HJR

2

HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: January 20, 2009

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3-19-09

The STATE AFFAIRS Committee considered:

HOUSE JOINT RESOLUTION NO. 2

Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document.

HJR 2 CONST AM: GENDER-NEUTRAL REFERENCES

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
*For Senate Bills with new title: [ ] Technical Title / [ ] New Title: HCR*_____ [X] Same Title [ ] New Title

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

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

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

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Johnson			X	
Paul Seaton	Seaton	X			
	Gatto	X			
Mary Gruenberg	Gruenberg	-			
Peggy Wilson	WILSON	N			
Pete Peterson	Peterson	X			
Chair:					
Chair:					

1626

LEGAL SERVICES

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

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Juneau, Alaska 99801-1182
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MEMORANDUM February 19, 2009

SUBJECT: Combining proposed constitutional amendment HJR 2 (gender neutral pronouns) with HJR 13 (correcting obsolete references to secretary of state)

TO: Representative Max F. Gruenberg, Jr.

FROM: Tamara Brandt Cook
Director

You ask whether the legislature may combine HJR 2 with HJR 13 into a single proposition for constitutional amendments. The problem with this course of action is that the court has decided that each proposal for constitutional amendments must be confined to a single subject in Bess v. Ulmer, 985 P.2d 979 (Alaska 1999). While the court has upheld very broad subjects in cases construing the single-subject requirement that applies to bills changing statutes, there have been no other cases that shed light on the scope of a single subject for the purposes of proposed constitutional amendments. I think that there is a reasonably good chance that the court, if confronted with a constitutional amendment proposal consisting of the contents of both HJR 2 and HJR 13, would conclude that the proposal is encompassed in the single subject of technical, nonsubstantive amendments. Nonetheless, it is not certain that a court would agree for the reasons stated in a memorandum on this subject to you by Jack Chenoweth, Assistant Revisor, dated March 19, 2008, copy attached. Therefore, the safest course is for HJR 2 and HJR 13 to be offered to the people to consider as separate proposals.

TBC:med
09-010.med

Attachment

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COPY

MEMORANDUM March 19, 2008

SUBJECT: Consistent with the analytical principles set out in *Bess v. Ulmer*, may HJR 7 (proposing constitutional amendments substituting gender-neutral language for personal pronouns) and HJR 37 (proposing constitutional amendments to correct obsolete references to secretary of state) be combined?

TO: Representative Max F. Gruenberg, Jr.

FROM: Jack Chenoweth
Assistant Revisor

As you and I have discussed, I am reluctant to endorse any proposal to combine the two joint resolutions identified in this memo's subject line into a committee substitute. I say this principally because of concerns arising out of the court's decision in *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999).

Under section 1 of article XIII, the legislature may initiate proposed constitutional amendments:

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

By contrast, under section 4 of that article, constitutional revision is the prerogative of a constitutional convention:

> **Powers.** Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

The decision in *Bess* established that the legislature's power to propose a change in the text of the state constitution is limited to amendments that are "few, simple, independent,

and of comparatively small importance."[1] The legislature lacks authority, the court concluded, to propose changes to the document's "substance and integrity." Changes of that magnitude would have to be prepared and offered by a constitutional convention as revisions. The standard that the court fashioned relates that:

> . . . an enactment which is so extensive in its provisions as to change directly the "substantial entirety" of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.
>
> The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole.

Bess, 985 P.2d at 987 (notes omitted).

The *Bess* standard spoke of evaluating an amendment's qualitative and quantitative effects.

HJR 7:

Quantitatively, the material in HJR 7 arguably fails at least part of the standard. The proposed changes are, admittedly, not clearly "few," nor, it may be contended, are they "independent." On the other hand, the material proposes changes that are "simple" -- the amendment is confined to a series of technical changes affecting singular masculine personal pronouns and a handful of gender-related terms. At least when compared to the much more significant questions of assigning powers among the branches of government, limiting the exercise of institutional authority, or providing protection of individual rights, cited as examples by the court in *Bess*, HJR 7 does not propose to make fundamental changes in the scheme or plan of operation of the state government. Indeed, in that context, the modifications proposed in HJR 7 are arguably of relative unimportance.

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[1] The court prefaced its analysis by noting that, in its view, the framers' distinction between an amendment and a revision was intended to be substantive, and concluded that:

> a revision is a change which alters the substance and integrity of our Constitution in a manner measured both qualitatively and quantitatively.

Bess, 985 P.2d at 982.

Qualitatively, it is my observation that nothing in the resolution would "substantially alter the substance and integrity of the state Constitution as a document of independent force and effect." *Bess*, 985 P.2d at 987, quoting *Raven v. Deukmejian*, 801 P.2d 1077, 1087 (Cal. 1990) (note omitted). The material in the resolution is arguably wholly technical and not intended to make a substantive change in a matter of constitutional law.

On balance, I am satisfied that, if challenged, the court could conclude that the absence of qualitative change within the proposed amendments as set out and, despite the number of sections affected, the relatively insignificant incidental effect on the integrity of the document as a whole would allow the material in HJR 7 to be treated through the amendment process rather than as a revision.[2]

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[2] When, in 1955-1956, the Alaska Constitution was deliberated, decades of territorial bill drafting practice reflected use of the masculine gender to reference to the feminine. See, for example, CLA 1913, § 2096 ("[t]hat words used in the masculine gender comprehend as well the feminine and the neuter"), CLA 1933, § 3274 (same), both part of the territorial compiled laws. The Constitutional Convention's Style and Drafting Committee prepared a "Drafting Suggestions" memo to guide its work; the document cited to Crawford, *Statutory Construction*, as a source, and that volume, at § 374, endorses the idea that "words importing the masculine gender may include the feminine and neuter." Indeed the Constitution itself relates (article XII, section 10) that "Personal pronouns used in this constitution shall be construed as including either sex," but the document makes no use of words imparting feminine gender. A later, 1981 edition of the *Merriam Webster Legal Secretaries Handbook* directs that:

> Notwithstanding recent concern about sexism in language, forms of the personal pronoun *he* and the indefinite pronoun *one* are still standard substitutes for antecedents whose genders are mixed or irrelevant:

Handbook, at page 247.

