising from the administration of such policy or regulation as applied to the grievant. A majority of the grievance council membership shall constitute a quorum.
>
> The grievance council's determination shall be based on a review of the written request for a hearing, all other documentation submitted, and the written responses of the respondent and/or the respondent's supervisor. The council may also direct questions to the grievant, if necessary.
>
> Within five (5) working days of the grievance council's determination, the grievance council chair shall provide a written explanation of the determination to the grievant, respondent, and chancellor. If the determination is made that there is no reasonable likelihood that there has been a violation, misinterpretation, improper application, or abuse of discretion arising from the administration of a Board of Regents policy or university regulation as applied to the grievant, the grievance council shall recommend that the chancellor dismiss the matter. If the chancellor accepts the recommendation to dismiss the matter, notification of the dismissal shall be transmitted by the chancellor to the grievant within five (5) working days.

R. 37-38. Thus, the decision that there is no reasonable likelihood of a violation, misinterpretation or misapplication is a decision on the merits. It is not a decision that the parties' complaint was not a "grievance."

C. Marital Status Discrimination

Alaska Statute 18.80.220(a)(1) makes it unlawful for an employer:

> to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's . . . marital status . . . .

Similarly, under BOR Policy 04.03.01(B)(1)(a):

> The University of Alaska does not engage in impermissible discrimination. In accordance with federal and state law, the University of Alaska makes its programs and activities available without discrimination on the basis of . . . marital status . . . .

If the University is discriminating against Tumeo and Wattum based on their marital status in violation of AS 18.80.220(a)(1), it is also violating BOR Policy 04.03.01(B)(1)(a). If the University's health care plan does discriminate on the basis of marital status in violation of 18.80.220(a)(1), the President's decision in this case must be reversed.

The appellants argue that the University extends eligibility for health care coverage to an employee's domestic partner only if the partner and the employee are married. They note that employer-provided benefits are considered "compensation" to an employee. See Newport News Shipbuilding and Dry Dock Co. v. EEOC, 462 U.S. 669, 682, 77 L.Ed.2d 89, 101 (1983) (health insurance benefits are "compensation, terms, conditions, or privileges of employment" for purposes of Title VII)[3]; Ragland v. Morrison-Knudsen Co., 724 P.2d

[3]The Alaska Human Rights Act (AS 18.80.220) offers broader protection to employees than does Title VII. Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 1132 (Alaska 1989); Wondzell

519 (Alaska 1986) (vested fringe benefits including health insurance plans are "wages" for purposes of Alaska Workers' Compensation Acts); Gorman v. City of Haines, 675 P.2d 646, 649 n.5 (Alaska 1984) ("the city had the power to include disability pension benefits in the compensation provided to its employees").[4]

The Alaska Supreme Court has decided two cases regarding discrimination on the basis of marital status in violation of the Alaska Human Rights Act, Foreman v. Anchorage Equal Rights Commission, 779 P.2d 1199 (Alaska 1989), and Swanner v. Anchorage Equal Rights Commission, 874 P.2d 274 (Alaska 1994). Both cases involve AS 18.80.240, which prohibits discrimination in housing.[5]

In Foreman, an unmarried woman attempted to rent an apartment for her family, which consisted of her baby, the baby's father and herself. The Foremans' refused to rent to her because she and the father were not married. They would have rented to her if she had been married or if only the baby and the woman planned to reside in the apartment. The Foremans maintained that the refusal was not discrimination because the statute did not reach discrimination against two cohabiting people. The court ruled that AS 18.80.240 was intended to protect unmarried couples. The court stated:

We conclude that state and municipal prohibitions

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v. Alaska Wood Products, Inc., 601 P.2d 584, 585 (Alaska 1979).

[4]The University has not challenged the assertion that such benefits are "compensation" to the employee.

[5]AS 18.80.220, at issue here, precludes discrimination in employment.

> against discrimination based on marital status protect the rights of unmarried couples. The Foremans would have rented the apartment to Hohman, Kiefer and the infant had Hohman and Kiefer been married; the Foremans refused to rent the apartment only after they learned that Hohman and Kiefer were not married. This constitutes unlawful discrimination based on marital status.

