HJR

9

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Ralph Samuels
Room 204
(907) 465-2095

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 18, 2007

To: Representative Kevin Meyer
Co-Chairman House Finance Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HJR9

Attached please find the referral file for HJR9, which is composed of the following documents:

- CSHJR9(JUD) 25-LS0553\C
- Sponsor Statement
- Amendment #1 adopted by the House Judiciary Committee
- House Judiciary Committee Report
- Fiscal Note – GOV
- HJR9 (25-LS0553\A)
- Ballot Measure 2
- Legal Opinion, Kevin G. Clarkson, dated April 17, 2007
- Rep. Gruenberg memo to Leg. legal re: Requesting an opinion re: revision
- Jean Mischel legal opinion, dated April 2, 2007
- *ACLU v. SOA*, Supreme Court Opinion No. S-10459
- *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999)
- *Romer v. Evans, et al.*, 517 U.S. 620, 116 S.Ct. 1620
- Backup
- Letters of Support
- Letters of Opposition

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:
Interim Address:
3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

HJR 9 Constitutional Amendment Relating to Marriage

SPONSOR STATEMENT

HJR 9 is offered in response to the Supreme Court ruling of October 28, 2005. The Court ruled that same sex couples are similarly situated making them equal to married couples with regard to receiving health benefits from public employment. The conclusion of the Court is that spousal limitations are unconstitutional.

The people of Alaska in a constitutional amendment vote in November 1998 by a 68% margin thought the issue of marriage and its benefits for same-sex couples was settled. The plaintiffs in Brause v. Bureau of Vital Statistics treated marital status and marital benefits as inseparable, thereby recognizing that marriage is a special relationship is society and law.

AS 25.05.013(b) passed by the Alaska Legislature in 1996 prohibits any public employer from extending marriage benefits to same-sex partners so the constitutional language in HJR 9 is consistent with the will of the legislature, which is consistent with the 1998 vote of the people of Alaska.

AS 18.80.220(c) is a law ignored by the court. It is under "unlawful Employment Practices" which grants an exception to employers who "provide greater health and retirement benefits to employees who have a spouse or dependent children" enacted into law in 1996. My intent is to show the public good of a policy preserving marriage benefits as a societal value for the health of families in Alaska.

As a Representative Democracy it falls upon us to refer this to those who answer to the principle "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." Alaska Constitution, Article 1, Sec.2.

Amending our constitution is a weighty matter and should not be done lightly in my view. My interest is asking the people of Alaska if they agree with their Supreme Court, and if not, should we amend the constitution to better reflect the people's view. I appeal to you with Article 1, Section 2. This is our only recourse in answering this huge sociological question for those of us who disagree with the Court's conclusion.

The Constitution of the State of Alaska clearly states that "all political power is inherent in the people." In October of last year, The Alaska Supreme Court ruled in favor of granting employee benefits to same-sex couples, in effect undermining this Constitutional provision and establishing its own will as having precedent over the will of the people of Alaska.

By deliberately ignoring the clear message sent by Alaskan voters in 1998 when they overwhelming amended the Constitution to read that "a marriage may only exist between a man and a woman," the Supreme Court overstepped its bounds. The key to correcting this misdeed and reestablishing the constitutionally guaranteed series of checks-and-balances is the April 3rd Advisory Vote on Same Sex Benefits.

In a few weeks, the people of Alaska need to once again remind the Legislature that we will not tolerate judges legislating from the bench. A "Yes" vote on the April ballot will give legislators the extra push needed in order to again amend the constitution.

Some objections to the vote are based on three different ideas:

1. The advisory vote is estimated to cost one million dollars; the legislature can find a better purpose for the money.

The Supreme Court has ordered Alaskans to pay for a benefit that the majority of people disagree with philosophically. Once the state requires same-sex benefits for partners of state employees, it is only a few more legal steps until private businesses are forced to provide the same benefits lest they "discriminate". Such a broad-reaching policy decision deserves to be openly debated in a broad public venue – that debate costs money. I believe there is no better way for Alaska's money to be spent than by furthering the will of the people.

2. Objection to same-sex benefits is a result of religious bigotry.

The issue at hand is not the morality of homosexuality, but rather the court's deliberate misinterpretation of the will of the people of Alaska. The people voted that same sex unions are not the same as a marriage. Married couples commit to each other for life, and with that level of commitment, the state recognizes the married couple's right to benefits for spouses. The Court set no mandates for proof of commitment other than a state employee's designation on a form.

3. A special election will weary already skeptical voters.

Weariness is not an excuse for apathy. I am weary after every session, but the people elect me to support and defend the Constitution, and fighting for this advisory vote does exactly that. I am looking to the people of Alaska to once again cast a vote in defense of marriage and reclaim the rights usurped by the Supreme Court.

If Alaskans allow this decision to pass without objection, we will be setting a precedent that allows the Supreme Court to disregard the will of the people of Alaska.

STATUTE CITES FROM SPONSOR STATEMENT FOR HJR 9

Sec. ⏭25.05.013⏮. Same-sex marriages.

(a) A marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state.

(⏭b⏮) A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage.

Sec. ⏭18.80.220⏮. Unlawful employment practices; exception.

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

(1) an employer may, without violating this chapter, provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees;

(2) a labor organization may, without violating this chapter, negotiate greater health and retirement benefits for employees of an employer who have a spouse or dependent children than are provided to other employees of the employer.

Adopt
offered by
Rep Coghill

Amendment # 1

Page 1, lines 8-9:

Delete:

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

[redacted] HOUSE COMMITTEE REPO[redacted]

(7)

Date Referred to Committee: March 27, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: April 17, 2007

The JUDICIARY Committee considered: **HJR 9**

HOUSE JOINT RESOLUTION NO. 9 **CONST. AM: BENEFITS & MARRIAGE**

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

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* ~~HB~~ HJR9 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[✓] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
ADM		✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	HOLMES		X		
	[illegible]		–		
	Coghill	✓			
	[illegible]	X			
	SAMUELS			X	
Chair:				X	
Chair:					

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HJR 9
(H) Publish Date: 3/27/07

Revision Date/Time (Note if correction):
Dept. Affected: OOG
Title: Constitutional Amendment relating to marriage
RDU: Elections
Component: Elections
Sponsor: Representatives Coghill, Harris, Kohring, et al
Requester: House State Affairs Committee
Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	1.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

If this amendment appears on the 2008 ballot, the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this questions require the printing of an 8-1/2 by 18-inch ballot the cost will increase to $22.0.

Prepared by: Linda Perez, Administrative Director
Phone 465-3885
Division: Division of Administrative Services
Date/Time 3/22/07 4:25 PM
Approved by: Whitney Brewster, Director
Date 3/22/2007
Agency: Office of the Lt. Governor, Division of Elections

(Revised 9/18/2006 OMB)

Ballot Measure 2
Constitutional Amendment Limiting Marriage

BALLOT LANGUAGE

This measure would amend the Declaration of Rights section of the Alaska Constitution to limit marriage. The amendment would say that to be valid, a marriage may exist only between one man and one woman.

SHOULD THIS AMENDMENT BE ADOPTED?
Yes [ ]
No [ ]

Votes cast by members of the Twentieth Alaska Legislature on final passage:

House: 28 yeas, 12 nays, all members present
Senate: 14 yeas, 6 nays, all members present

LEGISLATIVE AFFAIRS AGENCY SUMMARY

This measure would add a new section about marriage to the state constitution. To be valid or recognized by the state, a marriage would have to be between one man and one woman.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

[HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 42 (RLS)]

* **Section 1.** Article I, Constitution of the State of Alaska, is amended by adding a new section to read:

> **Section 25. Marriage.** To be valid or recognized in this State, a marriage may exist only between one man and one woman.

* **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

STATEMENT IN SUPPORT

Do you believe that marriage requires both a man and a woman? Is this a reasonable question that you should be

allowed to decide? If so, vote "YES" on the Marriage Amendment.

llot Measure No. 2 reaffirms and protects existing Alaska law that states that marriage is a union of "one man and one woman." This is also the law in every state in the U.S. and in all other countries.

More than two-thirds of Alaskans agree with this definition of marriage. So do most of your elected representatives. An overwhelming majority of the U.S. Congress, including all three members of Alaska's delegation, has voted to preserve marriage as a union of one man and one woman.

But a small group of lawyers and liberal activists wants to change all that. In 1995, two Anchorage men who describe themselves as homosexuals sued the State of Alaska because they were not granted a marriage license. Last February, Anchorage Superior Court Judge Peter Michalski issued a preliminary ruling in their case. Judge Michalski ruled that Alaska's "one man, one woman" marriage law may be unconstitutional because it supposedly violates the "right to privacy." No judge in America has ever before issued such a bizarre ruling.

The state Attorney General then asked the Alaska Supreme Court to reconsider Judge Michalski's ruling, and they refused to do so. So here we are. The Legislature had no choice but to place this subject before you in the form of a Marriage Amendment.

Just remember: the people of Alaska did not pick this fight. Ballot Measure No. 2 does not "target" anybody or "deny" anybody their rights. You'll hear that, but don't believe it. All Alaskans are equal before the law. But that's not what this debate is about. This debate is about who should define marriage: the people, or a handful of non-elected judges.

The activists who want to change the meaning of marriage certainly have a right to make their case. They made it before the Legislature. They lost. But instead of waiting to fight another day, they filed two unsuccessful lawsuits ing to stop this amendment from even appearing on the ballot. They don't trust the voters of Alaska.

Most Alaskans believe that marriage is a natural institution that must be preserved. Marriage is recognized by Alaska civil law, but it was not created or "invented" by Alaska law. And it shouldn't be arbitrarily redefined by non-elected judges.

We urge you to vote "YES" on Ballot Measure No. 2 and protect the institution of marriage in our society.

Senator Loren Leman
Alaska State Legislature
(907) 258-8189

STATEMENT IN OPPOSITION

Three good reasons exist for Alaskans to VOTE NO on this proposed Constitutional amendment.

It would amend Alaska's Declaration of Rights and begin to tear away at citizens' rights, making exception to the liberties, including the right of privacy, protected by our Alaska Constitution.

It would deny some groups of Alaskan citizens rights enjoyed by other citizens.

would undercut a recent Superior Court finding which maintains the basic privacy rights of Alaska citizens.

1. We Should Not Tamper With The Alaska Constitution, Article I, Declaration Of Rights, By Proposing To Limit

Individual Liberties And Rights. Alaska's Constitution is one of the newest state constitutions and is considered a model document throughout the nation. The League of Women Voters of Alaska is extremely concerned about ballot measures, such as this one, which propose amendments to Alaska's Constitution that limit citizens' individual liberties and right to privacy.

Protect the minority from the tyranny of the majority. This is one of the most profound reasons why constitutions exist.

Ballot Measure 2 would, for the first time, write discrimination into our state Constitution. Voting NO on this measure protects the integrity of our Declaration of Rights in Alaska's Constitution against discriminatory amendments such as this. There is nothing in the Constitution that requires the State to recognize marriage between individuals of the same sex. The Constitution, as it stands now, treats all persons equally.

2. We Must Protect The Rights Of All Alaska's Citizens. The League of Women Voters of Alaska believes this proposed Constitutional amendment is in conflict with ARTICLE I, Sections 1, 2 and 22 of the Constitution as currently written. The Alaska Constitution, ARTICLE I, Declaration of Rights, provides:

Section 1. Inherent Rights. (reads in part) This constitution is dedicated to the principles that . . . all persons are entitled to equal rights, opportunities, and protection under the law . . .

Section 3. Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national origin.

Section 22. Right to Privacy. The right of the people to privacy is recognized and shall not be infringed.

This ballot measure would weaken or abridge these critical sections of the Alaska Constitution. A NO vote would ensure that our liberties and right to privacy are protected.

3. The Checks And Balances Of Our Three-Part System Of Government (Legislative, Executive, Judicial) Must Be Preserved. A recent attempt to restrict marriage to "one man and one woman" has been found unconstitutional by a Superior Court ruling under Alaska's right to privacy law. The judicial process should be respected and the balance of powers should be maintained.

Vote No On Ballot Measure No. 2. The League of Women Voters promotes an open governmental system that protects individual liberties and right to privacy as established by Alaska's Constitution. Join us in protecting these rights for ALL citizens by voting NO on Ballot Measure No. 2.

League of Women Voters of Alaska
Wilda Hudson, President

Alaska Division of Elections Home Page

1998 Official Election Pamphlet Introduction Page

BRENA, BELL & CLARKSON, P.C.

ROBIN O. BRENA, OWNER
JESSE C. BELL, OF COUNSEL
KEVIN G. CLARKSON, OF COUNSEL
DAVID W. WENGEL, OF COUNSEL
ANTHONY S. GUBERNARO, OF COUNSEL
PAULA T. VRANA, OF COUNSEL

ATTORNEYS AT LAW

310 K STREET, SUITE 601
ANCHORAGE, AK 99501
TELEPHONE (907) 258-2000
FACSIMILE (907) 258-2001
WEB SITE BRENALAW.COM
EMAIL: *@BRENALAW.COM

MEMORANDUM

TO: Representative John Coghill

FROM: Kevin G. Clarkson

DATE: April 17, 2007

RE: HJR 9

ISSUE

You have asked that I provide an expert legal opinion regarding the constitutionality of HJR 9 under both the Alaska and United States Constitutions. HJR 9 proposes an Amendment to Art. I, Sec. 25 of the Alaska Constitution to add a single second sentence as follows:

> **Section 25. Marriage and related limitations.** To be valid or recognized in this State, a marriage may exist only between one man and one woman. **No other union is similarly situated to a marriage between a man and a woman and, therefore, a marriage between a man and a woman is the only union that shall be valid or recognized in this State and to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned.**

You have also asked that I provide my expert critique as to the validity of the legal opinions expressed in the April 2, 2007, Memorandum from Legislative Counsel Jean M. Mischel to Representative Max Gruenberg.

QUALIFICATIONS TO OFFER OPINION

In 1998 I was a co-author of the Alaska Marriage Amendment, now Art. 1, Sec. 25 of the Alaska Constitution. I was also counsel of record for the Alaska Legislature in Bess v. Ulmer, 985 P.2d 979 (Alaska 1999), retained specifically to defend the Alaska Marriage Amendment from the claim that it could not be presented to the people of Alaska for ratification because it constituted a revision to the Constitution that had not been passed through a constitutional convention under Art. XIII, Sec. 4.

OPINIONS

I. HJR 9 IS A PROPER AMENDMENT UNDER ART. XIII, SEC. 1 AND DOES NOT CONSTITUTE A REVISION UNDER ART. XIII, SEC. 4

Art. XIII, Sec. 1 of the Alaska Constitution provides that "Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature." Art. XIII, Sec. 4 of the Alaska Constitution provides that "Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people." In Bess v. Ulmer, 985 P.2d 979 (Alaska 1999) the Alaska Supreme Court recognized that Article XIII makes a distinction between an "Amendment" to the Constitution and a "revision" of the Constitution. The Court concluded that Article XIII allows "Amendments" to the Constitution to be proposed to the people for ratification by either the Alaska Legislature or a constitutional convention, but that Art. XIII allows "revisions" to the Constitution to be proposed to the people for ratification only by a constitutional convention.

In Bess v. Ulmer the Court recognized that there are both quantitative and qualitative distinctions between an Amendment and a revision of the Constitution. 979 P.2d at 987 ("In deciding whether the proposal is an amendment or revision, we must consider both the quantity and quality of the proposed constitutional changes"). From a quantitative perspective a proposed constitutional change can be considered a revision if it directly affects a modification to numerous existing provisions of the Constitution so as to constitute a change of the "substantial entirety" of the Constitution. "[A]n enactment that is so extensive in its provisions as to change directly the 'substantial entirety' of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision." Id. From a qualitative perspective a proposed constitutional change, no matter how simple or short in language and number of insertions, may constitute a "revision" if it has the effect of creating a far reaching change in the nature of Alaska's basic governmental plan. Id. "[E]ven a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision. . . ." Id. The Court explained that "the core determination" in distinguishing an Amendment from a revision is whether the proposed constitutional change "is so significant as to create a need to consider the constitution as an organic whole." Id. In other words, when considering the proposed constitutional change, one must ask whether it is necessary at the same time to reconsider the entire structure of the Constitution.

Utilizing this test the Court concluded that the Marriage Amendment itself constituted an Amendment that was properly proposed by the Legislature for ratification by the people. Id. at 988. "Under our hybrid analysis, this proposed ballot measure is sufficiently limited in both quantity and effect of change as to be a proper subject for constitutional amendment." Id. The Court explained, "[f]ew sections of the Constitution are directly affected, and nothing in the proposal will 'necessarily or inevitably alter the basic governmental framework' of the Constitution." Id.

Here, HJR 9 is a proper Amendment just as was the Marriage Amendment itself. From a quantitative perspective HJR 9 only directly affects a change to one section of the Constitution, Art. I, Sec. 25. And, HJR 9 at most has the effect of indirectly altering the Court's interpretation of one

other provision of the Constitution, that being the Equal Protection provision of Art. I, Sec. 1. This was exactly the same quantitative effect of the Marriage Amendment itself that the Court ruled was a proper Amendment and not a revision in Bess v. Ulmer. From a qualitative perspective, HJR 9, just like the Marriage Amendment, would not "'necessarily or inevitably alter the basic governmental framework' of the Constitution." 985 P.2d at 988. In other words, considering HJR 9 does not require one to reconsider the entire structure of the Alaska Constitution as a whole.

The Legislative Legal Services Memorandum is incorrect both legally and factually in its claim that the Alaska Supreme Court deleted the second sentence of the Marriage Amendment in Bess v. Ulmer because the Court concluded that the sentence constituted a "revision" of the Constitution. The Court very clearly quoted the full two sentences of the Marriage Amendment in the section of its opinion where it concluded that the Amendment was a proper "Amendment" and not a revision. 985 P.2d at 988. The Court deleted the second sentence of the proposed Marriage Amendment only after concluding that the two sentences of the Amendment together were an Amendment, and only because the Court concluded that the second sentence added no substance to the Amendment. In other words, the Court concluded that the second sentence was mere surplusage. 985 P.2d at 988 n. 57. It is completely illogical and without basis to claim that the Court deleted the second sentence of the Marriage Amendment, a sentence that the Court expressly explained had no substantive significance or effect, and that constituted mere surplusage, because that meaningless second sentence was a revision of the Constitution. That conclusion would be complete nonsense, and the Court reached no such conclusion in Bess v. Ulmer.

The claim of Legislative Counsel that HJR 9 would effect Alaska laws regarding dissolution of marriage is incorrect. HJR 9 addresses the extension or assignment of the " rights, benefits, obligations, qualities, or effects of marriage." A marriage in Alaska exists only between a man and a woman. A divorce under AS 25.24 et. seq. can only occur between a married man and woman. Divorce decrees maintain some vestiges of legal rights between a man and a woman that were legally married. Nothing within the divorce laws has the effect of assigning the rights, benefits, obligations, qualities, or effects of marriage" to people who were never married and who do not qualify to marry under the Constitution's definition of marriage. The divorce laws assign legal obligations and rights based upon the fact of divorce, which can only occur between married men and women.

And, even if HJR 9 would modify Alaska's divorce laws, which it would not, this would still have no bearing whatsoever on whether HJR 9 is a proper Amendment to the Constitution. A revision is identified by the impact that it has on the terms and provisions of the Constitution itself, not based upon what lower statutory laws it may impact. Divorce in Alaska is based upon statutory law, it is not a constitutional law concept. In any vent, HJR 9 would have no impact upon Alaska's laws regarding the legal rights and obligations of formerly legally married men and women.

All of the arguments that Legislative Counsel has leveled at HJR 9 were in fact made with equal force at the Marriage Amendment itself. It was claimed in Bess v. Ulmer that the Marriage Amendment would have the effect of denying same sex couples some 150 legal rights and benefits attached to marriage. This argument had no impact upon the Marriage Amendment itself in Bess

v. Ulmer and it would have no impact upon HJR 9. If the Marriage Amendment itself, which restricted the relationship of marriage and all of the various attributes, rights and privileges of marriage to only unions between men and women, was an Amendment an not a revision, then there is no logical basis for claiming that the Court's conclusion would be any different regarding HJR 9.

II. HJR 9 DOES NOT VIOLATE THE UNITED STATES CONSTITUTION

An equal protection attack on HJR 9 would assert that it makes classifications based on a biased category that adversely affects a group of citizens. Confronted with such a claim, a court would have to decide whether the law classifies on the basis claimed. If the law does classify on the basis claimed, a court would have to decide on the appropriate standard of review, then determine whether, despite using the biased category, the law should survive.

Laws that bear "a rational relation to some legitimate end" are usually upheld. However, laws that classify on the basis of a category such as race, sex, ancestry, or illegitimacy are subject to heightened scrutiny. This heightened scrutiny is strict or intermediate, depending upon the classification. In either case, the burden of proof shifts from the plaintiffs to the State - requiring the State to show how the law meets the heightened standard.

Equal protection attacks on HJR 9 would most likely be of two kinds: (1) that the Amendment discriminates based on sex, and should receive intermediate scrutiny, or (2) that the Amendment is based on "animus" toward gays, which fails even the rational basis test. Here I examine both claims, concluding that each should be rejected.

Is HJR 9 "Sex-Discrimination"? Laws that classify "based on sex" are treated by the Supreme Court as "quasi-suspect" classifications requiring "intermediate" or "skeptical" scrutiny. *United States v. Virginia* provides a two-part test for conducting this scrutiny. First, a law must be identified as "sex-based." Second, "[p]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive' justification for that action." To be "exceedingly persuasive," according to Justice Ginsburg, means the following:

> The State must show "at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives." The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.

The Justice adds, "[t]he heightened review standard our precedent establishes does not make sex a proscribed classification." She observes that, unlike distinctions based on race or national origin, "[p]hysical differences between men and women, however, are enduring: '[T]he two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.'" She continues: "'Inherent differences' between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity."

It is clear from Justice Ginsburg's logic that a statute that disadvantages one sex over the

other is a sex-based classification that merits "skeptical scrutiny. It is not clear that Justice Ginsburg would see a Marriage Amendment or a marriage benefits amendment as such a law.

Since the Supreme Court has yet to address this question, we can only look at other courts for guidance. Only the Hawaii Supreme Court and one Alaska trial court have held that a marriage statute represents a sex-based classification that deserves heightened scrutiny. By defining the object of analysis as couples rather than individuals, these courts held the statutes to be sex discrimination. Both decisions have been overruled by amendments approved by their respective electorates. One other high court (the District of Columbia) and one appellate court (Washington) have held that a marriage statute does not classify based on sex. By defining the object of analysis as individuals rather than couples, these courts held that the statutes were based on the definition of marriage. Since women and men have the equal right to marry, the courts found no evidence of sex discrimination. Thus, intermediate scrutiny was appropriate. Here, women and men have equal rights to marriage benefits and so HJR 9 should not be found to constitute gender discrimination.

Is it likely that the Supreme Court will follow the Hawaii Supreme Court and hold that an Amendment like HJR 9 is a form of sex discrimination? I think not. The amendment does not classify based on "physical differences" or "inherent differences" between men and women. Instead, it is based upon what Justice Ginsberg calls "a community composed of both [sexes]." The Justice rightly states that "the two sexes are not fungible." Marriage law, which is based upon this truth, is a unique legal category. In marriage, neither sex is disadvantaged; both are equally included. Marriage does not separate the sexes, but instead unites them. Distributing the benefits, rights and attributes of marriage on the same basis has no different effect.

As a matter of prudence, the Court would hesitate before casting a cloud upon marriage law and marriage benefits laws in nearly all states, if not overturning them outright. Such a decision would pre-empt the political process, similar to the effect of *Roe v. Wade*, in an area that has always been considered primarily a matter of decision-making for the States. Moreover, the Court would anticipate that if it strikes down such an Amendment, it might generate a national movement for a federal marriage amendment. By so doing, it may plunge the country into strife over marriage and damage its own credibility as a reliable interpreter of the Constitution.

Romer v. Evans and the Marriage Amendment. Apart from whether or not HJR 9 is a "sex-based classification," does it fail even rational basis review because it "targets" gays and lesbians based on "animus"? No.

Before 1996, rational basis review was fairly straightforward: laws bearing a rational relation to a legitimate governmental end were upheld. Yet in *Romer v. Evans*, the Court struck down a Colorado constitutional amendment ("Amendment 2") which classified on the basis of "homosexual, lesbian or bisexual orientation." The question, therefore, is squarely posed: is *Romer* a potential basis for overturning the Marriage Amendment? The simple answer is No.

The Court struck down Amendment 2 because, by its reading, Amendment 2 was "at once too narrow and too broad." It was too narrow because it characterized a class of people by a single trait. It was too broad because, on the basis of that single trait, it "then denie[d] them protection

across the board." Based on this combination of targeting plus potentially limitless breadth, the Court concluded that Amendment 2 could not possibly be justified by the State's alleged reasons (*i.e.*, conserving resources and associational privacy). Rather, Amendment 2 was "inexplicable by anything but animus toward the class that it affects." The majority opinion considered Amendment 2 not only irrational, but evil.

Romer is an insufficient basis for rejecting HJR 9. *Romer* has nothing to do with marriage laws or amendments. *Romer* is not a case about sexual orientation *per se*. Instead, it is about the irrationality of laws that broadly disable any narrowly targeted group. Legal scholars have opined that Colorado Amendment 2 was so broad in its impact upon a narrowly defined group, stripping that group of all legal rights in al facets of life, that it would have been unconstitutional if it had focussed upon plumbers or dentists instead of homosexuals.

According to Professor Richard Duncan, constitutional law Professor at the University of Nebraska Law School, marriage laws and marriage benefits laws define marriage and who obtains marriage benefits, rather than disadvantage homosexuals. In Duncan's view, these statutes should easily pass rational basis review because they rationally advance at least these legitimate purposes: (1) encouraging public morality, (2) encouraging childbirth within marriage, (3) encouraging dual-gender parenting, (4) educating children, and (5) avoiding slippery slope marital redefinitions. A Marriage Amendment like HJR 9 is a valid exercise of democratic self-government.

Finally, HJR 9, unlike Colorado Amendment 2, represents no animus toward homosexuals and it does not identify a single class of individuals and deny them legal rights across the board in society. HJR 9 addresses only the topic of marriage benefits.

Representative Max F. Gruenberg, Jr.

Alaska State Legislature
State Capitol – Session (January – May)
Phone: (907) 465-4940 Fax: (907) 465-3766
716 W. 4th Avenue – Interim
Phone (907) 269-0123 Fax: (907) 269-0124

Facsimile Transmittal Sheet

TO: Leg Legal **DATE:** 3/22/07

FAX:

PHONE:

FROM: Max Gruenberg 465-4940
Norman A. Cohen 465-5159

MESSAGE: **Total Number of Pages w/Cover Sheet 3**

HJR 9 may constitute a revision of the Constitution as opposed to a simple amendment.

A quick review of constitutional provisions shows possible impact on the following sections:

Article 1, Sections 1, 3, 5, 7, 15, and 22
Article 12, Section 7

Our concern is raised based upon two aspects of the wording of the proposed amendment: paragraph (1) the word "union" and the phrase the "rights, benefits, obligations, qualities, or effects."

In addition to these constitutional provisions, a quick review of the statutes shows a number of sections that would be affected by the proposed amendment. See Exhibit "A" attached.

In light of the decision in Bess v. Ulmer, 985 P.3d 979 (Alaska 1999), please provide a legal opinion as to whether HJR 9 would constitute a revision of the Alaska Constitution or an amendment that the legislature has the authority to adopt for voter approval.

Thank you very much.

Rights and Liabilities of Alaska residents that could be affected by passage of HJR 9.

Sec. 03.09.010 - Board of Agriculture and Conservation

Chapter 04.06 - Alcoholic Beverage Control Board

Chapter 06.26 - Alaska Trust Company Act

Chapter 08.66 - Buyer's Agents

Chapter 10.13 - BIDCOs

Chapter 11.41 - Offenses Against the Person

Chapter 12.55 - Factors in aggravation and mitigation

Chapter 13.12 - Inheritance

Chapter 13.26 - Guardians and Guardian ad litems

Chapter 13.41 - Disposition of Community Property Rights

Chapter 13.52 - Health Care Decisions

Chapter 14.25 - Teacher's Retirement

Chapter 16.05 - Fish and Game license fees

Chapter 17.37 - Medical Uses of marijuana

Chapter 21.42 - The Insurance Contract

Chapter 21.45 - Life Insurance

Chapter 21.48 - Group Life Insurance

Chapter 21.51 - Health Insurance Policies

Chapter 22.25 - Judicial Retirement and Death Benefits

Chapter 23.10 - Employment Practices and Working Conditions

Chapter 23.30 - Workmen's Compensation

Chapter 24.60 - Legislative Ethics

Chapter 25.23 - Adoption

Chapter 25.25 - Interstate Family Support

Chapter 26.05 - Military Affairs retirements

Chapter 34.15 - Conveyances

Chapter 34.77 - Community Property

Chapter 38.08 - Homesites

Chapter 38.09 - Homesteads

Chapter 39.26 - Rights of State Employees

Chapter 39.35 - Public Employment Retirement

Chapter 39.50 - Public Official Financial Disclosure

Chapter 42.40 - Alaska Railroad

Chapter 43.23 - Permanent Fund Dividends

Chapter 44.33 - Child Care Facilities

Chapter 47.10 - Child in need of aid

Chapter 47.12 - Delinquent Minors

Chapter 47.24 - Protection of Vulnerable Adults

Chapter 47.25 - :Public Assistance

Chapter 47.31 - Mental Health Treatment

Chapter 47.32 - Centralized Licensing

Chapter 47.45 - Older Alaskans

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 2, 2007

SUBJECT: Proposed constitutional amendment to art. I, sec. 25, related to marriage analyzed under *Bess v. Ulmer*
(HJR 9 (Work Order No. 25-LS0553\A))

TO: Representative Max Gruenberg
Attn: Norman Cohen

FROM: Jean M. Mischel
Legislative Counsel

You have asked for an analysis of HJR 9 under *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999). You have also asked whether the resolution (1) revises the Alaska Constitution, necessitating the convening of a constitutional convention, or (2) amends the constitution, allowing for legislative and voter approval. You have provided a list of possible revisions to the constitution resulting from the proposed amendment to art. I, sec. 25, and a lengthy list of other laws potentially affected by the broad terms used in HJR 9 such as "union" and the phrase "rights, benefits, obligations, qualities, or effects" of marriage. In my opinion, the breadth of the language used in HJR 9 makes it more likely to be construed by a court as a revision rather than an amendment thus requiring a constitutional convention.

HJR 9 proposes to amend art. I, sec. 25 of the Alaska Constitution as follows:

> **Section 25. Marriage and related limitations.** To be valid or recognized in this State, a marriage may exist only between one man and one woman. **No other union is similarly situated to a marriage between a man and a woman and, therefore, a marriage between a man and a woman is the only union that shall be valid or recognized in this State and to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned.**

A constitutional amendment may be proposed by vote of two-thirds of the legislature and take effect after approval by a majority of the voters under art. XIII, sec. 1, Constitution of the State of Alaska. A constitutional amendment may also be proposed by a constitutional convention and take effect after ratification by the voters under art. XIII, sec. 4. A constitutional revision may *only* be proposed by a constitutional convention and take effect after ratification by the voters under art. XIII, sec. 4.

The Alaska Supreme Court was not able, in the *Bess* case, to precisely describe the difference between a constitutional amendment and a constitutional revision except to say that "changes that are 'few and simple and independent' can be considered amendments, whereas 'sweeping change' requires the revision process." *Id.* at 983 (citations omitted). In upholding the first sentence of art. I, sec. 25 (same-sex marriage ban) as an amendment and invalidating the then proposed second sentence as a revision, the *Bess* Court acknowledged that the first sentence potentially changed one constitutional section (the equal rights clause) and that it was not clear whether the right to privacy might also be affected. The court reasoned that "the content of the sentence is simple to express and understand. It relates to only one subject and does not substantially affect numerous other sections of the constitution." *Id.* at 987. The potential effect on other provisions in the constitution resulting from the adoption of the retained sentence in art. I, sec. 25 alone was not enough to invalidate the amendment; the effect must be substantial both qualitatively and quantitatively to constitute a revision.

At the same time, the *Bess* Court found that since the proposed second sentence may have been interpreted to permit prosecution of individuals involved in marriage-like relationships and might inhibit religiously sanctioned same-sex marriages, the sentence may have attempted to revise the constitution. The deleted second sentence provided:

> No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex.

The Court also noted in its preliminary opinion, attached to the published opinion, that the appellees characterized the second sentence as surplusage and they conceded that the Court has the power to delete the second sentence. Therefore, the Court ordered the deletion of the second sentence stating, "We do not believe that language which is surplusage should be part of the constitution." *Id.* at 995.

This second sentence is similar (though obviously not identical) in its intent to the language in HJR 9 and therefore could draw the same type of challenge as the one that succeeded at the Alaska Supreme Court in *Bess v. Ulmer*.

There are a number of constitutional sections that appear to be affected by HJR 9 -- equal protection (art. I, sec. 1), civil rights (art. I, sec. 3), due process (art. I, sec. 7), privacy rights (art. I, sec. 22), and perhaps the retirement protections (art. XII, sec. 7) to the extent benefits have accrued. There are also plausible, but not necessarily convincing, arguments that could be made that other sections are affected. Additionally, because of the extremely broad phrasing used in HJR 9 as "limitations to marriage" HJR 9 appears to affect numerous rights, benefits and effects that are completely unrelated to marriage or same sex employment benefits.

The equal protection (art. I, sec. 1) and due process (art. I, sec. 7) clauses of the Alaska constitution generally require that persons who are similarly situated be treated equally unless the state has some interest in treating them differently that can withstand a sliding

scale of judicial scrutiny that depends on the importance of the right at issue. As you know, the Alaska Supreme Court held in *ACLU v. State*, 122 P.3d 781, 794 (Alaska 2005), that disparate treatment of same-sex domestic partnerships, subject to the court's "minimum scrutiny," was not "substantially related" to enumerated governmental interests involving promotion of marriage, administrative efficiency, and cost control. Since HJR 9 is apparently intended to overturn the result in *ACLU v. State*, it appears that HJR 9 is intended to substantially affect equal protection rights. It may also affect art I, sec. 22 of the state constitution (relating to privacy) and may therefore be invalidated under *Bess v. Ulmer* on the basis of these two apparently substantial effects alone.

In addition, HJR 9 may violate the federal equal protection clause. In footnote 20 of the ACLU opinion, Alaska's court cited *Romer v. Evans*, 517 U.S. 620 (1996), as an example of the constitutional risk involved in using broad statutory language to prevent legislative, executive, or judicial action extending legal protection to homosexual people as a class. The language of the Colorado provision struck down by the U.S. Supreme Court in *Romer* was broader than the language proposed in HJR 9 but HJR 9 may spark federal equal protection challenges for some of the same reasons.

I don't know what the sponsors intended by the use of the term "union," which has many meanings and could affect implementation of many current laws and constitutional protections outside of the context of marriage. A court will generally look to the common meaning, legislative intent, and to voter understanding in order to define broad or ambiguous terms.

The context in which the term is used may limit the term to "marriage," but even this interpretation does not resolve the questions involving those persons who were formerly married and have continuing benefits, obligations, and rights of the marriage even though they are no longer legally married or the question of the possible application to private employment benefits.

The language proposed not only affects same sex relationships but may have a discriminatory effect on those persons who were bound by a "union" that at one time was a legal marriage, but that no longer is a marriage. HJR 9 may interfere with rights and obligations of a former spouse, widow, or children of a marriage that no longer exists but that under current law has remaining rights and effects. Under current statutes, for example, the effect of a decree of legal separation "modifies the parties rights and responsibilities as married persons only to the extent specified in the decree of separation" under AS 25.24.460. The effect of a judgment decreeing a divorce or dissolution is to "restore the parties to the state of unmarried persons" under AS 25.24.180 and 25.24.240, but the divorce decree may still require that certain rights or benefits of marriage be given to formerly married, but now unmarried, persons. The rights, benefits, and obligations of a legal separation, divorce, or dissolution contained in a court decree, including property and child support rights, are, it seems to me, all called into question by HJR 9's broad prohibitions.

Furthermore, courts have awarded property rights (on death or separation) to a person who has lived in a "common law" type of marriage or other type of "domestic partnership" under the theories of *quantum meruit*, partnership, and fairness. These theories could be applied to relationships that were heterosexual, homosexual, or asexual (e.g. two maiden ladies who have shared a home for decades, but have no sexual relationship). Those awards may be prohibited under the resolution if they are found to assign benefits, rights, and obligations of marriage.

Voter understanding of the terms used seems to have the most influence in a judicial review of a proposed constitutional amendment. In *Miller v. Safeway*, 102 P.3d 282 (Alaska 2004), for example, the Alaska Supreme Court found in a case challenging a private corporation's privacy intrusions, that the state constitutional right to privacy applied only to governmental actions. The court reviewed the legislative history and the voter pamphlet supporting the constitutional amendment. Although the legislative history supported the plaintiff's view that the right to privacy applied to private and public persons, the court relied on the voters' intent. In another case, *Luedtke v. Nabors Alaska Drilling*, 768 P.2d 1123, 1130 (Alaska 1989) (quoting *Davis*, 533 P.2d 222 (Cal. 1975)), the court acknowledged the possibility of drawing the opposite conclusion with respect to California's constitutional privacy right on the basis of statements made to California voters with respect to that state's privacy amendment that it would protect them against unwarranted intrusions by businesses and government.