Times change. In 1981-1982, the Twelfth Legislature initiated a change to the state's bill drafting policy. The original form of the vehicle of change, SB 266, declared:

> POLICY. The constitution and laws of Alaska prohibit discrimination because of sex. In keeping with the spirit of those prohibitions the legislature now recognizes the inherent bias our laws occasioned by an official policy calling for the use of the masculine pronoun in the Alaska Statutes. The legislature finds that the interest of all Alaskans would be best served by eliminating all vestiges of sexual discrimination. The legislature declares a step in that endeavor by establishing in this Act the official policy of eliminating, whenever possible, the use of sexually explicit pronouns in the Alaska Statutes.

HJR 37:

My analysis of the resolution you introduced would proceed along the same lines. Suffice to say, a resolution that substitutes only references to "lieutenant governor" for the two obsolete references to "secretary of state" should easily meet the *Bess* criteria.

*

My doubts about the likelihood that a merger of these two measures would survive judicial scrutiny is based on two other elements of the *Bess* decision.

The court's preliminary opinion in the *Bess* matter looked at the qualitative standard from a different perspective, indicating that changes that are "few and simple and independent" are permissible amendments while "sweeping change" requires revision. In that preliminary opinion, the court identified four factors that suggest that a particular proposal is a valid amendment: it (1) "is simple to express and understand"; (2) "is complete within itself"; ***(3) "relates to only one subject";*** and (4) "does not substantially affect numerous other sections of the constitution. . . ." Preliminary Opinion and Order, at paragraphs 10 and 12 (emphasis added). The third of the four factors gives pause. It may be argued -- well argued, in my view -- that the reference puts the legislature on notice that the court is prepared to examine proposed constitutional amendments for compliance with a single subject requirement. A committee substitute joint resolution that combines arguably unrelated topics invites tougher scrutiny.

Any hesitation of that point should be resolved by the court's caution concerning joinder of marginally consistent subjects, as expressed within the *Bess* decision. Speaking of a proposed "amendment" to the California Constitution that ran to 228 subsections and more than 21,000 words, the court noted the California Supreme Court's rejection of the proposal as an "amendment":

> The proposal is offered as a single amendment but it obviously is multifarious. ***It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested; rather does it, apparently, have the purpose of aggregating for the measure the favorable votes from electors of many suasions who, wanting strongly enough any one or more propositions offered, might grasp at that which they want, tacitly accepting the remainder.*** Minorities favoring each proposition severally might, thus aggregated,

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While the bill's policy statement didn't survive the committee review process, the direction to the revisor of statutes to "edit and revise the laws enacted by the legislature, without changing the meaning of any law, so as to avoid the use of pronouns denoting masculine or feminine gender" has become part of the current statute law. AS 01.05.031(c).

> adopt all. Such an appeal might well be proper in voting on a revised constitution, proposed under the safeguards provided for such a procedure, but it goes beyond the legitimate scope of a single amendatory article. There is in the measure itself no attempt to enumerate the various and many articles and sections of our present Constitution which would be affected, altered, replaced or repealed.

Bess, 985 P.2d at 985, considering *McFadden v. Jordan*, 196 P.2d 787, 796 - 797 (Cal. 1948) (emphasis added). Neither of the changes you're contemplating by combining HJR 7 and HJR 37 is as lengthy or extensive as those alluded to by the Alaska court in its comments concerning *McFadden*. Still, our Supreme Court's reference does serve as a warning that it may consider as clearly distinct or separate the elements of the material presented within a modified House Joint Resolution proposing the amendment. Taken altogether, the court might be more disposed to view these separate elements as evidence of matter that should be treated as a revision for the public to consider through presentation by a constitutional convention rather than for the legislature to initiate.

The drafting manual relates that "[a] legal opinion [provided by this office] expresses a well-considered opinion that may or may not be agreed with by a court faced with the same issue at a later date." At this point, I feel that I am obligated to identify the considerations that may bear on the court's *Bess* analysis if the question of combining the two joint resolutions into one measure is offered. The *Bess* decision has so limited a later appellate history that I don't feel I can be any more definitive.

JBC:ljw
08-158.ljw

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Representative Carl Gatto

Chair House Military and Veteran Affairs Committee
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SPONSOR STATEMENT
HJR 2

"Proposing amendments to the constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document."

HJR 2 removes all masculine or feminine terms from the Constitution of the State of Alaska. This resolution deletes the terms "his," "him," and "himself" and replaces them with terms as "oneself," "Governor," "Governor-elect," "Lieutenant Governor," "Legislator," "members," "executive," "justice or judge," "voter," "person's," "auditor," and "accused." Other changes that occur make the sentences grammatically correct.

Some of our oldest and youngest states in the union such as New York and Hawaii have amended their constitutions to reflect gender neutrality. The framers of our constitution went to great lengths in the construction of the Constitution to recognize gender equality and it is in that spirit and as a continuation of their leadership that we seek to modify our constitution in recognition of the progress in our society and culture.

This resolution is before us now because it is time for us to recognize a significant moment in Alaska history, a time when we elected our first female Governor. The administration fully supports this effort.