Foreman, 779 P.2d at 1203.

In Swanner, a landlord refused to rent to unmarried couples who were cohabiting outside of marriage. Swanner claimed he did not discriminate based on marital status, but rather based on conduct, cohabiting. The court rejected this argument:

> Swanner cannot reasonably claim that he does not rent or show property to cohabitating couples based on their conduct (living together outside of marriage) and not their marital status when their marital status (unmarried) is what makes their conduct immoral in his opinion. The undisputed facts demonstrate that Swanner would have rented to the prospective tenants if they were married. Swanner's argument that he discriminated against the prospective tenants based on their conduct and not their marital status is without merit.

874 P.2d at 278 n.4. Swanner also maintained that enforcement of the antidiscrimination statutes violated his right to free exercise of his religion. The court also rejected this argument as well. 874 P.2d at 284.

Tumeo and Wattum correctly argue that Swanner and Foreman are compelling authorities for this case. Here, the University would provide health care coverage to these couples if they were married and is refusing to provide health care coverage only because they are not married. The University stands in the shoes as the Foremans and Swanner.

The University, by providing added health care coverage for

married employees but not for unmarried employees, is compensating married employees to a greater extent than it compensates unmarried employees. As a result, the definition of "dependent" in the University's health care plan plainly results in discrimination on the basis of marital status.[6]

The University's Grievance Council (and the University's President, to the extent that he relied on the Grievance Council's rationale) misapplied state law in making the decision in this case. The Grievance Council explained its holding that the University had not discriminated against the appellants on the basis of marital status:

> [S]ame-sex marriage is not recognized by Alaska law and hence the marital condition of being married is not fulfilled by the grievants and hence there was not a reasonable likelihood that respondent violated, misinterpreted, or improperly applied Board of Regents policy with regard to the marital status of the grievants. Only if grievants, not being in the marital status of marriage under state law, had been denied benefits only available to those falling under the marital [status] of being single (or unmarried), could the grievants, unmarried under state law, be considered to have been discriminated against because of their marital condition.

R. 13-14 (emphasis added). Apparently, the Grievance Council thought that to prove marital status discrimination, a person was required to show that he or she was denied benefits available only to employees who are of the same marital status. Instead, marital

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[6]The University has not suggested any "reasonable demands of the position" held by either Tumeo or Wattum that would require distinction on the basis of marital status. See AS 18.80.220(a)(1); McLean v. State, 583 P.2d 867, 869 (Alaska 1978).

status discrimination may be proved by a showing that a person was denied benefits available only to employees who are of a different marital status. See, e.g., Swanner, 874 P.2d at 278. That is, a single person may show that he or she is being denied benefits only available to married persons. Such a showing has been made here.

Whether Tumeo and Anders or Wattum and McClendon are able to obtain a marriage licence in Alaska is irrelevant to this court's holding. Discrimination against unmarried couples, even when they are of the same sex, constitutes discrimination based on marital status. See, e.g., Zahorian v. Russell Fitt Real Estate Agency, 301 A.2d 754, 757 (N.J. 1973); cited by Foreman, 779 P.2d at 1202 n.7.

The University claims that the couples in question in this case are not "similarly situated" to married employees because married employees are legally obligated to support their spouses while unmarried employees are not legally required to support their partners. See Voyles v. Voyles, 644 P.2d 847, 849 (Alaska 1982) (there is a legal obligation of support embodied in a marital relationship). The University states:

> In the State of Alaska, there is a mutual duty of general financial support between married individuals. There is no similar obligation between unmarried couples of any gender. This obligation may be compelled by the state and enforced in the courts. Because of the obligation of general financial support, appellants' legal statuses are not similar to those of married University employees. Accordingly, the disparate treatment alleged by appellants in the application of the University's definition of "dependent," although "discriminatory," is not violative of AS 18.80.220.

Appellee's Br. at 20.

The University's argument apparently goes like this: (1) It may lawfully discriminate among its employees by offering health care benefits to those persons for whom its employees are obligated to provide financial support. (2) Married employees are legally obligated to support their spouses. (3) Therefore, the University may discriminate on the basis of marital status.