The appellants in the *Bess* case argued that the first sentence of the marriage amendment affected three sections of the constitution: equal rights (art. I, sec. 1), civil rights (art. I, sec. 3), and privacy (art. I, sec. 22). The court flatly rejected the notion that the civil rights section was affected. It determined that whether the privacy section was affected was unclear and that the first sentence only "potentially" affected the equal protection section. The court then upheld the first sentence of the marriage amendment as a valid legislative proposal because it found the proposal did not "substantially affect numerous other sections of the constitution" and was otherwise clear.

I think this illustrates that the court is not going to readily agree that a proposal affects another section of the constitution unless the connection between the proposal and the section is fairly direct. It also illustrates that the court may be willing to tolerate merely potential or limited effects on other sections of the constitution. What is critical, apparently, is determining the number of sections that are substantially affected by a proposal.

The answer depends on how a court would evaluate the quantity and quality of change proposed. The "quality" of change criteria is quite plastic; the court has said that a "simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision. . . ." Based on the decision in the *Bess* case and the breadth of language used in HJR 9 as discussed, I suspect that a court would find the changes proposed in this resolution are sweeping, affect several existing constitutional protections and therefore appear to be a revision of the constitution rather

than an amendment. I cannot, however, rule out the possibility that a court could reach the opposite conclusion.

If I may be of further assistance, please advise.

JMM:ljw
07-176.ljw

THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA CIVIL LIBERTIES UNION, DAN CARTER and AL INCONTRO, LIN DAVIS and MAUREEN LONGWORTH, SHIRLEY DEAN and CARLA TIMPONE, DARLA MADDEN and KAREN WOOD, AIMEE OLEJASZ and FABIENNE PETER-CONTESSE, KAREN STURNICK and ELIZABETH ANDREWS, THERESA TAVEL and KAREN WALTER, CORIN WHITTEMORE and GANI RUTHELLEN, and ESTRA BENSUSSEN and CAROL ROSE GACKOWSKI, Appellants, v. STATE OF ALASKA and MUNICIPALITY OF ANCHORAGE, Appellees.	Supreme Court No. S-10459 Superior Court No. 3AN-99-11179 CI OPINION [No. 5950 - October 28, 2005]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Stephanie Joannides, Judge.

Appearances: Allison E. Mendel, Mendel & Associates, Anchorage, Kenneth Y. Choe, American Civil Liberties Union Foundation, New York City, New York, and Tobias B. Wolff, Davis, California, for Appellants. John B. Gaguine,

Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellee State of Alaska. Neil T. O'Donnell, Atkinson, Conway & Gagnon, Anchorage, for Appellee Municipality of Anchorage. James M. Gorski, Hughes, Thorsness, Gantz, Powell, Huddleston & Bauman LLC, Anchorage, for Amicus Curiae The Alaska Catholic Conference. Rebecca L. Maxey, Law Offices of Rebecca L. Maxey, L.L.C., Anchorage, and Jennifer Middleton, Lambda Legal Defense and Education Fund, Inc., New York City, New York, for Amicus Curiae Lambda Legal Defense and Education Fund, Inc. Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Amici Curiae North Star Civil Rights Defense Fund, Inc. and Marriage Law Project.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

EASTAUGH, Justice.

I. INTRODUCTION

The State of Alaska and the Municipality of Anchorage offer valuable benefits to their employees' spouses that they do not offer to their unmarried employees' domestic partners. Essentially all opposite-sex adult couples may marry and thus become eligible for these benefits. But no same-sex couple can ever become eligible for these benefits because same-sex couples may not marry in Alaska.[1] The spousal limitations in the benefits programs therefore affect public employees with same-sex domestic partners differently than public employees who are married. This case requires us to determine if it is reasonable to pay public employees who are in committed domestic relationships with same-sex partners less in terms of employee benefits than their co-workers who are married. In making this determination, we must decide whether the

---

[1] Alaska Const. art. I, § 25.

spousal limitations in the benefits programs violate the rights of public employees with same-sex domestic partners to "equal rights, opportunities, and protection under the law."[2]

The Alaska Constitution dictates the answer to that constitutional question. Irrelevant to our analysis must be personal, moral, or religious beliefs — held deeply by many — about whether persons should enter into intimate same-sex relationships or whether same-sex domestic partners should be permitted to marry. It is the duty of courts "to define the liberty of all, not to mandate [their] own moral code."[3] Our duty here is to decide whether the eligibility restrictions satisfy established standards for resolving equal protection challenges to governmental action.

We do not need to decide whether heightened scrutiny should be applied here because the benefits programs cannot withstand minimum scrutiny. Although the governmental objectives are presumably legitimate, the difference in treatment is not substantially related to those objectives. We accordingly hold that the spousal limitations are unconstitutional as applied to public employees with same-sex domestic partners, and we vacate the judgment below. We ask the parties to file supplemental memoranda addressing the issue of remedy.

II. FACTS AND PROCEEDINGS

The State of Alaska and the Municipality of Anchorage offer health

---

[2] Alaska Const. art. I, § 1. As the issue is framed in this case, we need not reach any separate question of the independent right to benefits of a same-sex domestic partner of a public employee.

[3] *Lawrence v. Texas*, 539 U.S. 558, 559 (2003) (citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850 (1992)).

insurance and other employment benefits to the spouses of their employees.[4] These benefits are financially valuable to employees and their spouses. Only couples who are married are eligible to receive these benefits; unmarried couples are not eligible. The state and the municipality have offered some form of these employment benefits since 1955 and at least 1985, respectively.

The Alaska Civil Liberties Union and eighteen individuals who alleged that they comprised nine lesbian or gay couples (collectively, the "plaintiffs") filed suit against the state and the municipality in 1999, complaining that these benefits programs violated their right to equal protection under the Alaska Constitution. They alleged that at least one member of each same-sex couple was an employee or retiree of the state or the municipality, that the eighteen individual plaintiffs were involved in "intimate, committed, loving" long-term relationships with same-sex domestic partners, and that, as gay and lesbian couples, they are excluded by state law from the institution of marriage. Members of eight of the couples asserted in affidavits that they are in

---

[4] The plaintiffs' opening brief states that the benefits available for spouses of state employees include those provided by AS 39.20.360 (death benefits); AS 39.30.090 (life and health insurance); AS 39.35.450 (joint and survivor annuities); AS 39.35.535 (post-retirement health insurance); AS 14.25.010-.220 (benefits for retired teachers); and AS 22.25.010-.900 (benefits for retirees of state judiciary). These statutes do not expressly deny benefits to unmarried domestic partners, but each contains a clause expressly conferring them on an eligible employee's "spouse." The state refers to such clauses as "spousal limitations." We will sometimes use that terminology in this appeal.

No party has identified a Municipality of Anchorage ordinance containing an equivalent spousal limitation, but it is undisputed here that an unmarried domestic partner of a municipal employee is not eligible for employment benefits.

We variously refer to the challenged state statutes and municipal benefit plans as "benefits laws" or "benefits programs."

"committed relationships."[5] Their amended complaint alleged that because they are prohibited from marrying each other by Alaska Constitution article I, section 25, they are ineligible for the employment benefits the defendants provide to married couples, resulting in a denial of the individual plaintiffs' right to equal protection.

Article I, section 25 was adopted by Alaska voters in 1998. Commonly known as the Marriage Amendment, it provides: "To be valid or recognized in this State, a marriage may exist only between one man and one woman." It effectively prohibits marriage in Alaska between persons of the same sex.[6] The plaintiff employees consequently cannot enter into the formal relationship — marriage — that the benefits programs require if the employees are to confer these benefits on their domestic partners.

Put another way, the plaintiff employees and their same-sex partners are absolutely precluded from becoming eligible for these benefits. Although all opposite-sex couples who are unmarried are also ineligible for these employment benefits, by marrying they can change the status that makes them ineligible.

The plaintiffs did not challenge the Marriage Amendment in the superior court (nor do they on appeal). Instead, their amended complaint asked the superior court

---

[5] We use the phrases "domestic partnership" and "committed relationship" interchangeably to refer to relationships between adult couples who reside together in long-term, interdependent, intimate associations. We use the phrase "domestic partners" to refer to persons in these relationships. The phrase includes both same-sex and opposite-sex couples. For our purposes, "domestic partners" also includes all married couples.

[6] Section 25 does not contain express words of prohibition, but it confers validity or recognition in Alaska only on a marriage between one man and one woman. It therefore effectively prohibits marriage, or recognition of marriage, between persons of the same sex in Alaska.

AS 25.05.011(a), enacted in 1996, defines "marriage." It provides in part: "Marriage is a civil contract entered into by one man and one woman . . . ."

to declare that denying employment benefits to same-sex domestic partners violates, among other things, article I, section 1 of the Alaska Constitution, which states in part: "This constitution is dedicated to the principle[] . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

All parties moved for summary judgment. The superior court denied the plaintiffs' motion and granted the defendants' motion. The court first rejected plaintiffs' assertion that it was necessary to apply heightened scrutiny in considering their equal protection challenge; the court reasoned that heightened scrutiny was unwarranted because the state and the municipality were discriminating between married and unmarried employees, not between opposite-sex and same-sex couples. The court also determined that the only right at issue was a right to employee benefits, which it ruled was not a fundamental right. Because the court found that no suspect class or fundamental right was involved, it applied the lowest level of scrutiny to the governmental action. The court ruled that the defendants had a legitimate interest in reducing costs, increasing administrative efficiency, and promoting marriage. It then ruled that granting benefits only to spouses of married employees bore a fair and substantial relationship to those interests.

The plaintiffs appealed. Briefing on their appeal was completed and oral argument took place before the United States Supreme Court decided *Lawrence v. Texas*.[7] With our permission, the parties filed supplemental briefs discussing *Lawrence*.

---

[7] *Lawrence v. Texas*, 539 U.S. 558 (2003).

III. DISCUSSION

A. Standard of Review

We review a grant or denial of summary judgment de novo.[8] Summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[9] Deciding the applicable standard of scrutiny in an equal protection challenge to an allegedly discriminatory statute presents a question of law.[10] Likewise, identifying the nature of the challenger's interest and assessing the importance of the governmental interest and the fit between that interest and the means chosen to advance it, present questions of law.[11] We will apply our independent judgment to questions of law and adopt the rule of law most persuasive in light of precedent, reason, and policy.[12] We apply our independent judgment when interpreting constitutional provisions or statutes.[13] A constitutional challenge to a statute must overcome a presumption of constitutionality.[14]

---

[8] *City of Kodiak v. Samaniego*, 83 P.3d 1077, 1082 (Alaska 2004); *Powell v. Tanner*, 59 P.3d 246, 248 (Alaska 2002).

[9] *Odsather v. Richardson*, 96 P.3d 521, 523 n.2 (Alaska 2004).

[10] *See Reichmann v. State, Dep't of Natural Res.*, 917 P.2d 1197, 1200 & n.6 (Alaska 1996); *Sonneman v. Knight*, 790 P.2d 702, 704 (Alaska 1990).

[11] *See Sonneman*, 790 P.2d at 704-06.

[12] *Hickel v. Southeast Conference*, 868 P.2d 919, 923 (Alaska 1994); *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979).

[13] *Alaska Trademark Shellfish, LLC v. State*, 91 P.3d 953, 956 (Alaska 2004); *State, Commercial Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 858 (Alaska 2003).

[14] *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 275 (Alaska 2001).

B. Effect of the Marriage Amendment on Plaintiffs' Equal Protection Arguments

The plaintiffs, in challenging the spousal limitations in the benefits programs, rely on article I, section 1 of the Alaska Constitution, which guarantees the right to equal treatment. It states that "all persons are equal and entitled to equal rights, opportunities, and protection under the law."[15] Often referred to as the "equal protection clause," this clause actually guarantees not only equal "protection," but also equal "rights" and "opportunities" under the law.[16]

But Alaska Constitution article I, section 25, the Marriage Amendment, states that "[t]o be valid or recognized in this State, a marriage may exist only between one man and one woman." It effectively prohibits same-sex domestic partners from marrying in Alaska and denies recognition in Alaska to foreign marriages between same-sex couples.[17] We must decide as a threshold matter whether, as contended by the municipality and amici curiae North Star Civil Rights Defense Fund, Inc. and the Marriage Law Project, the Marriage Amendment precludes challenges by same-sex

---

[15] Alaska Const. art. I, § 1.

[16] *See* Alaska Const. art. I, § 1; *Malabed v. North Slope Borough*, 70 P.3d 416, 420 (Alaska 2003) ("We have long recognized that the Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment."); *Schafer v. Vest*, 680 P.2d 1169, 1172 (Alaska 1984) (Burke, C.J., concurring, noting that this textual difference from the Federal Constitution emphasizes that the framers meant all three guarantees).

[17] *See* Alaska Const. art. I, § 25.

Alaska voters adopted this amendment in 1998. *See* OFFICE OF THE LIEUTENANT GOVERNOR, *Alaska Constitution: Alaska Constitutional Amendment Summary*, *at* http://www.gov.state.ak.us/ltgov/akcon/summary.html. The amendment took effect January 3, 1999. *See Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 358 (Alaska 2001).

couples to government policies that discriminate between married and unmarried couples.

We must give effect to every word, phrase, and clause of the Alaska Constitution.[18] "[S]eemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the constitution."[19]

The Alaska Constitution's equal protection clause and Marriage Amendment can be harmonized in this case because it concerns a dispute about employment benefits. The Marriage Amendment effectively precludes same-sex couples from marrying in Alaska, but it does not explicitly or implicitly prohibit public employers from offering to their employees' same-sex domestic partners all benefits that they offer to their employees' spouses. It does not address the topic of employment benefits at all.[20]

---

[18] *See Owsichek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 496 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1191 (Alaska 1983); *Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974); CHESTER JAMES ANTIEAU, CONSTITUTIONAL CONSTRUCTION § 2.06, at 18-20 (1982).

[19] ANTIEAU, *supra* note 18, § 2.15, at 27; *see also Ostrosky*, 667 P.2d at 1190 (holding that constitutional amendment "cannot, in turn, be challenged as unconstitutional under preexisting clauses in the same document").

[20] Explicitly denying benefits to public employees with same-sex domestic partners would arguably offend the Federal Constitution. In *Romer v. Evans*, 517 U.S. 620 (1996), the United States Supreme Court struck down on federal equal protection grounds an amendment to the Colorado Constitution that repealed all local and statewide laws prohibiting discrimination based on sexual orientation. The Court explained that in addition to merely repealing state and local laws, the amendment "prohibits all legislative, executive, or judicial action at any level of state or local government designed to protect the named class . . . ." *Id.* at 624. The Court invalidated the amendment under the rational basis standard of judicial review, reasoning that the amendment could not satisfy even the minimal level of scrutiny. *Id.* at 632. It explained that the amendment's

(continued...)

Nor have we been referred to any legislative history implying that, despite its clear words, the Marriage Amendment should be interpreted to deny employment benefits to public employees with same-sex domestic partners.[21] The Marriage Amendment could have the effect of foreclosing the present challenge only if it could be read to prohibit public employers from offering benefits to their employees' same-sex domestic partners. But nothing in its text would permit that reading, and indeed the state and the municipality implicitly assume on appeal that governments are free to offer employment benefits to their employees' unmarried, domestic partners, including same-sex domestic partners.

Because the public employers' benefits programs could be amended to include unmarried same-sex domestic partners without offending the Marriage Amendment, that amendment does not foreclose plaintiffs' equal protection claims here. That the Marriage Amendment effectively prevents same-sex couples from marrying does not automatically permit the government to treat them differently in other ways. It therefore does not preclude public employees with same-sex domestic partners from claiming that the spousal limitations in the benefits programs invidiously discriminate against them.

---

[20](...continued)
"disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence . . . . A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense." *Id.* at 633.

[21] *See Brooks v. Wright*, 971 P.2d 1025, 1028 (Alaska 1999) (stating that court looks to plain language, purpose, and framers' intent in interpreting constitution); *Native Vill. of Elim v. State*, 990 P.2d 1, 5 (Alaska 1999) (same); *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992) (same).

The state equal protection clause cannot override more specific provisions in the Alaska Constitution.[22] But the plaintiffs do not contend that the Marriage Amendment violates Alaska's equal protection clause. They argue not that they have a right to marry each other, but that the benefits programs discriminate against them by denying them benefits that the programs provide to others who, plaintiffs claim, are similarly situated.

Because the Marriage Amendment does not resolve this appeal, we turn to the merits of plaintiffs' equal protection arguments.

C. Challenge to the Spousal Limitations Under the Equal Protection Clause of the Alaska Constitution

Article I, section 1 of the Alaska Constitution "mandates 'equal treatment of those similarly situated;' it protects Alaskans' right › non-discriminatory treatment more robustly than does the federal equal protection clause."[23] "We have long recognized that [this clause] affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment."[24]

"To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed

---

[22] *Cf. Bess v. Ulmer*, 985 P.2d 979, 988 n.57 (Alaska 1999) ("[A] specific amendment controls other more general [constitutional] provisions with which it might conflict."); ANTIEAU, *supra* note 18, § 2.16, at 27-28.

[23] *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 909 (Alaska 2001) (footnote omitted) (quoting *Alaska Pac. Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984)).

[24] *Malabed v. North Slope Borough*, 70 P.3d 416, 420 (Alaska 2003); *see also Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 272 & n.15 (Alaska 2003).

classification and the nature of the governmental interest at stake . . . ."[25]

1. The benefits programs' distinctions between same-sex and opposite-sex domestic partners

A person or group asserting an equal protection violation must demonstrate that the challenged law treats similarly situated persons differently.[26] Absent disparate treatment of similarly situated persons, the law as applied to the aggrieved group does not violate the group's right to equal protection.[27] We first consider whether, as the municipality contends, there is no evidence of differential treatment, making it unnecessary to engage in a sliding-scale analysis.[28]

The plaintiffs assert that the defendant governments treat same-sex and opposite-sex couples differently. The defendants argue that their programs differentiate on the basis of marital status, not sexual orientation or gender. The municipality asserts that all married employees can confer benefits on their spouses, and no unmarried employees can confer benefits on their partners. It therefore argues that it treats same-sex couples no differently than any other unmarried couples, and that there is consequently no basis for an equal protection claim. Several courts examining similar programs have reached this conclusion.[29]

---

[25] *Malabed*, 70 P.3d at 420-21.

[26] *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska 2005); *Lawson v. Helmer*, 77 P.3d 724, 728 (Alaska 2003).

[27] *Lawson*, 77 P.3d at 728; *Brandon v. Corr. Corp. of Am.*, 28 P.3d 269, 275-76 (Alaska 2001).

[28] *Cf. Shearer v. Mundt*, 36 P.3d 1196, 1199 (Alaska 2001).

[29] *Beaty v. Truck Ins. Exch.*, 8 Cal. Rptr. 2d 593, 596-97 (Cal. App. 1992); *Hinman v. Dep't of Pers. Admin.*, 213 Cal. Rptr. 410, 416 (Cal. App. 1985); *Ross v.* (continued...)

We must therefore decide whether there is a classification that results in different treatment for similarly situated people.

We agree with the plaintiffs that the proper comparison is between same-sex couples and opposite-sex couples, whether or not they are married. The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners.[30] In comparison, public employees in committed same-sex relationships are absolutely denied any opportunity to obtain these benefits, because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying. The programs

---

[29](...continued)
Denver Dep't of Health & Hosps., 883 P.2d 516, 519 (Colo. App. 1994); *Phillips v. Wisconsin Pers. Comm'n*, 482 N.W.2d 121, 129 (Wis. App. 1992).

[30] Some heterosexual couples, such as consanguineous couples, are also prohibited from marrying and are consequently prevented from obtaining benefits. But in those instances, the relationship itself is illegal, not merely the marriage. AS 11.41.450 classifies incest as a class C felony. No Alaska statute criminalizes homosexual relationships or homosexual conduct between consenting adults, nor could it. *See Lawrence v. Texas*, 539 U.S. 558 (2003). Moreover, as discussed below, just because some other, smaller group of people is also excluded does not mean that the plaintiffs here cannot have a valid claim.

consequently treat same-sex couples differently from opposite-sex couples.[31]

2. Intent to discriminate

The state argues that an intent to discriminate is, or should be, an essential element of a state equal protection claim in Alaska. Both defendants contend that there was no discriminatory intent, or evidence of animus against gays and lesbians. Plaintiffs respond that Alaska's equal protection clause does not require a showing of discriminatory intent.

We need not resolve this dispute here because we conclude that the benefits programs are facially discriminatory. When a "law by its own terms classifies persons for different treatment," this is known as a facial classification.[32] And when a law is discriminatory on its face, "the question of discriminatory intent is subsumed by the determination that the classification established by the terms of the challenged law or policy is, itself, discriminatory."[33]

To determine whether the benefits programs make a facial classification, we must therefore examine the meaning of the term "spouse." The United States Supreme Court, in *Personnel Administrator v. Feeney*, considered whether a state statute

---

[31] *See Tanner v. Oregon Health Scis. Univ.*, 971 P.2d 435, 442-43, 447 (Or. App. 1998) (determining that denial of employment benefits to unmarried domestic partners of employees had "disparate impact" on homosexuals).

[32] JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 14.4, at 711 (7th ed. 2004) (emphasis added).

[33] *Hamlyn v. Rock Island County Metro. Mass Transit Dist.*, 986 F. Supp. 1126, 1133 (C.D. Ill. 1997); *see also Cook v. Babbitt*, 819 F. Supp. 1, 14 (D.D.C. 1993) ("In cases where a law or regulation makes an explicit reference to a suspect characteristic, purposeful discrimination is self-evident, and the measure is subject to challenge on its face without any evidentiary inquiry into the motives of the relevant government actors.").

granting a hiring preference to veterans violated equal protection on the basis of gender.[34] The Court concluded in part that the statute was gender-neutral because the "definition of 'veterans' in the statute ha[d] always been neutral as to gender" and that "Massachusetts ha[d] consistently defined veteran status in a way that ha[d] been inclusive of women who ha[d] served in the military . . . ."[35]

But unlike the neutral definition of "veteran" in *Feeney*, Alaska's definition of the legal status of "marriage" (and, hence, who can be a "spouse") excludes same-sex couples.[36] By restricting the availability of benefits to "spouses," the benefits programs "by [their] own terms classif[y]" same-sex couples "for different treatment."[37] Heterosexual couples in legal relationships have the opportunity to marry and become eligible for benefits. In comparison, because of the legal definition of "marriage," the partner of a homosexual employee can never be legally considered as that employee's "spouse" and, hence, can never become eligible for benefits. We therefore conclude that the benefits programs are facially discriminatory.[38]

The next question is whether the disparate treatment is permitted under the

---

[34] *Personnel Adm'r v. Feeney*, 442 U.S. 256 (1979).

[35] *Id.* at 275.

[36] Alaska Const. art. I, § 25 ("To be valid or recognized in this State, a marriage may exist only between one man and one woman.").

[37] *See* NOWAK & ROTUNDA, *supra* note 32, § 14.4, at 711.

[38] We recognize that the benefits programs became discriminatory only after the legislature acted in 1996 and 1998 and the electorate adopted the Marriage Amendment in 1998. But, in our view, allowing a discriminatory classification to remain in force is no different than giving it the force of law in the first place.

sliding-scale analysis for equal protection challenges in Alaska.[39]

3. Sliding-scale analysis under the Alaska Constitution

Having resolved these preliminary issues by determining (1) that it cannot be said as a matter of law that the benefits programs do not treat public employees with same-sex domestic partners differently, and (2) that the benefits programs are facially discriminatory, we turn to the three-step, sliding-scale analysis applicable to equal protection challenges under the Alaska Constitution. This approach involves the following process:

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review . . . . Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.
>
> Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
>
> Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be

---

[39] In the case of a facial classification, "there is no problem of proof and the court can proceed to test the validity of the classification by the appropriate standard." NOWAK & ROTUNDA, *supra* note 32, § 14.4, at 711.

> much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.[40]

The plaintiffs advance four alternative arguments to support their equal protection challenge to the spousal limitation in the benefits programs. The first three ask us to apply a heightened level of scrutiny because the programs allegedly (1) discriminate on the basis of sexual orientation; (2) discriminate on the basis of gender; or (3) significantly burden at least one of several important personal interests. The plaintiffs alternatively contend that the programs cannot withstand even the minimum level of scrutiny, either because the governmental interests advanced are not legitimate, or because the eligibility restrictions do not bear a fair and substantial relationship to advancing those interests.

Because we conclude that the benefits programs cannot survive minimum scrutiny, we need not address plaintiffs' alternative arguments.

a. Nature of plaintiffs' interests: level of scrutiny

The first step of our analysis requires us to determine what weight to give the individual interests affected by the benefits programs.[41] Plaintiffs contend that the spousal limitations significantly burden important personal interests, such as the right to intimate association, and are therefore subject to heightened scrutiny. But because minimum scrutiny is sufficient to resolve this case, we do not need to decide whether the plaintiffs' interests are "important" or whether a "fundamental right" is affected.[42]

---

[40] *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396-97 (Alaska 1997) (quoting *Alaska Pac. Assurance Co. v. Brown*, 687 P.2d 264, 269-70 (Alaska 1984)).

[41] *Id.* at 396.

[42] *Malabed v. North Slope Borough*, 70 P.3d 416, 421 (Alaska 2003) (continued...)

Government action affecting an economic interest receives minimum scrutiny,[43] and the employment benefits at issue here are undeniably economic.

b. The governmental interests and the relationship between those interests and the means chosen to advance them

The second step of the sliding-scale analysis requires us to consider the governmental interests advanced by a challenged law.[44] Under minimum scrutiny, these interests need only be legitimate.[45] The third step requires us to evaluate the means chosen to advance the interests identified from the second step. Minimum scrutiny requires a "fair and substantial relation" between the means (i.e., the classification) and the "object of the legislation."[46]

The state and the municipality contend that they have three legitimate interests — cost control, administrative efficiency, and promotion of marriage — in limiting employment benefits to spouses and dependent children. We must therefore consider whether these interests are legitimate and, if so, whether the classification bears a fair and substantial relationship to those interests.

Cost control. The state and the municipality argue that cost control is a

---

[42](...continued)
(applying "close" scrutiny to enactment affecting "important" interest); *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 909 (Alaska 2001) (observing that "strict" scrutiny is applied to enactments affecting "fundamental rights").

[43] *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999).

[44] *Planned Parenthood*, 28 P.3d at 909.

[45] *Matanuska-Susitna Borough*, 931 P.2d at 396-97 (quoting *Alaska Pac. Assurance*, 687 P.2d at 269-70).

[46] *Planned Parenthood*, 28 P.3d at 911 (quoting *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976)).

primary purpose of limiting the availability of benefits to spouses of married employees. The state explains that it must offer health insurance to attract and retain a qualified work force and that "the legislature should be entitled to take reasonable measures to control the cost of that offering." As the number of program participants increases, so does the cost.

The state also asserts that the legislature "wanted to limit participation to that small group in a truly close relationship with the employee." The municipality asserts that it decided "to limit employee benefits to a small, readily ascertainable group of individuals closely connected to the employee." These assertions indicate to us that the governmental interest here is more specific than just "cost control." Indeed, if the governments were interested in simply saving money, the companion goal of promoting marriage would seem to do the opposite. As the benefits programs succeed in convincing couples to marry or to stay married, the governments have to provide benefits to more people. This apparent tension between cost control and promotion of marriage can be harmonized by more appropriately describing the governments' interest in cost control as an interest in controlling costs by limiting benefits to those people in "truly close relationship[s]" with or "closely connected" to the employee.

We assume that limiting benefit programs to those in truly close relationships with the employee is a legitimate governmental goal. But we do not see how an absolute exclusion of same-sex domestic partners from being eligible for benefits is substantially related to this interest. Many same-sex couples are no doubt just as "truly close[ly] relat[ed]" and "closely connected" as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples, and would choose to get married if they were not prohibited by law from doing so. Although limiting benefits to "spouses," and thereby

excluding all same-sex domestic partners, does technically reduce costs, such a restriction fails to advance the expressed governmental goal of limiting benefits to those in "truly close relationships" with and "closely connected" to the employee.

Administrative efficiency. The state and the municipality argue that the need to efficiently administer the benefits programs justifies the spousal limitations. They argue that marriage provides a bright-line distinction that is easily applied, and that allowing employees to designate beneficiaries other than spouses will make it more difficult to administer the programs. The director of the benefits section of the Alaska Division of Retirement and Benefits explained during deposition the potential administrative difficulties that could arise if employees were allowed to designate benefits recipients other than spouses. She discussed theoretical burdens of determining who other than a spouse might be eligible for coverage. The municipality anticipates difficulty in deciding how long a same-sex relationship must last, whether the partners must reside in the same house, whether the relationship must be of a sexual nature, and when the relationship ends.

We have recognized that administrative efficiency is a legitimate governmental interest.[47] There is no doubt that making a less-clearly-defined (compared to spouses) category of persons eligible for employment benefits would create administrative burdens. But Alaska's Equal Protection Clause requires more than just a rational connection between a classification and a governmental interest; even at the lowest level of scrutiny, the connection must be substantial.[48]

---

[47] *Wilkerson v. State, Dep't of Health & Soc. Servs.*, 993 P.2d 1018, 1024 (Alaska 1999); *State v. Albert*, 899 P.2d 103, 115 (Alaska 1995).

[48] *See Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976) (approving of "less speculative, less deferential, more intensified means-to-end inquiry" for traditional (continued...)

It is significant that other agencies, political subdivisions, and states provide, or have provided, employment benefits to their employees' same-sex domestic partners. The state does not dispute the plaintiffs' contention that the University of Alaska does or did so and that it adopted qualifying criteria.[49] Likewise, other states[50] and municipalities,[51] including the City and Borough of Juneau,[52] offer the same health

---

[48](...continued)
rational basis test).

[49] Under the university's plan, an employee and the employee's partner submit an affidavit stating that they are financially interdependent partners and meet certain criteria of commitment and dependency. They must meet eight criteria including: having an exclusive personal relationship with each other for at least the last twelve consecutive months and an intention to continue the relationship indefinitely; residing together at the same primary residence for at least the last twelve consecutive months and intending to reside together indefinitely; considering themselves members of each other's immediate family; being responsible for each other's common welfare; and sharing financial obligations. They must also attest that they meet at least five of a second set of eight criteria, including: jointly purchasing or leasing real property; jointly owning an automobile; sharing a joint bank or credit account; naming each other as life insurance beneficiaries; and naming each other as primary beneficiaries in each other's wills. UNIVERSITY OF ALASKA, *Explanation of Availability of Benefits Based on Financially Interdependent Relationship*, *at* http://info.alaska.edu/hr/ forms/PDF/B140-FIPExplanation.pdf (last visited June 13, 2003).

[50] *E.g.*, CAL. GOV'T CODE § 22818, *amended by* 2005 Cal. Legis. Serv. 418 (West); OR. ADMIN. R. 101-015-0005(c); WASH. ADMIN. CODE § 182-12-260. A more complete list of states that provide health benefits to domestic partners can be found in a database maintained by the Human Rights Campaign. The database can be accessed through the organization's website at http://www.hrc.org (last visited October 21, 2005).

[51] According to the Human Rights Campaign's database, 130 cities and counties offer domestic partner benefits. As of October 21, 2005, the cities and counties included, for example, Atlanta, Broward County, Chicago, Denver, and New York City. *See* ATLANTA, GA., CODE OF ORDINANCES § 2-858; BROWARD COUNTY, FL., CODE § 16 1/2-156; CHICAGO, ILL., MUNICIPAL CODE ch. 2-152-072; DENVER, CO., REV. MUNICIPAL
(continued...)

benefits to domestic partners, per their eligibility standards, that they offer to married couples.

We do not assume, as plaintiffs assert, that the state and the municipality can simply adopt the methodology the University of Alaska adopted to administer its programs. The state has many more employees than the university. Nonetheless, that many other agencies, municipalities, and states offer employment benefits to their employees' same-sex domestic partners suggests that the governments' legitimate administrative concerns can be satisfied. The availability of these benefits elsewhere persuades us that administrative difficulties are not an insurmountable barrier to providing benefits if our constitution requires that they be provided. We therefore conclude that the absolute exclusion of same-sex couples is not substantially related to the goal of maximizing administrative efficiency.

Promotion of marriage. The state and municipality assert that they have a legitimate interest in the promotion of marriage. To support this assertion, the municipality points to "the ancient cultural and legal status of marriage" and the place of a marriage between one man and one woman as "the historic foundation of society." Amicus curiae Alaska Catholic Conference also contends that the promotion of marriage is a legitimate state interest. It cites in support several United States Supreme Court decisions that have recognized the right to marry as "involv[ing] interests of basic

---

(...continued)
CODE § 18.321(4)-18.328; NEW YORK CITY, N.Y., ADMINISTRATIVE CODE § 3-244(1).

[52] *See* http://www.juneau.lib.ak.us/cbj/risk_management/pdfs/2005/Enrollment Guide2005.pdf (last visited June 6, 2005).

importance in our society."[53] The Supreme Court has also explained that "marriage is a social relation subject to the state's police power."[54]

We have never considered whether the promotion of marriage is a valid governmental interest.

Plaintiffs argue that whether or not the promotion of marriage is a legitimate governmental interest, the state is not truly interested in promoting marriage, because, if it were, it would not have prevented gays and lesbians from entering into married relationships. This argument has little merit. The state rightly argues that just because the legislature did not want to promote same-sex marriage does not mean it did not have a sincere interest in promoting "traditional" marriage.

Plaintiffs also challenge the legitimacy of any interest in promoting marriage. They argue that the state and municipality "may not assert an interest in promoting married relationships for its own sake." They claim that the government "may not favor a class simply because it favors the class," and that discrimination is never a legitimate interest. That proposition is certainly correct, but the promotion of marriage in and of itself is not necessarily discriminatory. And it is not irrational. Among other things, it can encourage family stability (an undeniably valid public goal), as the Alaska Catholic Conference argues.

---

[53] *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967) (describing marriage as "one of the vital personal rights essential to the orderly pursuit of happiness" by free people); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) ("one of the basic civil rights of man"); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("essential to the orderly pursuit of happiness").

[54] *Loving*, 388 U.S. at 7; *Maynard v. Hill*, 125 U.S. 190, 205 (1888) ("Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature.").

As to this issue, plaintiffs' true challenge is to the decision to promote family stability among opposite-sex couples but not among same-sex couples. They argue that the social good from family stability in same-sex relationships is just as important and valuable as the social good from stable opposite-sex relationships. Assuming plaintiffs' argument is correct, it would not establish that an interest in promoting marriage is not legitimate. Given the social benefits potentially inherent in marriage and the Supreme Court's statement that marriage is subject to state regulation,[55] we conclude that the promotion of marriage is at least a legitimate governmental interest.

We accept the state's contention that providing employment benefits to spouses of its employees may encourage persons to marry or stay married. Such benefits are financially valuable and their availability may be an important or even critical factor to persons deciding whether to marry. But the question here is whether the means chosen to advance the interest are substantially related to the governments' interest.

The first part of the chosen means — providing a benefit to spouses — is directly related to advancing the marriage interest. But the second part of the chosen means — restricting eligibility to persons in a status that same-sex domestic partners can never achieve — cannot be said to be related to that interest. There is no indication here that denying benefits to public employees with same-sex domestic partners has any bearing on who marries. There is no indication here that granting or denying benefits to public employees with same-sex domestic partners causes employees with opposite-sex domestic partners to alter their decisions about whether to marry. There is no indication here that any of the plaintiffs, having been denied these benefits, will now seek opposite-sex partners with an intention of marrying them. And if such changes resulted in sham or unstable marriages entered only to obtain or confer these benefits, they would not

---

[55] *See Loving*, 388 U.S. at 7.

seem to advance any valid reasons for promoting marriage. In short, there is no indication that the programs' challenged aspect — the denial of benefits to all public employees with same-sex domestic partners — has any relationship at all to the interest in promoting marriage. To repeat: making benefits available to spouses may well promote marriage; denying benefits to the same-sex domestic partners who are absolutely ineligible to become spouses has no demonstrated relationship to the interest of promoting marriage.

The municipality raises several other arguments that justify brief response. It asserts that it can properly limit eligibility because the Marriage Amendment sanctions the marriage relationship. We discussed above the effect of the Marriage Amendment and rejected a contention that it altogether forecloses plaintiffs' equal protection claims. See Part III.B. Moreover, the marriage relationship sanctioned by the amendment cannot justify unequal treatment unless the means relate to the purpose. No one has suggested that the Marriage Amendment would permit the municipality to double the pay of only its married employees or permit it to hire only married persons.

The municipality seems to imply that accepting the plaintiffs' arguments would require defendants to extend marriage benefits to members of "other non-traditional marriages," such as persons in polygamous relationships. But polygamy is illegal in Alaska,[56] as are incestuous relationships.[57] Even though same-sex domestic relationships are not marriages in Alaska,[58] they are not illegal. And, following

---

[56] AS 11.51.140.

[57] AS 11.41.450.

[58] Alaska Const. art. I, § 25.

Lawrence v. Texas, they could not be made illegal.[59] Nothing we hold here would require public employers to extend to members of polygamous or incestuous relationships the employment benefits they provide to their employees' spouses.

d. Equal protection conclusion

The governmental interests of cost control, administrative efficiency, and promotion of marriage are legitimate, but the absolute denial of benefits to public employees with same-sex domestic partners is not substantially related to these governmental interests.

