

HJR

9

ALASKA STATE HOUSE OF REPRESENTATIVES



Session

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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 in 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.

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.

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.

Ballot 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 trying 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.

It 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](#)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HJR009-OOG DOF-3-22-07
 Bill Version: HJR 9
 () Publish Date: _____

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						
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CHANGE IN REVENUES ()						
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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
 Division: Division of Administrative Services
 Approved by: Whitney Brewster, Director
 Agency: Office of the Lt. Governor, Division of Elections

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 Date/Time: 3/22/07 4:25 PM
 Date: 3/22/2007

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.

THE SUPREME COURT OF THE STATE OF ALASKA

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

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*, 55 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/litgov/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 to 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 states⁵⁰ 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-FIPEExplanation.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(f).

⁵² See http://www.juneau.lib.ak.us/cbj/risk_management/pdfs/2005/EnrollmentGuide2005.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 "shou'd 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.

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of Pages (including cover): 3

Senator Fred Dyson, Bill Sponsor
SJR 9 Const.AM: Benefits & Marriage
FAX: 465-4587

Dixie Hood's Testimony
FAX: 789-9585

From: Nancy Manly, Committee Aide
House State Affairs Committee
Phone: 465-2794

Re: SJR 9 Const.AM: Benefits & Marriage

5-2-07 - I received a call from Dixie Hood this afternoon concerning SJR 9. She testified on HJR 9 (House Companion Bill to SJR 9) and asked that I fax her testimony to both the bill sponsor and Senate State Affairs Committee and that committee members be given a copy of her testimony. Please distribute according to her wishes. Thanks.

March 26, 2007

Chair and Members
House State Affairs Committee

Gentlemen,

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" distort 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 as "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 tramping of democratic values. The special election is also a waste of the people's money. And, this Bill HJR 9 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. HJR 9 is shameful and should never come out of Committee. It is not the "Cat's Meow."

Yours truly,
Dixie A. Hood
9350 View Drive
Juneau 99801

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, prohibiting all employers from offering benefits to any couples 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 ^{that} sure that as many people as possible have health benefits, not trying to take them away. ~~This resolution will take away health benefits from public employees who are not married. It is not fair to take away benefits from people who are not married.~~

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~~ 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 ^{in future} benefits will be taken away from hard-working Alaska ~~Public~~ employees.

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 B. B.
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 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, Blockbuster, 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.

Word 7
44723

FEBRUARY 13
Friday, 2004

SCHEDULE	ACTION LIST
8	HJR9 is NOT About
9	MARRIAGE. It is About
10	Taking away rights -
11	And benefits from -
12	A segment of Alaska's
1	Population. -
2	Alaska's State -
3	Constitution Guarantees
4	Equal Rights to All
5	Its Citizens. There
6	is nothing Exclusionary
7	About its Working -
8	And to have some -
9	members of this -
10	Legislative body -
11	try to take away -
12	These rights for -
1	Strictly Political -
2	Reasons is wrong -
3	I Ask this Legislative
4	body to do what is -
5	Right and Just -
6	Do NOT PASS HJR9
NOTES THANK YOU.	
Rolands Rivas	
7247 Duben Ave	
Anch AK 99504	

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 as a whole* large. 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 Rivers
7247 Duben Ave
Anchorage, AK 99504
333-6168
d.20@gci.net*

My name is Steven Jacquer and I am speaking on behalf of myself and my family.

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. I lost my first partner, Robb, after 13 years. 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 43 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 pull our own weight and are not a burden upon anyone else.

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 43 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, forced white folks to be 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--like bloodsucking leeches and tapeworms--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.

The sponsors and supporters of this bill should feel deeply ashamed of themselves. 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. 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.