The University's argument is flawed.[7] The University's argument is based on the same logical error that plagued Swanner; the logic is tautological. The University says that it is not discriminating based on marital status but rather on the legal obligation of mutual support. However, by the University's logic the only way to have a legal obligation of mutual support is through marriage. Thus, this is a distinction without meaning, just as Swanner's "conduct" argument was a distinction without meaning.

The University argues that Swanner and Foreman are "clearly distinguishable from the instant case" because in those cases "there was no distinction between the unmarried applicants and married renters." Appellee Br. at 21. The University claims that "although the Alaska Supreme Court did not articulate this fact,

[7]The logical extension of the University's argument would permit the University to pay extra to employees for their work based on their legal obligation to support a spouse. Thus, a single person might be paid $50 for a job for which a married person might be paid $100. Such a result would plainly be unlawful discrimination based on marital status.

the applicants for rental property were 'similarly situated' to married renters." Appellee Br. at 21. It argues that "[i]n order to be unlawful, discriminatory treatment must be directed toward individuals who are 'similarly situated.'" Appellant Br. at 16.

The University does not explain why it believes that the heterosexual couples in Swanner and Foreman were similarly situated to married renters while the homosexual couples in this case are not similarly situated to married employees. Two possibilities come to mind. First, it may be that the University believes that the Swanner/Foreman couples were "similarly situated" to married couples because they would have been allowed to marry but chose not to, unlike the couples in this case who the University claims are not permitted to marry. Such a distinction is irrelevant.[8]

Next, it may be that the University believes that the Swanner/Foreman couples were "similarly situated" to married couples because they were financially interdependent while the couples in this case are not. Certainly, unmarried heterosexuals have no more claim to financial interdependence than unmarried homosexuals. Therefore, this rationale does not indicate that the Swanner/Foreman couples were "similarly situated" to married

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[8]Even if this distinction were relevant, the University would have to show that same-sex marriages are prohibited in Alaska. The Alaska Supreme Court has not been asked to decide whether Alaska's marriage statute allows for same-sex marriages. The memorandum from the presiding judge of the Third Judicial District is not a conclusive statement of the law in this regard. Appellee Exh. A. The University has provided no legal argument that such marriages are prohibited.

couples while the couples in this case are not.

The University also argues that "[a]n almost identical set of facts as those presented here was before the Wisconsin Court of Appeals in Phillips v. Wisconsin Personnel Commission," 167 Wis.2d 205, 482 N.W.2d 121 (Wis.App. 1992). In response, Tumeo and Wattum claim that the Phillips opinion rests upon a materially different statutory scheme.

The court does not regard Phillips as persuasive authority. The court in Phillips faced a much different statutory scheme. There the court was faced with two potentially inconsistent statutes: one prohibited discrimination based on marital status, the other defined "dependent" for the state health insurance plan as "spouse." Where two statutes are inconsistent, the court's task is to reconcile them in such a way as not to nullify either. Here there is only one statement of legislative intent: AS 18.80.220 prohibits discrimination based on marital status. There is no competing statute which requires interpretative gymnastics.

The University also argues:

> the question before this court is not whether the University should provide coverage to unmarried individuals or whether state or federal law prevents the University from doing so. Instead, the question before the court is whether state or federal law requires the University to offer coverage to unmarried individuals.

Appellee Br. at 25. The University misstates the question before this court. The question is not whether "state or federal law requires the University to offer coverage to unmarried individuals," as the University claims. Rather, the question is

whether state or federal law prohibits the University from using marital status as a classification for determining which of its employees will receive additional compensation in the form of third-party health coverage. This court holds that such a classification violates state laws prohibiting marital status discrimination, and that therefore the University's current definition of "dependent" is unlawful.

This holding is not tantamount to requiring the University to offer coverage to unmarried individuals. The holding does nothing more than prohibit the University from using marital status to determine whether or not to provide its employees with additional compensation in the form of subsidized health care coverage for the employees' partners. This holding need not result in radical changes in the University's existing policy, nor need it result in significant administrative burdens.