I ask for your support.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR2
() Publish Date:

Identifier (file name): HJR002-OOG-DOE-3-18-09
Dept. Affected: OOG
Title: Constitutional amendment relating to avoiding the use of personal pronouns and similar references....
RDU: Elections
Component: Elections
Sponsor: Representatives Gatto and Gruenberg
Requester: House State Affairs
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual			1.5				
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**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 Interagency Receipts							
TOTAL	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 3/18/09, 2:29pm
Approved by: Linda Perez, Director — Date 3/18/2009
Division of Administrative Services

(Revised 9/10/2008 OMB)

WBASNY urges support of "gender-neutral" constitutional amendment on the November 6 ballot.

Archived Other Briefs

Posted by Administrator WBASNY on 05/05/2002

WBASNY URGES SUPPORT OF □GENDER-NEUTRAL□ CONSTITUTIONAL AMENDMENT ON THE NOVEMBER 6 BALLOT

On March 10, 2001, the WBASNY Board voted to support legislation to place on the ballot a referendum to amend the New York Constitution to make it gender-neutral. The bill was sponsored by Assemblywoman Sandra Galef (Democrat) and by State Senator Patricia McGee (Republican). It passed both houses of the Legislature for the second consecutive year, as required, by unanimous vote, and the referendum will be on the ballot on November 6, 2001. WBASNY strongly supports passage of this proposed amendment to the New York State Constitution. If the amendment passes, New York will become the seventh state with a gender-neutral Constitution. Eight other states are considering similar amendments, and two other states have gender-neutral sections in their Constitutions.

At the request of Assemblywoman Galef and Victoria Lutz, Executive Director of the Pace Women□s Justice Center, Westchester Women□s Bar Association President Kathy N. Rosenthal and the Co-Chairs of the WWBA Legislative Committee (Jeanne M. Frey, Susan W. Kaufman and Loriann Vita) met with Assemblywoman Galef, Ms. Lutz and others to discuss how to inform voters that the referendum is to be on the ballot and is worthy of strong support. Assemblywoman Galef is seeking the active support of WBASNY and its chapters in this effort.

The proposal would change the approximately 170 references to males in the New York State Constitution either to add a female reference (i.e., □his□ becomes □his or hers□) or to use gender-neutral language (e.g., □fireman□ becomes □firefighter□). If the changes are approved, references in the New York Constitution to offices currently held by women (such as that of Lieutenant Governor, held by Mary O. Donohue; that of Chief Justice, held by Judith Kaye; and state legislative offices, 46 of which are currently held by women) would henceforth be described in gender-neutral terms.

WBASNY believes that there is great symbolic benefit to be gained by passage of the referendum. By including female references in the State Constitution, we eliminate the exclusionary symbolism of the document. We pay tribute to the substantial contributions of women such as Susan B. Anthony to the history of New York State. The change in the State Constitution would reflect the presence of women in both government and public life today, a reality that is far removed from the times in which the Constitution was written.

The possible objections to passage of the referendum are easily dismissed. Some argue that the amendment alters an historic document, ignoring the fact that there have been over 57 amendments to our state Constitution since 1938. Opponents of the proposal also criticize it as a waste of effort and tax dollars, but this is simply wrong. The ballot proposal will cost nothing. Furthermore, each year 5000 copies of the State Constitution are printed, and there would be no extra cost in time or money to include the gender-neutral changes, which are already on a computer file. The argument that the amendment is unnecessary because women have de facto equality in New York is misguided in two respects. First, the referendum is not an equal rights amendment. The amendment would not alter the rights, duties, powers or privileges enumerated in the Constitution. Second, the visible under-representation of women in political life is one indication of the continued resistance in some quarters to women□s complete equality, and the proposed amendment will help to create an atmosphere of inclusion.

It is important that WBASNY join other non-partisan professional women□s organizations to take an active role in publicizing and promoting passage of the amendment. Accordingly, WBASNY urges all members not only to look for the referendum on the ballot on November 6 and to vote in its favor, but also to write to your local newspaper editors and in other ways to communicate the importance of this matter to all voters and to other professional and women's groups statewide.

Susan W. Kaufman
WWBA State Director to WBASNY

Archived Other Briefs

LAW & HUMAN RIGHTS

The 1999 constitution and the woman question (2)

By Joy Ngozi Ezeilo
Posted to the Web: Friday, March 10, 2006

We need to engender the language of the preamble and substitute the word 'we' with 'men' and 'women'. This will not only be gender specific but also accord with universal human rights norms that have unequivocally entrenched the principle of equality and non-Discrimination.

Chapter II on Fundamental Objectives and Directive Principles of State Policy deals with this important aspects of the Constitution outlining the political, economic, social, educational, foreign policy, environmental objectives of the Nigerian Nation. It contains also obligation of the mass media, directive on Nigerian culture, National ethics and duties of the citizen. According to section 13: It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this constitution.

Section 14(1) states the fact that the Federal Republic of Nigeria shall be a state based on the principles of democracy and justice; and also recognize the fact that sovereignty belongs to the people, whereas section 14(3) entrenches what is now known as federal character.

A careful perusal of all the sections of this chapter reveals total gender blindness. Most of these provisions presented an ideal opportunity to be gender specific adopting men and women or genderless/gender neutral terms like "Everyone" "all persons" etc.

For example section 14(2) (b) which stipulates that "the security and welfare of the people shall be the primary purpose of government" should have used a gendered language that would read:

" the security and welfare of men and women shall be....

Further, the principle of federal character entrenched in the Nigerian Constitution is in effect an affirmative action provision and therefore ought to have extended its application based on gender. The most disappointing is the fact that the lofty ideals contained in this part are non-justiciable.

The Judicial Powers vested in accordance with the foregoing provisions of this Section (c) shall not, except as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of this Constitution".

The rights recognized under this Chapter of the constitution are basically socio-economic rights considered to be of paramount importance to women. Therefore, making these important provisions unenforceable has enormous implications for women's human rights.