In this case, because the programs at issue govern the governments' actions in their specific capacities as public employers, rather than in their broader governmental capacities, the programs' marital preferences would have difficulty meeting the means-to-end fit requirement unless they had a fair and substantial relationship to the governments' roles as public employers. When the state or a political subdivision acts in this capacity, it is subject to the overarching principles set out in article I, section 1, and article XII, section 6, of the Alaska Constitution. Those sections guarantee all Alaskans "the rewards of their own industry" and require public employment to be based on merit.[60] Programs allowing the governments to give married workers substantially greater compensation than they give, for identical work, to workers with same-sex partners cut against these constitutional principles yet further no legitimate goal of the governments as public employers. However legitimate these programs' broader policy goals may be, then, the means they employ would not be fairly and substantially related

---

[59] *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (holding that states may not criminalize private, consensual homosexual relations).

[60] Alaska Const. art. I, § 1 ("This constitution is dedicated to the principle[] that all persons have a natural right to . . . the enjoyment of the rewards of their own industry. . . ."); Alaska Const. art. XII, § 6.

to furthering those goals.

We therefore conclude, applying minimum scrutiny, that the challenged programs violate the individual plaintiffs' right to equal protection of the law.

D. *Trombley v. Starr-Wood Cardiac Group* Does Not Control Here.

The state argues that comments we made in *Trombley v. Starr-Wood Cardiac Group, P.C.*[61] "should be dispositive" of the constitutional issues now before us.

Trombley did not address constitutional issues. The Trombleys appealed the dismissal of their malpractice claims arising out of Barbara Trombley's medical care. One issue was whether Dale Trombley could bring a loss-of-consortium claim. While Barbara was being treated, she was cohabiting with Dale Trombley but was married to Keith Bradick. Some months later she divorced Bradick and married Dale Trombley. The superior court rejected Dale's consortium claim on summary judgment. In considering Dale's appellate contention that an unmarried cohabitant could claim loss of consortium, we said that "[w]hether spousal consortium claims should be extended to unmarried cohabitants as a general matter is not an easy issue to resolve. There are reasonable arguments on both sides."[62] We did not decide whether, "as a general matter," unmarried cohabitants could ever claim loss of consortium. We instead affirmed the denial of the consortium claim because one of the cohabitants was actually married to someone else when the alleged malpractice occurred.[63]

The state contends that it follows from our quoted characterization of the

---

61 *Trombley v. Starr-Wood Cardiac Group, P.C.*, 3 P.3d 916 (Alaska 2000).

62 *Id.* at 923 (emphasis added).

63 *Id.*

argument limiting consortium claims to legal spouses as "reasonable" that the legislature's choice in denying employment benefits to unmarried cohabitants must also be "reasonable and hence constitutional." It asserts that both areas "concern simply the right to receive money."

And of course, because they were not a same-sex couple, nothing prohibited Dale and Barbara from marrying as soon as Barbara divorced her prior spouse. Plaintiffs correctly observe that this court there "analyzed distinctions between married heterosexual couples and unmarried heterosexual couples, who *can* marry. It did not analyze distinctions between heterosexual couples [and] lesbian and gay couples, who *cannot* marry." (Emphasis in original.) That we stated in dictum that it was "reasonable" not to allow consortium claims by unmarried cohabitants does not mean that the government can treat unmarried couples of the same sex differently than it treats unmarried couples of the opposite sex.

E. Remedy

Plaintiffs do not contend that finding an equal protection violation would require that the benefits programs themselves must end: they simply seek the same benefits and opportunities potentially available to opposite-sex couples. Only the spousal limitations in the programs are unconstitutional, and they are invalid only to the extent they deny benefits to persons who are absolutely precluded from becoming eligible for those benefits, even though their domestic relationship is not illegal.

Therefore, one possible remedy would be to give the state and the municipality a reasonable opportunity to adopt standards for making these benefits available to persons deemed eligible. Many other public employers now have programs

that may be useful models,[64] and private employers may also.[65] Having held unconstitutional the exclusion of same-sex couples from access to civil marriage, the Supreme Judicial Court of Massachusetts in *Goodridge v. Department of Public Health*, vacated the department's summary judgment and remanded for entry of judgment consistent with its opinion. But it stayed entry of judgment on remand for 180 days to permit the legislature "to take such action as it may deem appropriate in light of this opinion."[66]

Because the parties have not addressed the issue of remedy, or how the state and municipality may comply, we invite supplemental briefing on this issue.

IV. CONCLUSION

We conclude that the public employers' spousal limitations violate the Alaska Constitution's equal protection clause. We therefore VACATE the judgment below. After hearing from the parties about the issue of remedy, we will REMAND. Until we resolve the issue of remedies, the disputed benefits programs remain in effect.

---

[64] *See supra* notes 49-52.

[65] According to the Human Rights Campaign's database, 247 Fortune 500 companies offer domestic partner benefits. The database can be accessed through the organization's website at http://www.hrc.org (last visited October 21, 2005).

[66] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 969-70 (Mass. 2003); *see also Baker v. State*, 744 A.2d 864, 886 (Vt. 1999). In *Baker*, the Vermont Supreme Court deferred to the prerogatives of the legislature "to craft an appropriate means of addressing this constitutional mandate." It therefore left the current statutory scheme in effect "for a reasonable period of time to enable the Legislature to consider and enact implementing legislation in an orderly and expeditious fashion." *Id.* at 887.

Senator Dyson Defends Alaska Marriage Amendment
Calls Supreme Court Decision Disappointing - Plans Corrective Legislation
Released: October 28, 2005

(**Anchorage**) - In an amazing opinion released today, the Alaska Supreme Court ruled that the 70% of Alaskans who approved the "Alaska Marriage Amendment" in 1998, created a cause of discrimination.

"This ruling reveals how out of touch some of our courts are with the people of Alaska," said Sen. Fred Dyson (R- Eagle River). "Similar lawsuits have challenged 'Defense of Marriage Acts' in other states. The people in those states have quickly passed additional constitutional language amendments to make it clear that the courts may **NOT** confer benefits that the people, through their elected officials, do not intend to confer. We are putting together constitutional amendment language similar to that of Virginia and Ohio and plan to have it ready for the legislature's consideration by the beginning of the legislative session in early January."

"In a representative democracy, the people must be able to define basic family relationships as the U.S. Congress did over 100 years ago when they made Polygamy illegal for states entering the union. We are engaged in a great cultural war in our country with traditional family values under attack on every front. The People of Alaska drew a clear line in the sand with overwhelming support for the definition of traditional marriage in our constitution. Now I believe they will rally to support a further clarifying amendment that makes it very clear that they meant what they said and a court that is hard of hearing will not thwart them."

The lawsuit, brought by the ACLU and several gay and lesbian couples, claims that because they no longer can apply the "remedy" of getting married, they can now not apply for spousal benefits from employer benefit programs, and are thus discriminated against. The court acknowledges that heterosexual "couples" are also precluded from some benefits programs, but decided that they have a remedy by marrying. The court declined to comment on "plural" marriages where an employee may have several "intimate, committed relationships". Offering spousal benefits to same sex couples is, and always has been, an option in Alaska, but that was not enough for these plaintiffs and this court.

# # #

http://www.akrepublicans.org/dyson/24/news/dyso20051028O1p.php

Return to Previous Page | Print This Page

985 P.2d 979
(Cite as: 985 P.2d 979)

C
Bess v. Ulmer
Alaska,1999.

Supreme Court of Alaska.
Howard BESS, Darlene Bess, Jay Brause, and Gene Dugan, Appellants,
v.
Fran ULMER, Lieutenant Governor of the State of Alaska, and State of Alaska, Appellees.
The Alaska Legislature, acting by and through the Alaska Legislative Council, Representative Pete Kelly, and Senator Loren Leman, Appellants,
v.
Fran Ulmer, in her official capacity as the Lieutenant Governor of the State of Alaska, Appellee.
Elizabeth A. Dodd, Victor "Vic" Fischer, Katherine T. "Katie" Hurley, Ernest E. Line, George Rogers, and Jean Rogers, Appellants,
v.
Fran ULMER, Lieutenant Governor of the State of Alaska, Sandra Stout, Director of Division of Elections, and the State of Alaska, Appellees.
Nos. S-8811/S-8812/S-8821.

Aug. 17, 1999.

Citizens groups challenged three ballot propositions to "amend" the state Constitution, alleging they were "revisions" for which a constitutional convention was required. The Superior Court, Third Judicial District, Anchorage, Sen K. Tan, J., granted summary judgment for the state defendants. Citizens groups appealed. After issuing a preliminary opinion, the Supreme Court, Matthews, C.J., held that: (1) as a matter of first impression, both the quantity and the quality of the proposed constitutional changes are considered when determining whether the changes are a constitutional "amendment" or instead a "revision"; (2) ballot proposition to limit the rights of prisoners to those afforded by the federal Constitution was a "revision"; (3) ballot proposition providing that same-sex marriages would not be valid or recognized by the state was an "amendment"; (4) ballot proposition removing from executive branch and assigning to neutral body the power to reapportion state legislative districts was an "amendment"; and (5) surplus language would be deleted from ballot proposition for constitutional amendment on same-sex marriages.

Preliminary opinion reaffirmed.

Compton, J., dissented in part and filed an opinion.

West Headnotes

[1] Appeal and Error 30 ⇐893(1)

30 Appeal and Error
30XVI Review

30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
In a case involving a question of law, the appellate court reviews the grant of summary judgment de novo and adopts the rule of law that is most persuasive in light of precedent, reason, and policy.

[2] Constitutional Law 92 ⇐5

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k5 k. In General. Most Cited Cases

Constitutional Law 92 ⇐7

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k7 k. Legislative Powers and Proceedings. Most Cited Cases

Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases
The Constitution can be neither revised nor amended, except in the manner prescribed by itself, and the power which it has conferred upon the legislature in reference to proposed amendments, as well as to calling a convention, must be strictly pursued. Const. Art. 13, §§ 1, 4.

[3] Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases
The Framers' decision to narrow the alternatives for adopting revisions to the Constitution by making constitutional conventions the sole permissible procedure demonstrates not only their awareness of the distinction between revisions and amendments, but also their desire to give the distinction substance, thereby ensuring that it would be observed by future generations of Alaskans. Const. Art. 13, §§ 1, 4.

[4] Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise

Constitution. Most Cited Cases
One purpose of requiring a constitutional convention for revisions of the Constitution is to promote stability, and another purpose is to provide a specialized body of citizens whose sole purpose is to consider the Constitution as an organic whole, and to make the appropriate and necessary changes. Const. Art. 13, § 4.

|5| Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
In deciding whether a proposed change to the Constitution is an amendment that can be submitted to the voters, or instead a revision that requires adoption at a constitutional convention before ratification by the voters, the court must consider both the quantity and quality of the proposed constitutional changes. Const. Art. 13, §§ 1, 4.

|6| Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases
An enactment which is so extensive in its provisions as to change directly the substantial entirety of the Constitution by the deletion or alteration of numerous existing provisions may well constitute a "revision" thereof for which a constitutional convention is required, while even a relatively simple enactment may accomplish such far reaching changes in the nature of the basic governmental plan as to amount to a revision also. Const. Art. 13, § 4.

|7| Constitutional Law 92 ⇐5

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k5 k. In General. Most Cited Cases
The process for "amendment" of the Constitution, which does not require a constitutional convention, is proper for those changes which are few, simple, independent, and of comparatively small importance. Const. Art. 13, §§ 1, 4.

|8| Constitutional Law 92 ⇐8

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
The core determination of whether a proposed change to the Constitution is an amendment that can be submitted to the voters, or instead a revision that requires adoption at a constitutional convention before ratification by the voters, is always the same: whether the changes are so significant as to create a need to consider the Constitution as an organic whole. Const. Art. 13, §§ 1, 4.

[9] Constitutional Law 92 ⇐8

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
Ballot proposition to change the state Constitution, to limit rights of prisoners to those afforded by the federal Constitution, was not an "amendment" but instead a "revision" for which a constitutional convention was required; qualitatively, the change would substantially alter the substance and integrity of the state Constitution, and quantitatively, the change would potentially alter as many as eleven separate sections of the state Constitution. Const. Art. 13, §§ 1, 4.

[10] Constitutional Law 92 ⇐8

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of

State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
A ballot proposition proposing to change the state Constitution, to provide that same-sex marriages would not be valid or recognized by the state, was an " amendment" rather than a "revision" for which a constitutional convention was required; quantitatively, few constitutional sections would be directly affected, and qualitatively, the change would not necessarily or inevitably alter the basic governmental framework of the Constitution. Const. Art. 13, §§ 1, 4.

|11| Constitutional Law 92 ⇨8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇨9(.5)

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
Ballot proposition to change the state Constitution, removing from executive branch and assigning to neutral body the power to reapportion state legislative districts, was an "amendment" rather than a "revision" for which constitutional convention was required; qualitatively, the change did not deprive the executive branch of a foundational power, and quantitatively, the number of other constitutional provisions that would be affected was minimal. Const. Art. 6, § 1 et seq.; Art. 13, §§ 1, 4.

|12| Constitutional Law 92 ⇨76

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(C) Executive Powers and Functions
92k76 k. Nature and Scope in General. Most Cited Cases
The intent of the Framers in giving the reapportionment power to the executive branch was primarily to prevent the abuse or neglect of that power in the hands of the legislature, rather than to safeguard a uniquely executive function. Const. Art. 6, § 1.

|13| Constitutional Law 92 ⇨5

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k5 k. In General. Most Cited Cases

Constitutional Law 92 ⇐8

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases
In general, changes to the Constitution that are few, simple, and independent can be considered an "amendment," whereas sweeping change is a "revision" for which a constitutional convention is required. Const. Art. 13, §§ 1, 4.

[14] Constitutional Law 92 ⇐8

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
In determining whether a ballot measure for a purported constitutional "amendment" is actually a "revision" for which a constitutional convention is required, respect for the legislature and the electoral process requires that courts should decline to order a measure removed from the ballot except in clear cases. Const. Art. 13, §§ 1, 4.

[15] Constitutional Law 92 ⇐9(1)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(1) k. Method of Submission and Form of Ballots. Most Cited Cases
In a ballot proposition proposing to change the state Constitution, to provide that same-sex marriages would not be valid or recognized by the state, language having the effect of providing for harmonization with other constitutional provisions was mere surplusage that might be construed in an unintended fashion at some future time, and thus, deletion of the language was required. Const. Art. 13, § 1.

[16] Constitutional Law 92 ⇐9(1)

92 Constitutional Law
921 Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(1) k. Method of Submission and Form of Ballots. Most

985 P.2d 979
(Cite as: 985 P.2d 979)

Cited Cases
Language which is surplusage in a ballot proposition to amend the Constitution should not be part of the Constitution. Const. Art. 13, § 1.

[17] Constitutional Law 92 ⇐8

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k8 k. Conventions to Revise Constitution. Most Cited Cases

Constitutional Law 92 ⇐9(.5)

92 Constitutional Law
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) k. In General. Most Cited Cases
Three ballot propositions to change the state Constitution with respect to prisoners' rights, marriage, and state legislative reapportionment procedures lacked a substantial relationship to each other and were proposed for separate and independent approval, and thus, consideration of the propositions in the aggregate was not required when determining whether the measures were revisions for which a constitutional convention was required. Const. Art. 13, § 4.

Preliminary Opinion and Order

Robert H. Wagstaff, Law Offices of Robert H. Wagstaff, Anchorage, for Appellants Bess, Brause and Dugan.
James L. Baldwin, Assistant Attorney General, Bruce M. Botelho, Attorney General, Juneau, for Appellee State of Alaska.
Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Appellee Alaska Legislature.
Allison E. Mendel, Mendel & Associates, Anchorage, for Appellants Dodd, Fischer, Hurley, Line and Rogers.
Jay Alan Sekulow, John P. Tuskey, American Center for Law and Justice, Virginia Beach, Virginia; Kevin Theriot, American Center for Law and Justice-Florida, Panama City, Florida; Robert B. Flint, Hartig, Rhodes, Norman, Mahoney and Edwards, Anchorage, for Amicus Curiae American Center for Law and Justice.

Before: MATTHEWS, Chief Justice, COMPTON, EASTAUGH, FABE, and BRYNER, Justices.

OPINION
MATTHEWS, Chief Justice.

I. *INTRODUCTION*

Citizen groups challenged three ballot propositions to amend the Alaska Constitution because the propositions were revisions not amendments; revisions can

only be accomplished through a constitutional convention. In an expedited Preliminary Opinion and Order we held that Legislative Resolve No. 59 (relating to prisoners' right's) is a revision, and struck it from the ballot.[FN1] Legislative Resolve No. 71 (limiting marriage) and Legislative Resolve No. 74 [FN2] (relating to apportionment) are amendments, and therefore could appear on the ballot, though we disallowed a portion of No. 71. This opinion reaffirms and amplifies our Preliminary Opinion and Order.[FN3]

FN1. Appellant Bess challenged Legislative Resolve No. 59 in briefs to the superior court and to this court. The State and Legislative defendants did not respond to the argument that the resolve, considered individually, constituted a revision.

FN2. Appellant Bess challenged Legislative Resolve No. 74 in briefs to the superior court and to this court. The State and Legislative defendants again failed to respond to the challenge.

FN3. Our Preliminary Opinion and Order is attached as an appendix. It has been edited.

***982** II. *FACTS AND PROCEEDINGS*

The superior court granted summary judgment in favor of the State defendants and the Legislative Council, entering final judgment on September 8, 1998. This court granted expedited consideration and heard oral argument on the case on September 18, 1998. On September 22, 1998, we issued a Preliminary Opinion and Order, striking Legislative Resolve No. 59 (restricting the rights of Alaska prisoners to those guaranteed by the federal constitution), allowing in part and deleting in part Legislative Resolve No. 71 (limiting marriage to the union of one man and one woman), and allowing Legislative Resolve No. 74 (transferring the power of reapportionment from the Executive branch to a Redistricting Board).

III. *STANDARD OF REVIEW*

[1] The parties agree that there are no material issues of fact before the court. Because the present case involves a question of law, we review the grant of summary judgment de novo and "adopt the rule of law that is most persuasive in light of precedent, reason, and policy." [FN4]

FN4. *Guin v. Ha.* 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

IV. *DISCUSSION*

[2] We based our expedited Preliminary Opinion and Order on the fact that the Constitution of the State of Alaska can be changed in only two ways-amendment and revision-and that a separate procedure must

be followed for each. To amend the Constitution, the proposed change must be passed by a two-thirds vote of each legislative house and then approved by a majority of the voters.[FN5] The Constitution may be revised by constitutional convention. [FN6] By holding that Legislative Resolve No. 59 was a revision, and as such inappropriate as a ballot measure, we adopted the view that the Constitution "can be neither revised nor amended, except in the manner prescribed by itself, and the power which it has conferred upon the legislature in reference to proposed amendments, as well as to calling a convention, must be strictly pursued." [FN7]

FN5. *See* Alaska Const. art. XIII, § 1.

FN6. *See id.* at § 4. Amendments may also be accomplished by convention. *See id.*

FN7. *McFadden v. Jordan*, 32 Cal.2d 330, 196 P.2d 787, 789 (1948) (quoting *Livermore v. Waite*, 102 Cal. 113, 36 P. 424, 425 (1894)).

The objective of this opinion is to elucidate the distinction between amendatory changes and revisory changes, to provide some guidance for future endeavors to change the Constitution.

The Framers of the Alaska Constitution distinguished between a revision and an amendment. Like scholars and other framers in other states, they intended this distinction to be substantive. We conclude that a revision is a change which alters the substance and integrity of our Constitution in a manner measured both qualitatively and quantitatively.

A. *Revision and Amendment*

The Framers of Alaska's Constitution explicitly contemplated the importance of the differentiation between amendments and revisions and between their respective fields of application.[FN8] In debating the text of article XIII, section 4, one constitutional convention delegate stated "[t]here is a big difference between revisions, which implies rewriting the constitution, and making amendments to specific articles or sections of the constitution." [FN9] Although no precise definition of the terms was reached by the Framers (perhaps because such a task is not possible), there was consensus that "amendment" contemplated a simple change, whereas "revision" would encompass broader and more comprehensive changes.[FN10] The Framers also understood that "[r]evision includes amendment ***983** but amendment does not include revision." [FN11] In recognition of these distinctions, the Framers fashioned more stringent procedures for adopting revisions than for adopting amendments.

FN8. *Cf. Adams v. Gunter*, 238 So.2d 824, 831 (Fla.1970) (quoting *McFadden*, 196 P.2d at 796-98) (noting "differentiation ... between [the] two procedures and between their respective fields of application.").

FN9. 2 Proceedings of the Alaska Constitutional Convention (PACC) 1247 (January 5, 1956).

FN10. *See id.* at 1274-77.

FN11. *Id.* at 1275.

As first proposed to the convention, article XIII allowed revisions and amendments to be adopted by two successive legislatures.[FN12] Delegates offered changes during floor debate distinguishing between revisions and amendments. Delegate Cooper proposed a change allowing revisions to be adopted by a two-thirds vote of two successive legislatures, a constitutional convention, or a three-fourths affirmative vote of a single legislature.[FN13] Under this proposal, amendments were to be adopted by a popular, three-fifths majority vote.[FN14] As ultimately passed, article XIII retained procedural distinctions for adopting revisions and amendments, but specified constitutional conventions as the only available avenue for revisions.

FN12. 6 PACC App. V at 21-22 (December 9, 1955).

FN13. 2 PACC at 1242.

FN14. *Id.*

[3] The Framers' decision to narrow the alternatives for adopting revisions by making constitutional conventions the sole permissible procedure demonstrates not only their awareness of the distinction between revisions and amendments, but also their desire to give the distinction substance, thereby ensuring that it would be observed by future generations of Alaskans.

Scholars have also concluded that a distinction exists between the two methods of constitutional change. Judge John A. Jameson, in his *Treatise on Constitutional Conventions*, wrote that the legislative process of amending a constitution should be confined to "changes which are few, simple, independent, and of comparatively small importance," whereas a constitutional convention is required for "a general revision of a Constitution, or even for single propositions involving radical changes as to the policy of which the popular mind has not been informed by prior discussion."[FN15]

FN15. Judge John A. Jameson, *A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding* § § 540, 574(c) (Chicago, Callaghan and Company, 4th ed. 1887).

985 P.2d 979
(Cite as: 985 P.2d 979)

Judge Jameson's examples of topics properly considered "amendments" include changes designed to address "a doubt ... as to the construction to be put upon a particular clause[,] ... or a new distribution among the agencies of government of their constitutional powers ... to facilitate the transaction of business, or to render public operations more safe or more economical." FN16

FN16. *Id.* at § 540.

[4] One purpose of requiring a constitutional convention for revisions of the constitution is to promote stability.
Some political thinkers have interpreted the written constitution in the American political system as a stabilizing element which operates to retard change or requires a more deliberate selection of what changes society deems desirable, hence acceptable. As a document embodying the fundamental political beliefs of the people and an accepted general arrangement of governmental powers, there is indeed good reason to examine searchingly any major changes proposed in the basic structure and philosophy.[FN17]

FN17. Public Administration Service, 3 *Constitutional Studies: Constitutional Amendment and Revision* 1 (November 8, 1955).

Another purpose is to provide a specialized body of citizens whose sole purpose is to consider the constitution as an organic whole, and to make the appropriate and necessary changes.
[C]omplete revisions or even alterations of a very thorough character should be made by conventions expressly chosen for that purpose. Legislatures will usually have their time taken up with other matters and be unable to devote sufficient time to [the] subject, and the election of a body for the one purpose concentrates public attention ***984** upon questions of a constitutional character.[FN18]

FN18. Walter F. Dodd, *The Revision and Amendment of State Constitutions* 261-62 (1910).

According to Judge Jameson, constitutional changes of a magnitude which can only be accomplished by a revision are not a task for the legislature:
The legislature is a body chosen for temporary purposes. It is a mirror of political passions and interests, and, with the best intentions, cannot be expected to be free from bias, even in questions of the highest moment. It is composed, moreover, in general, of politicians rather than of statesmen.... But, when a Convention is called, it is sometimes possible to secure the return of such men.
It is not necessarily because such a body is recognized to be, as it is, the most important ever assembled in a State, but because the measures it is expected to

mature bear less directly on the interests of parties or of individuals. Party management, therefore, is not usually so much directed to the seeking of control of a Convention as of a legislature. Besides, the proper function of the latter body, that of municipal legislation, being one of the highest vested by the sovereign in any governmental agency, it cannot but be inexpedient, on a general view, that there should be added to it that of organic legislation, requiring different and higher gifts, and wider experience and study, thus threatening to unsettle the balance of the Constitution.[FN19]

FN19. Jameson, *Constitutional Conventions* at § 539.

The case law of other states which have similar constitutional provisions that distinguish between amendments and revisions is in accord with the scholarly writing. The courts have held that constitutions which provide for both pro cesses of amendment and revision express a distinction of substance. FN20 The Supreme Court of Florida described one aspect of the distinction by stating that amendments "originate in the legislature and the people have the choice only of acceptance or rejection of the ones the legislature submits," while in the case of revision "[t]he people's delegates, elected for the purpose, ... weigh proposed provisions, debate their merits, [and] decide what should become and what should not become the organic law." FN21 The same court later held that the power to amend the constitution (as distinct from the power to revise it) "includes only the power to amend any section in such a manner that such amendment if approved would be complete within itself, relate to one subject and not substantially affect any other section or article of the Constitution or require further amendments to the Constitution to accomplish its purpose." FN22

FN20. *See, e.g., Jackman v. Bodine*, 43 N.J. 453, 205 A.2d 713, 725-26 (1964); *Holmes v. Appling*, 237 Or. 546, 392 P.2d 636, 638-39 (1964).

FN21. *Rivera-Cruz v. Gray*, 104 So.2d 501, 503-04 (Fla.1958). *See also State v. Manley*, 441 So.2d 864, 877 (Ala.1983) (Torbert, C.J., concurring) ("The people of this State, through their Constitution ..., have decreed that they reserve, in revising or replacing the Constitution, a role much more active than merely passing upon a proposal someone else has written.").

FN22. *Adams v. Gunter*, 238 So.2d 824, 831 (Fla.1970).

B. *California's Resolution of the Issue*

As the Framers of the Alaska Constitution

did not sufficiently define the difference between the two concepts for our purposes, and because Alaska has not before had occasion to address the deceptively simple question of the distinction between revisory and amendatory changes, it is helpful to look to the law of California, a state which has considered the issue carefully over a period of nearly one hundred years. A line of California Supreme Court cases, beginning with *Livermore v. Waite*,[FN23] has outlined the parameters of the procedures for constitutional change in that state. The *Livermore* court described the importance of adhering to strict procedures for revising and amending the California Constitution.

FN23. 102 Cal. 113, 36 P. 424 (1894).

Under the first of these methods the entire sovereignty of the people is represented in the convention. The character and extent of a constitution that may be framed by that body is freed from any limitations ***985** other than those contained in the constitution of the United States. If, upon its submission to the people, it is adopted, it becomes the measure of authority for all the departments of government,-the organic law of the state,-to which every citizen must yield an acquiescent obedience .... The legislature is not authorized to assume the function of a constitutional convention, and propose for adoption by the people a revision of the entire constitution under the form of an amendment.... The very term "constitution " implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicated the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term "amendment" implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed.[FN24]

FN24. *Id.* at 426.

The California Supreme Court relied heavily on *Livermore* when it decided *McFadden v. Jordan* [FN25] more than a half-century later. *McFadden* concerned a proposed "amendment" to the California Constitution. The amendment was designed to add a new article, composed of two hundred and eight subsections, totalling more than twenty-one thousand words.[FN26] The court rejected the proposed amendment because it was so " far reaching and multifarious" as to amount to a revision.[FN27]

FN25. 32 Cal.2d 330, 196 P.2d 787 (1948).

FN26. *Id.* at 790.

FN27. *Id.* at 788.

The proposal is offered as a single amendment but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder. Minorities favoring each proposition severally might, thus aggregated, adopt all. Such an appeal might well be proper in voting on a revised constitution, proposed under the safeguards provided for such a procedure, but it goes beyond the legitimate scope of a single amendatory article. There is in the measure itself no attempt to enumerate the various and many articles and sections of our present Constitution which would be affected, altered, replaced or repealed.[FN28]

FN28. *Id.* at 796-97.

Four cases on the same topic followed *McFadden.*[FN29] In three of those cases the California Supreme Court decided that challenged proposals to amend the state constitution were not impermissible revisions.[FN30] *Amador Valley v. State* [FN31] concerned Proposition 13, which proposed a new article, dramatically changing California's system of property taxation. [FN32] After discussing *Livermore* and *McFadden,* the court went on to state that the method for distinguishing between amendments and revisions "must be both quantitative and qualitative in nature." [FN33]

FN29. These cases are: *Legislature of the State of California v. Eu,* 54 Cal.3d 492, 286 Cal.Rptr. 283, 816 P.2d 1309 (1991); *Raven v. Deukmejian,* 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077 (1990); *Brosnahan v. Brown,* 32 Cal.3d 236, 186 Cal.Rptr. 30, 651 P.2d 274 (1982); *Amador Valley Joint Union High School Dist. v. State Board of Equalization,* 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978).

FN30. *See Eu,* 286 Cal.Rptr. 283, 816 P.2d at 1318; *Brosnahan,* 186 Cal.Rptr. 30, 651 P.2d at 288-89; *Amador Valley,* 149 Cal.Rptr. 239, 583 P.2d at 1284-89.

FN31. 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978).

FN32. *Id.* 149 Cal.Rptr. 239, 583 P.2d at 1283.

FN33. *Id.* 149 Cal.Rptr. 239, 583 P.2d at 1286.

For example, an enactment which is so extensive in its provisions as to change ***986** directly the "substantial entirety" of

the Constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof. However, even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also. In illustration, ... an enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.[FN34]

FN34. *Id.*

The court held that Proposition 13 was neither quantitatively nor qualitatively revisory in nature, despite the fact that it accomplished "substantial changes" in the tax system.[FN35]

FN35. *Id.* 149 Cal.Rptr. 239, 583 P.2d at 1286-87, 1289.

In *Brosnahan v. Brown*,[FN36] the California Supreme Court applied this quantitative/qualitative analysis in holding that the proposition known as the "Victims' Bill of Rights" was not an illegitimate revision.[FN37] The court concluded that the "substantial changes" the proposal would accomplish failed to amount to a sufficiently "far reaching change[ ] in the nature of [the] basic governmental plan as to amount to a revision."[FN38]

FN36. 32 Cal.3d 236, 186 Cal.Rptr. 30, 651 P.2d 274 (1982).

FN37. *Id.* 186 Cal.Rptr. 30, 651 P.2d at 276, 288-89.

FN38. *Id.* 186 Cal.Rptr. 30, 651 P.2d at 288-89 (quoting *Amador Valley*, 149 Cal.Rptr. 239, 583 P.2d at 1286).

Finally, in *Legislature of the State of California v. Eu*,[FN39] the California Supreme Court addressed a proposed amendment designed to limit "the powers of incumbency" by providing for term limits and restrictions on legislators' retirement benefits.[FN40] Although the court recognized that "[t]erm and budgetary limitations may affect and alter the particular legislators and staff who participate in the legislative process," it held that "the basic and fundamental structure of the Legislature as a representative branch of government is left substantially unchanged" and therefore the proposal was not a qualitative revision of the constitution.[FN41]

FN39. 54 Cal.3d 492, 286 Cal.Rptr. 283, 816 P.2d 1309 (1991).

FN40. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1312.

FN41. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318.

Less than a year before *Eu* was decided, the California Supreme Court had applied the quantitative/qualitative analysis to a challenged initiative measure and reached a different result in *Raven v. Deukmejian.* [FN42] At issue there was a proposal entitled the "Crime Victims Justice Reform Act," designed to limit the rights of criminal defendants to those guaranteed by the federal constitution.[FN43] To that end, the measure contained a section that provided that certain criminal law rights " shall be construed by the courts of [California] in a manner consistent with the Constitution of the United States" and that the state constitution "shall not be construed to afford greater rights" than those afforded by the federal constitution. [FN44] The *Eu* court later noted that the proposal in *Raven* (in contrast to that in *Eu*) was one that "would have fundamentally changed and subordinated the constitutional role assumed by the judiciary in the governmental process." [FN45] In other words, the amendment would affect a core function of one of the three branches of government, an outcome expressly forbidden by *Amador Valley.* [FN46]

FN42. 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077 (1990).

FN43. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1079, 1080-83.

FN44. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086.

FN45. *Eu,* 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN46. 149 Cal.Rptr. 239, 583 P.2d at 1286 ("[A]n enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.").

The California Supreme Court based its holding in *Raven* solely on the qualitative effect of the proposed amendment:

***987** As a practical matter, ultimate protection of criminal defendants from deprivation of their constitutional rights would be left in the care of the United States Supreme Court. Moreover, the nature and extent of state constitutional guarantees would remain uncertain and undeveloped unless and until the high court had spoken and clarified *federal* constitutional law.

In effect, [the proposed amendment] would substantially alter the substance and integrity of the state Constitution as a document of independent force and effect.[FN47]

FN47. *Raven,* 276 Cal.Rptr. 326, 801 P.2d at 1087 (emphasis in original).

The court specifically stated that the

proposed amendment did not have a quantitatively revisory effect, as it " delete[d] no existing constitutional language and it affect[ed] only one constitutional article," [FN48] but concluded that qualitatively it was "so far reaching as to amount to a constitutional revision beyond the scope of the initiative process." [FN49]

FN48. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086-87 (emphasis omitted).

FN49. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086.

C. *The Alaska Rule and Its Application to the Three Challenged Ballot Measures*

[5][6] The Constitution of Alaska, like that of California, provides different procedures for different methods of constitutional change.[FN50] In deciding whether the proposal is an amendment or revision, we must consider both the quantity and quality of the proposed constitutional changes. We agree with the reasoning of the California Supreme Court in *Livermore, McFadden,* and *Amador Valley* that

FN50. *See* discussion at page 982, *supra.*

an enactment which is so extensive in its provisions as to change directly the " substantial entirety" of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.[[[[[[FN51]]

FN51. *Amador Valley,* 149 Cal.Rptr. 239, 583 P.2d at 1286.

[7][8] The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." [FN52] The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole. With this in mind, we turn to an evaluation of each of the three challenged ballot measures.

FN52. Jameson, *Constitutional Conventions* at § 540.

1. *Legislative Resolve No. 59*

[9] This measure proposed to amend the Alaska Constitution by adding a new section to article I, providing as follows: Rights of Prisoners. Notwithstanding any other provision of this constitution, the rights and protections, and the extent of those rights and protections, afforded by this constitution to prisoners convicted of crimes shall be limited to those rights and protections, and the extent of those rights

and protections, afforded under the Constitution of the United States to prisoners convicted of crimes.

This proposal bears an obvious similarity to the initiative measure at issue in *Raven*. FN53 Like the *Raven* court, we find the proposal to "amount to a constitutional revision beyond the scope of the [ballot] process," FN54 although our reasoning differs somewhat. The *Raven* court held that the proposal constituted a qualitatively revisory change to the constitution, but not a quantitatively revisory change.FN55 We take a hybrid approach. Not only would the proposal, for the reasons stated in *Raven*, "substantially alter the substance and integrity of the state Constitution as a document of independent force and effect," ***988** FN56 but as we held in the Preliminary Opinion and Order, it also would potentially alter as many as eleven separate sections of our Constitution. Both qualitatively and quantitatively, therefore, Legislative Resolve No. 59 is an impermissible constitutional revision.

FN53. 276 Cal.Rptr. 326, 801 P.2d at 1086.

FN54. *Id.*

FN55. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086-90.

FN56. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1087.

2. *Legislative Resolve No. 71*

[10] This measure proposed to amend the Alaska Constitution by adding a new section to article I providing as follows: Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex.

Under our hybrid analysis, this proposed ballot measure is sufficiently limited in both quantity and effect of change as to be a proper subject for a constitutional amendment.FN57 Few sections of the Constitution are directly affected, and nothing in the proposal will "necessarily or inevitably alter the basic governmental framework" of the Constitution.FN58

FN57. Our Preliminary Opinion and Order deleted the second sentence of Legislative Resolve No. 71 on other grounds. Appellants expressed concern that the language could be interpreted to permit the prosecution of individuals involved in marriage-like relationships without the benefit of state sanction, and that this risk might discourage religiously sanctioned marriage ceremonies. Appellees questioned the need for deletion, contending

that the language was mere surplusage, but conceded at oral argument that this court has the power to order deletion. We explained our decision to order deletion as follows:

We do not believe that language which is surplusage should be part of the constitution. Of special concern is the possibility that the sentence in question might be construed at some future time in an unintended fashion which could seriously interfere with important rights. As decades pass, the legislative history of the resolve may fade from memory. Further, court decisions lack the permanency of constitutional language and may be overruled. The objective of the second sentence-harmonization of other provisions of the constitution with the meaning of the first sentence-will be achieved in any event, for a specific amendment controls other more general provisions with which it might conflict. [*See*] *Johns v. Commercial Fisheries Entry Comm'n,* 758 P.2d 1256, 1264 (Alaska 1988); *State v. Ostrosky,* 667 P.2d 1184, 1190 (Alaska 1983).