The University, confronted with a ruling from this court that its current plan violates AS 18.80.220, would have many options. First, it could simply refuse to provide health care coverage for spouses. That is, it could eliminate "spouse" from its definition of "dependent". Second, the University could rewrite its plan to indicate that "dependents" include all persons for whom its employees provide the majority of financial support. The University could adopt Tumeo and Anders' "Affidavit of Spousal Equivalency". The health care plan could be rewritten to indicate that health care coverage would be available for all employees and

for employees' domestic partners, provided the employee and the partner were willing to sign an affidavit such as Tumeo and Anders' affidavit. Certainly, married employees would be willing to sign such an affidavit. However, the plan would be nondiscriminatory because an unmarried employee could also sign the affidavit if he or she were in a domestic partnership involving financial interdependance. Other options are probably also available. Certainly the three mentioned above would not result in radical, sweeping changes in the University's existing policy. Further, the administrative problems associated with these options would likely be minimal. Finally, and perhaps most importantly, the University would not be in a position in which it would have to engage in intense scrutiny of its employees' relationships.

The University correctly notes that Thomas v. Anchorage Telephone Utility, 741 P.2d 618 (Alaska 1987) adopts a three-stage analysis for disparate treatment employment discrimination cases. In the first stage, the employee must show a prima facie case of employer discriminatory intent. If the employee does so, in the second stage the employer must articulate a legitimate, nondiscriminatory reason for the disparate treatment. If the employer does so, in the third stage the employee must prove that the proffered reasons are pretextual. The court has determined that Tumeo and Wattum have shown a prima facie case of disparate treatment. On its face, the University's health plan favors married couples over unmarried couples. The University has

articulated a basis for the discrimination: the legal mutual obligation of support that results from marriage. The court determines that this is pratextual. As noted before, to allow this basis for disparate treatment would be to eliminate the prohibition against marital status discrimination. Any employer could raise the argument with respect to any item of employee compensation. Recognition of the proffered reason for disparate treatment would result in circular reasoning. Accordingly, the court determines that Tumeo and Wattum have proven their allegation of discrimination based on marital status.

For these reasons, the court concludes that President Komisar's decision must be REVERSED. The matter will be REMANDED for further proceedings consistent with this opinion.[9]

DATED at Fairbanks, Alaska this 11 day of January, 1995.

MARY E. GREENE
Superior Court Judge

[9]Because of the disposition of this issue it is not necessary to reach the other two issues raised by appellants. In the interest of completeness the court notes that the Grievance Council misstated the law of sexual discrimination; mere "equal application" does not render a regulation nondiscriminatory. See Loving v. Virginia, 388 U.S. 1, 8, 18 L.Ed.2d 1010, 1016 (1967). However, the court concludes that the health plan does not discriminate on the basis of sex.

The court does not reach the argument that the plan violates the requirement of merit-based employment because the University never addressed the issue and the case is remanded for further proceedings, where, if necessary, the University may consider the allegation in the first instance.

I certify that on 1/11/95 copies of this form were sent to
CLERK
Owens Tiernan
Schendel

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives
House District 34

HOUSE STATE AFFAIRS COMMITTEE

memo:

To: House Clerk 3-16-95
From: Rep. Jeannette James, Chair
Re: House State Affairs Committee schedule

Saturday March 18 10AM-N00N

HB 130 Regulation adoption procedures and review-Kelly-
HB 163 Compliance cost estimates for regs.-Kott-
*HB 201 Relating to prisoner litigation-Governor-
*HB 234 Administrative Adjudication APA-Governor-
(Anch AG 269-5225, Teresa Williams)
*HB 122 Marine motor fuel tax-Moses-
(Bethel telecon LIO TCN 50419)
*HB 226 Repeal of marital status protection-Kelly-
*HB 227 Same sex marriage prohibition-Rokeberg-
*HB 10 Payment of costs of DWI accidents-Davies-
(FBX LIO telecon 10-12 TCN 50419)
<Bills previously heard>

* Denotes first hearing
Please contact Committee Aide Walt Wilcox for more information.