The resource argument is the most advanced for making the ECOSOC rights non justiciable. I submit that these arguments no longer hold true. What it cost Nigeria to democratize (including all the aborted transitions) would have been enough to eradicate poverty in all its forms in Nigeria. Further, the indivisibility, interdependence and interrelatedness of these rights - Civil and Political and Economic, Social and Cultural rights have now crystallized.

For example, right to education falls within civil and political as well as socio-economic rights. What lack of education means for women is early marriage, harmful traditional practices, lack of self-determination all leading to socio-economic underdevelopment of women and girls. The trend in most recent constitutions is to recognize these ESC rights and make them justiciable.

Further, there is need to expand the content of substantive rights in Chapter II to include pre-natal and post natal medical care for women, right to work, right to social security amongst others.

Citizenship

The 1999 Constitution has failed to solve the problems associated with citizenship in a democratic Nigeria. The 1999 constitution recognizes only one class of nationals namely citizens of Nigeria of whom there are three categories: (i) Citizens by birth: The following persons are citizens of Nigeria by birth: Every person born in Nigeria before the date of Independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria:

Every person born in Nigeria after the date of Independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and Every person born outside Nigeria either of whose parents is a citizen of Nigeria.

As Professor Nwabueze noted, citizenship by birth is used in the constitution not in its generally accepted sense of citizenship derived from the circumstances of birth in a country (jus soli) but rather in a special sense of citizenship acquired automatically at birth. Birth in Nigeria by itself alone confers no citizenship; unlike in the United States and elsewhere where anybody born in the country is a citizen whether or not the parents are themselves citizens. Therefore, descent

from Nigeria parents carry greater importance than birth within a country.

A parent or grand-parent of a person is deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on October1, 1960. (ii) Citizenship by registration:

This second category of citizenship is provided for under section 26 and subject to the provisions of section 28. According to the provision a person may be registered as a citizen of Nigeria, if the President is satisfied that - he is a person of good characterhe has shown a clear intention of his desire to be domiciled in Nigeria and he has taken the oath of allegiance prescribed in the seventh schedule to this constitution.Importantly, it is stated in sub section (2) that the provisions of this section shall apply to - any woman who is or has been married to a citizen of Nigeria; or every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria. The provisions of section 26 (2)(a) clearly do not apply to husbands of female Nigerian citizens. This is blatant sex discrimination that cannot be justified in any democratic society like ours. It contradicts even the constitutional provision in section 42 which prohibits sex discrimination. This provision ought to be expunged from our constitution so that Nigerian men and women can confer full residency rights to their foreign spouses.

iii. The third category is citizenship by naturalization covered by Section 27 and made subject to section 28 on dual citizenship. This need not detain us except to say that the conditions precedents for grant of citizenship by naturalization are too stringent and need to be liberalized. The required compulsory period of residence need to be reduced from 15 years to 10 years. Additionally further reduction for a period not exceeding 5 years should be allowed for foreign spouses of female Nigerians. As naturalization is now the only option for them to becoming citizens of Nigeria

Furthermore, section 28 on dual citizenship should be amended so that persons who acquired Nigerian citizenship by birth should not be required to forfeit their original nationality. Since citizenship by naturalization is also conditional upon good behaviour and could be revoked by the President, it appears incongruous to ask the person on naturalization to forfeit its original citizenship.

The most obnoxious part of this constitution dealing with citizenship is Section 29 that made provisions concerning renunciation of citizenship. Section 29(4) stipulates that for purposes of denunciation full age" means the age of eighteen years and above"any woman who is married shall be deemed to be of full age. One wonders how this very obnoxious and discriminatory provision found its way into the new constitution. It is the first time such a provision appeared in a Nigerian Constitution.

It is highly retrogressive, incompatible with modern sociology and a legalization of child marriage with its attendant consequences. This provision should be expunged forthwith from the 1999 constitution.

Finally on citizenship, I would like to suggest that we should use gender specific words. Using prepositions 'he' or 'she' to ensure that

its provisions apply equally to all without distinctions on grounds of sex or gender.

Again the issue of indigeneity - an identified problem especially for women must be clarified in the constitution. Specific provisions should be entrenched outlining conditions and circumstances when a person not originally from a particular state should become or be regarded as an indigene of the place. This could be based on grounds of residence and/or marriage. Also state citizenship/indigeneity could be based on cite of labour of individual - place of work. We should also address the issue of federal centralism, which disempowers the citizens and exacerbates the indigeneity problem. The constitution needs to explicitly define state of origin and empower women disadvantaged by indigeneity policies to be an indigene of two states simultaneously. That is their state of origin at birth and their husband's state in cases where wife's state is different from that of the husband.

Fundamental Rights
This part of the constitution also called bill of rights contain classical provisions on civil and political rights the so-called first generation of rights only. Sections 33 -44 deals with substantive rights namely: -

Right to life - s. 33
Right of dignity of human person - s.34
Right to personal liberty - s.35
Right of fair hearing - s. 36
Right to private and family life - s. 37
Right to freedom of thought, conscience and religion - s. 38
Right to freedom of expression and the press - s. 39
Right to peaceful assembly and association - s. 40
Right to freedom of movement - s. 41
Right to freedom from discrimination
Right to acquire and own immovable properly anywhere in Nigeria - s. 43
Payment of compensation in case of compulsory acquisition of property - s. 44

Section 45 deals with restriction and derogation from fundamental rights and freedoms, while section 46 made provisions for its enforcement and granting of financial or legal aid to indigent citizens whose rights recognized under this Chapter have been violated.

Section 42 of the 1999 constitution seems to be the most relevant provision through which women can fight against discrimination. Although, it is not a right that can be exercised on its own alone it must be linked to violation of other substantive rights recognized in the bill of rights.