FN58. *Brosnahan,* 186 Cal.Rptr. 30, 651 P.2d at 289.

3. Legislative Resolve No. 74

[11][12] This ballot measure was designed to alter the reapportionment scheme of article VI of the Alaska Constitution, concerning House and Senate districts. The Framers of the Alaska Constitution gave the power to reapportion the legislative districts to the executive branch, to be used as a check against legislative power.[FN59] Legislative Resolve No. 74 removes this power from the executive and assigns it to a neutral body.[FN60] Reassigning this power is unquestionably a significant change in the present system of Alaskan government. It does not, however, deprive the executive branch of a "foundational power," and as a result does not constitute a revision.[FN61] As the quantitative effect of the proposal is minimal, the qualitative force of this narrow change would have to be greater to satisfy our hybrid test. The essential function of the executive branch-to enforce the laws of the state-remains unchanged, as does its structure. No executive power is delegated to either of the other two branches. In fact, the intent of the Framers in giving the reapportionment power to the executive was primarily to prevent the abuse or neglect of that power in the hands of the legislature, rather than to safeguard a uniquely executive function.[FN62] Historically, ***989** the "method [of delegating reapportionment power to the legislature itself] was a total failure" so the Framers delegated it to the executive "in order to assure that the reapportionment will be made and that there will not be neglect."[FN63]

FN59. *See* 3 PACC 1839 (January 11, 1956)("[S]tudents and writers seem generally in accord that reapportionment ... has been neglected where it has been left to legislators.").

FN60. The power to draw the boundaries of the House and Senate districts thereby passes from the governor, with the advice of a reapportionment board of his own appointment, to a five-member Redistricting Board, two members of which are appointed by the governor and one each by the House Speaker, the Senate President, and the Chief Justice of the Supreme Court.

FN61. *Eu,* 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN62. Though the Framers assigned the reapportionment power to the executive branch, there are statements in the Proceedings of the Constitutional Convention that indicate that assigning the power to an independent board would be a rational, relatively uncontroversial alternative. *See* 3 PACC at 1859, 1863.

FN63. 3 PACC 1858 (January 11, 1956).

This proposal, unlike Legislative Resolve No. 59, does not "fundamentally change[ ] and subordinate[ ] the constitutional role" of any branch in the governmental process. FN64 Therefore, although the proposed change is substantial, it is not so "far reaching and multifarious" as to comprise a revision.FN65

FN64. *Eu,* 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN65. *Cf. Brosnahan,* 186 Cal.Rptr. 30, 651 P.2d at 288-89; *Amador Valley,* 149 Cal.Rptr. 239, 583 P.2d at 1284-89.

V. *CONCLUSION*

We REAFFIRM the Preliminary Opinion and Order.

COMPTON, Justice, dissenting in part.
I have reexamined the Preliminary Opinion and Order, my partial dissent from that order, and the court's present amplification of its preliminary opinion. Nothing presented in the amplification has persuaded me now to take a different path.

First, I think it unclear just what test the court is adopting. The court cites and quotes with approval California cases that have shaped that state's development of the constitutional distinction between revisions of and amendments to its constitution. California's analysis does not focus on only one test, but rather on two: does the proposed enactment quantitatively *or*

qualitatively revise the constitution? If a proposed enactment changes the substantial entirety of the constitution because of numerous deletions and alterations, quantitatively it may constitute a revision. On the other hand, if a proposed enactment accomplishes a far reaching change in the nature of government, qualitatively it likewise may constitute a revision even though the enactment is simple. California's analysis does not entirely preclude some degree of subjectivity in its application, but realistically it could not. The California approach seems well suited to its purpose.

This court states that it "agree[s] with the reasoning of the California Supreme Court. " [FN1] Yet in regard to Legislative Resolve No. 59, it states that "[w]e take a hybrid approach." [FN2] It concludes that Legislative Resolve No. 59 fails both the quantitative and qualitative tests. [FN3] Applying California's analysis, the proposal is a revision. While it may be correct to say that Legislative Resolve No. 59 fails both tests, I do not understand why this makes the test "hybrid."

FN1. Op. at 987.

FN2. Op. at 987.

FN3. *Id.*

The court again refers to its "hybrid analysis" in its discussion of Legislative Resolve No. 71.[FN4] It concludes that this proposal "is sufficiently limited in both quantity and effect of change as to be a proper subject for constitutional amendment." [FN5] This proposal offends neither of California's tests, and would not be a revision in that state. Again I fail to understand what is hybrid about the analysis applied by this court.

FN4. *Id.*

FN5. *Id.*

The court uses the term "hybrid" again with respect to Legislative Resolve No. 74. [FN6] It concludes that although reassignment of the power to reapportion the legislature is "significant," it does not constitute a revision since it does not deprive the executive branch of a " foundational power." [FN7] The court reasons: "As the quantitative effect of the proposal is minimal, the qualitative force of this narrow change would have to be greater to satisfy our hybrid test." [FN8] The court still has not articulated just what its "hybrid test" is, ***990** although it sounds suspiciously like a sliding comparative scale test of some sort.

FN6. Op. at 988.

FN7. *Id.*

FN8. *Id.*

The California analysis, with which this

court has stated it agrees, does not test by comparing quantitative and qualitative criteria; each stands on its own merits. A proposed enactment could satisfy neither test, either test, or both tests. That does not make the test a "hybrid," nor does it suggest some sort of sliding comparative scale. This court's failure to carefully articulate the test it is adopting is unfortunate.

This court's analysis is not constrained by contrary findings or analysis by the superior court. Although the superior court was asked to adopt California's *Raven v. Deukmejian* [FN9] analysis, it declined to do so. It concluded that looking to "the historical context of constitutional amendments in Alaska" was the correct analytical approach. The superior court concluded that "a lot of these amendments add[ ] to rights rather than detract [ ] from them, ... then on the flip side the same constitutional amendment could detract from [them]." A revision would not be necessary; an amendment would suffice. Thus the record and briefing are virtually barren of any presentation of the quantitative or qualitative impact of Legislative Resolve No. 74. Nonetheless, this court declares the quantitative effect to be "minimal" and the qualitative effect "narrow." [FN10]

FN9. 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077 (1990).

FN10. Op. at 987.

It is valuable to compare Legislative Resolve No. 74 with Legislative Resolve No. 59 and Legislative Resolve No. 71. Legislative Resolve No. 59 amends article I of the Alaska Constitution by adding section 25, which, in sixty-five words or less, limits the rights of prisoners. This court has identified eleven constitutional provisions that will be actually or potentially affected by Legislative Resolve No. 59.[FN11] It concludes that this proposed enactment is not a permissible constitutional amendment, foundering on both quantitative and qualitative grounds.[FN12] Since I agree that the proposal founders on quantitative grounds, I need not address the remainder of the conclusion. Suffice it to say, however, that its application appears relatively simple.

FN11. Op. Appendix at 995.

FN12. Op. at 987.

Legislative Resolve No. 71 amends article I of the Alaska Constitution by adding section 26, which, in forty-five words or less, defines marriage. This court concludes that this proposed enactment is a permissible constitutional amendment, not a revision, since it is limited "in both quantity and effect of change."[FN13] Again, I agree.

FN13. *Id.*

Legislative Resolve No. 74 is altogether another matter. It explicitly amends article VI of the Alaska Constitution by revising sections 1, 2, 3, 4, 6, 8, 9, 10, and 11, and by repealing sections 5 and 7; article XI by revising section 3; article XIV by repealing it; and article XV by adding section 29. It implicitly amends article VI of the Alaska Constitution by adding to the powers of the Chief Justice of the Alaska Supreme Court. As noted, this is brushed aside by the court as quantitatively "minimal." [FN14] While some of the amendments are procedural in nature, others alter the core of the reapportionment/redistricting process as it has been known in Alaska since statehood.

FN14. Op. at 987.

This court cites carefully selected language from *Legislature of the State of California v. Eu*,[FN15] to support its assertion that the executive branch must be deprived of a " foundational power" before a proposed enactment constitutes a revision rather than an amendment.[FN16] That is not what *Eu* says:

FN15. 54 Cal.3d 492, 286 Cal.Rptr. 283, 816 P.2d 1309 (1991).

FN16. Op. at 987-988.

By contrast, Proposition 140 on its face does not affect either the structure or the foundational powers of the Legislature, which remains free to enact whatever laws it deems appropriate. The challenged measure alters neither the content of those laws nor the process by which they are ***991** adopted. No legislative power is diminished or delegated to other persons or agencies. The relationships between the three governmental branches, and their respective powers, remain untouched.[FN17]

FN17. *Eu*, 286 Cal.Rptr. 283, 816 P.2d at 1318.

Citing *Raven*, *Eu* observes that "a qualitative revision includes one that involves a change in the basic plan of California government, i.e., a change in its fundamental structure or the foundational powers of its branches." [FN18] Later, *Eu* again observes that "[o]ur prior decisions have made it clear that to find such a revision, it must *necessarily or inevitably appear from the face* of the challenged provision that the measure will substantially alter the basic governmental framework set forth in our Constitution." [FN19]

FN18. *Id.* (citing *Raven*, 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077).

FN19. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1319 (citations omitted).

Neither *Eu* nor any other California case

requires that the branch of government to be affected by a proposed enactment be deprived of a foundational power before the proposal constitutes a revision rather than an amendment. Rather, *Eu* 's language is much less demanding. Its qualifiers are "*affect,*" "*alter,*" "*change,*" "*diminish[ ],*" and "*delegate[ ].*" [FN20] In *Eu,* the California Supreme Court concluded that "[t]he relationships between the three governmental branches, and their respective powers, remain *untouched.*" [FN21]

FN20. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318-19 (emphasis added).

FN21. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318 (emphasis added).

This court acknowledges that "[t]he Framers of the Alaska Constitution gave the power to reapportion the legislative districts to the executive branch, to be used as a check against legislative power," citing a statement in the Proceedings of the Alaska Constitutional Convention that " [S]tudents and writers seem generally in accord that reapportionment ... has been neglected where it has been left to legislators." [FN22] The court advances no reason why the executive branch should now be deprived of this check on legislative power, so debated in the Constitutional Convention, and so unique in American government. Nor does the court take issue with the statement I made in my dissent to the Preliminary Opinion and Order that

FN22. Op. at 988 and note 59.

[t]he chief executive's constitutional powers, including the power over reapportionment, were among the most debated, if not the most debated, issues at Alaska's Constitutional Convention.... [N]ot only will the "amendment" divest the chief executive of much of the constitutional power that office has held since statehood, and invest the legislature with a constitutional power heretofore unknown to it, but also it will bring the judiciary into the reapportionment process in a manner which is potentially highly political.[[[[[FN23]

FN23. Op. Appendix at 997.

This court recognized the uniqueness of Alaska's constitutional reapportionment scheme over thirty years ago in *Wade v. Nolan:* [FN24]

FN24. 414 P.2d 689 (Alaska 1966).

Before attempting to discuss [whether the acts of the Governor and his advisory Reapportionment Board in reapportioning the Senate were authorized by the Alaska Constitution] it is well to explain the origin of a unique feature of the reapportionment provisions of the Alaska Constitution. Whereas, traditionally, reapportionment

had been made the responsibility of state legislatures, the Alaska Constitutional Convention purposely avoided placing any authority or responsibility for reapportionment in the legislature. The Convention was aware of the notorious and frequent failure or downright refusal of state legislatures to comply with their constitutional or statutory duty to reapportion. The Alaska Convention's reason for placing reapportionment responsibility in the Governor was well stated by its Chairman of the Committee on Suffrage, Elections and Apportionment, John S. Hellenthal....

....

***992** A reading of the Convention minutes in relation to the reapportionment provisions makes it abundantly clear that it was the specific intent of the Convention to grant no authority to and to place no responsibility in the legislature with respect to reapportionment. In a clear and clean-cut departure from tradition, all of the authority and responsibility for reapportionment granted or assigned was placed in the Governor, assisted by a Reapportionment Board, including the authority to make minor changes in Senate Districts.[FN25]

FN25. *Id.* at 694-95.

The court quotes Hellenthal at length, including his reference to other variations of a plan.[FN26] Hellenthal concludes with the statement that "the best thought seemed to indicate that the people would be best helped if [reapportionment] were an executive function.... But it is the inaction of the legislature, as testified to by the universal history of the 48 states, that we're trying to overcome." [FN27] There is virtually no textual support for this court's assertion that some Framers believed " assigning the power to an independent board would be a rational, relatively uncontroversial alternative." [FN28]

FN26. *Id.*

FN27. 3 Proceedings of the Alaska Constitutional Convention (PACC) 1859 (January 11, 1956).

FN28. Op. at 988, note 62.

In my dissent from the court's Preliminary Opinion and Order, I remarked that [t]he proposed constitutional "revision" regarding prisoners affects a narrow class of persons comparatively few in number. Yet because it implicates numerous state constitutional provisions, and divests prisoners of state constitutional protections, we conclude that it is a constitutional "revision" that cannot be brought before the voters as a constitutional "amendment" initiated by legislative action.[1] On the other hand, we conclude that the proposed change regarding reapportionment, which fundamentally redistributes among all three branches of government constitutional power previously held by the

chief executive alone, impacts all voters within the state, and restructures the manner by which the voters are grouped together to elect their legislators, is a mere constitutional "amendment" undeserving of the politically impartial deliberation inherent in the constitutional convention process. The irony is remarkable.[FN29]

FN29. Op. Appendix at 997.

FN[1] In concluding that Legislative Resolve No. 74 is an "amendment" and not a "revision," the court observes that "[w]hile the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous sections of the constitution." Except for the "does not substantially affect" phrase, which relates to the numerous constitutional provisions that will be affected, what could be more easily expressed and understood than that the rights of prisoners under the Alaska Constitution shall be limited to those afforded by the Constitution of the United States?

Juxtaposing these two proposed enactments today produces no less irony than it did eleven months ago when the Preliminary Opinion and Order were entered. The landscape so carefully crafted by the Alaska Constitutional Convention's Committee on Suffrage, Elections and Apportionment has been fundamentally and dramatically "affected," "altered," and "changed." The executive branch's power has been "diminished" by being "delegated" to a board of significantly different composition than that which heretofore was constituted. Legislative Resolve No. 74 does not leave the relationships between the three respective branches of government, and their respective powers, "untouched." The contrary is plainly evident. Legislative Resolve No. 74 is just as plainly a constitutional revision. The substance of Legislative Resolve No. 74 should have to undergo the deliberative scrutiny to which the issue was subjected in anticipation of statehood. To proclaim that this is a "narrow" enactment, as does this court, is to reduce reapportionment to the trivial. Years of reapportionment litigation, and hundreds of pages of Alaska Supreme Court orders and opinions, demonstrate just how important the issue is, and how wrong this court is to hold otherwise.

***993** APPENDIX

DISCUSSION

1. Challenged in this case are three ballot propositions to amend the Alaska Constitution which by legislative resolve are to be placed before the voters in the

985 P.2d 979
(Cite as: 985 P.2d 979)

November 1998 general election. The superior court granted summary judgment in favor of the State defendants and the Legislative Council and entered final judgment on September 8, 1998. Because of the immediate need to decide what the general election ballot shall contain we granted expedited consideration. For the reasons set forth below we conclude that (1) Legislative Resolve No. 59 (relating to prisoners' rights) may not appear on the ballot, (2) Legislative Resolve No. 71 (limiting marriage) may appear on the ballot, but the second sentence of the proposed amendment should be deleted, and (3) Legislative Resolve No. 74 (relating to reapportionment) may appear on the ballot.

2. The Alaska Constitution recognizes two types of constitutional change. The constitution may be *amended* or it may be *revised*.

a. *Amendment.* There are two methods of amendment. The method relevant here is by legislative proposition which is passed by two-thirds of the members of each legislative house and adopted by a majority of the voters. Alaska Const. art. XIII, § 1 . A constitutional convention may also propose amendments. These become effective if they are ratified by the voters. Alaska Const. art. XIII, § 4.

b. *Revision.* There is one method of revision. The constitution may be revised only by a constitutional convention ratified by the voters. Alaska Const. art. XIII, § 4

3. All three ballot propositions are challenged on the ground that they are inappropriate as amendments under article XIII, section 1 of the Alaska Constitution. Appellants argue that the changes the propositions seek to accomplish can only be effected, if at all, by the constitutional process of revision.

4. Case law is evidently unanimous in support of the view that there is a distinction of substance between the concepts of amendment and revision and that some proposed constitutional changes can only be accomplished by revision. *McFadden v. Jordan,* [32 Cal.2d 330] 196 P.2d 787 (Cal.1948); *Rivera-Cruz v. Gray,* 104 So.2d 501 (Fla.1958). The proceedings of the Alaska Constitutional Convention indicate that the framers of our constitution were in accord with this view. 2 Proceedings of the Alaska Constitutional Convention 1247, 1251, 1275 (January 5, 1956).

[13] 5. The line between changes which are permissible as amendments and those which must necessarily be revisions cannot be drawn with precision. In general, changes which are "few and simple and independent" can be considered amendments, whereas "sweeping change" requires the revision process. *See State v. Manley,* 441 So.2d 864, 879 (Ala.1983) (Torbert, C.J., concurring); *Jackman v. Bodine* [43 N.J. 453] 205 A.2d 713, 725 (N.J.1964), both quoting sections from

Judge John A. Jameson, *A Treatise on Constitutional Conventions* (4th ed. 1887). *McFadden* is instructive on the distinction between amendment and revision. We quote it at some length because it was decided by a distinguished court only a few years before the Alaska Constitution was written. Quoting from an earlier case, the *McFadden* court discussed revisions made by a convention in which "the entire sovereignty of the people is represented...." *McFadden*, 196 P.2d at 789.

The character and extent of a constitution that may be framed by that body is freed from any limitations other than those contained in the constitution of the United States.... The very term ["]constitution" implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicated the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term "amendment" implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed.

***994** *Id.* (quoting *Livermore v. Waite*, [102 Cal. 113] 36 P. 424, 425 (Cal.1894)). The court held that the measure in question was so "far reaching and multifarious" that it was revisory rather than amendatory in nature. *Id.* at 788. The court listed numerous sections of the constitution which the measure in question would affect. *Id.* at 794-96. This review demonstrated

the wide and diverse range of subject matters proposed to be voted upon, and the revisional effect which it would necessarily have on our basic plan of government. The proposal is offered as a single amendment but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested....

Id. at 796-97. In *Adams v. Gunter*, 238 So.2d 824 (Fla.1970), the court opined that amendment as distinct from revision authority "includes only the power to amend any section in such a manner that such amendment if approved would be complete within itself, relate to one subject and not substantially affect any other section or article of the Constitution or require further amendments to the Constitution to accomplish its purpose." *Id.* at 831.

[14] 6. The above authorities are quoted merely to suggest factors that should be considered in determining whether a proposed constitutional change is amendatory or revisory. In making such a determination, respect for the legislature and the electoral process requires that courts should decline to order a measure removed from the ballot except in clear cases. *See Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 296 (Alaska 1984).

7. *Legislative Resolve No. 59.* This measure proposes to amend the Alaska Constitution by adding a new section to article I providing as follows:
Rights of Prisoners. Notwithstanding any other provision of this constitution, the rights and protections, and the extent of those rights and protections, afforded by this constitution to prisoners convicted of crimes shall be limited to those rights and protections, and the extent of those rights and protections, afforded under the Constitution of the United States to prisoners convicted of crimes.

1998 Legislative Resolve No. 59 (HCS CSSJR 3). All provisions of the Alaska Constitution granting prisoners' rights not granted under the federal constitution are superseded or amended by this measure.
Numerous provisions of the Alaska Constitution are either actually or potentially affected. Changed or potentially changed would be such constitutional guarantees as the right of all persons to equal rights, art. I, § 1; freedom of religion, art. I, § 4; freedom of speech, art. I, § 5; the right to petition government, art. I, § 6; the right to due process of law, art. I, § 7; protections from double jeopardy and self-incrimination, art. I, § 9; the right to counsel, art. I, § 11; protection from excessive bail, excessive fines and cruel and unusual punishment, art. I, § 12; the rights which flow from the principle of reformation, art. I, § 12; the privilege of habeas corpus, art. I, § 13; protection from unreasonable searches and seizures, art. I, § 14; and the right to privacy, art. I, § 22.

8. Legislative Resolve No. 59 is similar in character to the ballot measure involved in *Raven v. Deukmejian,* [52 Cal.3d 336, 276 Cal.Rptr. 326] 801 P.2d 1077 (Cal.1990). The measure in that case provided in part that the California Constitution "shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States...." *Id.* [276 Cal.Rptr. 326, 801 P.2d] at 1086. The California Supreme Court concluded that this measure "would be so far reaching as to amount to a constitutional revision...." *Id.* We reach the same conclusion in this case. Legislative Resolve No. 59 would eliminate the independent force and effect of so many provisions of the Alaska Constitution with respect to the rights of prisoners that it is beyond the limits of the amendatory process of article XIII, section 1.

9. *Legislative Resolve No. 71.* This measure would amend article I of the Alaska Constitution by adding a new section to read:
***995** Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex.

1998 Legislative Resolve No. 71 (HCS CSSJR 42). The appellees contend that the meaning of this measure is that only marriages between one man and one woman may be given official status and recognition. Appellants contend that it has broader implications. They argue that the first sentence necessarily amends the Alaska Constitution in three respects: changing the equal rights clause, art. I, § 1 ; the civil rights clause, art. I, § 3; and the privacy section, art. I § 22. They contend that the second sentence divests the judiciary of the power to interpret the constitution. Further, they argue that the second sentence "permits the criminalization of homosexual relationships ..." and may modify the free exercise of religion clause of article I, section 4 "because some religions ... perform same sex marriages today."

10. In our view the first sentence of the resolve is not so broad in scope that it is impermissible as an amendment. It potentially affects the meaning of the equal rights clause contained in article I, section 1 . Article I, section 3 is not affected, for it does not specify sexual preference as a suspect classification. Further, it is unclear whether the right to privacy is affected, for the first sentence is concerned with recognition of marriage as an official relationship, not with private relationships. Moreover, the content of the sentence is simple to express and understand. It relates to only one subject and does not substantially affect numerous other sections of the constitution.

[15][16] 11. More problematical are two aspects of the second sentence of the measure. The appellants argue that the second sentence may be interpreted to permit the prosecution of individuals because they are involved in marriage-like relationships which are not officially sanctioned, and may tend to inhibit, because of this risk, religiously sanctioned marriage ceremonies. The appellees counter that the second sentence is superfluous. They argue that it is intended to say no more than that other provisions of the Alaska Constitution must be harmonized with the first sentence. Appellees suggest that this court could make it clear that the proposed amendment is not intended to interfere with or criminalize private or religiously recognized same-sex partnerships by issuing an interpretation to that effect in this case. At oral argument the appellees acknowledged that this court has the power to order the deletion of the second sentence, but questioned the need for this action since the sentence is merely surplusage. We believe that there is such a need. We do not believe that language which is surplusage should be part of the constitution. Of special concern is the possibility that the sentence in question might be construed at some future time in an unintended fashion which could seriously interfere with important rights. As decades pass, the legislative history of the resolve may fade from memory. Further, court decisions lack the permanency of constitutional language and may be overruled. The objective of the

second sentence-harmonization of other provisions of the constitution with the meaning of the first sentence-will be achieved in any event, for a specific amendment controls other more general provisions with which it might conflict. *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1264 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1190 (Alaska 1983). Impelled by these considerations we believe that deletion of the second sentence is appropriate.

12. *Legislative Resolve No. 74.* This measure would amend article VI of the Alaska Constitution concerning the apportionment of House and Senate districts. Currently reapportionment is a function performed by the Governor. Under the proposed amendment the function would be performed by a board consisting of five members, two appointed by the Governor, one appointed by the presiding officer of the Senate, one by the presiding officer of the House of Representatives, and one by the Chief Justice of the Supreme Court. 1998 Legislative Resolve No. 74 (SCS CSHJR ***996** 44). It is our view that this resolve reflects an appropriate exercise of the amendatory power. While the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous other sections of the constitution.

[17] 13. The appellants also argue that the three ballot propositions should be considered in the aggregate to be beyond the constitutional amendatory process. We reject this argument, for the measures lack substantial relationship to each other and are proposed for separate and independent approval. *Cf. Rivera-Cruz v. Gray*, 104 So.2d 501 (Fla.1958) (discussing "daisy chain" argument).

14. In addition to the point that the measures are beyond the amendatory process, the parties raise two other process-related issues which are appropriate for decision prior to the election. These are whether the propositions violate a constitutional one-subject requirement and whether the Lieutenant Governor's summary is fair and impartial. The Legislative Council also objects to the summary as not fair and impartial. We have examined these claims and find them to be without merit. However, the final sentence of the summary regarding marriage must be deleted in conformity with our decision regarding that measure.

15. Appellants' remaining claims are inappropriate for a pre-election challenge.

ORDER

1. Legislative Resolve No. 59 shall not be placed on the ballot.

2. The second sentence of the amendment proposed by Legislative Resolve No. 71 shall not be placed on the ballot. To

conform with this change the last sentence of the Lieutenant Governor's summary shall be deleted.

3. Legislative Resolve No. 74 shall be placed on the ballot.

4. An opinion will follow.

Entered at the direction of the court.

COMPTON, Justice, dissenting, in part.

The court concludes that the words "amend" and "revise," as used in article XIII of the Alaska Constitution, indeed have a different meaning. I agree. It also concludes that the proposed changes to the constitution relating to prisoners and the definition of marriage are, in whole or in part, "revisions" to the constitution and hence cannot be placed on the ballot by legislative action; only a constitutional convention can act to place these issues before the voters. I also agree. However, the court concludes that the proposed change relating to the manner by which reapportionment is accomplished is merely an "amendment." By any measure this seems unsupportable; it is particularly so in light of the court's conclusions with respect to constitutional "revisions" regarding prisoners and the definition of marriage. Therefore, I dissent from the court's conclusion regarding this issue.

The Alaska Constitution provides for a chief executive with strong powers, one of which is the power to shape the composition of the reapportionment board. Effectively, this is the power to shape the composition of the legislature itself. Indeed, Alaska's is probably the only state constitution that grants its chief executive such broad power over reapportionment. The chief executive's constitutional powers, including the power over reapportionment, were among the most debated, if not the most debated, issues at Alaska's Constitutional Convention. To now permit this issue to be brought before the voters through legislative action as a constitutional "amendment" ignores the importance which the Constitutional Convention gave to this issue, and the pervasive effect the transfer of so much constitutional power from the chief executive to the legislature will have on the manner by which voters are grouped together to elect legislators. Moreover, not only will the "amendment" divest the chief executive of much of the constitutional power that office has held since statehood, and invest the legislature with a constitutional power heretofore unknown to it, but ***997** also it will bring the judiciary into the reapportionment process in a manner which is potentially highly political. The fact that the very persons whose interests are the most directly affected by this "amendment" are the persons who have brought the issue to the voters by the least restrictive, least impartial, and most politically sensitive process, should not be ignored.

The proposed constitutional "revision" regarding prisoners affects a narrow class of persons comparatively few in number.

Yet because it implicates numerous state constitutional provisions, and divests prisoners of state constitutional protections, we conclude that it is a constitutional "revision" that cannot be brought before the voters as a constitutional "amendment" initiated by legislative action.[FN1] On the other hand, we conclude that the proposed change regarding reapportionment, which fundamentally redistributes among all three branches of government constitutional power previously held by the chief executive alone, impacts all voters within the state, and restructures the manner by which the voters are grouped together to elect their legislators, is a mere constitutional "amendment" undeserving of the politically impartial deliberation inherent in the constitutional convention process. The irony is remarkable.

FN1. In concluding that Legislative Resolve No. 74 is an "amendment" and not a "revision," the court observes that "[w]hile the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous sections of the constitution." Except for the "does not substantially affect" phrase, which relates to the numerous constitutional provisions that will be affected, what could be more easily expressed and understood than that the rights of prisoners under the Alaska Constitution shall be limited to those afforded by the Constitution of the United States?

Alaska,1999.
Bess v. Ulmer
985 P.2d 979

END OF DOCUMENT

Westlaw Attached Printing Summary Report for PIERSON,JANE 6003886

Date/Time of Request:	Tuesday, April 17, 2007 15:07:00 Central
Client Identifier:	JJJ
Database:	AK-ST-ANN
Citation Text:	AK CONST Art 13, s 1
Lines:	82
Documents:	1
Images:	0

Const. Art. 13, § 1

C
ALASKA STATUTES
Constitution
Article XIII. Amendment and Revision
Section 1 Amendments.

Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

HISTORICAL NOTES

Effect of amendment. -- The amendment, effective October 10, 1970 (6th Legislature's SJR 2(1970)), substituted "lieutenant governor" for "secretary of state" in the second and last sentences.

The amendment effective October 12, 1974 (8th Legislature's HJR 20(1973)) substituted "general" for "statewide" near the end of the second sentence.

NOTES TO DECISIONS

The United States Congress has no power to amend a state's constitution. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

This article provides two methods of amending the constitution: (1) by a constitutional convention, followed by a ratification of the proposed amendment by the people, and (2) by a proposal that has obtained a two-thirds vote of each house of the legislature, and is adopted by the people by a majority vote at a statewide election. Starr v. Hagglund, 374 P.2d 316 (Alaska 1962).

The constitution of the State of Alaska provides only two means for its amendment. This section authorizes such amendments by a two-thirds vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. Alaska Const., art. XIII, §

Const. Art. 13, § 1

4 provides for amendments by a constitutional convention subject to ratification by the people. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

The Alaska Constitution may not be amended by popular vote alone, without prior action by either the legislature or a constitutional convention. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Adoption of proposition in Statehood Act did not amend constitution. -- Although included in Alaska Statehood Act, § 8(b), 48 U.S.C. Prec. § 21, was the provision that in the event that three propositions to be submitted to the voters were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i), since there was no state legislature in existence at the time of passage of the Statehood Act, the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution, and no constitutional convention was called to act on the matter. State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 975 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Proper subject for amendment. -- A legislative resolve to amend the recognition of marriage in the state was sufficiently limited in both quantity and effect of change as to be a proper subject for a constitutional amendment, since few sections of the state Constitution were affected, and nothing in the proposal would necessarily or inevitably alter the basic government framework of the Constitution. Bess v. Ulmer, 985 P.2d 979 (Alaska 1999).

A ballot measure designed to alter the reapportionment scheme of the state Constitution, although a significant change in the system of state government, did not deprive the executive branch of its foundational power to enforce the laws of the state, and thus the proposal did not constitute a revision. Bess v. Ulmer, 985 P.2d 979 (Alaska 1999).

Quoted in Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

Const. Art. 13, § 1, AK CONST Art. 13, § 1

Current through all 2006 Legislation. Annotations current through Opinions Decided as of July 1, 2006.

Const. Art. 13, § 1

END OF DOCUMENT

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

▷

Romer v. Evans
U.S.Colo.,1996.

Supreme Court of the United States
Roy **ROMER**, Governor of Colorado, et al., Petitioners,
v.
Richard G. EVANS et al.
No. 94-1039.

Argued Oct. 10, 1995.
Decided May 20, 1996.

Homosexual persons, municipalities, and others brought action against governor, state attorney general, and state, challenging validity of amendment to Colorado Constitution that prohibited all legislative, executive, or judicial action designed to protect homosexual persons from discrimination. The District Court, City and County of Denver, H. Jeffrey Bayless, J., 1993 WL 518586, entered permanent injunction enjoining enforcement of amendment, and defendants appealed. The Colorado Supreme Court affirmed, 882 P.2d 1335, and certiorari was granted. The Supreme Court, Justice Kennedy, held that amendment violated equal protection clause.

Affirmed.

Justice Scalia dissented and filed opinion in which Chief Justice Rehnquist and Justice Thomas joined.

West Headnotes

[1] Civil Rights 78 ⇐1005

78 Civil Rights
781 Rights Protected and Discrimination Prohibited in General
78k1002 Constitutional and Statutory Provisions
78k1005 k. Power to Enact and Validity. Most Cited Cases
(Formerly 78k105(2))

Civil Rights 78 ⇐1012

78 Civil Rights
781 Rights Protected and Discrimination Prohibited in General
78k1007 Bases of Discrimination and Classes Protected
78k1012 k. Sexual Orientation or Identity. Most Cited Cases
(Formerly 78k105(2))

Constitutional Law 92 ⇐224(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k224 Sex Discrimination
92k224(2) k. Particular Discriminatory Practices. Most Cited Cases
Equal protection clause was violated by

amendment to Colorado Constitution that prohibited all legislative, executive, or judicial action at any level of state or local government designed to protect homosexual persons from discrimination; amendment had peculiar property of imposing a broad and undifferentiated disability on a single named group, and amendment lacked a rational relationship to legitimate state interests. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 30b.

|2| Constitutional Law 92 ⇐234.6

92 Constitutional Law
92XI Equal Protection of Laws
92k234.5 Regulation of Use of Public Facilities or Services
92k234.6 k. In General. Most Cited Cases
Fourteenth Amendment does not give Congress a general power to prohibit discrimination in public accommodations. U.S.C.A. Const.Amend. 14.

|3| Constitutional Law 92 ⇐211(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k211 Nature and Scope of Prohibitions in General
92k211(2) k. Legislative Classification in General. Most Cited Cases
Fourteenth Amendment's promise that no person shall be denied equal protection of the laws must coexist with practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. U.S.C.A. Const.Amend. 14.

|4| Constitutional Law 92 ⇐213.1(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k213.1 Bases for Discrimination Affected in General
92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases
If a law neither burdens a fundamental right nor targets a suspect class, Supreme Court will uphold the legislative classification so long as it bears a rational relation to some legitimate end. U.S.C.A. Const.Amend. 14.

|5| Constitutional Law 92 ⇐213.1(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k213.1 Bases for Discrimination Affected in General
92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases
In the ordinary case, a law will be sustained under equal protection clause if it can be said to advance a legitimate government interest, even if law seems unwise or works to disadvantage of a particular group, or if rationale for it seems tenuous. U.S.C.A. Const.Amend. 14.

|6| Constitutional Law 92 ⇐211(1)

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

92 Constitutional Law
92XI Equal Protection of Laws
92k211 Nature and Scope of Prohibitions in General
92k211(1) k. In General; Discrimination. Most Cited Cases
Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to equal protection clause. U.S.C.A. Const.Amend. 14.

|7| Constitutional Law 92 ⇐209

92 Constitutional Law
92XI Equal Protection of Laws
92k209 k. Constitutional Guaranties in General. Most Cited Cases
Central both to the idea of rule of law and to Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. U.S.C.A. Const.Amend. 14.

|8| Constitutional Law 92 ⇐211(1)

92 Constitutional Law
92XI Equal Protection of Laws
92k211 Nature and Scope of Prohibitions in General
92k211(1) k. In General; Discrimination. Most Cited Cases
Equal protection of the laws is not achieved through indiscriminate imposition of inequalities. U.S.C.A. Const.Amend. 14.

|9| Constitutional Law 92 ⇐211(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k211 Nature and Scope of Prohibitions in General
92k211(2) k. Legislative Classification in General. Most Cited Cases
A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from government is itself a denial of equal protection of the laws in the most literal sense. U.S.C.A. Const.Amend. 14.

|10| Constitutional Law 92 ⇐209

92 Constitutional Law
92XI Equal Protection of Laws
92k209 k. Constitutional Guaranties in General. Most Cited Cases
The guaranty of equal protection of the laws is a pledge of the protection of equal laws. U.S.C.A. Const.Amend. 14.

|11| Constitutional Law 92 ⇐213.1(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k213.1 Bases for Discrimination Affected in General
92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases
If constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare desire to harm a politically unpopular

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

group cannot constitute a legitimate governmental interest. U.S.C.A. Const.Amend. 14.

[12] Constitutional Law 92 ⇐213.1(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k213.1 Bases for Discrimination Affected in General
92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases
To be valid under equal protection clause, a law must bear a rational relationship to a legitimate governmental purpose. U.S.C.A. Const.Amend. 14.

[13] Constitutional Law 92 ⇐211(2)

92 Constitutional Law
92XI Equal Protection of Laws
92k211 Nature and Scope of Prohibitions in General
92k211(2) k. Legislative Classification in General. Most Cited Cases
Class legislation is obnoxious to prohibitions of Fourteenth Amendment. U.S.C.A. Const.Amend. 14.
West CodenotesHeld Unconstitutional C.R.S.A. Cons. Art. 2, § 30b*Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***620** After various Colorado municipalities passed ordinances banning discrimination ****1622** based on sexual orientation in housing, employment, education, public accommodations, health and welfare services, and other transactions and activities, Colorado voters adopted by statewide referendum "Amendment 2" to the State Constitution, which precludes all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their "homosexual, lesbian or bisexual orientation, conduct, practices or relationships." Respondents, who include aggrieved homosexuals and municipalities, commenced this litigation in state court against petitioner state parties to declare Amendment 2 invalid and enjoin its enforcement. The trial court's grant of a preliminary injunction was sustained by the Colorado Supreme Court, which held that Amendment 2 was subject to strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. On remand, the trial court found that the amendment failed to satisfy strict scrutiny. It enjoined Amendment 2's enforcement, and the State Supreme Court affirmed.

Held: Amendment 2 violates the Equal

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

Protection Clause. Pp. 1624-1629.