Friday, March 17, 1995

The Honorable Scott Ogan, Vice-Chair
Alaska State House Affairs Committee
State Capitol Building
Juneau, AK 99801

Dear Rep. Ogan:

My name is Daniel Collison. I serve as Vice-President of the Southeast Alaska Gay and Lesbian Alliance. Today, the State House Affairs Committee considers HB-227, a bill which will only recognize unions between men and women as legal marriages. I oppose this legislation.

In my opposition to this bill, I recall a conversation I had three years ago with my father. Then I had phoned my dad in Iowa to tell him I was gay. You can appreciate that I was apprehensive about this conversation. I especially wondered how this news might color our future relations. As with all my siblings, my father has freely, even abundantly extended to me his love and support. Would the fact of my homosexuality cause my father to now regard me with a certain reserve or coolness?

I spoke with my father for perhaps twenty minutes or more. I wanted desperately to reassure Dad that, regardless of my sexual orientation, I was in fact no different a son than he had known for more than thirty years. My father interrupted my excited monologue. To my surprise, I learned I hadn't really ever been in the closet. He had in fact suspected for many years that I might be struggling with issues of sexual orientation. Furthermore, he stated -- in a voice so casual as to nearly unsettle me -- that my homosexuality, quote, "was more a concern for you than it would ever be for your mother or me" unquote.

In the future, I intend to marry. I know my father and mother will both extend to the man whom I choose as my partner the same warmth and graciousness which they have shown to all five of their other sons- and daughters-in-law.

If my parents recognize that the sex of my married partner is no concern of theirs, I wonder today how it can be the concern of you, the members of this committee? To refuse to any man legal recognition as my lawful, married partner is not the legitimate business of the state of Alaska. Quite simply, the state has no compelling interest in refusing such recognition to a male partner of mine. To do so would be to extend special rights to heterosexual couples, to in fact discriminate against gay and lesbian couples.

Daniel Collison

Daniel Collison
PO Box 21466
Juneau, Alaska 99802
(907) 789-5001

9-LS0595\C.1
Cramer
3/13/95

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE ROBINSON

TO: HB 226

Page 1, line 2, after "**status**":

Insert "**except to marital or domestic partners of employees**"

Page 2, line 26:

Delete "a new subsection"

Insert "new subsections"

Page 2, line 29, to page 3, line 4:

Delete all material and insert:

"(1) an employer may, without violating this chapter, refuse to provide benefits to a person based on marital status unless the person

(A) is legally married to an employee; or

(B) is the domestic partner of an employee as established under (d) of this section; and

(2) a labor organization may, without violating this chapter, negotiate to preclude or may directly preclude the provision of benefit to a person based on marital status unless the person

(A) is legally married to an employee; or

(B) is the domestic partner of an employee as established under (d) of this section.

(d) An employee may not establish a domestic partnership under this section unless both the employee and the individual with whom the domestic partnership is established are unmarried, at least 18 years of age, and mentally competent to consent to contract.

(e) In this section, "domestic partner" means an individual who

(1) is an employee's only domestic partner and who intends, and who is intended by the employee, to remain the employee's domestic partner indefinitely;

(2) is not related to the employee by blood to a degree that would prohibit legal marriage in the state;

(3) resides in the same residence as the employee and intends, and is intended by the employee, to do so indefinitely;

(4) is, as established by at least five of the criteria set out in this paragraph, jointly responsible with the employee for the employee's common welfare and financial obligations and for whom the employee is jointly responsible in similar fashion; the criteria are

(A) having entered into a legally binding domestic partnership agreement with the employee;

(B) holding a joint deed, mortgage agreement, or lease of real property with the employee;

(C) holding joint ownership of a motor vehicle with the employee;

(D) having a joint bank account with the employee;

(E) having a joint credit account or other joint liabilities with the employee;

(F) having a co-parenting agreement with the employee, having adopted a child of the employee, or being the natural parent of a child of the employee;

(G) being designated by the employee as primary beneficiary on the employee's life insurance;

(H) being designated by the employee as primary beneficiary of the employee's retirement benefits in case of the employee's death;

(I) being designated as the primary beneficiary under the employee's will; and

(J) being named by the employee under a durable health care or property power of attorney."