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the _____

Committee on HSR 9
Bill / Subject

Committee Name
Dated 3/27/07

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 on HSR 9 Committee Name 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 their states ability to recruit employees in the state and maintain the health of the people who live here. People without health care always end up costing the state.
 I want the legislature have anything better to do than attempt to micromanage our parents lives! When did the republican party stand for larger governments

SIGNATURE:

Norise Thoren
 Testifier

Myself and my family
 Representing

PO BOX 81271 FBX AK 99708 907-455-1210
 Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs
 Committee on House Joint Resolution No. 9 Dated 3/27/07
Committee Name
Title / 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 less 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 ^{take} 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:

Leanne Kople

Testifier

Representing

PO Box 82003, Fairbanks, AK 99708

Address / Phone Number

979-8543

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

Referral

FROM:

**Shelley S. Hughes
P.O. Box 1496
Palmer, Alaska 99645-1496
907.746.3459**

TO:

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House of Representatives - Alaska State Legislature
Juneau, Alaska 99801**

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Shelley S. Hughes

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907.746.3459

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Sincerely,



Shelley S. Hughes

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 2 of 2)

Please enter into the record my testimony to the

State Affairs

Committee on

H.J.R. 9

Committee Name

Dated 17 March 2007

Bill / Subject

(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 amendment's 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 ~~the~~ day.

Thank you.

SIGNED

Testifier

PAUL F. ADASIAK

Representing

Self

521 Annfield St, Fbks 9701 Tel: 452-5411

Address / Phone Number



ALASKA STATE LEGISLATURE

(Page 1 of 2)

Please enter into the record my testimony to the

State Affairs

Committee on

HJR. 9

Committee Name

Dated 27 March 2007

Bill / Subject

I want to speak to you about my Christian faith, my faith as a Quaker. While Quakers have creeds, we are united by common testimonies, perhaps the best-known of 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 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, as is 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:

Testifier

Paul F. ADASIAK

Self

Representing

519 Barnard St, Fols, 99701

Tel: 452-5411

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs

Committee on HJR 9 Committee Name
March 27, 2007 Dated
Bill / Subject

I am writing to object ~~to~~ to HJR 9.
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:

Testifier

Duluth

(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 on HJR 9 Committee Name Dated 3/27/07
Bill / Subject

please see attached sheet.

SIGNED:

Tom Stallard
Testifier

myself + my family
Representing

2780 Montevideo Rd., Fairbanks, AK
Address / Phone Number

374-9958

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.
Not 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



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Health Services Committee
 Committee on HSR9 Committee Name
 Dated 3-27-07
 Bill / Subject

Thank you for the opportunity to speak to you today. I urge you to vote on HSR9.

Part of the onus of being a lawyer is to ensure that the law is applied fairly and that the law is not used to oppress anyone.

It is the court's responsibility to look at the law's constitutionality through not legislating from the bench.

The criteria for which to obtain partner benefits is quite stringent and not something simple, easy or cheap.

The need is there to take many health benefits for anyone. Please vote No on HSR9!

SIGNED: Cheryl Hummel
 Testifier

Myself
 Representing

P.O. Box 82183 Fairbanks, AK 99708 907-
 Address / Phone Number 152-2800

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HJR008-OOG-DOE-3-22-07

Bill Version: HJR 8

() Publish Date: _____

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 question require the printing of an 8-1/2 by 18-inch ballot the cost will increase to \$22.0.

Prepared by: Linda Paraz, Administrative Director
 Division: Division of Administrative Services
 Approved by: Whitney Brewster, Director
 Agency: Office of the Lt. Governor, Division of Elections

Phone: 485-3885
 Date/Time: 3/22/07 4:25 PM
 Date: 3/22/2007

Nancy Manly

From: on behalf of Rep. Bob Lynn
To: Andy Clary
Subject: RE: HJR 9

Hi Andy: HJR 9 has been scheduled in House State Affairs Committee on Tuesday, March 27,2007 at 8:00am.

Sincerely,
Nancy Manly, Staff for
Representative Bob Lynn
465-2794

From: Andy Clary [mailto:abclary@gmail.com]
Sent: Thursday, February 15, 2007 3:22 PM
To: Rep. Bob Lynn
Subject: HJR 9

Representative Lynn,
When do you plan on hearing HJR 9 in State Affairs? I am very interested in this bill and fully support it.

Thanks,
Andy

3/23/2007

Nancy Manly

From: on behalf of Rep. Bob Lynn
To: Andy Clary
Subject: RE: HJR 9

Hi Andy: Thank you for your email in support of HJR 9. The bill sponsor (Representative Coghill) has not yet requested a hearing in the House State Affairs Committee. When he does, we will schedule it. Thank you again.

Sincerely,
Nancy Manly, Staff for
Representative Bob Lynn
485-2794

From: Andy Clary [mailto:abclary@gmail.com]
Sent: Thursday, February 15, 2007 3:22 PM
To: Rep. Bob Lynn
Subject: HJR 9

Representative Lynn,
When do you plan on hearing HJR 9 in State Affairs? I am very interested in this bill and fully support it.