(a) The State's principal argument that Amendment 2 puts gays and lesbians in the same position as all other persons by denying them special rights is rejected as implausible. The extent of the change in legal status effected by this law is evident from the authoritative construction of Colorado's Supreme Court-which establishes that the amendment's immediate effect is to repeal all existing statutes, regulations, ordinances, and policies of state and local entities barring discrimination based on sexual orientation, and that its ultimate effect is to prohibit any governmental entity from adopting similar, or more protective, measures in the future absent state constitutional amendment-and from a review of the terms, structure, and operation of the ordinances that would be repealed and prohibited by Amendment 2. Even if, as the State contends, homosexuals can find protection in laws and policies of general application, Amendment 2 goes well beyond merely depriving them of special rights. It imposes a broad disability upon those persons alone, forbidding them, but no others, to seek specific legal protection ***621** from injuries caused by discrimination in a wide range of public and private transactions. Pp. 1624-1627.

(b) In order to reconcile the Fourteenth Amendment's promise that no person shall be denied equal protection with the practical reality that most legislation classifies for one purpose or another, the Court has stated that it will uphold a law that neither burdens a fundamental right nor targets a suspect class so long as the legislative classification bears a rational relation to some independent and legitimate legislative end. See, *e.g.*, *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642-2643, 125 L.Ed.2d 257 (1993). Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment is at once too narrow and too broad, identifying persons by a single trait and then denying them the possibility of protection across the board. This disqualification of a class of persons from the right to obtain specific protection from the law is unprecedented and is itself a denial of equal protection in the most literal sense. Second, the sheer breadth of Amendment 2, which makes a general announcement that gays and lesbians shall not have any particular protections from the law, is so far removed from the reasons offered for it, *i.e.*, respect for other citizens' freedom of association, particularly landlords or employers who have personal or religious objections to homosexuality, and the State's interest in conserving resources to fight discrimination against other groups, that the amendment cannot be explained by reference to those reasons; the amendment raises the inevitable inference that it is born of animosity toward the class that it affects. Amendment 2 cannot be said to be directed to an identifiable legitimate purpose or discrete objective. It is a status-****1623**

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

based classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. Pp. 1627-1629.

882 P.2d 1335 (Colo.1994), affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ.,joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST , C.J., and THOMAS, J., joined, *post,* p. 1629.

Timothy M. Tymkovich, Denver, CO, for petitioners.

Jean E. Dubofsky, Boulder, CO, Suzanne B. Goldberg, New York City, Matthew Coles, San Francisco, CA, for respondents.For U.S. Supreme Court briefs, see:1996 WL 310026 (Pet.Brief)1995 WL 417786 (Resp.Brief)1996 WL 370335 (Resp.Brief)1995 WL 466395 (Reply.Brief)

***623** Justice KENNEDY delivered the opinion of the Court.

One century ago, the first Justice Harlan admonished this Court that the Constitution "neither knows nor tolerates classes among citizens." *Plessy v. Ferguson,* 163 U.S. 537, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256 (1896) (dissenting opinion). Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake. The Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution.

I

The enactment challenged in this case is an amendment to the Constitution of the State of Colorado, adopted in a 1992 statewide referendum. The parties and the state courts refer to it as "Amendment 2," its designation when submitted to the voters. The impetus for the amendment and the contentious campaign that preceded its adoption came in large part from ordinances that had been passed in various Colorado municipalities. For example, the cities of Aspen and Boulder and the city and County of Denver each had ***624** enacted ordinances which banned discrimination in many transactions and activities, including housing, employment, education, public accommodations, and health and welfare services. Denver Rev. Municipal Code, Art. IV, §§ 28-91 to 28-116 (1991); Aspen Municipal Code § 13-98 (1977); Boulder Rev.Code §§ 12-1-1 to 12-1-11 (1987). What gave rise to the statewide controversy was the protection the ordinances afforded to persons discriminated against by reason of their sexual orientation. See Boulder Rev.Code § 12-1-1 (defining "sexual orientation" as "the choice of sexual partners, i.e., bisexual, homosexual or heterosexual"); Denver Rev. Municipal

Code, Art. IV, § 28-92 (defining "sexual orientation" as "[t]he status of an individual as to his or her heterosexuality, homosexuality or bisexuality"). Amendment 2 repeals these ordinances to the extent they prohibit discrimination on the basis of "homosexual, lesbian or bisexual orientation, conduct, practices or relationships." Colo. Const., Art. II, § 30b

Yet Amendment 2, in explicit terms, does more than repeal or rescind these provisions. It prohibits all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians. The amendment reads:

"No Protected Status Based on Homosexual, Lesbian or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing." *Ibid.*

**1624 *625 Soon after Amendment 2 was adopted, this litigation to declare its invalidity and enjoin its enforcement was commenced in the District Court for the City and County of Denver. Among the plaintiffs (respondents here) were homosexual persons, some of them government employees. They alleged that enforcement of Amendment 2 would subject them to immediate and substantial risk of discrimination on the basis of their sexual orientation. Other plaintiffs (also respondents here) included the three municipalities whose ordinances we have cited and certain other governmental entities which had acted earlier to protect homosexuals from discrimination but would be prevented by Amendment 2 from continuing to do so. Although Governor Romer had been on record opposing the adoption of Amendment 2, he was named in his official capacity as a defendant, together with the Colorado Attorney General and the State of Colorado.

The trial court granted a preliminary injunction to stay enforcement of Amendment 2, and an appeal was taken to the Supreme Court of Colorado. Sustaining the interim injunction and remanding the case for further proceedings, the State Supreme Court held that Amendment 2 was subject to strict scrutiny under the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. *Evans v. Romer*, 854 P.2d 1270 (Colo.1993) *(Evans I)*. To reach this conclusion, the state court relied on our

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

voting rights cases, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Carrington v. Rash*, 380 U.S 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), and on our precedents involving discriminatory restructuring of governmental decisionmaking, see, *e.g.*, *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969); *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 10.. S.Ct. 3187, 73 L.Ed.2d 896 (1982); *Gordon v. Lance*, 403 U.S. 1, 91 S.Ct. 1889, 29 L.Ed.2d 273 (1971). On remand, the State advanced various arguments in an effort to show that ***626** Amendment 2 was narrowly tailored to serve compelling interests, but the trial court found none sufficient. It enjoined enforcement of Amendment 2, and the Supreme Court of Colorado, in a second opinion, affirmed the ruling. 882 P.2d 1335 (1994) (*Evans II*). We granted certiorari, 513 U.S. 1146, 115 S.Ct. 1092, 130 L.Ed.2d 1061 (1995), and now affirm the judgment, but on a rationale different from that adopted by the State Supreme Court.

II

[1] The State's principal argument in defense of Amendment 2 is that it puts gays and lesbians in the same position as all other persons. So, the State says, the measure does no more than deny homosexuals special rights. This reading of the amendment's language is implausible. We rely not upon our own interpretation of the amendment but upon the authoritative construction of Colorado's Supreme Court. The state court, deeming it unnecessary to determine the full extent of the amendment's reach, found it invalid even on a modest reading of its implications. The critical discussion of the amendment, set out in *Evans I*, is as follows:

"The immediate objective of Amendment 2 is, at a minimum, to repeal existing statutes, regulations, ordinances, and policies of state and local entities that barred discrimination based on sexual orientation. *See* Aspen, Colo., Mun.Code § 13-98 (1977) (prohibiting discrimination in employment, housing and public accommodations on the basis of sexual orientation); Boulder, Colo., Rev.Code §§ 12-1-2 to -4 (1987) (same); Denver, Colo., Rev. Mun.Code art. IV, §§ 28-91 to -116 (1991) (same); Executive Order No. D0035 (December 10, 1990) (prohibiting employment discrimination for 'all state employees, classified and exempt' on the basis of sexual orientation); Colorado Insurance Code, § 10-3-1104, 4A C.R.S. (1992 Supp.) (forbidding health insurance providers from determining insurability and premiums based on an applicant's, a beneficiary's, or an insured's ***627** sexual orientation); and various provisions****1625**

prohibiting discrimination based on sexual orientation at state colleges.[26]

FN[26]. Metropolitan State College of Denver prohibits college sponsored social clubs from discriminating in membership on the basis of sexual orientation and Colorado State University has an antidiscrimination policy which encompasses sexual orientation.

"The 'ultimate effect' of Amendment 2 is to prohibit any governmental entity from adopting similar, or more protective statutes, regulations, ordinances, or policies in the future unless the state constitution is first amended to permit such measures." 854 P.2d, at 1284-1285, and n. 26.

Sweeping and comprehensive is the change in legal status effected by this law. So much is evident from the ordinances the Colorado Supreme Court declared would be void by operation of Amendment 2. Homosexuals, by state decree, are put in a solitary class with respect to transactions and relations in both the private and governmental spheres. The amendment withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbids reinstatement of these laws and policies.

[2] The change Amendment 2 works in the legal status of gays and lesbians in the private sphere is far reaching, both on its own terms and when considered in light of the structure and operation of modern anti-discrimination laws. That structure is well illustrated by contemporary statutes and ordinances prohibiting discrimination by providers of public accommodations. " At common law, innkeepers, smiths, and others who 'made profession of a public employment,' were prohibited from refusing, without good reason, to serve a customer." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 571, 115 S.Ct. 2338, 2346, 132 L.Ed.2d 487 (1995). The duty was a general one and did not specify protection for particular groups. The common-law rules, however, proved ***628** insufficient in many instances, and it was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations. *Civil Rights Cases*, 109 U.S. 3, 25, 3 S.Ct. 18, 31-32, 27 L.Ed. 835 (1883). In consequence, most States have chosen to counter discrimination by enacting detailed statutory schemes. See, *e.g.*, S.D. Codified Laws §§ 20-13-10, 20-13-22, 20-13-23 (1995); Iowa Code §§ 216.6-216.8 (1994); Okla. Stat., Tit. 25, §§ 1502, 1402 (1987); 43 Pa. Cons.Stat. §§ 953, 955 (Supp.1995); N.J. Stat. Ann. §§ 10:5-3 , 10:5-4 (West Supp.1995); N.H.Rev.Stat. Ann. §§ 354-A:7, 354-A:10, 354-A:17 (1995); Minn.Stat. § 363.03 (1991 and

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

Supp.1995).

Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a consistent pattern. The laws first enumerate the persons or entities subject to a duty not to discriminate. The list goes well beyond the entities covered by the common law. The Boulder ordinance, for example, has a comprehensive definition of entities deemed places of "public accommodation." They include "any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind." Boulder Rev.Code § 12-1-1(j) (1987). The Denver ordinance is of similar breadth, applying, for example, to hotels, restaurants, hospitals, dental clinics, theaters, banks, common carriers, travel and insurance agencies, and "shops and stores dealing with goods or services of any kind." Denver Rev. Municipal Code, Art. IV, § 28-92 (1991).

These statutes and ordinances also depart from the common law by enumerating the groups or persons within their ambit of protection. Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply. In following this approach, Colorado's state and local governments have ***629** not limited antidiscrimination laws to groups that have so far been given the protection of heightened equal protection scrutiny under our cases. See, *e.g.*, *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 135, 114 S.Ct. 1419, 1425, 128 L.Ed.2d 89 (1994) (sex); *Lalli v. Lalli*, 439 U.S. 259, 265, 99 S.Ct. 518, 523, 58 L.Ed.2d 503 (1978) (illegitimacy); ****1626** *McLaughlin v. Florida*, 379 U.S. 184, 191-192, 85 S.Ct. 283, 288-289, 13 L.Ed.2d 222 (1964) (race); *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948) (ancestry). Rather, they set forth an extensive catalog of traits which cannot be the basis for discrimination, including age, military status, marital status, pregnancy, parenthood, custody of a minor child, political affiliation, physical or mental disability of an individual or of his or her associates---and, in recent times, sexual orientation. Aspen Municipal Code § 13-98(a)(1) (1977); Boulder Rev.Code §§ 12-1-1 to 12-1-4 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-92 to 28-119 (1991); Colo.Rev.Stat. §§ 24-34-401 to 24-34-707 (1988 and Supp.1995).

Amendment 2 bars homosexuals from securing protection against the injuries that these public-accommodations laws address. That in itself is a severe consequence, but there is more. Amendment 2, in addition, nullifies specific legal protections for this targeted class in all transactions in housing, sale of real estate, insurance, health and welfare

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

services, private education, and employment. See, *e.g.*, Aspen Municipal Code §§ 13-98(b), (c) (1977); Boulder Rev.Code §§ 12-1-2, 12-1-3 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-93 to 28-95, 28-97 (1991).

Not confined to the private sphere, Amendment 2 also operates to repeal and forbid all laws or policies providing specific protection for gays or lesbians from discrimination by every level of Colorado government. The State Supreme Court cited two examples of protections in the governmental sphere that are now rescinded and may not be reintroduced. The first is Colorado Executive Order D0035 (1990), which forbids employment discrimination against " 'all state employees, classified and exempt' on the basis of sexual orientation." 854 P.2d, at 1284. Also repealed, and now forbidden,are ***630** "various provisions prohibiting discrimination based on sexual orientation at state colleges." *Id.*, at 1284, 1285. The repeal of these measures and the prohibition against their future reenactment demonstrate that Amendment 2 has the same force and effect in Colorado's governmental sector as it does elsewhere and that it applies to policies as well as ordinary legislation.

Amendment 2's reach may not be limited to specific laws passed for the benefit of gays and lesbians. It is a fair, if not necessary, inference from the broad language of the amendment that it deprives gays and lesbians even of the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings. See, *e.g.*, Colo.Rev.Stat. § 24-4-106(7) (1988) (agency action subject to judicial review under arbitrary and capricious standard); § 18-8-405 (making it a criminal offense for a public servant knowingly, arbitrarily, or capriciously to refrain from performing a duty imposed on him by law); § 10-3-1104(1)(f) (prohibiting "unfair discrimination" in insurance); 4 Colo.Code of Regulations 801-1, Policy 11-1 (1983) (prohibiting discrimination in state employment on grounds of specified traits or "other non-merit factor"). At some point in the systematic administration of these laws, an official must determine whether homosexuality is an arbitrary and, thus, forbidden basis for decision. Yet a decision to that effect would itself amount to a policy prohibiting discrimination on the basis of homosexuality, and so would appear to be no more valid under Amendment 2 than the specific prohibitions against discrimination the state court held inval...

If this consequence follows from Amendment 2, as its broad language suggests, it would compound the constitutional difficulties the law creates. The state court did not decide whether the amendment has this effect, however, and neither need we. In the course of rejecting the argument that Amendment 2 is intended to conserve resources to fight

discrimination against suspect classes, the Colorado Supreme***631** Court made the limited observation that the amendment is not intended to affect many anti-discrimination laws protecting nonsuspect classes, *Romer II*, 882 P.2d, at 1346, n. 9. In our view that does not resolve the issue. In any event, even if, as we doubt, homosexuals could find some safe harbor in laws of general application, we cannot accept the view that Amendment 2's prohibition on specific legal protections does no more than deprive homosexuals****1627** of special rights. To the contrary, the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. They can obtain specific protection against discrimination only by enlisting the citizenry of Colorado to amend the State Constitution or perhaps, on the State's view, by trying to pass helpful laws of general applicability. This is so no matter how local or discrete the harm, no matter how public and widespread the injury. We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them: these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

III

[3][4] The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 271-272, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870 (1979); *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561-562, 64 L.Ed. 989 (1920). We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. See, *e.g.*, *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642, 125 L.Ed.2d 257 (1993).

***632** Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

[5] Taking the first point, even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between classification and objective gives substance to the Equal Protection Clause; it provides guidance and discipline for the legislature, which is entitled to know what sorts of laws it can pass; and it marks the limits of our own authority. In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous. See *New Orleans v. Dukes*, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976) (tourism benefits justified classification favoring pushcart vendors of certain longevity); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955) (assumed health concerns justified law favoring optometrists over opticians); *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533 (1949) (potential traffic hazards justified exemption of vehicles advertising the owner's products from general advertising ban); *Kotch v. Board of River Port Pilot Comm'rs for Port of New Orleans*, 330 U.S. 552, 67 S.Ct. 910, 91 L.Ed. 1093 (1947) (licensing scheme that disfavored persons unrelated to current river boat pilots justified by possible efficiency and safety benefits of a closely knit pilotage system). The laws challenged in the cases just cited were narrow enough in scope and grounded in a sufficient factual context for us to ***633** ascertain some relation between the classification and the purpose it served. By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law. See *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 181, 101 S.Ct. 453, 462, 66 L.Ed.2d 368 (1980) (STEVENS, J., concurring) ("If the adverse impact on the disfavored class is an ****1628** apparent aim of the legislature, its impartiality would be suspect").

[6] Amendment 2 confounds this normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. The absence of precedent for Amendment 2 is itself instructive: "[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37-38, 48 S.Ct. 423, 425, 72 L.Ed. 770 (1928).

[7][8][9][10] It is not within our constitutional tradition to enact laws of this

sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. " 'Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.' " *Sweatt v. Painter*, 339 U.S. 629, 635, 70 S.Ct. 848, 850-851, 94 L.Ed. 1114 (1950) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 22, 68 S.Ct. 836, 846, 92 L.Ed. 1161 (1948)). Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense. "The guaranty of 'equal protection of the laws ***634** is a pledge of the protection of equal laws.' " *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220 (1886)).

Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890), not cited by the parties but relied upon by the dissent, is not evidence that Amendment 2 is within our constitutional tradition, and any reliance upon it as authority for sustaining the amendment is misplaced. In *Davis*, the Court approved an Idaho territorial statute denying Mormons, polygamists, and advocates of polygamy the right to vote and to hold office because, as the Court construed the statute, it "simply excludes from the privilege of voting, or of holding any office of honor, trust or profit, those who have been convicted of certain offences, and those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it." *Id.*, at 347, 10 S.Ct., at 302. To the extent *Davis* held that persons advocating a certain practice may be denied the right to vote, it is no longer good law. *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) *(per curiam)*. To the extent it held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling could not stand without surviving strict scrutiny, a most doubtful outcome. *Dunn v. Blumstein*, 405 U.S. 330, 337, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274 (1972); cf. *United States v. Brown*, 381 U.S. 437, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965); *United States v. Robel*, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967). To the extent *Davis* held that a convicted felon may be denied the right to vote, its holding is not implicated by our decision and is unexceptionable. See *Richardson v. Ramirez*, 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974).

[11][12] A second and related point is that laws of the kind now before us raise the

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." ***635***Department of Agriculture v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 2826, 37 L.Ed.2d 782 1973). Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any ****1629** particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it. We conclude that, in addition to the far-reaching deficiencies of Amendment 2 that we have noted, the principles it offends, in another sense, are conventional and venerable; a law must bear a rational relationship to a legitimate governmental purpose. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 462, 108 S.Ct. 2481, 2489-2490, 101 L.Ed.2d 399 (1988), and Amendment 2 does not.

[13] The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality. Colorado also cites its interest in conserving resources to fight discrimination against other groups. The breadth of the amendment is so far removed from these particular justifications that we find it impossible to credit them. We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. "[C]lass legislation ... [is] obnoxious to the prohibitions of the Fourteenth Amendment. ..." *Civil Rights Cases*, 109 U.S., at 24, 3 S.Ct., at 30.

We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause, ***636** and the judgment of the Supreme Court of Colorado is affirmed.

It is so ordered.

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join,

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

dissenting.

The Court has mistaken a Kulturkampf for a fit of spite. The constitutional amendment before us here is not the manifestation of a " 'bare ... desire to harm ' " homosexuals, *ante*, at 1628, but is rather a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws. That objective, and the means chosen to achieve it, are not only unimpeachable under any constitutional doctrine hitherto pronounced (hence the opinion's heavy reliance upon principles of righteousness rather than judicial holdings); they have been specifically approved by the Congress of the United States and by this Court.

In holding that homosexuality cannot be singled out for disfavorable treatment, the Court contradicts a decision, unchallenged here, pronounced only 10 years ago, see *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), and places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias. Whether it is or not is *precisely* the cultural debate that gave rise to the Colorado constitutional amendment (and to the preferential laws against which the amendment was directed). Since the Constitution of the United States says nothing about this subject, it is left to be resolved by normal democratic means, including the democratic adoption of provisions in state constitutions. This Court has no business imposing upon all Americans the resolution favored by the elite class from which the Members of this institution are selected, pronouncing that " animosity" toward homosexuality, *ante*, at 1628, is evil. I vigorously dissent.

*637 I

Let me first discuss Part II of the Court's opinion, its longest section, which is devoted to rejecting the State's arguments that Amendment 2 "puts gays and lesbians in the same position as all other persons," and "does no more than deny homosexuals special rights." *ante*, at 1624. The Court concludes that this reading of Amendment 2's language is "implausible" under the " authoritative**1630 construction" given Amendment 2 by the Supreme Court of Colorado. *Ibid.*

In reaching this conclusion, the Court considers it unnecessary to decide the validity of the State's argument that Amendment 2 does not deprive homosexuals of the "protection [afforded by] general laws and policies that prohibit arbitrary discrimination in governmental and private settings." *Ante*, at 1626. I agree that we need not resolve that dispute, because the Supreme Court of Colorado has resolved it for us. In the case below, 882 P.2d 1335 (1994), the Colorado court stated:

"[I]t is significant to note that Colorado

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

law currently proscribes discrimination against persons who are not suspect classes, including discrimination based on age, § 24-34-402(1)(a), 10A C.R.S. (1994 Supp.); marital or family status, § 24-34-502(1)(a), 10A C.R.S. (1994 Supp.); veterans' status, § 28-3-506, 11B C.R.S. (1989); and for any legal, off-duty conduct such as smoking tobacco, § 24-34-402.5, 10A C. R.S. (1994 Supp.). *Of course Amendment 2 is not intended to have any effect on this legislation, but seeks only to prevent the adoption of antidiscrimination laws intended to protect gays, lesbians, and bisexuals.*" *Id.*, at 1346, n. 9 (emphasis added).

The Court utterly fails to distinguish this portion of the Colorado court's opinion. Colorado Rev. Stat. § 24-34-402.5 (Supp.1995), which this passage authoritatively declares *not* to be affected by Amendment 2, was respondents' primary ***638** example of a generally applicable law whose protections would be unavailable to homosexuals under Amendment 2. See Brief for Respondents Evans et al. 11-12. The clear import of the Colorado court's conclusion that it is not affected is that "general laws and policies that prohibit arbitrary discrimination" would continue to prohibit discrimination on the basis of homosexual conduct as well. This analysis, which is fully in accord with (indeed, follows inescapably from) the text of the constitutional provision, lays to rest such horribles, raised in the course of oral argument, as the prospect that assaults upon homosexuals could not be prosecuted. The amendment prohibits *special treatment* of homosexuals, and nothing more. It would not affect, for example, a requirement of state law that pensions be paid to all retiring state employees with a certain length of service; homosexual employees, as well as others, would be entitled to that benefit. But it would prevent the State or any municipality from making death-benefit payments to the "life partner" of a homosexual when it does not make such payments to the long-time roommate of a nonhomosexual employee. Or again, it does not affect the requirement of the State's general insurance laws that customers be afforded coverage without discrimination unrelated to anticipated risk. Thus, homosexuals could not be denied coverage, or charged a greater premium, with respect to auto collision insurance; but neither the State nor any municipality could require that distinctive health insurance risks associated with homosexuality (if there are any) be ignored.

Despite all of its hand wringing about the potential effect of Amendment 2 on general antidiscrimination laws, the Court's opinion ultimately does not dispute all this, but assumes it to be true. See *ante*, at 1626. The only denial of equal treatment it contends homosexuals have suffered is this: They may not obtain *preferential* treatment without amending the State Constitution. That is to say, the principle

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(**Cite as: 517 U.S. 620, 116 S.Ct. 1620**)

underlying the Court's opinion is that one who is accorded***639** equal treatment under the laws, but cannot as readily as others obtain *preferential* treatment under the laws, has been denied equal protection of the laws. If merely stating this alleged "equal protection" violation does not suffice to refute it, our constitutional jurisprudence has achieved terminal silliness.

The central thesis of the Court's reasoning is that any group is denied equal protection when, to obtain advantage (or, presumably, to avoid disadvantage), it must have recourse to a more general and hence more difficult level of political decisionmaking than others. The world has never heard of such a principle, which is why the Court's opinion is so long on emotive utterance and so short on relevant legal citation. And it seems to me most unlikely that any multilevel democracy can function under such a principle. For *whenever* a disadvantage is imposed, or conferral ****1631** of a benefit is prohibited, at one of the higher levels of democratic decisionmaking (*i.e.*, by the state legislature rather than local government, or by the people at large in the state constitution rather than the legislature), the affected group has (under this theory) been denied equal protection. To take the simplest of examples, consider a state law prohibiting the award of municipal contracts to relatives of mayors or city councilmen. Once such a law is passed, the group composed of such relatives must, in order to get the benefit of city contracts, persuade the state legislature-unlike all other citizens, who need only persuade the municipality. It is ridiculous to consider this a denial of equal protection, which is why the Court's theory is unheard of.

The Court might reply that the example I have given is *not* a denial of equal protection only because the same "rational basis" (avoidance of corruption) which renders constitutional the *substantive discrimination* against relatives (*i.e.*, the fact that they alone cannot obtain city contracts) also automatically suffices to sustain what might be called the *electoral-procedural discrimination* against them (*i.e.*, ***640** the fact that they must go to the state level to get this changed). This is of course a perfectly reasonable response, and would explain why "electoral-procedural discrimination" has not hitherto been heard of: A law that is valid in its substance is automatically valid in its level of enactment. But the Court cannot afford to make this argument, for as I shall discuss next, there is no doubt of a rational basis for the substance of the prohibition at issue here. The Court's entire novel theory rests upon the proposition that there is something *special* -something that cannot be justified by normal "rational basis" analysis-in making a disadvantaged group (or a nonpreferred group) resort to a higher decisionmaking level. That proposition finds no support in law or logic.

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

II

I turn next to whether there was a legitimate rational basis for the substance of the constitutional amendment-for the prohibition of special protection for homosexuals.[FN1] It is unsurprising that the Court avoids discussion of this question, since the answer is so obviously yes. The case most relevant to the issue before us today is not even mentioned in the Court's opinion: In *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), we held that the Constitution does not prohibit what virtually all States had done from the founding of the Republic until very recent years-making homosexual conduct a crime. That holding is unassailable, except by those who ***641** think that the Constitution changes to suit current fashions. But in any event it is a given in the present case: Respondents' briefs did not urge overruling *Bowers*, and at oral argument respondents' counsel expressly disavowed any intent to seek such overruling. Tr. of Oral Arg. 53.

If it is constitutionally permissible for a State to make homosexual conduct criminal, surely it is constitutionally permissible for a State to enact other laws merely *disfavoring* homosexual conduct. (As the Court of Appeals for the District of Columbia Circuit has aptly put it: "If the Court [in *Bowers*] was unwilling to object to state laws that criminalize the behavior that defines the class, it is hardly open ... to conclude that state sponsored discrimination against the class is invidious. After all, there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal." *Padula v. Webster*, 822 F.2d 97, 103 (1987).) And *a fortiori* it is constitutionally permissible for a State to adopt a provision *not even* disfavoring homosexual conduct, but merely prohibiting ****1632** all levels of state government from bestowing *special protections* upon homosexual conduct. Respondents (who, unlike the Court, cannot afford the luxury of ignoring inconvenient precedent) counter *Bowers* with the argument that a greater-includes-the-lesser rationale cannot justify Amendment 2's application to individuals who do not engage in homosexual acts, but are merely of homosexual "orientation." Some Courts of Appeals have concluded that, with respect to laws of this sort at least, that is a distinction without a difference. See *Equality Foundation of Greater Cincinnati, Inc. v. Cincinnati*, 54 F.3d 261, 267 (C.A.6 1995) ("[F]or purposes of these proceedings, it is virtually impossible to distinguish or separate individuals of a particular *orientation* which predisposes them toward a particular sexual conduct from those who actually *engage* in that particular type of sexual conduct"); *Steffan v. Perry*, 41 F.3d 677, 689-690 (C.A.D.C.1994). The Supreme Court of Colorado itself appears to be of this view. See ***642** 882 P.2d, at 1349-1350 ("Amendment 2 targets this class of persons based on four characteristics: sexual

orientation; conduct; practices, and relationships. Each characteristic provides a potentially different way of identifying that class of persons who are gay, lesbian, or bisexual. These four characteristics are not truly severable from one another because each provides nothing more than a different way of identifying *the same class of persons* ") (emphasis added).

> FN1. The Court evidently agrees that "rational basis"-the normal test for compliance with the Equal Protection Clause-is the governing standard. The trial court rejected respondents' argument that homosexuals constitute a "suspect" or "quasi-suspect" class, and respondents elected not to appeal that ruling to the Supreme Court of Colorado. See 882 P.2d 1335, 1341, n. 5 (1994). And the Court implicitly rejects the Supreme Court of Colorado's holding, *Evans v. Romer*, 854 P.2d 1270, 1282 (1993), that Amendment 2 infringes upon a "fundamental right " of "independently identifiable class[es]" to "participate equally in the political process." See *ante*, at 1624.

But assuming that, in Amendment 2, a person of homosexual "orientation" is someone who does not engage in homosexual conduct but merely has a tendency or desire to do so, *Bowers* still suffices to establish a rational basis for the provision. If it is rational to criminalize the conduct, surely it is rational to deny special favor and protection to those with a self-avowed tendency or desire to engage in the conduct. Indeed, where criminal sanctions are not involved, homosexual " orientation" is an acceptable stand-in for homosexual conduct. A State "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect," *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). Just as a policy barring the hiring of methadone users as transit employees does not violate equal protection simply because *some* methadone users pose no threat to passenger safety, see *New York City Transit Authority v. Beazer*, 440 U.S. 568, 99 S.Ct. 1355, 59 L.Ed.2d 587 (1979), and just as a mandatory retirement age of 50 for police officers does not violate equal protection even though it prematurely ends the careers of many policemen over 50 who still have the capacity to do the job, see *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) *(per curiam)*, Amendment 2 is not constitutionally invalid simply because it could have been drawn more precisely so as to withdraw special antidiscrimination protections only from those of homosexual "orientation" who actually engage in homosexual conduct. As Justice KENNEDY wrote, when he was on the Court of Appeals, in a case involving discharge of homosexuals

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

from the Navy: "Nearly any ***643** statute which classifies people may be irrational as applied in particular cases. Discharge of the particular plaintiffs before us would be rational, under minimal scrutiny, not because their particular cases present the dangers which justify Navy policy, but instead because the general policy of discharging all homosexuals is rational." *Beller v. Middendorf*, 632 F.2d 788, 808-809, n. 20 (C.A.9 1980) (citation omitted). See also *Ben-Shalom v. Marsh*, 881 F.2d 454, 464 (C.A.7 1989), cert. denied, 494 U.S. 1004, 110 S.Ct. 1296, 108 L.Ed.2d 473 (1990).

Moreover, even if the provision regarding homosexual "orientation" *were* invalid, respondents' challenge to Amendment 2-which is a facial challenge-must fail. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987). It would not be enough for respondents to establish (if they could) that Amendment 2 is unconstitutional as applied to those of homosexual "orientation"; since, under *Bowers*, Amendment 2 is unquestionably constitutional as applied ****1633** to those who engage in homosexual conduct, the facial challenge cannot succeed. Some individuals of homosexual "orientation" who do not engage in homosexual acts might successfully bring an as-applied challenge to Amendment 2, but so far as the record indicates, none of the respondents is such a person. See App. 4-5 (complaint describing each of the individual respondents as either "a gay man" or "a lesbian").[FN2]

FN2. The Supreme Court of Colorado stated: "We hold that the portions of Amendment 2 that would remain if only the provision concerning sexual orientation were stricken are not autonomous and thus, not severable." 882 P.2d, at 1349. That statement was premised, however, on the proposition that "[the] four characteristics [described in the Amendment-sexual orientation, conduct, practices, and relationships] are not truly severable from one another because each provides nothing more than a different way of identifying *the same class of persons*." *Id.*, at 1349-1350 (emphasis added). As I have discussed above, if that premise is true-if the entire class affected by the Amendment takes part in homosexual conduct, practices, and relationships-*Bowers* alone suffices to answer all constitutional objections. Separate consideration of persons of homosexual "orientation" is necessary only if one believes (as

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

the Supreme Court of Colorado did not) that that is a distinct class.

***644 III**

The foregoing suffices to establish what the Court's failure to cite any case remotely in point would lead one to suspect: No principle set forth in the Constitution, nor even any imagined by this Court in the past 200 years, prohibits what Colorado has done here. But the case for Colorado is much stronger than that. What it has done is not only unprohibited, but eminently reasonable, with close, congressionally approved precedent in earlier constitutional practice.

First, as to its eminent reasonableness. The Court's opinion contains grim, disapproving hints that Coloradans have been guilty of "animus" or "animosity" toward homosexuality, as though that has been established as un-American. Of course it is our moral heritage that one should not hate any human being or class of human beings. But I had thought that one could consider certain conduct reprehensible-murder, for example, or polygamy, or cruelty to animals-and could exhibit even "animus" toward such conduct. Surely that is the only sort of "animus" at issue here: moral disapproval of homosexual conduct, the same sort of moral disapproval that produced the centuries-old criminal laws that we held constitutional in *Bowers*. The Colorado amendment does not, to speak entirely precisely, prohibit giving favored status to people who are *homosexuals;* they can be favored for many reasons-for example, because they are senior citizens or members of racial minorities. But it prohibits giving them favored status *because of their homosexual conduct*-that is, it prohibits favored status *for homosexuality*.

But though Coloradans are, as I say, *entitled* to be hostile toward homosexual conduct, the fact is that the degree of hostility reflected by Amendment 2 is the smallest conceivable.***645** The Court's portrayal of Coloradans as a society fallen victim to pointless, hate-filled "gay-bashing" is so false as to be comical. Colorado not only is one of the 25 States that have repealed their antisodomy laws, but was among the first to do so. See 1971 Colo. Sess. Laws, ch. 121, § 1. But the society that eliminates criminal punishment for homosexual acts does not necessarily abandon the view that homosexuality is morally wrong and socially harmful; often, abolition simply reflects the view that enforcement of such criminal laws involves unseemly intrusion into the intimate lives of citizens. Cf. Brief for Lambda Legal Defense and Education Fund, Inc., et al. as *Amici Curiae* in *Bowers v. Hardwick*, O.T. 1985, No. 85-140, p. 25, n. 21 (antisodomy statutes are "unenforceable by any but the most offensive snooping and wasteful allocation of law enforcement resources"); Kadish, The Crisis of Overcriminalization, 374 The

Annals of the American Academy of Political and Social Science 157, 161 (1967) ("To obtain evidence [in sodomy cases], police are obliged to resort to behavior which tends to degrade and demean both themselves personally and law enforcement as an institution").

There is a problem, however, which arises when criminal sanction of homosexuality is eliminated but moral and social disapprobation of homosexuality is meant to be retained. ****1634** The Court cannot be unaware of that problem; it is evident in many cities of the country, and occasionally bubbles to the surface of the news, in heated political disputes over such matters as the introduction into local schools of books teaching that homosexuality is an optional and fully acceptable "alternative life style." The problem (a problem, that is, for those who wish to retain social disapprobation of homosexuality) is that, because those who engage in homosexual conduct tend to reside in disproportionate numbers in certain communities, see Record, Exh. MMM, have high disposable income, see *ibid.*; App. 254 (affidavit of Prof. James Hunter), and, of course, care about homosexual-rights issues much ***646** more ardently than the public at large, they possess political power much greater than their numbers, both locally and statewide. Quite understandably, they devote this political power to achieving not merely a grudging social toleration, but full social acceptance, of homosexuality. See, *e.g.*, Jacobs, The Rhetorical Construction of Rights: The Case of the Gay Rights Movement, 1969-1991, 72 Neb. L.Rev. 723, 724 (1993) ("[T]he task of gay rights proponents is to move the center of public discourse along a continuum from the rhetoric of disapprobation, to rhetoric of tolerance, and finally to affirmation").

By the time Coloradans were asked to vote on Amendment 2, their exposure to homosexuals' quest for social endorsement was not limited to newspaper accounts of happenings in places such as New York, Los Angeles, San Francisco, and Key West. Three Colorado cities-Aspen, Boulder, and Denver-had enacted ordinances that listed "sexual orientation" as an impermissible ground for discrimination, equating the moral disapproval of homosexual conduct with racial and religious bigotry. See Aspen Municipal Code § 13-98 (1977); Boulder Rev. Municipal Code §§ 12-1-1 to 12-1-11 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-91 to 28-116 (1991). The phenomenon had even appeared statewide: The Governor of Colorado had signed an executive order pronouncing that "in the State of Colorado we recognize the diversity in our pluralistic society and strive to bring an end to discrimination in any form," and directing state agency-heads to "ensure non-discrimination " in hiring and promotion based on, among other things, "sexual orientation." Executive Order No. D0035 (Dec. 10, 1990). I do not mean to be critical of

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

these legislative successes; homosexuals are as entitled to use the legal system for reinforcement of their moral sentiments as is the rest of society. But they are subject to being countered by lawful, democratic countermeasures as well.

*617 That is where Amendment 2 came in. It sought to counter both the geographic concentration and the disproportionate political power of homosexuals by (1) resolving the controversy at the statewide level, and (2) making the election a single-issue contest for both sides. It put directly, to all the citizens of the State, the question: Should homosexuality be given special protection? They answered no. The Court today asserts that this most democratic of procedures is unconstitutional. Lacking any cases to establish that facially absurd proposition, it simply asserts that it *must* be unconstitutional, because it has never happened before.