Even though section 42 may prove very useful to women, it is still not adequate. Commenting on similar provision under the 1979 (section 39) constitution, I concluded that the provisions are inadequate as it preserves equal status for women and men only in relation to laws and as far as practices, customs or other actions are concerned, there is no protection from discrimination.

In fact, item 61 on the exclusive list reinforces that thought as it excludes the federal government from making laws relating to the

formation, annulment and dissolution of marriages under Islamic law. Of course, this area poses the greatest challenge to realization of women's human rights. Nigeria should adopt the trend in modern constitutions of enacting an equal opportunity clause or provision that clearly embody the equality and non-discrimination principles. Mentioning specifically men and women and not just lumping 'sex' as one of the prohibited grounds for discrimination. The language of the constitution that is supposed to advocate for equality and non-discrimination is far from being gender sensitive. The word "he" was used and given the content of that right it is arguable whether "he" here could be said to mean "she".

There is a need to enlarge the content of Chapter IV, which unlike Chapter II is enforceable. Some of the provisions in the fundamental objectives and directive principles of state policy should be transferred to this Chapter. Economic and social rights including the right to work, free choice of employment, just and favourable remuneration and trade union rights; rights to rest and leisure, right to a standard of living adequate for health and well being including right to food and shelter should part of fundamental rights and freedoms contained in chapter IV. Sexual and Reproductive health rights of women should be specifically recognized. Also, right of women and girls to inherit and succeed to their husbands or fathers property should be recognized. The 1992 Ghana Constitution recognizes this right and other specific rights for women and children.

Furthermore, we need to expand the definition of those who can bring an action to enforce the fundamental rights provision. As it stands, it may be difficult based on the application of Locus standi for persons other than those directly affected to seek redress.

IMPLEMENTATION OF TREATIES
Section 12(1) provides for implementation of treaties ratified by Nigeria. In particular, the domestic enforcement of treaties entered into by Nigeria.
According to the section 12:

(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted by the National Assembly.
(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
(3) A bill for an Act of the National Assembly passed pursuant to the provisions of this subsection (2) of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by majority of all the Houses of Assembly in the Federation.

As I have argued elsewhere ratified human rights treaties will be of little importance to individual's subjects of rights thereon if not applied by national judges and administrators. Nigeria adheres to the common law legal system, which adopts a dualistic approach with regard to treaty interpretations and applications. Thus, an additional Act of Parliament is required to incorporate the treaty and make it a domestic law. The process outlined in section 12(3) for incorporation of treaties are rigorous and it may be extremely difficult to domesticate human rights treaties particularly dealing with contentious issues like women's rights and children's rights.

The provisions of 1979 Constitution are relatively easier and should be readopted.

I purposely left out consideration of sections dealing with powers of the three arms of government: Executive, Legislative and Judiciary. Also Resource allocation and Federalism, not because they do not have implications for women's rights as over centralization of wealth at the center without any visible trickle down effect to women and children at the bottom of the ladder impacts on their socio-economic and legal rights. I have left them out primarily because almost all interest groups in Nigeria have over flogged the issue without a moments consideration of the gender implications of the constitution of the Federal Republic of Nigeria 1999 on women. The pertinent question is how can we as women hold ourselves bound by these laws that we have no voice and representation in the making?

CAUSES OF CONSTITUTIONAL EXCLUSION OF WOMEN IN NIGERIA

I want to go back to the question I raised earlier on: Why is the female gender excluded from the constitution and constitution making processes in Nigeria? Why was it impossible for us to get specific provisions for women in the constitution despite seemingly gender consciousness of Nigerian Society, work of women's rights organizations and numerical strength of women? What really went wrong?

Feminists, women's rights activists and groups have not before now participated actively in debates about a Nigerian Constitution. It is only now that we are organizing and demanding inclusion and representation in the constitution making. But as the Igbos' will say: "tabugbo" meaning that today is still early if we can begin to make the desired impact. Females who were involved in the nationalist movement were more concerned with survival of Nigerian nation than getting specific rights for women. Although, they would not have predicated that an independent Nigeria would abandon its women and adopt a very retrogressive approach to women's human rights.

The conceptualized dichotomy of public and private sphere distinctions also made it very difficult for women to feature in the political space where constitutions are debated and negotiated. The experiences of women that have made an incursion into the so-called men's space served to discourage others from making similar attempt.

Related to this is the fact that women are not in power or in decision-making positions where they can influence the political process and change the laws and policies. Women's political powerlessness means that they always have to beg, shout, fight and even cry to be included. Lack of concerted action by women's groups have also made it impossible for women to speak with one voice in lobbying and agitating for their rights particularly the right to participate in determination of issues concerning them.

Customs, culture, religion and tradition are constantly used to deny women equal status in law and practice. The same constitution that prohibits sex discrimination accords recognition to customs and tradition that discriminate against women by reason of their sex and gender. The 1999 constitution and other legal standards in Nigeria are heavily weighted against women.

RECOMMENDATIONS

From my discussion there are twelve critical issues of concern to women with regard to the 1999 constitution and Gender and Constitution Reform Network (GECORN) have articulated these as part of women's demand in the on- going constitutional review. The following recommendations outlined here focuses on those twelve critical issues:

1. THE LANGUAGE OF THE CONSTITUTION

The 1999 Constitution should be re-drafted so that the language becomes user and gender friendly. The word "he or him" should be replaced with he/she and him/her and replacing person with men and women or any person or everyone.

2. CITIZENSHIP

Section 26 (2) should be amended to confer citizenship by registration to a foreign spouse of a woman just like her male counterpart. This section should be abrogated. There is no justification for allowing an under aged woman to have a rights to revoke or renounce her citizenship if it is not expected of her male counterpart. The other implication of this is that this section could become a mischief in a country where child marriage is prevalent.