Thanks,
Andy

2/16/2007

12 pages including this top sheet
Community Testimony
Regarding HSR 9

March 27, 2007

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. 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.

This is very clear to me

Shirley Rivas
7247 Duben Ave
Anchorage, AK 99504
333-6168
d.20@gci.net

My name is Steven Jacquier and I am speaking on behalf of myself and my family.

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. I lost my first partner, Robb, after 13 years. 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 43 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 pull our own weight and are not a burden upon anyone else.

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 43 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, forced white folks to be 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--like bloodsucking leeches and tapeworms--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.

The sponsors and supporters of this bill should feel deeply ashamed of themselves. 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. 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.



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 to 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 (NHSL), 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.



ALASKA STATE LEGISLATURE

(Page 1 of 2)

Please enter into the record my testimony to the State Affairs
Committee on HJR. 9 Committee Name
Dated 27 March 2007
Bill / Subject

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 of 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 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 PAUL F. ADASIAK
Testifier

Self
Representing
519 Bannifield 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 on H.J.R. 9 Committee Name
Dated 17 March 2007

Bill / Subject

(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 amendment's 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 ~~the~~ day.

Thank you.

SIGNED:

PAUL F. ADASIAK

Testifier

Self

Representing

59 Bennifield St, Flks, 99701 Tel: 452-5411

Address / Phone Number



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Small Business Committee
 Committee on HJR9 Committee Name Dated 3-27-07
Bill / Subject

Thank you for the opportunity to speak to you today. I urge you to vote No on HJR9.

The purpose of this amendment being up marriage over and over again, but this is not about marriage - this is something that has been decided on.

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 HJR9!

SIGNED: Cheryl Hummer
 Testifier

myself
 Representing

P.O. Box 82183 Fairbanks, AK 99708
 Address / Phone Number

207-
 452-2850



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs
Committee on HJR 9 Committee Name Dated 3/27/07
Bill / Subject

please see attached sheet.

SIGNED:

Tim Stallard
Testifier

myself + my family
Representing

2780 Monteverde Rd ; Fairbanks, AK
Address / Phone Number 374-9958



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the _____

Committee on HSR 9 Committee Name
Bill / Subject Dated 3/27/07

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: [Signature]
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 on HSR 9 Committee Name 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 view 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 employees in the state and maintain the health of the people who live here. People without health care always end up costing the state.

Would the legislature have anything better to do than attempt to micromanage our private lives! When did the republican party stand for larger government?

SIGNED:

Denise Hansen
 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 on House Joint Resolution No. 9 Dated 3/27/07
Committee Name
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 Kopler
 Testifier

Representing
PO Box 82003, Fairbanks, AK 99708
 Address / Phone Number 479-8343

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 threaten
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 don't deserve any rights. This is scary. Reasonable religious folks disagree with these 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"

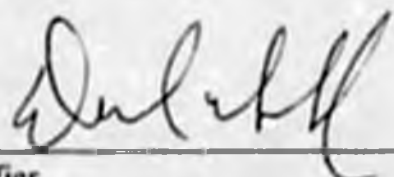
Tim Stallard
2780 Monteverde Rd.
Fairbanks, AK 99709
374-9958



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House State Affairs
 Committee on HJR 9 Committee Name
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: 
 Testifier
(myself)
 Representing
P.O. Box 81271, Fairbanks, AK 99708
 Address / Phone Number

Alaska State Legislature



Chairman
State Affairs Committee

Vice-Chairman
Economic Development, Trade & Tourism
Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Corrections
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

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Anchorage, AK 99501-2133

Phone: (907) 269-0205
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FAX

To: Lori Roland, House Records

Fax #: 465-2267

From: Representative Bob Lynn
Alaska State Capitol, room 104
Juneau, AK 99801-1182

of Pages (including cover): 7

Phone: 907-465-4931
Fax: 907-465-4316

Re: House State Affairs Committee - 3-27-07 Testimony

Comments: Lori - Here's the testimony of Jeffrey Satinover before the Massachusetts Senate Judicial Committee on April 28, 2003.

Have a good weekend!
Nancy Manley ☺
x 2794

TRANSACTION REPORT

JUN-22-2007 02:58 AM

FOR: REP LYNN

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