

HB

15

<TARGET><BILL>HB 8</BILL><SUBJECT>HB
15</SUBJECT><COMM>HJUD30</COMM></TARGET>

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Sponsor Statement

House Bill 15: Marriage and Spouses

Given the recent Supreme Court ruling in *Obergefell v. Hodges* (2015), and the District Court ruling in *Hamby v. Parnell* (2014), which both decided that state-level bans on same-sex marriage are unconstitutional, it falls upon the state legislature to recognize the legal legitimacy of same-sex marriage.

House Bill 15 addresses gendered language in existing statutes, and replaces the terms “husband” and “wife” with non-gendered language such as “spouse”, “person”, and “parent” where applicable. It addresses statutes regarding the divorce or dissolution of a marriage, adopting children, custody of shared children, the power-of-attorney over a spouse, property ownership, spousal immunity and the marital communications. Additionally, there are many housekeeping changes such as changing ‘the’ mother or father to ‘a’ mother or father.

House Bill 15 is not a civil rights bill, rather it is a necessary cleanup, or update of statute to reflect the true rule of law. This legislation extends no additional rights to the LGBTQ community that they do not already possess, even though our state statutes still appear to be discriminatory in nature. As they are today, the current statutes addressed in House Bill 15 are unenforceable and outdated, and if adopted, this legislation will enact no substantive change but rather will bring our laws up to date with state and national court decisions. The purpose of this bill is to make these required changes sooner rather than later and in an omnibus rather than piecemeal fashion.

I invite you to discuss this issue with me further and urge you to support this legislation.

Please contact my staff Megan Holland with any questions: 465-4939,
megan.holland@akleg.gov

LEGAL SERVICES

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MEMORANDUM

December 28, 2017

SUBJECT: HB 15 sectional summary
(Work Order No. 30-LS0167A)

TO: Representative Andy Josephson
Attn: Megan Holland

FROM: Linda M. Bruce *Linda Bruce*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that this sectional summary should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

Section 1. Replaces the phrase "a husband and wife" with "two spouses" in a current statute related to loans.

Section 2. Replaces the phrase "a husband and wife" with "two spouses" in a current statute related to fiduciary exemptions.

Section 3. Replaces the term "husband and wife" with "spouses" in a current statute related to a prosecution for failure to permit visitation with a minor.

Section 4. Replaces the term "husband and wife" with "the spousal relationship" under subsection (a) of a current statute and replaces the term "husband and wife" with "spouses" under subsection (b) in the same current statute related to the effect of a divorce, annulment, or a decree of separation.

Section 5. Replaces the term "husband and wife" with "the spousal relationship" in a current statute related to the definition of "divorce or annulment."

Section 6. Replaces the term "husband" with "spouse," the term "father" with "second parent," and the term "man" with "person" in a current statute related to birth certificates.

Section 7. Adds the term "the mother's spouse" in a current statute related to vital statistics information for a stillbirth.

Section 8. Replaces the term "upon" with "on," the term "effectuated" with "carried out," the term "effectuate" with "carry out," and the phrase "a husband and wife" with "either spouse" in a current statute related to life and health insurance.

Section 9. Replaces the term "husband, wife" with "a spouse," the term "shall" with "may," and the term "upon" with "on" in a current statute related to health insurance.

Section 10. Replaces the term "husband or wife" with "spouse" in a current statute related to employer liability.

Section 11. Replaces the phrase "one man and one woman" with "two natural persons" and the phrase "the man and the woman must each" with "[e]ach person shall" in a current statute related to marriage.

Section 12. Replaces the term "husband or wife" with "spouse" in a current statute related to prohibited and void marriages.

Section 13. Replaces the term "husband and wife" with "spouses" and the term "shall" with "may" in a current statute related to voiding a marriage.

Section 14. Replaces the term "husband or wife" with "person," the term "a" with "the," the term "husband and wife" with "spouses," and the phrase "the former husband or wife" with "the other party's spouse from the former marriage" in a current statute related to the effect of an existing former marriage.

Section 15. Replaces the term "husband and wife" with "spouses" in a current statute related to the form for the solemnization of a marriage.

Section 16. Replaces the term "husband and wife" with "spouses" in a current statute related to the unlawful solemnization of a marriage.

Section 17. Replaces the term "husband or wife" with "person who is married" and "other" with "person's spouse" in a current statute related to the authority of spouses to act as an attorney-in-fact for each other.

Section 18. Replaces the phrase "a husband and wife" with "two spouses" in a current statute related to adoption.

Section 19. Amends a current statute related to consent for a petition to adopt to require consent from the "legal parent of the minor" and expands the list of individuals who may be a legal parent for purposes of the statute.

Section 20. Conforms a cross-reference for purposes of consents to adoptions consistent with sec. 19 of this bill.