3. INDIGENESHIP
It is recommended that a Nigerian citizen that has resided in any state of the federation for a period of more than 5 years shall be entitled to all right and privileges of the state.
A Nigeria woman shall have a right to enjoy the indigeneship of both her place of origin and that of her husband.

4. DISCRIMINATION
Section 42(3), 1999 constitution is restrictive, nullifies and impairs women's rights and the rights of others and thus should be abrogated. The provision of Section 42(1) should be expanded to clearly enshrine the principle of gender equality and non- discrimination.

5. RIGHT TO DIGNITY OF WOMANHOOD

The scope of Section 34 1999 Constitution should be expanded to include protection against harmful cultural and traditional practices affecting the health and rights of women and girls and other protection from other gender based violence such as widowhood practices, female genital mutilation, forced marriage and others which have constituted a continuing threat to the lives of women in Nigeria.

6. POLITICAL RIGHTS

Political Parties structures must reflect gender balance and we therefore recommend that in line with the international commitments of the government that at least 30% affirmative measure for women in both elective and political appointive position must be guaranteed through constitutional provisions.

Independent candidacy must be encouraged to facilitate women's participation where first past the post test often place women at great

disadvantage in seeking elective position.

7. REPRODUCTIVE HEALTH AND RIGHTS

Reproductive health rights has emerged as a development and Human right issue and thus should be clearly spelt out in the constitution of Nigeria to protect women and girls.

Free and qualitative ante natal and post natal care to reduce the high mortality rate and guarantee women right to safe motherhood.

Access to information and education relating to reproductive health and rights and encouraging proper understanding of maternity as a social function and the protection of motherhood and childhood.

8. ENFORCEABILITY OF SOCIO-ECONOMIC RIGHTS

Section 6 (6) (c) of the constitution should be amended to ensure accountability of government and its institutions to implementation of Chapter II of the constitution. To this end any amendment to the constitution must remove all restrictions and make it possible for all Nigerians to be able to enjoy these rights.
State Social Order: Section 19 (d) should be strengthened to include not only respect for international laws/conventions signed and agreed to, but also implementation and incorporation into National laws and adequate representation of women and men on equal basis at the international levels. The socio-economic rights enshrined in the constitution should be made enforceable.

Specific Social and Economic Rights such as right to education, health, work and adequate housing should be moved to Chapter IV containing the bill of rights

9. FEDERAL CHARACTER COMMISSION OR ESTABLISHMENT OF EQUAL OPPORTUNITY COMMISSION?

We proposed that the Federal Character principle in Section 14 (3) be amended to include gender as one of indices for composition and conduct of affairs of government. This will ensure gender balance in political appointment as well as gender balance in composition of such body.

Establishment of Equal Opportunity Commission to replace the Federal Character Commission. The trend world wide is to have such body to monitor observance and implementation of policies and programmes to reflect gender equity and ensure social justice to all irrespective of sex, religion, ethnic group among other grounds for which discrimination is prohibited.

10. RIGHT TO INHERITANCE

It is recommended that there should be a provision guaranteeing the rights of widows and widowers to inheritance of properties jointly acquired in the absence of a will.
Female and male children should have explicitly stated rights to inheritance.

11. LAND USE ACT
The Land Use Act according to the yearnings of Nigerians should be repealed or at least amended to guarantee equal access to land and adequate compensation to men, women and the poor.

12. WOMEN WITH DISABILITIES
We recommend that the provision of Chapter IV of the constitution should specifically address the rights of people with disabilities especially the needs of women within that category.

CONCLUSION
That law is gender blind and of course gender bias is truly reflected in previous constitutions of Nigeria, in particular the 1999 constitution. These constitutions have shown virtually no recognition that sex or gender can be a significant dimension in defining the substantive contents of individual rights or that it can affect the choice of methods that must be adopted by states to ensure that all individuals within their jurisdiction enjoy these rights equally.

Maintenance of distinctions and categorization of rights in the 1999 constitution are major set back to women's rights in Nigeria. The most important rights -if we are to prioritize are made non-justiciable. Yet poverty and violence of all sorts are the most pervasive violations of women's rights.

Civilized sociology requires that in a democratic society where democratic values holds sway; we should recognize gender issues which has assumed same importance as ethnicity and religion and would therefore play a major role and impact whether negatively or positively on the democratization process.
However, the woman or gender questions if addressed will play an important role in peace and unity of this country. As a Nigerian woman for example, I have multiple identities - an Igbo, a woman, Christian and a southerner. But my gender identity is of more important consideration to me than my ethnic identity. The reason is that no ethnic group has been found to be most benevolent to women - according them rights and privileges deserved.

Therefore, that a woman (very gender sensitive) becomes president of Nigeria holds a better prospect for me as a woman and I think majority of women will support such candidature irrespective of whether she is - Hausa, Tiv, Ijaw, Yoruba, Efik, Urhobo, Ogoni, Igala or an Igbo woman. I see women not because we belong to the same gender as the only groups that can come together across party, ethnic, and religious divide because they are able to see a commonality of purpose that transcends their differences.
For sustainability of our nascent democracy, a peaceful Nigeria, we need to take into account gender matters. Modern constitutions of other African countries namely: - South Africa, Ghana, Uganda, Eritrea, Malawi to mention but a few have specific provisions on women and children. This simply recognized the fact that motherhood and childhood deserve special protection. The important fact is that colonialism, imperialism, debt crisis, food crisis, water crisis; environmental issues impact especially and differently on women and their children.