"[Amendment 2] identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. The absence of precedent for Amendment 2 is itself instructive....

"It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance." *Ante*, at 1627-1628.

As I have noted above, this is proved false every time a state law prohibiting or disfavoring certain conduct is passed, because such a law prevents the adversely affected group-whether drug addicts, or smokers, or gun owners, or motorcyclists-from changing the policy thus established in "each of [the] parts" of the State. What the Court says is even demonstrably false at the constitutional level. The Eighteenth Amendment to the **1635 Federal Constitution, for example, deprived those who drank alcohol not only of the power to alter the policy of prohibition *locally* or through *state legislation*, but even of the power to alter it through *state constitutional amendment* or *federal legislation*. The *648 Establishment Clause of the First Amendment prevents theocrats from having their way by converting their fellow citizens at the local, state, or federal statutory level: as does the Republican Form of Government Clause prevent monarchists.

But there is a much closer analogy, one that involves precisely the effort by the majority of citizens to preserve its view of sexual morality statewide, against the efforts of a geographically concentrated and politically powerful minority to undermine it. The Constitutions of the States of Arizona, Idaho, New Mexico, Oklahoma, and Utah *to this day* contain

provisions stating that polygamy is " forever prohibited." See Ariz. Const., Art. XX, par. 2; Idaho Const., Art. I, § 4; N.M. Const., Art. XXI, § 1; Okla. Const., Art. I, § 2; Utah Const., Art. III, § 1. Polygamists, and those who have a polygamous "orientation," have been " singled out" by these provisions for much more severe treatment than merely denial of favored status: and that treatment can only be changed by achieving amendment of the state constitutions. The Court's disposition today suggests that these provisions are unconstitutional, and that polygamy must be permitted in these States on a state-legislated, or perhaps even local-option, basis-unless, of course, polygamists for some reason have fewer constitutional rights than homosexuals.

The United States Congress, by the way, *required* the inclusion of these antipolygamy provisions in the Constitutions of Arizona, New Mexico, Oklahoma, and Utah, as a condition of their admission to statehood. See Arizona Enabling Act, 36 Stat. 569; New Mexico Enabling Act, 36 Stat. 558; Oklahoma Enabling Act, 34 Stat. 269; Utah Enabling Act, 28 Stat. 108. (For Arizona, New Mexico, and Utah, moreover, the Enabling Acts required that the antipolygamy provisions be "irrevocable without the consent of the United States and the people of said State"-so that not only were "each of [the] parts" of these States not "open on impartial terms" to polygamists, but even the States as a whole were not; ***649** polygamists would have to persuade the whole country to their way of thinking.) Idaho adopted the constitutional provision on its own, but the 51st Congress, which admitted Idaho into the Union, found its Constitution to be "republican in form *and* ... *in conformity with the Constitution of the United States*." Act of Admission of Idaho, 26 Stat. 215 (emphasis added). Thus, this "singling out" of the sexual practices of a single group for statewide, democratic vote-so utterly alien to our constitutional system, the Court would have us believe-has not only happened, but has received the explicit approval of the United States Congress.

I cannot say that this Court has explicitly approved any of these state constitutional provisions; but it has approved a territorial statutory provision that went even further, depriving polygamists of the ability even to achieve a constitutional amendment, by depriving them of the power to vote. In *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890), Justice Field wrote for a unanimous Court:

"In our judgment, § 501 of the Revised Statutes of Idaho Territory, which provides that 'no person ... who is a bigamist or polygamist or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization or association which teaches,

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

advises, counsels, or encourages its members or devotees or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law ... is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this Territory,' *is not open to any constitutional or legal objection.*" *Id.*, at 346-347, 10 S.Ct., at 302 (emphasis added).

To the extent, if any, that this opinion permits the imposition of adverse consequences upon mere abstract advocacy of polygamy,***650** it has, of course, been overruled by later cases. See ****1636** *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) *(per curiam)*. But the proposition that polygamy can be criminalized, and those engaging in that crime deprived of the vote, remains good law. See *Richardson v. Ramirez*, 418 U.S. 24, 53, 94 S.Ct. 2655, 2670, 41 L.Ed.2d 551 (1974). *Beason* rejected the argument that "such discrimination is a denial of the equal protection of the laws." Brief for Appellant in *Davis v. Beason*, O.T. 1889, No. 1261, p. 41. Among the Justices joining in that rejection were the two whose views in other cases the Court today treats as equal protection lodestars-Justice Harlan, who was to proclaim in *Plessy v. Ferguson*, 163 U.S. 537, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256 (1896) (dissenting opinion), that the Constitution " neither knows nor tolerates classes among citizens," quoted *ante*, at 1623, and Justice Bradley, who had earlier declared that " class legislation ... [is] obnoxious to the prohibitions of the Fourteenth Amendment. " *Civil Rights Cases*, 109 U.S. 3, 24, 3 S.Ct. 18, 30, 27 L.Ed. 835 (1883), quoted *ante*, at 1629.[FN3]

FN3. The Court labors mightily to get around *Beason*, see *ante*, at 1628, but cannot escape the central fact that this Court found the statute at issue-which went much further than Amendment 2, denying polygamists not merely special treatment but the right *to vote*-"not open to any constitutional or legal objection," rejecting the appellant's argument (much like the argument of respondents today) that the statute impermissibly "single[d] him out." Brief for Appellant in *Davis v. Beason*, O.T. 1889, No. 1261, p. 41. The Court adopts my conclusions that (a) insofar as *Beason* permits the imposition of adverse consequences based upon mere advocacy, it has been overruled by subsequent cases, and (b) insofar as *Beason* holds that convicted felons may be denied the right to vote, it remains good law. To these conclusions, it adds something new: the claim that " [t]o the extent [*Beason*] held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling

could not stand without surviving strict scrutiny, a most doubtful outcome." *Ante*, at 1628. But if that is so, it is only because we have declared the right *to vote* to be a "fundamental political right," see, *e.g.*, *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999-1000, 31 L.Ed.2d 274 (1972), deprivation of which triggers strict scrutiny. Amendment 2, of course, does not deny the fundamental right to vote, and the Court rejects the Colorado court's view that there exists a fundamental right to participate in the political process. Strict scrutiny is thus not in play here. See *ante*, at 1627. Finally, the Court's suggestion that § 501 of the Revised Statutes of Idaho, and Amendment 2, deny rights on account of "status" (rather than conduct) opens up a broader debate involving the significance of *Bowers* to this case, a debate which the Court is otherwise unwilling to join, see *supra*, at 1631-1633.

***651** This Court cited *Beason* with approval as recently as 1993, in an opinion authored by the same Justice who writes for the Court today. That opinion said: "[A]dverse impact will not always lead to a finding of impermissible targeting. For example, a social harm may have been a legitimate concern of government for reasons quite apart from discrimination.... See, *e.g.*, ... *Davis v. Beason*, 133 U.S. 333 [10 S.Ct. 299, 33 L.Ed. 637] (1890)." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 535, 113 S.Ct. 2217, 2228, 124 L.Ed.2d 472 (1993). It remains to be explained how § 501 of the Idaho Revised Statutes was not an "impermissible targeting" of polygamists, but (the much more mild) Amendment 2 is an "impermissible targeting" of homosexuals. Has the Court concluded that the perceived social harm of polygamy is a "legitimate concern of government," and the perceived social harm of homosexuality is not?

IV

I strongly suspect that the answer to the last question is yes, which leads me to the last point I wish to make: The Court today, announcing that Amendment 2 "defies ... conventional [constitutional] inquiry," *ante*, at 1627, and "confounds [the] normal process of judicial review," *ante*, at 1628, employs a constitutional theory heretofore unknown to frustrate Colorado's reasonable effort to preserve traditional American moral values. The Court's stern disapproval of "animosity" towards homosexuality might be compared with what an earlier Court (including the revered Justices Harlan and Bradley) said in *Murphy v. Ramsey*, 114 U.S. 15, 5 S.Ct. 747, 29 L.Ed. 47 (1885), rejecting a constitutional challenge to a United States statute that denied the franchise in federal territories to those who engaged in

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

polygamous cohabitation:
"[C]ertainly no legislation can be supposed more wholesome and necessary in the **1637 founding of a free, self-governing *652 commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." *Id.*, at 45, 5 S.Ct., at 764.

I would not myself indulge in such official praise for heterosexual monogamy, because I think it no business of the courts (as opposed to the political branches) to take sides in this culture war.

But the Court today has done so, not only by inventing a novel and extravagant constitutional doctrine to take the victory away from traditional forces, but even by verbally disparaging as bigotry adherence to traditional attitudes. To suggest, for example, that this constitutional amendment springs from nothing more than " 'a bare ... desire to harm a politically unpopular group,' " *ante*, at 1628, quoting *Department of Agriculture v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 2826, 37 L.Ed.2d 782 (1973), is nothing short of insulting. (It is also nothing short of preposterous to call " politically unpopular" a group which enjoys enormous influence in American media and politics, and which, as the trial court here noted, though composing no more than 4% of the population had the support of 46% of the voters on Amendment 2, see App. to Pet. for Cert. C-18.)

When the Court takes sides in the culture wars, it tends to be with the knights rather than the villeins-and more specifically with the Templars, reflecting the views and values of the lawyer class from which the Court's Members are drawn. How that class feels about homosexuality will be evident to anyone who wishes to interview job applicants at virtually any of the Nation's law schools. The interviewer may refuse to offer a job because the applicant is a Republican; because he is an adulterer; because he went to the wrong *653 prep school or belongs to the wrong country club; because he eats snails; because he is a womanizer; because she wears real-animal fur; or even because he hates the Chicago Cubs. But if the interviewer should wish not to be an associate or partner of an applicant because he disapproves of the applicant's homosexuality, *then* he will have violated the pledge which the Association of American Law Schools requires all its member schools to exact from job interviewers: "assurance of the employer's willingness" to hire homosexuals. Bylaws of the Association of American Law Schools, Inc. § 6-4(b); Executive

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

Committee Regulations of the Association of American Law Schools § 6.19, in 1995 Handbook, Association of American Law Schools. This law-school view of what " prejudices" must be stamped out may be contrasted with the more plebeian attitudes that apparently still prevail in the United States Congress, which has been unresponsive to repeated attempts to extend to homosexuals the protections of federal civil rights laws, see, *e.g.*, Employment Non-Discrimination Act of 1994, S. 2238, 103d Cong., 2d Sess. (1994); Civil Rights Amendments of 1975, H.R. 5452, 94th Cong., 1st Sess. (1975), and which took the pains to exclude them specifically from the Americans with Disabilities Act of 1990, see 42 U.S.C. § 12211(a) (1988 ed., Supp. V).

* * *

Today's opinion has no foundation in American constitutional law, and barely pretends to. The people of Colorado have adopted an entirely reasonable provision which does not even disfavor homosexuals in any substantive sense, but merely denies them preferential treatment. Amendment 2 is designed to prevent piecemeal deterioration of the sexual morality favored by a majority of Coloradans, and is not only an appropriate means to that legitimate end, but a means that Americans have employed before. Striking it down is an act, not of judicial judgment, but of political will. I dissent.

U.S.Colo.,1996.
Romer v. Evans
517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730

END OF DOCUMENT

Rep Gruenberg:

I called Pat Shier, Newly Director of Div. of Retirement & Benefits

There are a total of ~~60~~ people enrolled for same-sex benefits

53 are retirees
17 are current employees

29,732 total retirees/members

0.18%

We do not track claim costs per retiree - so aren't able quantify "How much"

- Bitner

The Business of Domestic Partner and Same-Sex Benefits

- In 1990 fewer than half a dozen US employers offered domestic partner/same-sex benefits; they are now rapidly becoming the norm.

- In 1992 only 3 of the Fortune 500 companies offered domestic partner/same-sex benefits; today over half (266) provide them, including 78 of the top 100.

- According to a 2005 study conducted by the national human resources firm Hewitt Associates, the main reason given for providing such benefits is a desire to attract and retain employees.

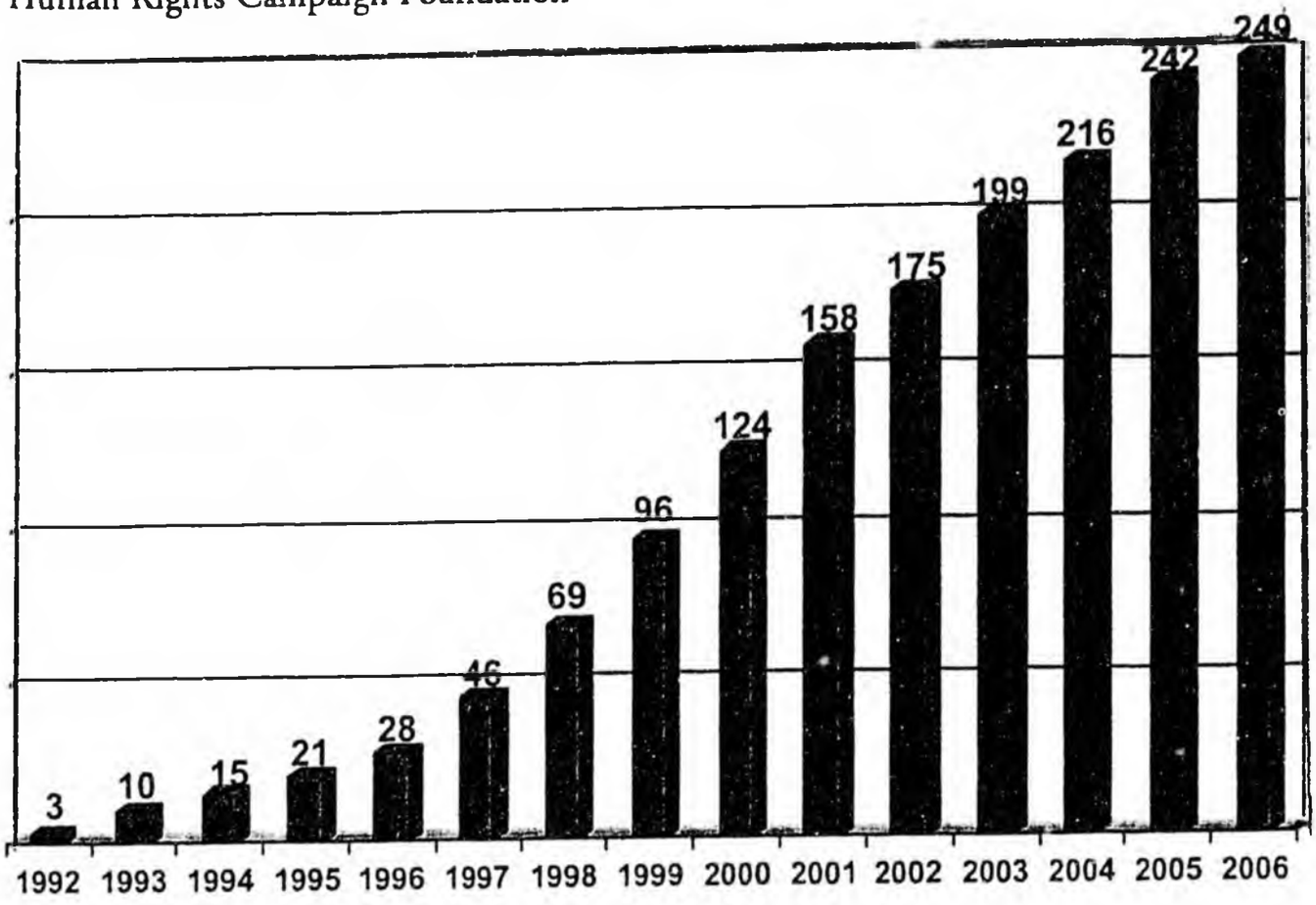
- Not only do most Fortune 500 companies now provide domestic partner/same-sex benefits, but so do over 8,000 other private employers in the United States.

- In addition to thousands of private sector employers, 13 state governments, over 140 local governments (including 7 of the 10 largest cities) and almost 300 colleges and universities (including 7 of the 10 largest universities) now provide such benefits.

Those who look to the private sector for guidance on how to run government should follow the practices established by America's largest and most successful companies. Why would Alaska want to forever ban an employment practice that every day is becoming more and more essential to attracting and retaining the most qualified workforce possible?

Distributed by [illegible]

Figure 1: Domestic Partner Health Benefits — Fortune 500, By Year
Human Rights Campaign Foundation



March 2006

Dr. Jeffrey Satinover Testifies Before Massachusetts Senate Committee Studying Gay Marriage

On April 28, 2003, psychiatrist Dr. Jeffrey Satinover testified before the Massachusetts Senate Judicial Committee on various issues surrounding the subject homosexuality and the future of the family in America. Dr. Satinover is a member of NARTH's Scientific Advisory Committee.

Massachusetts is now debating the legalization homosexual marriages. If such marriages are legalized in that state, a legal challenge of traditional marriage is expected in the remaining 49 states.

Dr. Satinover, author of *Homosexuality and the Politics of Truth,* urged the senators to carefully consider their actions. He observed:

"As you all know most keenly, the question before you is not merely one of academic dispute; rather, upon the outcome of your deliberations will depend the foundational social structure, hence direction of the Commonwealth in future, and in significant measure, that of our Nation as well."
He continued:
"It is therefore most urgent that these deliberations be based not only on compassion, and justice, but on the factual truth as well. Indeed, unless resting upon truth, neither justice nor compassion can long endure against shifts in sentiment."
Dr. Satinover discussed the following claims of homosexual activists, and offered a rebuttal to each of them. The claims he challenged were--

1. That homosexuality has been repeatedly demonstrated to be--and is in fact--an innate, genetically-determined condition.

2. That homosexuality is an immutable state.

3. That the only disadvantages of homosexuality are those caused by social disapproval and discrimination.

4. That a society composed of same-sex couples raising children in family-like units will differ in no undesirable ways from a society composed of traditional family units.

Dr. Satinover's testimony is reprinted below.

Jeffrey Satinover, MD is a Board-Certified Psychiatrist. He holds degrees from MIT (S.B., Humanities and Science), Harvard (Ed.M., Clinical Psychology and Public Practice), the University of Texas (M.D.) and Yale (M.S., Physics.) He completed his residency in Psychiatry at Yale with a year as Fellow of The Yale Child Study Center. He holds a Diploma in Analytical Psychology from the C. G. Jung Institute of Zurich. Dr. Satinover has practiced psychotherapy and/or psychiatry since 1974. He is the author of numerous articles in peer-reviewed journals of psychology and of neuroscience, chapters and books, among them Homosexuality and the Politics of Truth.

April 28, 2003

Honorable Members, Citizens of Massachusetts:

The debate over homosexuality is one of the most contentious and divisive in which our society has ever engaged. On the face of it, one might wonder that so intensely personal and private a matter could achieve such public weight, but wonder aside, it has: In this legislation now under consideration by the State of Massachusetts, all the varying points of that debate come into sharp opposition.

As you all know, most keenly, the question before you is not merely one of academic dispute; rather, upon the outcome of your deliberations will depend the foundational social structure, hence direction of the Commonwealth in future, and in significant measure, that of our Nation as well.

It is therefore most urgent that these deliberations be based not only on compassion, and justice, but on the factual truth as well. Indeed, unless resting upon truth, neither justice nor compassion can long endure against shifts in sentiment.

That as a society we strive no longer to condone - rather to condemn --cruelty toward people attracted to members of their own sex is an absolute requirement of both justice and humanity. But we would be short-sighted indeed were we to advance this, as any other, just cause based on fictions: Not only will the inevitable uncovering of those fictions, however delayed, provide an excuse for bigotry to reclaim its unearned place, it will engender beliefs, attitudes and policies that, by flying in the face of reality, will lead to an increase, rather than a decrease in the happiness all are entitled to pursue. Nature (and if you prefer, "Nature's God") cannot be fooled.

A number of claims have become central to the argument that the definition and privileged status of marriage ought be expanded to include couples of the same sex. These claims are:

- **That homosexuality has been repeatedly demonstrated to be, and is in fact, an innate, genetically-determined condition.**
- **That homosexuality is an immutable state of an individual.**
- **That the only disadvantages of homosexuality are those caused by social disapproval and discrimination.**
- **That a society composed of same-sex couples raising children in family-like units will differ from a society composed of traditional family units in no undesirable ways.**

None of these claims are even remotely true, however widely believed they may have become; the evidence of the kind that "everyone knows" simply does not exist; even a cursory examination of the actual sources behind these claims will reveal a very strong preponderance of evidence to precisely the contrary; the claims are simply fiction. I have below assembled a selection of statements from prominent researchers. A far wider and more comprehensive bibliography of scientific references is provided as an attachment. Most of the statements below have been selected according to three basic principles:

(1) They are the general conclusions of prominent scientists whose research is well-respected.

(2) The scientists cited have specifically identified themselves as "gay" or "lesbian" and/or as more generally sympathetic to "gay activist" political positions.

(3) Their research is precisely that widely cited and believed as providing evidence *directly contrary to what they themselves found and acknowledge.* (It is to the credit of a number of them that they have publicly acknowledged that their own evidence contradicts what they had believed and had hoped to confirm.)

CLAIMS vs. THE EVIDENCE

Claim 1. That homosexuality has been repeatedly demonstrated to be, and is in fact, an innate, genetically-determined condition.

- Dean Hamer of the National Institutes of Health performed and published the research most widely cited as pointing to a "gay gene." Dr. Hamer testified in the Colorado Proposition 2 court case that he was "99.5% certain that homosexuality is genetic." He later came to the following conclusions:

"The pedigree failed to produce what we originally hoped to find: simple Mendelian inheritance. In fact, we never found a single family in which homosexuality was distributed in the obvious pattern that Mendel observed..."

- Hamer's study was duplicated by Rice et al with research that was more robust. In this replication the genetic markers found by Hamer turned out to be of no statistical significance:

"It is unclear why our results are so discrepant from Hamer's original study. Because our study was larger than that of Hamer's et al, we certainly had adequate power to detect a genetic effect as large as reported in that study. Nonetheless, our data do not support the presence of a gene of large effect influencing sexual orientation..."

- Simon LeVay, a neuroanatomist at The Salk Institute in San Diego, founded the Institute for Gay and Lesbian Education in San Francisco after researching and publishing the study of hypothalamic structures in men most widely-cited as confirming innate brain differences between homosexuals and heterosexuals, as he himself initially argued. He later acknowledged:

"It's important to stress what I didn't find. I did not prove that homosexuality is genetic, or find a genetic cause for being gay. I didn't show that gay men are born that way, the most common mistake people make in interpreting my work. Nor did I locate a gay center in the brain."

Furthermore:

"Since I looked at adult brains, we don't know if the differences I found were there at birth, or if they appeared later."

Also pertinent to the present debate is his observation that:

"...people who think that gays and lesbians are born that way are also more likely to support gay rights."

- Dr. Mark Breedlove at the University of California at Berkeley, referring to his own research: "[My] findings give us proof for what we theoretically know to be the case - that sexual experience can alter the structure of the brain, just as genes can alter it. [I]t is possible that differences in sexual behavior cause (rather than are caused) by differences in the brain."

- Prominent research teams Byne & Parsons, and Friedman & Downey, both concluded that there was no evidence to support a biologic theory, but rather that homosexuality could be best explained by an alternative model where "temperamental and personality traits interact with the familial and social milieu as the individual's sexuality emerges."

- Richard Pillard, is the coauthor of the two major twin studies on homosexuality most often cited as providing family evidence for homosexuality being inherited. He noted to an interviewer that he, his brother, and his sister are all homosexual and that one of his daughters from a now-failed marriage is bisexual. He speculated that his father was also homosexual. The interviewer, Chandler Burr, comments re Pillard: "Many of the scientists

who have been studying homosexuality are gay, as am I." The interview is part of a book Burr wrote that purports to demonstrate that virtually all reputable scientists consider homosexuality genetic.

This is certainly what Pillard both wanted and expected to confirm by his research: "These studies were designed to detect heritable variation, and if it was present, to counter the prevalent belief that sexual orientation is largely the product of family interactions and the social environment"

But that is not what he found. Rather, he concluded:

"Although male and female homosexuality appear to be at least somewhat heritable, environment must also be of considerable importance in their origins."

Claim 2. That homosexuality is an immutable state of an individual.

The 1973 decision to delete homosexuality from the diagnostic manual of the American Psychiatric Association has had a chilling effect on scientific objectivity with respect to homosexuality and on both public and professional attitudes concerning its permanence as an individual characteristic. The decision tended to confirm the sentiment that, since homosexuality has been voted out as a formal "disorder," it need not, cannot and should not be "treated", regardless of the principle that in a free society individuals should be free to pursue happiness each according to his own lights, consonant with the well-being of others.

But the American Psychiatric Association, like most other professional-practitioner associations, is *not* a scientific organization. It is a professional guild and as such, amenable to political influence in ways that science per se must not allow itself to be. Thus, the decision to de-list homosexuality was not made based on scientific evidence as is widely claimed. As Simon LeVay (cited above) acknowledges, "Gay activism was clearly the force that propelled the American Psychiatric Association to declassify homosexuality."

But of far greater import is the fact that whether it is deemed a "disorder" or not, it is undesirable to many, and susceptible to change. The evidence for this fact should not be obscured by the false assumption that homosexuality is either innate and unchangeable, or a "lifestyle choice" and changeable at will. It is neither: It is most often a deeply- embedded condition that develops over many years, beginning long before the development of moral and self-awareness, and is genuinely experienced by the individual as though it was never absent in one form or another. It is, in other words, similar to most human characteristics, and shares with them the typical possibilities for, and difficulties in, achieving sustained change.

- A review of the research over many years demonstrates a consistent 30- 52% success rate in the treatment of unwanted homosexual attraction. Masters and Johnson reported a 65% success rate after a five-year follow-up. Other professionals report success rates ranging from 30% to 70%.

- Dr. Lisa Diamond, a professor at the University of Utah, concludes that, "Sexual identity is far from fixed in women who aren't exclusively heterosexual."

- Dr. Robert Spitzer, the prominent psychiatrist and researcher at Columbia University has been the chief architect of the American Psychiatric Association's diagnostic manual and he was the chief decision-maker in the 1973 removal of homosexuality from the diagnostic manual. He considers himself a gay-affirmative psychiatrist, and a long time supporter of gay rights. He has long been convinced that homosexuality is neither a disorder nor changeable. Because of the increasingly heated debate over the latter point within the professional community, Spitzer decided to conduct his own study of the matter. He concluded:

"I'm convinced from the people I have interviewed, that for many of them, they have made substantial changes toward becoming heterosexual...I think that's news...I came to this study skeptical. I now claim that these changes can be sustained."

When he presented his results to the Gay and Lesbian committees of the APA, anticipating a scientific debate, he was shocked to be met with intense pressure to withhold his findings for political reasons. Dr. Spitzer has subsequently received considerable "hate mail" and complaints

from his colleagues because of his research. Douglas C. Haldeman, Ph.D., an independent practitioner in Seattle, WA, is a prominent gay-affirmative theorist. He comments, "From the perspective of gay theorists and activists. . . the question of conversion therapy's efficacy, or lack thereof, is irrelevant. It has been seen as a social phenomenon, one that is driven by anti-gay prejudice in society..."

- Regarding change and the right to treatment, lesbian activist Camille Paglia states the following, in terms considerably sharper than most of us feel comfortable with:

"Is the gay identity so fragile that it cannot bear the thought that some people may not wish to be gay? Sexuality is highly fluid, and reversals are theoretically possible. However, habit is refractory, once the sensory pathways have been blazed and deepened by repetition - a phenomenon obvious in the struggle with obesity, smoking, alcoholism or drug addiction...helping gays to learn how to function heterosexually, if they wish, is a perfectly worthy aim."

Furthermore, just as locking onto a "choice versus genetic" dichotomy obscures reality, so, too, does locking onto "unchangeable versus therapeutic change." For it is also the case, well-documented but unobserved and unremarked upon, that the *majority of "homosexuals" become "heterosexual" spontaneously,* without therapy.

By way of introduction to the scientific evidence for this, it's worth citing Paglia again:

- "We should be honest enough to consider whether homosexuality may not indeed be a pausing at the prepubescent stage where children anxiously band together by gender..."

The scientific evidence is as follows:

The most comprehensive, most recent and most accurate study of sexuality, the National Health and Social Life Survey (NHSLS), was completed in 1994 by a large research team from the University of Chicago and funded by almost every large government agency and NGO with an interest in the AIDS epidemic. They studied every aspect of sexuality, but among their findings is the following, which I'm going to quote for you directly:

- "7.1 [to as much as 9.1] percent of the men [we studied, more than 1,500] had at least one same-gender partner since puberty. ... [But] almost 4 percent of the men [we studied] had sex with another male before turning eighteen but not after. These men. . . constitute 42 percent of the total number of men who report ever having a same gender experience."

Let me put this in context: Roughly ten out of every 100 men have had sex with another man at some time - the origin of the 10% gay myth. Most of these will have identified themselves as gay before turning eighteen and will have acted on it. But by age 18, a full half of them no longer identify themselves as gay and will never again have a male sexual partner. And this is not a population of people selected because they went into therapy; it's just the general population. Furthermore, by age twenty-five, the percentage of gay identified men drops to 2.8%. **This means that without any intervention whatsoever, three out of four boys who think they're gay at age 16 aren't by 25.**

Claim 3. The only disadvantages of homosexuality are those caused by social disapproval and discrimination.

To mistakenly support three out of four gay identified men in their identification with homosexuality is not a benign mistake. Bailey (of the twin study) recently examined the question as to whether homosexuality is associated with a higher level of psychopathology. He concluded:

- "Homosexuality represents a deviation from normal development and is associated with other such deviations that may lead to mental illness.. [or, another possibility]... that increased psychopathology among homosexual people is a consequence of lifestyle differences associated with sexual orientation."

He specifically cited "behavioral risk factors associated with male homosexuality such as receptive anal sex and promiscuity." He noted that it would be a shame if "sociopolitical concerns prevented researchers from conscientious consideration of any reasonable hypothesis."

The specific concern in supporting young men in a gay identification is that innumerable studies from major centers around the US and elsewhere note that a twenty-year-old man who identified

himself as gay carries 30% (or greater) risk of being HIV positive or dead of AIDS by age 30. A recent Canadian study published concluded that in urban centers gay male identification is associated with a life expectancy comparable to that in Canada in the 1870's.

Claim 4. A society composed of same-sex couples raising children in family-like units will differ from a society composed of traditional family units in no undesirable ways.

There has recently been an attempt to demonstrate that raising children in a same-sex household has no ill effect. These studies are few in number, none have ever looked at those areas where difficulties would be expected and one of the most repeatedly cited researchers was excoriated by the court for her testimony when she refused to turn over her research notes to the court even at the urging of the ACLU attorneys for whom she was testifying.

What is known, from decades of research on family structure, studying literally thousands of children, is that every departure from the traditional, stable, mother-father family has severe detrimental effects upon children; and these effects persist not only into adulthood but into the next generation as well.

In short, the central problem with mother-mother or father-father families is that they deliberately institute, and intend to keep in place indefinitely, a family structure known to be deficient in being obligatorily and permanently either fatherless or motherless.

unilateral (yoo-nə-lat-ər-əl), *adj.* One-sided; relating to only one of two or more persons or things <unilateral mistake>.

unilateral act. See ACT (2).

unilateral advance pricing agreement. See ADVANCE PRICING AGREEMENT.

unilateral contract. See CONTRACT.

unilateral mistake. See MISTAKE.

unimproved land. **1.** Land that has never been developed. **2.** Land that was once developed but has now been cleared of all buildings and structures.

unincorporated association. See ASSOCIATION (3).

unindicted coconspirator. See COCONSPIRATOR.

unindicted conspirator. See *unindicted coconspirator* under COCONSPIRATOR.

uninstructed delegate. See DELEGATE.

uninsured-motorist coverage. Insurance that pays for the insured's injuries and losses negligently caused by a driver who has no liability insurance. Cf. UNDERINSURED-MOTORIST COVERAGE. [Cases: Insurance ⇦2772. C.J.S. *Insurance* §§ 1647, 1650, 1653.]

unintelligible vote. See VOTE (1).

unintentional act. See ACT (2).

uninterrupted-adverse-use principle. See CONTINUOUS-ADVERSE-USE PRINCIPLE.

unio (yoo-nee-oh). *Eccles. law.* A consolidation of two churches into one.

union, *n.* An organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions. • Unions generally represent skilled workers in trades and crafts. — Also termed *labor union*; *labor organization*; *organization*. See TRADE COUNCIL. [Cases: Labor Relations ⇦81. C.J.S. *Labor Relations* §§ 43–45.] — **unionize,** *vb.* — **unionist,** *n.*

closed union. A union with restrictive membership requirements, such as high dues and long apprenticeship periods. Cf. *closed shop* under SHOP.

company union. **1.** A union whose membership is limited to the employees of a single company. **2.** A union under company domination.

craft union. A union composed of workers in the same trade or craft, such as carpentry or plumbing, regardless of the industry in which they work. — Also termed *horizontal union*.

federal labor union. A local union directly chartered by the AFL-CIO.

horizontal union. See *craft union*.

independent union. A union that is not affiliated with a national or international union.

industrial union. A union composed of workers in the same industry, such as shipbuilding or automobile manufacturing, regardless of their particular trade or craft. — Also termed *vertical union*.

international union. A parent union with affiliates in other countries.

local union. A union that serves as the local gaining unit for a national or international u

multicraft union. A union composed of work different industries.

national union. A parent union with locals i ous parts of the United States.

open union. A union with minimal membe requirements. Cf. *open shop* under SHOP.

trade union. A union composed of workers same or of several allied trades; a craft

vertical union. See *industrial union*.

union certification. A determination by the Na Labor Relations Board or a state agency particular union qualifies as the bargaining sentative for a segment of a company's worke bargaining unit — because it has the suppor jority of the workers in the unit. — Also *certification of bargaining agent*; *certification of union*.

union contract. See COLLECTIVE-BARGAINING AGREE

union givebacks. See CONCESSION BARGAINING.

Union Jack. The common name of the national the United Kingdom, combining the nationa of England, Scotland, and Ireland. • The Jack was originally a small union flag flown fro jack-staff at the bow of a vessel. It is differen the Royal Standard, which bears the royal ar is the Queen's personal flag.

union-loss clause. See MORTGAGE-LOSS CLAUSE.

union mortgage clause. See *standard mortgage* under MORTGAGE CLAUSE.

union rate. See RATE.

union-security clause. A provision in a union co intended to protect the union against emp nonunion employees, and competing unions. Labor Relations ⇦251. C.J.S. *Labor Relations* 230–231, 233, 235–238.]

union shop. See SHOP.

union steward. See STEWARD (2).

unique chattel. See CHATTEL.

unissued stock. See STOCK.

unit. The number of shares, often 100, that a stock is normally traded in.

unital (yoo-nə-təl), *adj.* Of or relating to legal re that ex st between only two persons. Cf. MULTITU

> "The relations of the *cestui que trust* with the trustee *personam* or 'unital,' and the same is true of a co beneficiary and the promisor . . . ." William R. Anson *ples of the Law of Contract* 326 n.1 (Arthur L. Corbin Am. ed. 1919).

unitary business (yoo-nə-ter-ee). *Tax.* A busine has subsidiaries in other states or countries an calculates its state income tax by determinin portion of a subsidiary's income is attribut activities within the state, and paying taxes percentage. [Cases: Taxation ⇦1005. C.J.S. § 1719.]

unitary state. See STATE.

unitary tax. See TA

unitas actus (yoo Unity of action, must not be in

unitas juris (yoo-r right.

unit cost. See COST

unit depreciation r

unite, *vb.* **1.** To c To act in concert

United Kingdom. England, Scotlan but not the Isle Abbr. U.K.

United Nations. A lished in 1945 to peace and secur between nations, ternational proble tural, and humar [Cases: Internatio *al Law* §§ 59–65.]

United Nations C Child. An intern dren's civil, politi rights. • The Con Nations General Only a few natic ha e not ratified t

United Nations Ed Organization. Th charged with pron al, scientific, and c • Its Copyright L versal Copyright

United Nations Env zation created in and employment o in all nations. — Al

United Nations Tre Activities of States Outer Space. See ou

United States Agenc The independent U.S. foreign-aid p humanitarian assis The agency becam Affairs and Restruc administrator is un eign-policy guidanc Abbr. AID; USAID.

United States Air Fc United States armed Air Force (standing and the Air Nationa Force is under the of the Air Force. —

United States Arbitra ACT. — Abbr. USAA.

Jane Pierson

From: Karen Karlen [alaskakarlens@alaska.net]
Sent: Monday, April 16, 2007 7:36 PM
To: Jane Pierson
Subject: HJR9

To the House Judiciary Committee,

I am asking that the House Judiciary Committee move HJR9 out of committee to a floor vote.

Thank you.

Karen Karlen
1108 Tyrol Streeet
Fairbanks AK 99712

Jane Pierson

From: Ruth E Poage [poagies@yahoo.com]
Sent: Tuesday, April 17, 2007 12:01 AM
To: Jane Pierson
Subject: HJR9

Please move HJR9 through to a full floor vote.

The people of Alaska have sent a strong message to the Legislature, the Governor, and most importantly – the Supreme Court. Alaskans don't want homosexual relationships treated as if they were the same as marriage between a man and a woman.