03/18/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

10:31:25 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:50419 SCHEDULED FOR:03/18/95 10:00 TO 12:00 FOR:ANC

PUBLIC HEARING HOUSE STATE AFFAIRS

LOCATION:ANCHORAGE

HB 227	RANDALL	BURNS	HB 226		TESTIFY

AL 50

1

03/18/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

11:22:07 PARTICIPANT LIST (ALL PARTICIPANTS) BY:FBX

TCN:50419 SCHEDULED FOR:03/18/95 10:00 TO 12:00 FOR:FBX

PUBLIC HEARING HOUSE STATE AFFAIRS

LOCATION:FAIRBANKS

HB 226	MR.	MIKE	HUMPHREY	UAF	TESTIFY
HB 226	MR.	PAUL	EAGLIN	UAF	TESTIFY
HB 226	MR.	MARK	TUMEO		TESTIFY
HB 226	MS.	JENNINE	WILLIAMSON		TESTIFY
HB 226	MS.	SANDRA	BOATWRIGHT		TESTIFY
HB 226	MS.	NANCY	WINFORD		TESTIFY
HB 10	MR.	DAVID	TYLER		TESTIFY
HB 10	MR.	VICTOR	GUNN		TESTIFY

My mother, Mildred Boesser, had signed up to testify on bills 2260 & 227. She had to leave, & I would like you to put my name in for hers on your testimony list so I may read her testimony today please.

Cindy Bowen

Cindy Boesser

STATE OF ALASKA / ~~WALTER J. HICKEL, GOVERNOR~~

HUMAN RIGHTS COMMISSION

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 276-7474
TTY/TDD: (907) 276-3177
FAX: (907) 278-8588

March 14, 1995

The Honorable Pete Kelly
The Honorable Norman Rokeberg
House of Representatives
State Capitol
Mail Stop 3101
Juneau, Ak. 99801-1182

RE: House Bill 226 and House Bill 227

Dear Representatives Kelly and Rokeberg:

Last week's Representative Kelly's aide, Bruce Campbell, contacted the Commission's executive director and indicated that you would appreciate knowing the agency's position on House Bills 226 and 227, and any suggestions that the Commission might have. At its meeting on March 9 and 10, 1995, in Anchorage the Commission considered the legislation.

The Commissioners reviewed the bills and passed the following motion with regard to House Bill 226:

Motion: The Commission supports House Bill 226 with the following change: the term 'benefits' be clearly defined as health insurance benefits.

Motion By: Commissioner Hamilton; Second by Commissioner Dyson. Motion passed unanimously.

The Commission takes no position on House Bill 227 because it doesn't directly effect A.S. 18.80 et seq. the Commission's enforcement statute. The current commission has taken this practice when considering legislation.

If you have questions, please contact either me at 745-3362 or Executive Director Paula M. Haley at 1-907-276-7474, extension 241.

Sincerely,

Edna DeVries, Chairman

Committee for Equality
PO Box 34202
Juneau, AK 99803

CFE is a statewide organization
Call Sara Boesser in Juneau at
586-5230 (w); 789-9604 (h);
789-7450 (home fax).

Representative Jeannette James
Chair, House State Affairs
Alaska Legislature

March 9, 1995

Re: HB-227 Discriminates on the basis of gender.
Please stop it in House Affairs.

Dear Representative James:

I am writing against HB-227, to urge you to stop it in your committee, because **I believe it illegally discriminates on the basis of gender.**

Why does HB 227 discriminate illegally on the basis of gender? It's true that both men and women are allowed to marry. It obviously doesn't discriminate in that aspect. However, if a person does choose to seek a legal marriage license from the state, under HB-227 that person would be forced to choose only a person of the opposite gender for that contract, or be denied the state's license. **Limiting the marriage license applicant's choice to only one gender is obvious gender discrimination.**

To force a person to discriminate on the basis of gender in order to receive a state service or benefit violates state law.