Nigeria is very much part of the globalized world and cannot afford to be going backward when sister countries are forward looking. Its

constitution needs to reflect the international obligations it has undertaken, particularly, to eliminate all forms of discrimination against women. A consultative process to broaden and deepen the contributions of the Nigerian women to constitutional reform/making should be initiated and sustained by all those concerned with promotion and protection of women. The civil society organizations should take the lead in creating awareness, educating and mobilizing support for women's participation in constitution making, general governance and development initiatives taking place in the Country.

In conclusion, I wish to posit that the 1999 constitution should be amended to reflect the gender composition of Nigeria protecting women as full citizens with rights also applicable to their male counterparts. The review has presented an ideal opportunity to give visibility to women's concerns for both participation and adequate protection in proposed constitutional amendments. Nigerians should work towards giving themselves a new grundnorm with full participation of women and all stakeholders to make a constitution that will come into force before the next general election in 2007.

Gender democracy, evidenced by the balanced participation of women and men, is considered a cornerstone of democratic development. The empowerment and autonomy of women and the improvement of women's social, economic, and political status is essential for the achievement of both transparent and accountable government as well as sustainable constitutional democracy and development in all areas of life. Although Nigeria has finally transited from military rule to civil rule, it has to take steps to ensure participation of all stakeholders especially women who will in collaboration with men work towards a sustainable democracy fore grounded on constitutionalism.

Joy Ngozi Ezeilo

In the States

Six State Constitutions Use Gender-Neutral Wording

Run Date: 12/09/01

By Darryl McGrath
WEnews correspondent

Six states adopted gender-neutral language in their constitutions; eight others are considering the change. Advocates say gender-neutral language is a subtle but important way to promote equality; critics call it empty, feel-good, demeaning to women.


Sandy Galef

ALBANY, N.Y. (WOMENSENEWS)--A recent New York state referendum that will change the state constitution wording to gender-neutral language is part of a growing awareness of the power of language and the role it plays in promoting equality.

Advocates of gender-neutral language say that it is a subtle and often overlooked aspect of equality, but so pervasive that it affects everyday thinking in the workplace, home and government. Critics say the push for gender-neutral language is an unnecessary and even frivolous effort that distracts attention and drains resources from more pressing issues.

Still, a heightened awareness of gender-neutral language is evident in universities, institutional training programs and everyday conversation.

"I can't think of a more important time for this issue than right now," said Judith Barlow, a professor of English and acting chair of the women's studies department at the State University of New York in Albany. "There are going to be great changes in Afghanistan, that for several years has barely acknowledged women." Using language that erases women by only mentioning men absolutely sends the wrong message, she added.

The change in the New York State Constitution takes place immediately and will appear as soon as new copies are printed, an annual process. In most cases, the words "he" and "him" will be replaced with "he or she" and "him or her," but other changes will also be made. All references to the governor as "he" will become "the governor" and references to a "fireman" in a section dealing with civil service employees will become "firefighter."

That change reflects the decades-long efforts by women's scholars and others to change usage from gender-specific terms to gender-neutral terms, or terms that don't denote marital status. Examples from the 1970s and 1980s include police officer instead of policeman; chair instead of chairman; flight attendant instead of stewardess; and Ms. as an alternative to Mrs. or Miss. Advocates say that other, more recent terms, such as "humankind" instead of "mankind" are gradually gaining acceptance into modern terminology.

Six States Have Changed Wording: Eight Considering Changes

New York follows the example of several other states that have either changed their state constitutions to gender-neutral language or are considering doing so. Some states are also considering applying gender-neutral requirements to the wording of new legislation and the revision of current law.

Or, in Rhode Island's case, returning to old language. A research project undertaken by the state's Commission on Women recently brought to light the 1663 charter to the Rhode Island colony granted by King Charles II of England. The document is noteworthy for using many gender-neutral phrases instead of the male-oriented phrases that would be expected, said Jane Anthony, chair of the commission. The most prominent example cited by Anthony: a phrase that states "no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question."

"It seems somewhat ironic," Anthony said, "that you find your first official document had nonspecific language, which was quite unusual at that time, and then centuries later, you had people making a conscious choice not to use nonspecific gender language."

New York voters approved the change in the language of the state constitution in last month's general election. The campaign for the referendum unfolded with little public debate, and 56 percent of the voters approved the measure.

The change in New York started four years ago with a bill introduced by state Assembly member Sandy Galef, a Democrat from the town of Ossining, about an hour's drive north of New York City.

N.Y. Lawmaker: Language Change Shows Others Women Are Valued

"You could say it's symbolic, but I think words are very important," Galef said. "What we say, how we say it, sends a message. We changed the term 'stewardess' to 'flight attendant' and that changed the image. I think symbolically it's important for us to show other countries that we value women."

The bill eventually gained bipartisan support, unanimously passing both the Republican-controlled state Senate and the Democratic-controlled Assembly. With legislative support secured, the change was ready for the referendum. Since the constitution is reprinted annually and distributed by the Secretary of State's office, there will be no significant or special cost to taxpayers, Galef said.

She touched on Barlow's theme of international perceptions in describing why she pushed for gender-neutral language in the state constitution, which dates to 1777 and had 170 references to the male gender and no references to the female gender. Her staff's research revealed that six other states--California, Hawaii, Maine, Rhode Island, Vermont and Florida--have changed their constitutions to gender-neutral language, and eight are considering such a change: Delaware, Illinois, Iowa, Minnesota, Nevada, Nebraska, New Hampshire and Wyoming.

The Conservative Party of New York was one of the most vocal opponents of the referendum, issuing a written statement of opposition and speaking out through its leadership against the effort, specifically in New York and in society in general.

"We were opposed to it before Sept. 11, but Sept. 11 highlighted that with all the things that have to be done in the state of New York, here the legislature spent time on something that did absolutely nothing for anyone," said Michael Long, the Conservative Party state chair. "It's just another example of what I guess one could consider 'feel good' legislation. Male and female legislators could not pass a budget on time, yet they could this. Shame on them."