In 1998, a majority of Alaskans said "YES" to protecting marriage in our constitution. Now, almost ten years later, Alaskans have said "YES" again – this time to making the marriage amendment stronger, in response to efforts by un-elected judges who want to weaken it. How many times do Alaskans need to speak on this issue before judges, legislators, and the Governor start to listen?

Legislators voted to place this advisory question on the ballot. Now, we will watch those same legislators carefully to see how they respond. Will they honor the will of the public, and place the constitutional amendment on the 2008 ballot? As far as we're concerned, any legislator who said "YES" to the advisory vote, and votes "NO" on the constitutional amendment is snubbing his nose at the voters. People with that kind of arrogance usually have brief careers in politics.

Again we ask to please move HJR9 through to a full floor vote.

Thank you

Larry & Ruth E Poage
P. O. Box 2138
Soldotna, AK 99669
907-262-7540

Jane Pierson

From: dalethomas [dalethomas@myway.com]
Sent: Monday, April 16, 2007 8:10 PM
To: Jane Pierson
Subject: HJR9

Dear Jane,

Please move HJR9 out of committee for a full floor vote. I would eventually like to vote on the constitutional amendment. Thank you.

Dale Judge

Anchorage

phone: 227-5053

Jane Pierson

From: Pamela Voigt [pamela.caringhands@gmail.com]
Sent: Tuesday, April 17, 2007 9:06 AM
To: Jane Pierson
Subject: Floor vote

Towhom it may concern:
I am writing this email in hopes that our House Judiciary Committee will move HJR9 out of committee and on to the floor for a vote. It is my sincere hope that history will show that our great state of Alaska had the courage and fortitude to stand for what is right and good. The same strength that our forefathers displayed when they made some hard unpopular decisions in the founding of this great nation. This great nation will only stay great will if we stand strong against the onslaught of thinking such as this whole gay rights movement. Please, please show the rest of our country that our state is going to stand for morality and keeping our families pure.
Pam Voigt
1935 Bridgewater
Fairbanks.AK 99709

Jane Pierson

From: Darcy Fullford [darcyfullford@hotmail.com]
Sent: Tuesday, April 17, 2007 7:58 AM
To: Jane Pierson
Subject: HJR9

Dear Ms Pierson,

I urge you to represent the majority of those who voted on the issue of benifits going to same sex partners. Even out of the poor turn out, the majority of people wh. voted made their wishes clear. We have given you the right and power to speak for us. We urge you to move HJR9 out of committee to a floor vote. Thank you, Darcy Fullford

Jane Pierson

From: James and Shaharriet Houchins [jnshouch@gci.net]
Sent: Wednesday, April 18, 2007 12:35 AM
To: Jane Pierson
Subject: Today's Testimony for the House Judiciary Committee WRITTEN(HOUCHINS)
Attachments: header.htm; image001.gif

Good Afternoon House Judiciary Committee, We are James and Shaharriet Houchins

As Alaska Parents of the Year 2004 we addressed the legislature in Juneau on Alask

We are the parents of 9 children and by our example and their exposure to the examples of couples who feel as strongly as we do we have fought hard to be the moral compass and example of what marriage is truly about. We want you, our elected officials to help us cement this example by 100% protection of the only marriage that can really be, a man and a woman.

We invest in our marriage daily and always want to exemplify what God wanted when he raised the level of marriage at the wedding at Cana. A husband and wife procreate with God and the world continues. It is imperative we uphold this most sacred union. We must stand up for the family. The family unit is the most precious unit we have. Our children need to see us as committed married parents tha weather storms and celebrate triumphs so they can see what they will grow up to parallel. Our nations future depends on the futur and we are raising that future now. When our 4 year old ask us to kiss and revels with pure innocent joy when we do we know she is understanding our positions in her life and in God's world. I'm a nurse by trade but I am a domestic engineer daily. I'm in charge of nurturing futures. Every mother shows her daughter how to be the bride, the wife and the mother of the family and every father shows his son how to be the groom, the husband and the father of the family. Together we show our children when we sit as a family at Mass and other public events how to be a family ~ Mom, Dad, and children.
As we present our WWME Weekend to couples they see how deep our commitment is to preserve marriage between one man and one woman.
As a mother they saw me united with their Dad even when he was serving our country during Desert Storm/ Shield and his active duty career. They understood our bond of marriage and their place in the family unit as they sacrificed their time with their Dad while he served our country.
They see our marriage commitment as we work together at their school Holy Rosary Academy, Dad as Secretary of the HRA Board of Directors and I as VP of the

Parents Organization. They see it at our Church St. Elizabeth Ann Seton when their Dad serves on the Pastoral Council, KOC and together we reverence Aduration and work at Vacation Bible School.

James: Good afternoon, this is James testifying in support of HJR9

As my wife stated we are Alaska Parents of the Year 2004. This is an honor I wear with pride. When we addressed the legislature I wanted to impress our faith and desire for a healthy marital union one between a man and a wife. As Alaska Worldwide Marriage Encounter Presenting team and as Sacramental married Catholics we uphold 100% Gods moral law that the bond of marriage is ONLY between a man and a woman. We strongly believe marriage is only between man and woman.
Leviticus 18:22
You shall not lie with a male as one lies with a female; it is an abomination.
I served my country for 20 years in the military. One of the principles I held dear was the sanctity of a healthy family man/woman and children if God saw fit to grant them.

We want you, our elected officials to truly hear us and be our voice. Don't bow to pressure to compromise what needs to be said for the good of the family.

We as a state cannot allow this unholy union to become commonplace. I believe as a people God created us in His image. This country was founded on traditional values. When I pray to god I pray for everyone regardless of race, creed, color, religion, and even those who choose a different sexual orientation. However, in good conscious I cannot support a male/ male or female/female union. If we allow the homosexual union to be given the same dignity as a union between a man and a woman society will be irreparably damaged. Our children are born into a world that is confusing enough as it is. Please lets not complicate even more.

PLEASE listen to the voters and let's bring it to the people in 2008.

Thank You, James and Shaharriet Houchins
Alaska Parents of the Year 2004
Worldwide Marriage Encounter Presenting Team
13710 Venus Way
Anchorage, Alaska 99515
644-8677
jnshouch@gci.net

Jane Pierson

From: robert.l.paul@us.army.mil
Sent: Tuesday, April 17, 2007 12:35 PM
To: Jane Pierson
Subject: Take HJR9 out of the Committee and put to a floor vote!

Dear and Sir's and House Judiciary Committee,

HJR9 needs to be pulled out of the committee and put to a full floor vote. With the vote on this issue in 1998 and most recently, will the courts finally listen to the Alaskan citizen? Same sex marriage is an unnatural relationship and unhealthy for our society and our children. The Alaskan citizen has shown their disapproval of them to have the same financial benifits as Male and Female marraiges. As an American soldier I believe we all have constitutional rights, but when it comes to sexual preferance rights (such as homosexuals, beastiology, child molestation) I believe we are going too far by giving them financial benifits and encouraging such immorality and life styles. Will the words "purity"or "morals" exist in Alaska's vocabulary 10 years from now? We are getting pretty twisted!

Sgt Robert Paul (3 time Iraqi freedom vet) father of 6 children.

Jane Pierson

From: Archibald Campbell [archibald@accchurch.org]
Sent: Tuesday, April 17, 2007 12:11 PM
To: Jane Pierson
Subject: Re: House Bill HJR9 : Move it to the floor.

Dear Mr. Chairman and members of the House Judiciary Committee,

I am writing on behalf of my family and fellow citizens who voted to protect marriage during the recent election. It is concerning to me that Alaskans have now voted twice to protect marriage - but are the courts listening ? Now that a majority of Alaskans have voted to protect marriage, it would be a cynical betrayal of public trust to spend more than $1 million of public money on a statewide advisory vote, only to ignore the results.

I urge you to move HJR9 out of committee to the floor for a full vote.

Thank you sincerely,

Archibald C. Campbell
13310 Brant Way
Anchorage AK, 99515

907-344-4024

Jane Pierson

From: Jon and Ruth Ewig [ewig4him_7@hotmail.com]
Sent: Tuesday, April 17, 2007 11:54 AM
To: Jane Pierson
Subject: Fully support HJR 9

Please include my testimony in the bill packet.

I am working and will not be able to participate in the teleconference at 1 pm. I am writing on my lunch break and fully support the Marriage Amendment with the understanding that benefits provided to married couples by the definition of marriage of one man and one woman should not expand to any other group. Marriage is a unique and stable union and deserves special treatment, reights, benefits, obligations, qualities. Marriage needs to be treated as such with no loopholes for homosexual partners.

Sincerely,

Ruth Ewig
2325-30th Avenue
Fairbanks, Alaska 99701

Jane Pierson

From: Kristina Johannes [amdg@alaska.net]

Sent: Sunday, April 15, 2007 3:49 PM

To: Jane Pierson

Subject: In support of HJR 9

I would like to urge the committee to pass HJR 9, the marriage amendment. This clarification is necessary in order for our constitution to be understood and interpreted correctly by the courts. Same sex unions are not marriage, the state should not be required to provide marriage benefits to these unions. This needs to be cleared up as soon as possible. A large majority of Alaskans support this amendment as witnessed by the recent advisory vote.

Thank you,
Kristina Johannes
Anchorage

FROM:
Shelley S. Hughes
P.O. Box 1496
Palmer, Alaska 99645-1496
907.746.3459

TO:
Honorable Bob Lynn and Members of House State Affairs Committee
House of Representatives - Alaska State Legislature
Juneau, Alaska 99801

March 25, 2007

Re: HJR 9 Constitutional Amendment: Benefits & Marriage

Dear Chairman Lynn and Members of the House State Affairs Committee:

With the current opposing interpretations of the existing marriage amendment in Alaska's Constitution, HJR 9 would provide a fair and reasonable opportunity for clarification.

Although I value all the people of this great state as individuals, their backgrounds and differences, the definition of marriage is timeless and a core foundation of our way of life and what we hope for following generations; it should not be left open to redefinition: it is the union between one man and one woman only. I agree that the rights, benefits, obligations, qualities or effects of marriage should only be extended or assigned to this same union.

Allowing the voters to decide whether or not to further amend the Constitution on this matter will resolve the questions at hand regarding same sex benefits for public employees—as well as other potential questions in the future.

I appreciate Representative Coghill's and the co-sponsors' efforts to settle this matter and respectfully ask the Members of the House State Affairs Committee to move this resolution out of committee.

Sincerely,

Shelley S. Hughes

Shelley S. Hughes

Today is the day for our legislative to do what most Alaskan want them to do with this bill HJR9.
Otherwise we wasted a lot of money.
Please do the right thing.

Paul Merrifield
1556 Dogwood Street
Fairbanks, Alaska 99709
907-451-0657
leconte@gci.net

Testimony byVictoria Dance

April 17, 2007

PO Box 210741, Auke Bay, AK 99821

(907) 789-005

I believe justice and equality are serious issues. That's why I'm here

Though I don't feel I should have to come down to this honored body to argue for justice and equality. This great state of Alaska has other more important things to accomplish...today. So I'm not asking you to fight for justice or equality. I'm just asking you... not destroy it in our constitution.

We ALL know how it feels to have a very difficult problem to solve without a solution at hand.

- The violence on campuses IS such a problem (and let's not be foolish in thinking it can't happen here. There is a need to figure out emergency plans in case it does),
- The effects of Global warming on Alaska is such a problem,
- All energy issues vital to Alaska's future are such problems.

In deciding who gets benefits, whether someone in a long-term relationship is married, is not such a problem;whether someone who works & contributes to the state's GNP has a same-gender partner is not such a problem. The Supreme Court did not see it as a problem. Almost half of the Alaskan who voted against the benefits ban on April 3rd did not see it as a problem.

The effort spent on making equal pay for equal work a problem or writing a constitutional amendment for this imagined problem is time and money taken away from solving truly difficult issues.

We all know how more satisfying it can feel to distract ourselves by making issues out of something we can see a solution for. Denying benefits to targeted groups is comparatively an easy distraction with an easy solution. But it's not the highest purpose for public servants to devote their time to.

Even the ethics of some of state legislators are more of a problem to solve than looking for a punishment for people who are not ill serving the public of Alaska,

Indeed, some of the people whom HJR9 would punish are contributing not only at their workplace but also in the community. For example, as a group, gay and lesbians are well known for the amount of volunteer work they give to any community they live in, let alone often going above and beyond for their employers and increasing economic value in that way.

Perhaps this is why the advisory vote failed to show a mandate for denying benefits to a targeted group of Alaskan workers and taxpayers. Those who have actually worked beside individuals in a group targeted for prejudice are more likely to give them the respect they are often due.

The advisory vote should be giving the supporters of HJR9 important feedback that their bill would not give them popular support or respect for writing and pushing for this bill.

I urge you all to let this bill die here..today.

- To not allow the constitution to be further sullied by bills engendered from prejudice,
- To turn away from this distraction,
- To stop the willful waste of legislative time and taxpayers money,

I urge you all to turn your great hearts and minds to attend to real problems
and find solutions that will truly benefit Alaskans,..not rob some.

Emily Stancliff

From: Glenn Gray [glenn@glenngray.net]
Sent: Monday, April 16, 2007 10:20 PM
To: Rep. Jay Ramras
Subject: HJR 9

Dear Representative Ramras:

Please do not pass HJR 9 out of committee. The recent vote clearly showed there is no mandate to for a constitutional amendment to discriminate against a small minority.

Thank you for considering this request.

Glenn Gray
P.O. Box 33646
Juneau, Alaska 99803
Phone: (907) 789-7822 Fax: (907) 523-1005

Emily Stancliff

From: Joyce Bamberger [danjoyce@gci.net]
Sent: Tuesday, April 17, 2007 8:20 AM
To: Rep. Jay Ramras
Subject: HJR 9

I strongly oppose any change to the Alaska Constitution without far more input than what has occurred to date. Our constitution is a model of fairness among state constitutions. It would be a travesty to undo the thoughtful work of the 1959 convention on a whim to satisfy a minority view. Please do not underestimate the unforeseen long term consequences of changes based on politics rather than law and ethics. I urge you to leave our model constitution as is. Thank you.

Joyce Bamberger
1036 West 22nd Street
Anchorage, Alaska 99503
(907) 277-7354

Emily Stancliff

From: Cady Lister [cadylister@gmail.com]

Sent: Tuesday, April 17, 2007 8:17 AM

To: Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Jay Ramras; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: HJR 9 .... what?

Hello Representatives - Some of you I have written before, some of you I worked for in high school. I have lived in Alaska all of my life, grew up in a log cabin with no running water and until I was 10 no electricity or telephone. I spent the majority of my summers in the village of Tanana with family friends and have ties in many communities throughout the state, Fairbanks, Anchorage, Juneau, Nenana, Sitka, Bethel, Scammon Bay, etc. ..... I am the kind of Alaskan and the kind of voter who believes in equal pay for equal work. This proposed amendment to our Constitution is both mean spirited and ill conceived. Additionally, it will never stick. The times...they are changin, the majority of fortune 500 companies in America offer domestic partner benefits, as do the major employers in our state including all of the oil companies, the university, and Providence healthcare (for crying out loud!). When young people from all around the state came to Fairbanks for the conference of young Alaskans one of the statements they made was that the ban on same sex marriage should be removed from the constitution, **they** are the future. I hope you will think about what sort of state you want to live in, who you want to alienate, whose children you think deserve healthcare, and how you personally want to be remembered. And then I hope you will vote to kill this hateful piece of legislation. Sincerely, Cady Lister

Emily Stancliff

From: Ben Millstein/KODIAK ISLAND BREWING CO [bmills@ak.net]
Sent: Tuesday, April 17, 2007 9:06 AM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: HJR 9

Greetings Representatives--

Please do not allow state sanctioned discrimination. It is as simple as that. I am not gay, but America stands for freedom, and as Americans we need to protect peoples' rights to live as seems fit for them. That's who we claim to be.

Thank You,

Ben Millstein
Kodiak

Emily Stancliff

From: Stephanie [lafleurdesign@alaska.com]
Sent: Tuesday, April 17, 2007 12:23 PM
To: Rep. Jay Ramras
Subject: Benefits

Dear Representative Ramras,

I urge you to defeat the efforts to place a constitutional amendment baring equal protection and benefits to all employees. I am so incised by the very discussion that this is difficult to articulate. There are a host of reasons why MOST every major successful business has recognized other forms of 'families' and extended the same employee benefits package to all employees. DO NOT let Alaska go backwards in time. Please defeat this measure and uphold the Superior Courts decision. Alaskans will not support discrimination in our constitution.

Thank you for your consideration-for the good of everyone.
Stephanie LaFleur and same-sex partner of 16 years, Jean Wall

Emily Stancliff

From: Kate Boesser [kateboesser@mail.com]
Sent: Tuesday, April 17, 2007 11:48 AM
To: Rep. Jay Ramras
Subject: VOTE NO to Constitutional Amendment HJR9

VOTE NO to HJR 9, Constitutional Amendment to take away benefits from some partners of public employees. It is bad public policy at odds with the trends in business and government across the country. Health care is in crisis and we should be doing everything we can to ADD people to the rolls, not bar them. *Please vote no.
*Sincereiy,
Mary Kate Boesser, Alaskan since 1959
and
David F. Koschmann, Alaskan since 1953

Emily Stancliff

From: HFLEISCH@aol.com
Sent: Tuesday, April 17, 2007 12:59 PM
To: Rep. Jay Ramras
Subject: Same sex

Hello Rep. Ramras-My wife and I encourage you and the committee to not challenge the Alaska Supreme Court decision regarding same sex partners getting the same benefits from the State. I work with the big Oil companies, which you may know, provide more subsistence to Alaska than others pursuits. Those companies provide equal benifits to all employees, straight or gay-so take a page out of their advanced book and do the same.

Hugh & Lanie Fleischer
1401 W. 11th Ave.
Anchorage, AK 99501
(907) 274-2453
hfleisch@aol.com

Emily Stancliff

From: richard or mary bishop [rmbishop@ptialaska.net]
Sent: Tuesday, April 17, 2007 1:09 PM
To: Rep. Jay Ramras
Subject: FW: HJR9

My computer says this was not transmitted on the first attempt. Dick Bishop

-----Original Message-----
From: richard or mary bishop [mailto:rmbishop@ptialaska.net]
Sent: Tuesday, April 17, 2007 1:00 PM
To: 'Rep_Jay_Ramras@legis.state.ak.us'
Subject: HJR9

Dear Representative Ramras, Chair, and House Judiciary Committee members:

I am opposed to passage of HJR 9. I urge the House Judiciary Committee not to approve the measure.

HJR 9 conflicts with Alaska's Constitutional provision of equal protection under the law.

The issue reminds me of when the State had a rural subsistence priority law. The Alaska Supreme Court ruled that the rural priority violated common use of and equal access to renewable resources, unacceptably discriminating among Alaskans on the basis of ZIP CODE.

At the time, Supreme Court Justice Moore, in his concurring remarks said: "This is an equal protection case, and an easy one at that."

HJR 9 is "an equal protection case, and an easy one at that".

Rights and privileges assured under Alaska's Constitutional provision of equal protection under the law should not be eroded in areas of equal pay for equal work and other areas of public policy any more than in the area of common use and equal access to natural resources.

Thank you for considering my opinion.

Dick Bishop
1555 Gus's Grind
Fairbanks, AK 99709
Ph# 907-455-6151

Barbara Belknap, 4481 Abby Way, Juneau, Alaska 99801, 780-8602

Public Testimony, HJR 9, March 27, 2007

I am here to testify against HJR 9. Former House Speaker Gail Philips helped me decide what I would say today.

Representative Phillips is in a new television ad for Northern Dynasty Minerals' Pebble Mine. In the ad, she says that fairness is an Alaskan moral value. She is also quoted in yesterday's paper as saying that attacks on the Pebble Mine are "so unfair that I think it is un-American and un-Alaskan."

Fairness is in the eye of the beholder. When our children were young, my husband and I had the final say when they couldn't agree. Inevitably, one would end up crying, "That's not fair!" In our democracy, when two parties cannot agree on what is fair, the issue goes to the courts for an impartial decision.

We are here today because some members of the administrative and legislative branches didn't like a decision made about fairness by the judicial branch. The judges ruled that it was not fair for some public employees to get employment benefits by virtue of marriage, while their co-workers who were in committed same-sex relationships were denied benefits. This Res. appears to go even further, prohibit no all employers from offering benefits to any employee who are not married. The state constitution guarantees equal protection, and, since the state workers were prohibited by the constitution from marrying, the fair and just thing to do was to provide equal benefits for equal work.

The overarching goal of good government policy should be making sure that as many people as possible have health benefits, not trying to take them away. ~~[illegible]~~ I am an Alaskan and I have to respectfully disagree with Representative Phillips. Fairness is not an inherent moral value for Alaskans or we wouldn't be here today. "Live and let live" used to be an Alaskan philosophy, but obviously that is no longer true.

This resolution will further divide Alaskans. The us versus them public discourse will continue to hurt our gay and lesbian family members, friends and neighbors who contribute so much to our state. Ultimately, if the two proposed amendments to the constitution pass, existing benefits will be taken away from hard-working Alaska ~~public employees~~ and future PEERS.

Now, that is really unfair.

BOB DOLL

27 MARCH 2007

HJR 9

THANK YOU MR. CHAIRMAN.

MY SUBJECT TODAY IS "WHAT ARE WE FIGHTING FOR?"

I BEGAN MY 36 YEARS OF MILITARY SERVICE BY ENLISTING AS A PRIVATE OF INFANTRY IN THE US ARMY RESERVE IN 1955. AT THAT TIME WE STILL HAD IN OUR UNIT MANY VETERANS OF THE KOREAN WAR, AND SOME OF WW II, WHO REMEMBERED THE OLD CLICHE, "WHAT ARE WE FIGHTING FOR?" IT WAS MOST OFTEN SAID IN JEST, AND THE STANDARD RESPONSE WAS USUALLY THAT WE WERE FIGHTING FOR SOME PINUP QUEEN OR FOR THE CHANCE TO CHASE SOME PROSPECTIVE PINUP.

BUT THE QUESTION ALSO HAD A POTENTIAL HARD EDGE, AND THE DEPARTMENT OF THE ARMY MADE SEVERAL TRAINING FILMS WITH THE SAME TITLE. THE FILMS INVARIABLY CONVEYED THE MESSAGE THAT WE WERE FIGHTING TO RID THE WORLD OF BULLIES, BE THEY GERMAN, JAPANESE, OR SOVIET. AND THAT SEEMED TO ME LIKE A GOOD THING TO INVEST ONE'S LIFE TOWARD.

I HAD OCCASION TO REMEMBER THAT MESSAGE, OFTEN, IN THE NEXT 36 YEARS. WHEN THE RIFLE, HELMET, AND PACK SEEMED LIKE TOO MUCH TO CARRY, OR WHEN GREEN WATER CAME OVER

THE BOW AND NEARLY CARRIED ME OVERBOARD, OR WHEN THE VIETNAM CANAL I WAS TAKING MY BOAT ALONG SEEMED TOO LONG, TOO STRAIGHT, AND TOO NARROW, I THOUGHT A LOT ABOUT WHAT I WAS FIGHTING FOR.

I BELIEVED, MR CHAIRMAN, THAT I WAS FIGHTING TO PREVENT THE KIND OF BULLYING THAT SINGLES OUT SOME OF OUR CITIZENS FOR INFERIOR STATUS; THAT APPLIES SOME KIND OF TEST THAT UNDERMINES THEIR CITIZENSHIP; THE KIND OF BULLYING THAT MADE POSSIBLE THE RISE OF NAZIS, FASCISTS, AND COMMUNISTS TO THE CONTROL OF ONCE-PROUD NATIONS, AND WHICH REQUIRED ALL OF OUR MANPOWER AND TREASURE TO OVERCOME. I WAS, AND

REMAIN, PROUD OF WHATEVER SMALL ROLE I HAD BEEN ABLE TO PLAY IN THAT EFFORT, AND I BELIEVE THAT MOST AMERICANS SHARE IN THE PRIDE THAT COMES WITH HAVING OVERCOME THAT KIND OF BULLYING.

AND SO I ASK THE COMMITTEE TO TABLE THIS RESOLUTION, AND REASSURE THOSE OF US WHO THOUGHT WE KNEW WHAT WE WERE FIGHTING FOR, THAT THE ALASKA LEGISLATURE UNDERSTANDS WHAT WE HAVE ALL FOUGHT FOR.

HOUSE STATE AFFAIRS COMMITTEE
MARCH 27, 2007
TESTIMONY ON HJR 9

My name is Marsha Buck and I am here representing PFLAG Juneau. PFLAG stands for Parents, Families, and Friends of Lesbians and Gays. I am a parent.

Alaskan voters recently gave you, the Legislature, a mandate, didn't they! They shortened the legislative session from 120 days to 90 days beginning next January. Alaskans appear to be giving you the message that they want you to use your time wisely not frivolously during the legislative session. It seems to me that this hearing today may be the very type of activity that Alaskan voters had in mind when we made the 90 day vote.

You do not need to be here this morning, nor do I. The advisory vote scheduled one week from today does not need to be occurring either. And especially, BOTH this hearing and the advisory vote TOGETHER do not need to be happening. Together they give the appearance of a huge waste of time and money.

Unless, of course, a particular group is into political maneuvering or a particular group is somehow using the removal of my daughter's health benefits for some purposes I don't understand, purposes that go against the Alaskan value of fairness. But I would love to trust that you, our legislators, would not use my daughter and her rights to try and trick people into voting the way a minority group would like them to vote next Tuesday.

No, I would love to trust that you, our legislators, would render unto Caesar that which is Caesar's, in this case your time and loyalty to the process of running one third of the balanced 3 part state government, and would render unto God what is God's, which is in all cases your deeply religious side that follows the commandment to love your neighbor as yourself, and that neighbor includes my daughter and many Alaskans like her. The way a legislative body shows love is not by going out individually to shovel driveways, although we all know that help has been badly needed this winter, but by making certain that Alaskans who are like my daughter have the health care benefits that they have worked to earn.

Please do not pass HJR 9 out of this committee. It is time to VOTE NO today just like we will Vote NO on April 3rd.

Marsha Buck
8445 Kimberly St.
Juneau

Testimony on HJR 9 March 27, 2008
Lin Davis

This bears repeating: I like what Pres Bush said at Coretta Scott King's funeral: "Her work made us whole." Let's use Coretta's life and Pres. Bush's words as a measuring stick, and see how HJR 9 holds up.

First, HJR 9 will take away the health insurance and survivor benefits that I am now able to offer my same sex my life partner. Imagine, taking away health benefits. We've been together 19 yrs, and we're on our 3rd set of dogs. My partner is self employed, and my health insurance is all that she has. As an older couple, we are very financially vulnerable: if she had a major medical crisis and had no health insurance, we could quickly lose our home and slide into bankruptcy. If my partner had to enter a nursing home, I would not be able to remain in our home.

We could lose so much so quickly. And how does taking away her health insurance serve the public good?

How will it help our community if she is prevented from getting my last paycheck and death benefits?

Because HJR 9 makes us financially very vulnerable, our whole community loses if the 2 of us are in health financial crisis. It costs everyone: local businesses, the hospital, the city, the state, when we can't financially survive. HJR 9 does not strengthen our communities. HJR 9 is clearly bad public policy. It appears to be punishing those of us who are different. This is not a Coretta.

The intent of HJR 9 is to make sure that certain groups of people are kept financially and socially vulnerable and marginalized. Why would anyone want to do that to a group of their fellow Americans?

At a time when most states are figuring out how to provide health insurance for ALL citizens, Alaska will be in a race to the bottom by proposing to take away health and survivor benefits from gay employees who are in committed long term relationships. Note, the net has widened and now unmarried men and women are also targets of HJR 9.

2) HJR 9 is so un-Alaskan. We know these exact words are imported from Michigan where this policy has been damaging to the public good.

Alaskans believe in fairness and equal pay for equal work. What kind of example are we setting for our youth when they see it is okay to treat gay people and unmarried people as 2nd class citizens? My co-workers at the job center are pleased that after 10 years of working there, I am finally making a salary equal to theirs. Our benefits are 40% of our pay.

Alaskans are proud of our constitution and its eloquent equal protection which indeed lives up to Coretta's life work. HJR 9 appears to be another prong in a movement called "No Gays Left in the Constitution."

What if the signers of this resolution are unknowingly writing their child or niece or nephew or grandchild out of constitutional equal protection? What a deeply harmful action toward a family member you didn't know is gay or doesn't plan to get married.

Last Sunday's headlines said that 75 Juneau high school students have tried to kill themselves in the last year. Not that all of them or any of them are gay, but that they cannot see themselves happily alive and working and making a living and feeling tenderly connected in a society that is constantly dividing people against each other and not respecting differences.

HJR 9 targets certain groups of people, and it does not make us whole. Constitutional equal protection makes us whole.

HJR 9 will prevent employers from providing the work-related merit-based benefits that they deem necessary. Here in Juneau, CBJ, Bartlett Hospital, the university, Alaska Airlines, Blockbu er, Freds, Laidlaw, McDonalds, Radio Shack, Safeway, Starbucks, Tesoro, UPS, Wells Fargo and Home Depot and Wal-Mart have successfully offered same sex benefits for years. These large companies know that offering equal pay for equal work gives them the ability to hire and retain talented workers. Good public policy. Everyone wins.

It's interesting that 6 of the 12 states that offer same sex domestic partner benefits also offer them for heterosexual couples who can show all the documents that indicate financial interdependence and life partnership.

HJR 9 will tangle with the rights of Alaskan employers and that doesn't sound like good public policy either.

As someone who graduated from a Christian college, there is something very wrong, very un-Christian, very un-Jesus-like, when certain minorities are constantly targeted with harmful legislation like HJR 9.

Here in Alaska, we have so many important issues to deal with, and we need minds and hearts and energies ready to tackle a gas line and coastal villages falling into the sea.

A mind is a precious thing to waste on the politics of inequality.

Week 7
44/322

FEBRUARY 13
Friday · 2004

	SCHEDULE	ACTION LIST
8		H.IRG is not About
		Marroge. It is About
9		Taking away rights
		And benefits from
10		A Segment of Alaskas
		population.
11		Alaskans State
		Constitution guarentees
12		EQUAL Rights to ALL
		Its Citizens. There
1		is nothing EXCLUSIONARY
		About its wording
2		And to have Some
		members of this
3		Legeslative body
		try to take away
4		these rights for
		Strickly Political
5		reasons is wrong
		I ask this Legislative
6		body to do what is
		Right and Just
7		
		Do not Pass H.IRG

NOTES THANK You

Rolando Rivas
7247 Duben Ave
Anch Ak 99504

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the _____
Committee Name

Committee on HJR 9 Dated 3/27/07
Bill / Subject

This intrusion into my life and my partner's life is unacceptable.

This amendment would prevent me from visitation and decision rights should my partner suffer a serious illness. After 15 years of partnership - a partnership entered into in the Unitarian Church - I am deeply concerned that the State would now attempt to involve itself in our lives.

Please vote no on this proposed Amendment.

SIGNED: _____
Testifier

_____
Representing

1722 Tamarack St. 458-0913
Address / Phone Number

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House state affairs
Committee Name
Committee on HJR 9 Dated 3/27/07
Bill / Subject

To the Alaska State Legislature: Table this bill!

Stop wasting our time and tax money with an advisory vote which is just a political ploy.

Stop wasting our tax money legislating a reduction of benefits on working Alaskan families just because that "family" doesn't fit the fundamentalist Christian views of "family".

Partner benefits are just that, benefits in support of Alaska families regardless of their construct. Partner benefits are not "marriage" benefits.

Removing benefits from Alaska families will cost Alaska in terms of the state's ability to recruit employers in the state and maintain the health of the people who live here. People without health care always end up costing the state.

I wish the legislature have anything better to do than attempt to micromanage our private lives! When did the republican party stand for larger government.

SIGNED: Louise Thorsen
Testifier

MYSELF and my family
Representing

PO BOX 81271 FBKS AK 99708 907-455-1260
Address / Phone Number

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs
Committee Name
Committee on House Joint Resolution No. 9 Dated 3/27/07
Bill / Subject

I urge you to support partner benefits for all Alaskans and not alter the Constitution, which is an excellent document as it stands. Many families will be negatively impacted by loss of benefits which will hurt children as well as adults. It is in the best interests of the State to promote stable couples and families and benefits add to this stability. Please do not vote to remove benefits from either same sex couples or mixed couples. Same sex couples in particular do not have the option of marrying and gaining benefits

SIGNED: Laurence Kaplan
Testifier

Representing

PO Box 82003, Fairbanks, AK 99708
Address / Phone Number 479-8343

Nancy Manly

From: Rep. Bob Lynn
Sent: Tuesday, March 27, 2007 10:42 AM
To: Nancy Manly
Subject: FW: HJR 9

-----Original Message-----
From: shalvor@juno.com [mailto:shalvor@juno.com]
Sent: Monday, March 26, 2007 11:37 PM
To: Rep. Bob Lynn
Subject: HJR 9

Dear Rep. Lynn,

I am an ordained Lutheran pastor, working full time as a hospital staff chaplain, primarily with families in pediatrics, maternity and newborn intensive care. I am unable to attend Tuesday's hearing about HJR 9; however, I ask you to defeat this proposed bill. I work every day with all kinds of families, traditional and nontraditional. Not having access to health insurance can be devastating to families – I've seen deaths occur when families have put off medical care because they were afraid they could not pay for it.

This issue is also personal for me as a lesbian with a life partner, Erin Pikey. A year and a half ago we were in a head-on car accident when another car crossed into our lane. We continue to deal with the ramifications of that accident. Luckily for us, my employer began offering domestic partner benefits the following year, and I don't know what we would have done had Erin not had that access to insurance. We hope to raise a child one day. Our families exist, and will continue to exist regardless of what legislation is passed or defeated. I see groups arguing that this measure is necessary to "protect the family" or "defend the family." This measure will cause harm to my family and to many others.

Do not amend our state constitution so that it will cause harm to many families who do not fit a traditional mold. Excluding all "rights, benefits, obligations, qualities, or effects of marriage" from those who are not in a legally married, one man-one woman relationship is a broad statement that could have devastating effects for many families as well as economic ramifications for Alaskan businesses striving to be competitive and just, and for our society as a whole. Please defeat HJR 9.

Thank you for your consideration,
Rev. Susan M. Halvor
17450 Rachel Ave.
Eagle River, AK 99577
907.696.5206

Love recognizes no barriers.
It jumps hurdles, leaps fences, penetrates walls to arrive at its destination, full of hope.
-- Maya Angelou

ALASKA STATE LEGISLATURE

(Page 1 of 2)

Please enter into the record my testimony to the State Affairs Committee Name

Committee on HJR 9 Bill / Subject Dated 27 March 2007

I want to speak to you about my Christian faith, my faith as a Quaker. While Quakers lack creeds, we are united by common testimonies, perhaps the best-known if which are peace and equality. But I would like to talk about the testimonies of Community and Integrity.

Quaker Community is often directed inward, guiding how we act in worship and among ourselves. But Community also directs us to take a caring interest in people other than ourselves. We recognize that no fruit is borne of a community whose members are not held accountable to and responsible for each other. We are called to be our brothers' keepers. We do this in part by providing employment and retirement benefits. The effect of this bill will be to weaken that network of support, and it can only weaken the ties of community.

Another Quaker testimony – the one at the very core of this issue – is that of Integrity. Quaker Integrity demands that we hold God at the at the center of our lives in all spheres – in religion, in work, in family, and in public policy. We listen for the Inner Christ, then, for our wholeness and consistency, do as that voice leads us. Quaker Integrity often manifests as honesty or fair dealing, but it is also seen in fulfilling our promises, doing the work for which they are paid, offering a fair wage for work, and providing equal pay for equal work. (Continued on page 2)

SIGNED: PAUL F. ADASIAK
Testifier

Self
Representing

519 Bonnifield St, Fbks. 99701 Tel: 452-5411
Address / Phone Number

ALASKA STATE LEGISLATURE

(Page 2 of 2)

Please enter into the record my testimony to the State Affairs Committee Name

Committee on H.J.R. 9 Bill / Subject Dated 27 March 2007

(Continued from page 1)

Article 1 Section 1. of the Alaska Constitution guarantees all persons the rights to "life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry, and that all are entitled to equal rights, opportunities, and protection under the law." Nothing could better embody the Quaker value of Integrity! The Supreme Court merely upheld this in its unanimous ruling of October, 2005. Any attempt to undermine this ruling bespeaks a lack of integrity, and this amendments passage would undermine the integrity of our entire state.

As a man of family and a man of religion, I ask you to table this unfair amendment and let it never again see the light of ~~day~~.

Thank you.

SIGNED: PAUL F. ADASIAK
Testifier

Self
Representing

519 Bonnifield St. Fbks. 99701 Tel: 452-5411
Address / Phone Number

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs
Committee Name

Committee on HJR9
Bill / Subject

Dated March 27, 2007

I am writing to object ~~th~~ to HJR9.
I have never participated in a legislative debate, but this proposal is the worst example of government interference I have ever seen.
I am a heterosexual, Christian man, and strongly believe in marriage, but I also believe very strongly that the government has no business requiring the state to people discriminate on the basis of what ~~they~~ choose to do in their bedrooms

SIGNED: [signature]
Testifier

(myself)
Representing

P.O. Box 81271, Fairbanks, AK 99708
Address / Phone Number

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs Committee
Committee Name

Committee on HJR 9 Dated 3·27·07
Bill / Subject

Thank you for the opportunity to speak to you today. I urge you to vote no on HJR 9.