Therefore, I believe you, the legislature and the public would be best served by stopping this bill before it goes any further. It would certainly be a hotly debated bill if it did enter the public process, and I urge you to avoid that since it in the end I believe it would only go to the courts for resolution. Furthermore, I believe legislative passage would be overturned by the courts for the reasons discussed above. Alaska has had too many bills pass that turned out to fail short of meeting state law. Such an emotionally charged issue as this should not have to face such a dead-end path.

Certainly it is true that same-gender legal marriage is not the norm in Alaska (nor anywhere else to date), and it is true that people have many and mixed opinions about such a possibility. But this bill won't resolve that scenario. Because whether or not HB-227 passes, it is only a matter of time until some citizens in Alaska do challenge the current state practice of denying marriage licenses on the basis of gender. Passage of HB-227 won't stop those legal pursuits. And only the courts will determine the final outcome, as the courts would have to determine whether or not this bill is lawful in the face of its discriminatory stance.

So, the question of same-gender marriage will certainly some day rise -- the question is do you want the legislature to lead the charge with a bill that I believe will be over-ruled by the courts, or would you rather let the action go directly from public individuals to the courts?

I believe the legislature should leave AS 25.05.011 alone, and quickly abandon HB-227. The public discussion of who can enjoy legal marriage, with all the benefits it provides, should be left to the courts. **The legislature should spend its short 120 days solving genuine priority issues like the budget, health care, economic stability, welfare concerns, etc -- and not consume its and the public's time with this discriminatory legislation.**

Thank you,

Sara Boesser

Sara Boesser, Board Member

cc. Bruce Botelho, Attorney General
House State Affairs members
Bill Sponsors

FAX MESSAGE PAGE 1 OF 1
465-2381

March 15, 1995

Representative Jeannette James:

I would like to share my thoughts on HB-226 and HB-227, currently before you for consideration. I am quite saddened, though not surprised to see these bills introduced and discussed; it seems there will always be those who seek to consolidate their own positions of power by denying equal benefits to others. In the past it has been women and people of color, now it is heterosexual people who choose to remain outside the legal structure and lesbian women and gay men who do not even have the option of becoming part of the legal structure. Regardless who is affected, it is wrong to deny the full benefits of a society to its fully participating members.

It is clear that recent the decision against the University of Alaska for withholding health benefits and the State of Hawaii allowing same sex marriages are the basis for these two bills even though proponents of these bills say their position is not aimed at any particular group. Their actions are clearly focused on non-married heterosexual people and lesbian women and gay men, all groups that remain outside the prevalent power structure. Regardless of these groups choices or orientations, it is wrong to restrict their choices to have the full lives we all deserve.

Thank you for your time.

Artemis BonaDea

Artemis BonaDea
Box 22582
Juneau, AK 99802

586-8056

Date: Friday, March 17, 1995 Time: 9:34:01 PM 2 Pages

To: Rep. Jeannette James Company: House State Affairs

Fax: 465-2381 Voice:

From: LEANNE GRIFFIN Company: ALASKA LOCAL 200 UNIT 2201

Fax: 907-780-6652 Voice: 907-780-6651

Comments:

3/17/95

TO: House State Affairs Committee
Alaska State House of Representatives

From: Leanne Griffin
1405 Mary Ellen Way
Juneau, Alaska 99801

Regarding: HB 226 and HB 227

I would like to emphatically state that I am opposed to both of these bills and urge that the Alaska State legislature spend their time on measures that improve the quality of life for all Alaskans instead of create new ways to divide us into separate camps of intolerant and fearful persons.

First, regarding HB 226, stay out of the university's health insurance system. Most modern companies have learned the value of being inclusive of their employees rather than discriminatory . Celebrating diversity instead of squashing it is good for business. An organization that has healthy and valued employees will just do things better and in the end we will get a better university. Alaskans value their privacy and their individuality, and do not need the legislature telling us we have to be married to be a couple.

Second, HB 227 is nothing but gender discrimination based on hateful, fearful, ignorant homophobia. I think the Alaska legislature has better things to do than to get drawn into the traps of such states as Idaho or Colorado. As more and more scientific evidence is gathered supporting a biological factor in sexual orientation, laws based on bills such as this will eventually be discarded in the same manner as outmoded laws that discriminated against women or people of color.

Thank you for your time.