Conservatives: Women Losers When Language Obscures Femininity

Long said women will lose more than they gain by pressing for language that obscures their femininity, in a world where women are often treated poorly.

"I do believe women sometimes have to be treated a little special," he said. "They haven't always been treated correctly, but I hope they would always be treated special."

Those working to change the thinking about male-dominant language agree that it can be difficult for people of either gender to push for such changes.

Sherryl Kleinman, a sociology professor at the University of North Carolina in Chapel Hill, has gained recognition for her campaign to eliminate the expression "you guys" from spoken language when the phrase describes a mixed-gender group. She knows she has an uphill battle when she hears a student in her gender class tell the group of 35 women and five men, "You guys, I have an announcement."

A year ago, Kleinman published a commentary entitled, "Good-bye 'You Guys'" in New York Newsday. In it, she mused about the origin of the expression and suggested that it came into common usage about the same time feminists started pushing for changes in official language.

In Popular Speech, 'You Guys' Refers to Both Women and Men

"So when did you 'you guys' sneak by and then sneak in?" Kleinman wrote. "I suspect it entered the scene around the time that official titles like 'chairman' were being challenged. You can push the provost to change freshman to first-year student or complain to publishers about their use of congressman in text books. But you can't go to court to make your friends stop using 'you guys.'"


Sherryl Kleinman

Kleinman and two former students have designed a card that publicizes the effort to eliminate "you guys" from spoken language, which can be handed out to explain the campaign "in a way that doesn't scold people," she wrote in her Newsday article.

The wallet-sized card has an illustration in the form of a mathematical equation, showing three women being added with one man and forming "you guys." The text sets up the illustration, reading in part, "Imagine someone walking up to a group of guys and saying, 'Hey, girls, how're ya doing?' We doubt they'd be amused! So isn't it weird that women are supposed to accept--even like--being called 'one of the guys'?"

Kleinman said the struggle for women to assert gender-neutral language can be likened to the efforts of African Americans to reject "Negro" and claim "black" in the 1960s, or the acceptance of "gay" in print and broadcast media instead of "homosexual."

"The struggle is harder when it comes to sexist language because, unlike blacks, for example, in relation to whites, most women seek intimate relationships with men, for emotional and economic reasons," Kleinman said. "This intimacy can be threatened when women make issues out of language habits that so many people take for granted."

Women, Men Pressured Not to Raise Issue of Gender-Neutral Language

Women's studies professor Barlow recalled a recent faculty meeting about the search for a new dean of the college of arts and sciences. A male department chair made repeated use of male gender terms, saying of the as-yet-

unidentified candidate for the dean's post that "he should know how to do this," and "he should have this experience."

"It was very glaring; it was certainly noted by people around me," Barlow recalled. But no one spoke up, she added.

"I think men and women have different reasons for being silent in this situation," said Jackson Katz, a nationally known expert on the prevention of gender-based violence, who has lectured and conducted training sessions at universities and military bases domestically and abroad.

For many women, Katz said, "they don't want to be creating conflict; they want to be creating cohesion. I think a lot of women just shuffle papers uneasily but go on. But the silence comes at a cost. The cost is frustration and loss of self-respect."


Jackson Katz

For men who want to speak up but are reluctant to do so, "there are very few models of men doing that kind of thing in public, much less private," Katz said. "You're not a team player--'What are you, one of those sensitive New Age guys?'"

Katz sees a dangerous flip side to gender-specific language, when sexual violence or teen pregnancy are almost always described in terms of the female gender. Rape statistics are usually presented in terms of how many thousands of women a year are raped, but rarely in terms of how many thousands of men a year commit rape. Teen pregnancies are couched in terms of how many teens become pregnant each year, but rarely in terms of how many boys or men a year impregnate teen-agers.

Advocates of gender-neutral language say they have a long way to go before gaining full acceptance in the culture of the United States, but many are persisting in their efforts to educate people.

Matt Ezzell is the coordinator of community education at the Orange County Rape Crisis Center in Chapel Hill, N.C. He stresses the use of gender-neutral language in training sessions.

"The first time we say something about it in our training group, they're surprised, they don't want to discuss it," Ezzell said. He persists, because he went through a similar awakening a few years ago and knows that most people will be receptive to the change once they think about it.

"It was like a lightbulb," said Ezzell, who majored in women's studies at the University of North Carolina at Chapel Hill, describing the time in college that he first heard someone else talk about language that constantly refers to the dominant male gender. "And it took me about a year to purge it from my language, that's how pervasive it was."

Darryl McGrath is a journalist in Albany, N.Y., who writes often on politics and child welfare issues.

For more information:

You All:
http://www.youall.freeservers.com/home.html

Jackson Katz:
http://www.jacksonkatz.com/

"Gender Neutrality in the New York State Constitution," by New York state Assemblywoman Sandra Galef:
http://assembly.state.ny.us/member_files/090/20010730/index.htm
http://assembly.state.ny.us/mem/?ad=090

Rhode Island Royal Charter:
http://www.sec.state.ri.us/rihist/richart.htm

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ALASKA STATE LEGISLATURE

Rep. Carl Gatto

MEMORANDUM

TO: Rep. Bob Lynn Chair House State Affairs Committee
FROM: Rep. Carl Gatto
DATE: February 19, 2009
RE: Request for Hearing

Enclosed is our committee packet for HJR 2 "Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document." I have included a sponsor statement, the most recent version of the bill, and other supplemental information.

Please schedule a committee hearing before the House State Affairs Committee at your earliest convenience. I appreciate your time and look forward to reviewing this bill.

Please contact my staff member Sandra Wilson at 465-3163 with any questions or comments regarding this request.

Thank you