Regardless of the outcome of [illegible] marriage [illegible] [illegible] the bill's introduction.

It is the court's responsibility to look at a law's constitutionality. This is not legislating from the bench.

The criteria for which to obtain partner benefits is quite stringent and not something simple, easy or cheap.

This is not a time to take away health benefits for anyone. Please Vote No on HJR 9!

SIGNED: Cheryl [illegible]
Testifier

myself
Representing

P.O. Box 82183 Fairbanks, AK 99708 907-452-[illegible]
Address / Phone Number

Why are we here today?
I respectfully suggest that the Legislature has more important matters to attend to. Alaska needs your work to make our gas line a reality. Our schools, roads and communities need your attention.

I am here today to oppose HJR 9 and the $1.2million we are spending on the non-binding special election April 3rd Advisory vote

I am here because some people want to take my health insurance. I have worked hard for this health insurance. I work at the University, where I have received benefits for my family for the past six years that I have been employed there. I am very proud of our great University that it has paid its employees equally for about 12 years. As an Alaskan and an American, don't I deserve the same opportunity to provide health insurance for my family?

This has Not harmed a single Alaska family, Nor threatened Marriage.

Family health insurance is an important, you might say, "life or death" element of job compensation. All Alaskans deserve Equal Pay for Equal Work. I deserve to be paid the same as the person working next to me.

Now is not the time to be taking away health insurance from any Alaskan worker.

Whose interests are you serving by taking away health insurance from me and other Alaskan workers?

I am like most other Alaskans. I want my privacy and I don't want to stick my nose in my neighbors business. But that is why we are here today because some folks want to impose their radical views on Alaska. If you don't fit the narrow mold of these folks, they think you don't deserve any rights. This is scary. Reasonable religious folks disagree with these tactics of hate politics. Our country is founded on separation of church and state. We cannot let the morality of a few dictate and limit the rights of all Alaskans.

I wonder why the Advisory vote is completely different than HJR 9? The Advisory votes asks us if we want to take health insurance from gay people, but if passed HJR 9 would effect the rights of more than 16,000 heterosexual Alaskan families (source: 2000 US Census). Why the bait and switch? It seems like the backers of HJR 9 and the Advisory Vote are playing up and encouraging bigotry towards gay Alaskans.

recently asked
As a friend ~~said to~~ me, "whose health insurance would Jesus take away?"

I recall Jesus' advice was that, "he who is without sin among you shall cast the first stone"

Tim Stallard
2780 Monteverde Rd.
Fairbanks, AK 99709
374-9958

March 26, 2007

Chair and Members
House State Affairs Committee

Gentlepersons,

Governing the diverse and independent citizens of Alaska can sometimes be compared to "herding cats." Likewise can the indignant Alaskan public attempting to keep the legislative Majority on a civil and constructive track. I am here this morning to join an effort to herd you cats toward a sense of responsibility

Alaska is a State that should be governed by humane and just law, not intolerance and emotional tirades. The slick mailers sent out in support of "Vote yes to protect marriage and families" distorts the truth. The ruling of the Alaska Supreme Court is not abusive. The Advisory vote and this proposed legislation is abusive to a significant percent of Alaskans, both adults and children who would lose health benefits they already have.

Based on the equal protection clause of our Alaska Constitution, the Supreme Court sought through its ruling to protect persons in committed relationships who are prohibited from marriage by the 1998 Amendment. The ruling called for equal pay, including benefits, for equal work. To characterize that ruling as a demand for "Special benefits" is dishonest semantics. Every Legislator swore to uphold the State Constitution. Failing to support "equal protection" for all Alaskans violates our Constitution and panders to prejudices based on disregard for our system of justice and ignorance of the nature of sexual orientation.

Whatever the outcome of the Advisory Vote, it is not a representative scientific poll. This Advisory Vote you approved foments fear, hatred and divisiveness in our communities. Recent letters to the Editor are shocking in their trampling of democratic values. The special election is also a waste of the peoples' money. And, this Bill HJR9 wastes your time and ours when there are many high priority needs for legislative action. I believe it is an exercise in futility.

If you have homophobic constituents with whom you wish to demonstrate an alliance, this Bill is a political ploy unworthy of elected State Representatives. HJR9 is shameful and should never come out of Committee. It is not the "Cat's Meow."

Yours truly,
Dixie A. Flood
9350 View Drive
Juneau 99801

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
Committee Name

Committee on HJR9 Dated 4/17/07
Bill / Subject

Hello, I appreciate the opportunity to testify on HJR9 I have been a Fairbanks resident for over 13 years. I have been partnered to a man, Patrick Marlow, for over 10 years. In 1996 we celebrated our partnership with our families in a church service. On that day, we signed our wills and powers of attorney and had them witnessed by members of the congregation.

Since then we have established our lives in Fairbanks. We have bought a home together, and accumulated probably too much property. I am very concerned that HJR9 will undermine the joint property and powers of health and financial attorney that we established. HJR9 will not change the definition of marriage in the Constitution. Recognizing that we will not have the opportunity to legally marry, Patrick-I have used the tools of everyday law to create a framework that makes sense for our lives.

It fear that HJR is a blunt tool and a broad brush that will revise common property and personal law. It establishes a special class of second class Alaskans

SIGNED:

Testifier Richard Collins

Thank you for your time and please vote no on HJR9

Representing SELF

1722 TAMARACK RD, FAIRBANKS, AK 99709
PO Box 82683, FAIRBANKS AK 99708
Address / Phone Number

(907) 458-0913

Kind Representatives,

What could I possibly say to convince you to vote "No" on HJR 9?

Five of the members of this committee voted "Yes" last year on HB 4002, approving the April 3rd advisory vote. And in each of those five districts, at least half of those who voted, voted "Yes". Your integrity would seem to demand your "Yes" vote. Short of persuading you that authorizing the advisory vote was a mistake, I can probably do little to encourage you now to vote "No".

However, I *can* take away one cowardly excuse for a "Yes" vote and ask you to to face up to what you may vote for.

Representative Mike Kelly (who, I realize, is not on the Judiciary Committee) has gone on the record saying; "I don't see how any legislator could vote to deny the people their vote on this issue." In this, he shows a poor understanding of the Legislature's *role* in constitutional amendments. He seems to think that the Legislature's job is to allow any amendment proposed to be approved by a majority of the popular vote. But that is not our process. Our Constitution shows more wisdom than that.

First, amendments must be passed by the Legislature. This body is presumed to have greater knowledge of State needs, a broader perspective, and a longer view than the average voter.

Second, amendments to the State Constitution require a two-thirds vote -- not a simple majority -- of each house of the Legislature. It was made thus to allow only persistent, pressing needs to be placed into the Constitution. If you place any stock in the results of the April 3 advisory vote (with 52.8% voting "Yes"), you cannot believe that Alaskan citizens are clamoring for a Constitutional amendment. And, if you compare that number to the 68% majority who voted for the "marriage amendment" in 1998, you cannot believe that this concern is pressing. If anything, this concern is fading!

Do not argue that you're voting for HJR 9 because "the voters should get to decide". With Constitutional amendments, your job is to use your best judgment for the long-term interests of the State -- not to act as a rubber stamp.

There is only one reason to vote for this amendment: because you think that denying constitutionally mandated health-care and retirement benefits to the unmarried partners and step-children of public employees is a good thing. Are you willing to say that?

Please, do not let an increased burden on families be your legacy. It is not to late to change course. For Alaskan families, I urge you to vote "No".

Paul Adasiak
519 Bonnifield St.
Fairbanks, Alaska 99701
Tel: 907-452-5411
E-mail: adasiak@mosquitonet.com

Thank you for the opportunity to speak. I am here today to oppose HJR 9.

First I want to briefly mention that I believe today is day 92 of the Legislative session. We don't have a budget or a gas line plan yet, but you are spending precious public time considering whether to take away health insurance from hard working Alaskan families (including my family).

Secondly I also want to point out that it is not true that the backers of this discriminatory amendment are "pro-family". The 2000 US Census estimated there are about 16,500 non-traditional unmarried families in Alaska. It is anti-family and un-Christian to take away health insurance, outlaw legal protections, and deny ~~any parental~~ family obligations to Alaska's many non-traditional families. This amendment will have unknown legal ramifications for thousands of Alaskan families. Marriage is not at risk by treating non-traditional families with respect and common decency.

While our country was founded on separation of church and state, our society is broadly influenced by Christ's message of compassion for all. As Jesus taught us in the parable of the good Samaritan, we should offer health care and common decency to all humans, not just those who pass our own personal moral judgment. Jesus also taught us at a public stoning, that "he who is without sin among you, shall cast the first stone." Yet this amendment lacks Christ's universal compassion and is all about throwing stones and passing personal judgment on others.

My main point I want to make is as a tourism business owner that discrimination is bad for business. Needless to say, tourism is a major pillar of our economy. I think everyone has heard the slogan, "What happens in Vegas...?" As a side note, this used to be the Alaskan way: 'What Alaskans do in their cabin in the woods is their own business, not anyone else's, nor especially the State's'. But today we are consider pulling up the welcome mat for unmarried couples, gays, lesbians, and their friends. Gay and lesbian travel is estimated to be a $58 billion/year industry across the USA. If Alaska captures ½% of this market that is $500 million/year. Do we want to chase away travelers by judging them on their personal moral values?

Unfortunately in our recent past some Alaskan businesses used to display signs saying "no Natives", now you are considering a "no gays or unmarried couples" caveat under Alaska's "open for business" sign. As a businessman, its pretty simple to me: (in today's global economy) discrimination is bad for business.

My other business concern is the issue of domestic partner benefits that sparked this whole debate. More than half of the Fortune 500 companies offer D.P. benefits to unmarried and gay couples. Alaska Airlines, IBM, Conoco Phillips, BP, and many more offer such benefits. They don't do this merely because it is the right thing to do, they offer benefits because it is good for business. Why would we want to outlaw this business best practice in Alaska?

I ask you all to support the true pro-family, pro-Christian, pro-tourism, and pro-business future of Alaska, by voting against this discriminatory amendment.

Tim Stallard
2780 Monteverde Rd.
Fairbanks, AK 99709

T S Wstallard

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the H. Judiciary Committee
Committee Name
Committee on HJR 9 Constitutional Amendment/Marriage Dated April 17, 2007
Bill / Subject

I am offering this testimony today to urge you strongly to vote no on HJR 9 based on the following reasons:

1) Our state constitution should be used to protect and defend civil rights, not to deny rights nor to legislate discrimination.

2) I am concerned about the number of children currently receiving benefits who would lose access to health care and the security of other benefits, as well as for the children who would be denied such benefits in the future should the ammendment pass. Increasing children's access to health care is critical to Alaska's future. We should be working to remove barriers to health care access, not creating new ones.

3) As the state supreme court has already found, this is an equal pay for equal work issue, an not an issue defining marriage. Alaska should promote equitable pay for equitable work. It is makes good business and economic sense, as many of Alaska's business have found, such as Alyeska. Our state will attract and retain better qualified and more productive employees by offering equal pay for equal work.

SIGNED: Shayla Hutchison
Testifier

Individual Self
Representing

904 E Chena Hills Fairbanks 99709 / 374-0786
Address / Phone Number

PO Box 70672 Fairbanks AK 99707

My name is Steven Jacquier and I am speaking on behalf of myself, my partner, and our children.

This issue being addressed today is entirely about fundamental issues of fairness as regards equal pay for equal work. Just as both our leaders and average people alike eventually came to realize the fundamental malignant wrongness of prejudicial discrimination in slavery, in preventing women from voting, and in denying partners of different colors the right to marry we trust time is on the side of reason and justice with this issue as well. HJR 9 is like a throwback to Territorial days when some people felt quite righteously justified in posting signs saying "No dogs or Natives allowed." My family and I have faith this, too, shall pass. Sooner or later justice will prevail and equal work for equal pay will stand uncontested as the law of the land for all people, just as it is now, today, thanks to the great wisdom of our founding fathers in the Alaska State Constitution. As time moves forward and younger, more diverse, better educated voters replace those whose irrational fears would block equal justice for all the question will change from "Should the same-sex partners of state employees be barred from equal access to benefits?" to "How, in 2007, could the legislators and people of this great state ever have sullied themselves with attempting to change the state constitution so as to implement such ugly discrimination?" If this bill moves forward today then history will recall this moment with distaste, just as we recall with embarrassment and shame the irrational prejudices of decades past. The question remains of just how much cost and harm to families unlike their own (as well as to the taxpayers, institutions, and reputation of Alaska as a whole) legislators such as Representative Coghill are willing to inflict on others based on their personal religious beliefs. Evidence in abundance shows there is no fiscal justification for this prejudicial bill. To quote the great scholar and statesman, Pres. John Adams, "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence." Indeed, the more the evidence of reason is willfully ignored and the more extremist, reactionary, and intolerant the Republican party allows itself to become of the actual diversity in our society the more irrelevant it will be and, accordingly, the less influence it will have in future. Please make a better choice today and table HJR 9.

My partner is a retired UAA professor and small business owner. I am a teacher, have taught for many years in Alaska's rural villages, and now also own and operate a small business. This is a second relationship for both of us; Doran lost his first partner, Frank, to diabetes after they were together for 27 years. My first partner, Robb, died after 13 years together. Doran and I have now been together for 5 going on 6 years and will doubtless remain a couple for the rest of our lives; between the two of us we have worked in Alaska for 45 years so far. Our family resides in South Anchorage. Our daughter, Kristina, is in high school and our son, Andrew, is in college; raising children and putting them through college is indeed expensive.

We carry our own weight and are not a burden upon anyone else, nor would we want to be parasites unfairly leeching off the labor of others. Can you say the same? Not if you support HJR 9.

My partner and I have worked long and hard in Alaska and continue to do so now; our payroll contributions have funded the coverage of our married coworkers for decades. I am currently covered by my partner's insurance but if this bill succeeds, though, then after having paid in once already via our payroll deductions we would be forced to also seek private health coverage, pulling out our wallets a second time to pay at private rates, on top of our labor having subsidized coverage for our coworkers' spouses for 45 years. Obtaining equivalent medical insurance at private rates is very expensive: money which could be much better spent on our children's needs and college tuition fees.

Bills like this in the South were called Jim Crow laws; they marginalized and disenfranchised people of color, turned white folks into parasites upon the labor of people of color, and were bad for everyone. Jim Crow laws existed because a righteous majority was content to tyrannically exploit and abuse a minority; not an admirable exercise of good Christian values. This is *no different*. Gay people are just as God created us; we have no more choice about that than we do about our skin color.

Just as women should receive pay equal with that of men for performing equal work, Alaskans in longstanding committed relationships contributing to our community with their labor yet who are prohibited from marriage absolutely do merit treatment equal with that accorded our married coworkers. The Alaska constitution says so, the highest court in this state says so, and common decency says so. We work just as hard, pay in just as much, we too have children in school and college, we would go to city hall and sign a civil marriage contract if we could, and many of us have certainly been together as committed *unmarried* couples far longer than most heterosexual *married* couples. If the situation were turned around, with this bill directly targeting our married coworkers and forcing us to become parasites upon them, then as fair-minded good neighbors we would not stand for it!

This bill turns our married coworkers into parasites. Yes, parasites. Parasites benefitting at the expense of others by taking from the labor of coworkers with families who are barred from marriage. Parasites do not make for good coworkers, nor good neighbors, nor a healthy Alaska. Parasites are without any shred of honor or dignity, and people who embrace being parasites should not even think about trying to claim the high moral ground on this issue.

Pandering to prejudice, HJR 9 seeks to pervert the Alaska constitution by inverting the whole purpose of a constitution to strip away equal treatment and unfairly target a specific group (unmarried families) for harm while creating special protections and special privileges for others (married families), thus effectively forcing the latter to be parasites upon their coworkers and neighbors, whether they want that despicable role or not.

Quite likely some members of this committee actually are listening to testimony with an open mind and a genuine desire to sort out that which will best serve our community here in Alaska. Unfortunately, it is also fairly likely that some of you are so enmeshed in partisan politics that you are merely making a cynical pretense at listening for the sake of form. Whichever group you fall into I hope that you can recognize that such a divisive, fiscally

irresponsible, and maliciously prejudicial bill as this will--like a malignant burden of parasites--bring more and more grief, expense, and suffering the bigger it is allowed to grow ...and that harm will be to everyone.

How would you feel if your family, your children, were attacked like this? Prejudicially targeting and harming families and children is exactly that which HJR 9 does, make no mistake. The sponsors and supporters of this bill should feel deeply ashamed of themselves. Please do not become guilty of doing violence to others through supporting this repugnant legislation. Please demonstrate maturity, exercise statecraft, and through your actions be leaders we may feel proud to have serving in our legislature -please defeat this bill as well as every other bigoted effort which comes before you, regardless of whom it targets. Equal pay for equal work means just that: equal. Not more, not less: simply equal.

Thank you for listening to my family; please feel welcome to contact us if you have any questions.

Transcript of additional oral testimony follows, on page 5.

[JACQUIER TESTIMONY, CONTINUED]

This devisive effort has been the root of so much radical rancor. For example, here in Anchorage supporters of the recent advisory vote —adults— were willfully trespassing without permission onto public schools and posting their campaign signs on school grounds even when asked not to engage in this illegal activity.

For the record, since there seems to be some confusion on the matter, gay and lesbian people can and do procreate as well as providing excellent parenting to orphaned children.

I join Chairman Ramras in wishing there were no hatred of gay and lesbian people in Alaska but my friend Gene's experience indicates otherwise. Gene was murdered by a zealot who burst into his home and smashed in Gene's skull with a hammer for being "an abomination in the sight of the Lord."

Good morning. I can see no reason whatsoever to amend our constitution to further define marriage and its benefits. I am a happily married woman. My husband and I have a blended family of five adult children and 12 grandchildren. I do not see how this legislation will in any way improve my life, my husband's life, or the lives of any of my children or grandchildren. In fact, I see the very harmful effects this legislation will have on our gay son and his partner. These two young men work hard at their jobs, work hard at higher education, contribute to our family culture, and society at ~~large~~ as a whole. These two men are truly as dedicated to one another as my husband and I are to each other. To remove benefits from them that they have worked for and truly earned is hateful and criminal. The only basis for HJR 9 is hate. Hate of a minority population in this state. Forgive me, but I thought the legislative body was elected by the people to represent the people and protect their rights. How does HJR 9 protect the earned rights of my son and his partner? Our Constitution should not have been amended in 1998 and should not be amended now. HJR 9 is nothing more than a hate crime. Please defeat HJR 9 in this committee.

It is very clear to me

Shirley Rives
7247 Dubeni Ave
Anchorage, AK 99504
333-6168
d.20@gci.net

Good afternoon to all of you, I am here representing my self and my family

HJR 9

~~This bill~~ has been pushed through the legislative body by a few of the highly conservative legislators who feel the need to press their agenda on a segment of Alaska's population. This Bill has nothing to do with marriage, but has every thing to do with equal rights under our constitution. I for one can not understand how it was that you felt the need to spend over a million of our tax dollars to run a poll to find out how some of our citizens felt. When it would have been just as easy to hire an agency to run a poll and a whole lot less expensive. Yet you did just that Where ~~[illegible]~~ [illegible] who found it important enough to vote on something like issue

I am here today to ask each of you to do the right thing. Our state constitution was written to among other things and I am sure you all are very well aware, that is it affords equal rights to all Alaskans not just those we feel are worthy of its protection. Yet here we are again testifying against what has become yet another hot button issue for those who feel that they are potentially better than the person sitting next to them in the work place.

What is it that makes you feel that you have the right to deny medical benefits to a segment of the population because they do not fit the mold that you have laid out. HJR 9 will not just affect those who have been waiting for medical benefits but potentially denying those rights already afforded them by their employers. Where is the justification in that I ask you? If you our legislature continue to pass this bill up the ladder it will be sad day for all Alaskans. What will come next? Will we some day again start do deny rights to our Alaska native other segments of our population as we did not so very long ago by an all white legislature. Because perhaps we might feel they just are not quite fitting the mold that we have come to expect.

So I ask you again to do what is the right thing not because some of you might feel it would get you more votes at some point but to do what is just and equal for all Alaskans. And that is to table HJR9.

Thank you.

Rolando Rivas
7247 Duben Ave.
Anchorage, Alaska

TO: HJUD
FROM: ANC L10
PGS: 2

Good afternoon,

~~I am here to speak to HJR9.~~

You know, I stay awake nights trying to figure out how denying my son health insurance from his partner's employer is going to defend or protect ~~the~~ marriage ~~of his parents, i.e.~~, his father ~~and I~~. This makes no practical sense to me. We are just fine. My son and his partner do not threaten our marriage. If anything, they enrich our lives. They have been together three years and are just as devoted and loving to each other as are our heterosexual children and their spouses. We feel greatly blessed by all of our children and their families.

I do, however, see a threat on my personal horizon if HJR9 should pass into law. For instance, if because of HJR9 our son should lose his health insurance and suffer a major accident or illness, the financial obligation for this catastrophe will fall on the shoulders of his partner and their extended family. That would be us, his parents, and his brother and sisters. Please know, without any doubt, this bill will definitely not just affect the people you so easily hate and dismiss, but also those you profess to protect.

HJR9 is a hideous hate crime based on homophobia, which is based on fear, or worse, HJR9 is a political ploy to get out the vote of those people who are eaten alive with homophobia and fear. The crafters of this bill will do anything for a vote, right down to amending a perfectly good constitution, wasting time and money for political gain. The crafters of this bill should be ashamed. Go back to your offices, put on your thinking caps, open your hearts and create legislation that will be useful to our society.

While you are wasting taxpayer time and money on amending the constitution to deny a minority population health care, you could be doing something useful. What are you doing to improve the education of our children? What are you doing to improve the health care system for all Alaskans? What are you doing to help end the plague of drug abuse? What are you doing to help the homeless? What are you doing to help end spousal and child abuse? What are you doing TRYING TO PASS LEGISLATION TO DENY PEOPLE RIGHTS THEY HAVE EASRNED AND ARE ENTITLED TO?

The Courts are correct

Vote NO and stop this nonsense in this committee

Shirley Rivas
7247 Duben Avenue
Anchorage, AK 99504
333-6168
April 17, 2007

HJR 9 Testimony to House Judiciary 4/17/07 Lin Davis

In January Alaska became the 12th state to offer same sex domestic partner benefits.

11 other states have been offering these benefits for years. Some since the early 90's. For these states, this is main stream. It has been a good business practice and good public policy to include more people under heath insurance and survivorship benefits. Over half of the Fortune 500 companies offer these benefits, and the % is increasing each quarter. Now more small businesses are offering them. This is increasingly a mainstream practice.

HJR 9 however is in the business of taking away health and survivor benefits.

It would remove them from our gay state workers who recently acquired them, and then it would prevent new gay people from obtaining these benefits. Now, a new twist, this legislation also targets unmarried people. The doctor letter that ran in the Empire continues to be helpful: 40 doctors said that this is a state health crisis to widen the circle of groups that are targeted for no benefits. Juneau doctors do not want the health of Alaskan families harmed by this unfair and undemocratic State legislation.

HJR 9 will prevent employers from providing the work-related merit-based benefits that employers deem necessary. HJR 9 will tangle with the rights of employers.

Here in Juneau, it appears that we have at least 18 companies that offer same sex partner benefits, and HJR 9 would force them to end these employment benefits. CBJ, the University, Bartlett Hospital, Alaska Airlines, Blockbuster, Footlocker, Freds/Kroger, Home Depot, Laidlaw, McDonalds, Radio Shack, Safeway, Sears, Starbucks, Tesoro, UPS, Wal-Mart and Wells Fargo. Here are 18 companies who will be forced to discriminate against gay people and unmarried people.

Last night I surfed the websites of these businesses. All of them include diversity and respect for differences as one of their 3 top values. HJR 9 would attempt to dismantle corporate policies, values and culture. (Show screen sheets from 8 companies)

The advisory vote was close and clear, and it got closer with yesterday's results. There's no traction in Alaska for further discrimination against gays or other target groups. Gov Palin said it too: No Mandate here.

Let's end this undemocratic effort to isolate us gay people in order to keep us financially and socially vulnerable. As Lincoln said, "When you trample on the rights of others, you lose your own genius for independence." Let's save our genius capacities for setting up a gas pipeline, and let's get back to the larger good work that we are all meant to do.

Jane Pierson

From: Sherry [tunillas@chugach.net]
Sent: Wednesday April 18, 2007 8:53 PM
To: Jane Pierson
Subject: Bill and Sherry Tunilla: Written Testimony HJR 9 on April 17,2007

BILL SHERRY TUNILLA
P.O. Box 231465
Anchorage, Alaska 99523-1465
(907) 248-5616

HJR 9 Constitutional Amendment Relating to Marriage

We are asking that you please bring this before the people. Marriage can only exist between ONE man and ONE woman. Same Sex couples cannot receive the Sacrament of Marriage. God and Nature forbids it and we will be held accountable if we choose to place a man made law before a natural law that has existed since the beginning of man and woman.

BILL:

Hello, I'm Bill Tunilla and this is my wife Sherry. Sherry and I have been married for 23 years and we have five children. We are here to support Marriage as being between ONE man and ONE woman. Marriage to us is a Sacrament, a lifetime covenant between Man, Woman and our great God. It can never just be a legal contract between two men or between two women. It is a Holy Covenant and the gift of the holiness is in our sexuality, in our ability as man and woman to join as ONE with God in the creation of children.

Today there are wars on many fronts. One of those wars is the war on the traditional American family. Sherry and I feel like our beliefs are being destroyed and are under attack and that our ability to freely worship and parent our children may be forever changed.

Sherry and I grew up in America where most families had both a Dad and a Mom, a husband and a wife. We grew up in a time where marriage was still a respected state between man and woman, where couples looked forward to having children and continuing to raise those children to respect the law, to respect church teachings. A time where giving to your neighbor was just a normal part of life.

BILL

I was proud to serve in the military and serve my country, proud to marry, to adopt five special needs children, to volunteer in my church and community often, giving of the gifts I have been given.

America still valued the American dream when I grew up and I still do. We still valued modesty and truthfulness, compassion and it was a time that no one questioned what happened in their parent's bedrooms or felt a need to know about anyone else's sexuality. It was a time of innocence, and it was a matter left up to our parents and the creator of the universe, it certainly wasn't on public display as it is today. And people did not use their sexuality as a reason for getting special favors. In my heart I believe that the Homosexual men and women today are publicly asking for their sexuality to be viewed as means to receive special favors.

I also believe that if allowed that these special favors will cost our society greatly. Not only are they in direct violation of God's laws and those of nature, but for our tax papers as well. I can think of better ways to spend my tax dollars. I have **read that in Massachusetts they have had to cut back on elder, disabled and children's programs to make way for this special group of people.** Our children, our parents and the disabled deserve better then this. If more of my tax money is to be used for special needs then I would expect our law makers to consider far greater needs then marriage for those of the homosexual community, perhaps using those dollars to fight AIDS, which homosexual men I have been told still have the greatest incidence of multiple partners and of contracting AIDS.

SHERRY;

Bill and I do value our traditional lifestyle and we wish to pass that on to our children. But each time my children turn on the TV or view a newspaper the headlines declare something is wrong with what we are teaching our children. Every group seems to have a right to this and some of those rights seem to ignore God's right, the true source of all of our lives. We cannot ignore that anymore. Our families and especially our children are growing up in a time where many of our beliefs and our values are being stripped away each day by one group or another in their quest for their personal special intentions.

In the America I grew up in, I valued being able worship and to pray to our One common God. **I fear that if homosexuals are allowed by law to marry as man and wife, then one day they will come to my church and ask my pastor to marry them. Because it is against the law of God and nature and our church he will deny them. And when they cry out discrimination will Bill and I and our children still have a church to worship in? Will our church doors be closed** by lawsuits? Will our **ability to worship our God be denied us?** Will my donations to my church become a way to cover legal expenses instead truly helping those in real need in our community?

I believe in my constitutional right to worship. Our forefathers, my Grandfather and my father were both World War 2 Vets, my husband a Gulf War Vet and my Son is stationed right now in Iraq fighting for our freedom, so we can freely worship in our churches as we choose. In this great country we cannot just allow a few people to change what God has already proclaimed as truth and in our hearts that we all know to be true.

SHERRY;

Our country is under attack from within just as many great leaders predicted it to be and if we will allow Marriage to be defined as anything else but between ONE Man and ONE woman then we will regret it just as we regret losing prayer in our schools. Men and women have fought and died to protect and to pass down to future generations the freedom of worship. And through out many centuries Godly men and women have fought and died for our faith and our Bible. We must not go against what God has

already decreed as the truth. We will be held accountable.

According to the Gospel of Mark Chapter 10 ....from the beginning of creation, God made them male and female. For this reason a man shall leave his father and mother and be joined to his wife and the two shall become one flesh. So they are no longer two but one flesh. Therefore what God has joined together, no human being m t separate."

Again, WE must not let any man or woman change the laws of God. No one has the right to change God's desire as our creator. Our GREAT GOD did not create two men, he did not create two women to be joined together as ONE but instead he created ONE man and ONE woman, he carefully formed them to compliment each other to become ONE in his sight and he told them to go forth and create life.

Thank you,

Bill and Sherry Tunilla

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the H. Judiciary Committee
Committee Name

Committee on HJR 9 Constitutional Amendment/Marriage Dated April 17, 2007
Bill / Subject

I am offering this testimony Today to urge you strongly to vote no on HJR 9 based on the following reasons:

1) Our state constitution should be used to protect and defend civil rights, not to deny rights nor to legislate discrimination.

2) I am concerned about the number of children currently receiving benefits who would lose access to health care and the security of other benefits, as well as for the children who would be denied such benefits in the future should this ammendment pass. Increasing children's access to health care is critical to Alaska's future. We should be working to remove barriers to health-care access, not creating new ones.

3) As the state supreme court has already found, this is an equal pay for equal work issue, an not an issue defining marriage. Alaska should promote equitable pay for equitable work. This makes good business and economic sense, as many of Alaska's businesses have found, such as Alyeska. Our state will attract and retain better qualified and more productive employees by offering equal pay for equal work.

SIGNED: Shayla Hutchison Shayla Hutchison
Testifier

Individual Self
Representing

904 E Chena Hills Fairbanks 99709 / 374-0789
Address / Phone Number

PO Box 70672 Fairbanks AK 99707

Thank you for the opportunity to speak. I am here today to oppose HJR 9.

First I want to briefly mention that I believe today is day 92 of the Legislative session. We don't have a budget or a gas line plan yet, but you are spending precious public time considering whether to take away health insurance from hard working Alaskan families (including my family).

Secondly I also want to point out that it is not true that the backers of this discriminatory amendment are "pro-family". The 2000 US Census estimated there are about 16,500 non-traditional unmarried families in Alaska. It is anti-family and un-Christian to take away health insurance, outlaw legal protections, and deny ~~any parental~~ family obligations to Alaska's many non-traditional families. This amendment will have unknown legal ramifications for thousands of Alaskan families. Marriage is not at risk by treating non-traditional families with respect and common decency.

While our country was founded on separation of church and state, our society is broadly influenced by Christ's message of compassion for all. As Jesus taught us in the parable of the good Samaritan, we should offer health care and common decency to all humans, not just those who pass our own personal moral judgment. Jesus also taught us at a public stoning, that "he who is without sin among you, shalt cast the first stone." Yet this amendment lacks Christ's universal compassion and is all about throwing stones and passing personal judgment on others.

My main point I want to make is as a tourism business owner that discrimination is bad for business. Needless to say, tourism is a major pillar of our economy. I think everyone has heard the slogan, "What happens in Vegas…?" As a side note, this used to be the Alaskan way: 'What Alaskans do in their cabin in the woods is their own business, not anyone else's, nor especially the State's'. But today we are consider pulling up the welcome mat for unmarried couples, gays, lesbians, and their friends. Gay and lesbian travel is estimated to be a $58 billion/year industry across the USA. If Alaska captures ½% of this market that is $500 million/year. Do we want to chase away travelers by judging them on their personal moral values?

Unfortunately in our recent past some Alaskan businesses used to display signs saying "no Natives", now you are considering a "no gays or unmarried couples" caveat under Alaska's "open for business" sign. As a businessman, its pretty simple to me: (in today's global economy) discrimination is bad for business.

My other business concern is the issue of domestic partner benefits that sparked this whole debate. More than half of the Fortune 500 companies offer D.P. benefits to unmarried and gay couples. Alaska Airlines, IBM, Conoco Phillips, BP, and many more offer such benefits. They don't do this merely because it is the right thing to do, they offer benefits because it is good for business. Why would we want to outlaw this business best practice in Alaska?

I ask you all to support the true pro-family, pro-Christian, pro-tourism, and pro-business future of Alaska, by voting against this discriminatory amendment.

Tim Stallard
2780 Monteverde Rd.
Fairbanks, AK 99709

TWStallard

Today is the day for our legislative to do what most Alaskan want them to do with this bill HJR9.
Otherwise we wasted a lot of money.
Please do the right thing.

Paul Merrifield
1556 Dogwood Street
Fairbanks, Alaska 99709
907-451-0657
leconte@gci.net

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
Committee Name

Committee on H.J.R. 9
Bill / Subject

Dated 17 April 2007

(Testimony attached)

SIGNED: [signature] PAUL ADASIAK
Testifier

Self
Representing

519 Bonnifield St Fairbanks 99701 907-457-5411
Address / Phone Number

Coghill

"I would like the people of Alaska to have a chance to chime in"

Tom Mirivung also on the people's right to vote

Alpha
Delta
Alpha
Sierra
India
Alpha
Kilo

Michel

Jean Michelle, atty for the legis.

Is this amendment a revision? ⇒ Const'l Conv'n required!

Encompasses a whole lot more than marriage"
Unresolved: does it apply to private enterprise

Kind Representatives,

What could I possibly say to convince you to vote "No" on HJR 9?

Five of the members of this committee voted "Yes" last year on HB 4002, approving the April 3rd advisory vote. And in each of those five districts, at least half of those who voted, voted "Yes". Your integrity would seem to demand your "Yes" vote. Short of persuading you that authorizing the advisory vote was a mistake, I can probably do little to encourage you now to vote "No".

However, I *can* take away one cowardly excuse for a "Yes" vote and ask you to to face up to what you may vote for.

Representative Mike Kelly (who, I realize, is not on the Judiciary Committee) has gone on the record saying, "I don't see how any legislator could vote to deny the people their vote on this issue." In this, he shows a poor understanding of the Legislature's role in constitutional amendments. He seems to think that the Legislature's job is to allow any amendment proposed to be approved by a majority of the popular vote. But that is not our process. Our Constitution shows more wisdom than that.

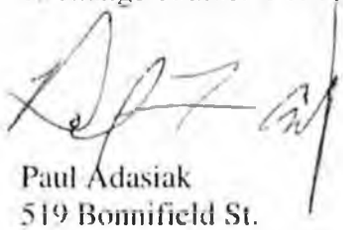
First, amendments must be passed by the Legislature. This body is presumed to have greater knowledge of State needs, a broader perspective, and a longer view than the average voter

Second, amendments to the State Constitution require a two-thirds vote -- not a simple majority -- of each house of the Legislature. It was made thus to allow only persistent, pressing needs to be placed into the Constitution. If you place any stock in the results of the April 3 advisory vote (with 52.8% voting "Yes"), you cannot believe that Alaskan citizens are clamoring for a Constitutional amendment. And, if you compare that number to the 68% majority who voted for the "marriage amendment" in 1998, you cannot believe that this concern is pressing. If anything, this concern is fading!

Do not argue that you're voting for HJR 9 because "the voters should get to decide". With Constitutional amendments, your job is to use your best judgment for the long-term interests of the State -- not to act as a rubber stamp.

There is only one reason to vote for this amendment: because you think that denying constitutionally mandated health-care and retirement benefits to the unmarried partners and step-children of public employees is a good thing. Are you willing to say that?

Please, do not let an increased burden on families be your legacy. It is not toolate to change course. For Alaskan families, I urge you to vote "No".



Paul Adasiak
519 Bonnifield St.
Fairbanks, Alaska 99701
Tel: 907-452-5411
E-mail: adasiak@mosquitonet.com

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
Committee Name

Committee on HJR9 Dated 4/17/07
Bill / Subject

Hello, I appreciate the opportunity to testify on HJR9
I have been a Fairbanks resident for over 13 years.
I have been partnered to a man, Patrick Marlow,
for over 3 years. In 1996 we celebrated our
partnership with our families in a church service.
On that day, we signed our wills and powers of
attorney and had them witnessed by members of the
congregation.

Since then we have established our lives in Fairbanks.
We have bought a home together, and accumulated
probably too much property. I am very concerned that
HJR9 will undermine the joint property and powers of
health and financial attorney that we established. HJR9
will not change the definition of marriage in the
constitution. Recognizing that we will not have the
opportunity to legally marry, Patrick + I have used the tools
of everyday law to create a framework that makes
sense for our lives.

I fear that HJR is a blunt tool and a broad brush
that will revise common property and personal law. It
establishes a special class of second class Alaskans

SIGNED:

Testifier RICHARD Collins

Thank you for your time and please vote no on HJR9

Representing SELF

1722 TAMARACK RD, FAIRBANKS, AK 99709
PO Box 83683, FAIRBANKS, AK 99708
Address / Phone Number

(907) 458-0913