Section 21. Conforms a cross-reference for purposes of adult family member preference in adoptions consistent with sec. 19 of this bill.

Section 22. Replaces the term "husband or wife" with "person" and the term "other" with "person's spouse" in a current statute related to the right of action for a divorce.

Section 23. Repeals and reenacts AS 25.24.020 related to void marriages to remove the term "husband or wife" and include language that applies to same-sex couples.

Section 24. Replaces the term "husband and wife" with "spouses" in a current statute related to voidable marriages.

Section 25. Replaces the phrase "either the husband or wife" with "a spouse" in a current statute related to an action to declare a marriage valid.

Section 26. Replaces the phrase "a husband and wife" with "two spouses" and the term "the wife" with "one of the spouses" in a current statute related to the dissolution of a marriage.

Section 27. Replaces the term "husband or wife" with "spouse" in a current statute related to a petition for dissolution of a marriage.

Section 28. Replaces the phrase "a husband and wife" with "both spouses" in a current statute related to ownership of an animal.

Section 29. Replaces the term "the wife" with "either spouse" in a current statute related to a petition for dissolution of a marriage.

Section 30. Replaces the term "husband or a wife" with "spouse" in a current statute related to a complaint for a legal separation.

Section 31. Replaces the phrase "relationship of husband and wife or parent and child" with "spousal relationship or the relationship of parent and child" in a current statute related to spousal immunity.

Section 32. Replaces the phrase "communications between spouses" with "marital communications" and the phrase "relationship of husband and wife or parent and child" with "spousal relationship or the relationship of parent and child" in a current statute related to the privilege against disclosure of marital communications.

Section 33. Replaces the term "husband and wife" with "two spouses" in a current statute related to apartment ownership and possession.

Section 34. Replaces the phrase "a husband and wife" with "two spouses" in a current statute related to the prohibition against the partition of common areas and facilities ownership.

Section 35. Replaces the term "husband and wife" with "spouses" in a current statute related to a deed or conveyance of a family home or homestead.

Section 36. Replaces the phrase "a husband and wife" with "two spouses" in a current statute related to conveyances that are construed as creating tenancy in common.

Section 37. Amends the definition of a "child" for purposes of public official financial disclosure to include "a legal child."

Section 38. Amends the definition of a "mother or father" for purposes of public official financial disclosure to include "a legal parent."

Section 39. Replaces the term "upon" with "on" and the phrase "the" father or mother with "a" father or mother in a current statute related to appointment of a guardian or custodian.

Section 40. Replaces the phrase "the" father or mother with "a" father or mother in a current statute related to the release of a minor from custody.

Section 41. Replaces the term "upon" with "on" and the phrase "the" father or mother with "a" father or mother in a current statute related to the appointment of a guardian or custodian.

Section 42. Replaces the term "husband-wife" with "spousal" in a current statute related to evidence that is not subject to the spousal privilege.

Section 43 Repeals AS 25.05.013, which provides that in this state a same-sex marriage is void, that contractual rights granted by virtue of the marriage are unenforceable, and that the marriage is not entitled to the benefits of marriage.

Section 44. Adds a revisor's instruction directing the revisor of statutes to change the heading of AS 25.15 from "Husband and Wife" to "Spouses."

If I may be of further assistance, please advise.

LBB:dls

17-619.dls

Sec. 25.05.011. Civil contract.

(a) Marriage is a civil contract entered into by one man and one woman that requires both a license and solemnization. The man and the woman must each be at least one of the following:

- (1) 18 years of age or older and otherwise capable;
- (2) qualified for a license under AS 25.05.171; or
- (3) a member of the armed forces of the United States while on active duty.

(b) A person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter.

History -

(Sec. 1 ch 58 SLA 1963; am Sec. 9 ch 245 SLA 1970; am Sec. 92 ch 127 SLA 1974; am Sec. 1 ch 28 SLA 1975; am Sec. 1 ch 21 SLA 1996)

Decisions -

License mandatory. - Provision requiring a marriage license is mandatory and not merely directive. *Edwards v. Franke*, 364 P.2d 60 (Alaska 1961), decided under former Sec. 21-1-1, ACLA 1949.

Alaska's same-sex marriage laws violate equal protection and due process clauses of Fourteenth Amendment. - Alaska's ban on same-sex marriage and refusal to recognize same-sex marriages lawfully entered in other states as set forth in Alaska Const. art. 1, Sec. 25 and AS Sec. 25.05.011, 25.05.013, is unconstitutional as a deprivation of basic due process and equal protection principles under the Fourteenth Amendment of the U.S. Constitution. No state interest provides exceedingly persuasive justification for the significant infringement of rights that they inflict upon homosexual individuals. *Hamby v. Parnell*, 56 F. Supp. 3d 1056 (D. Alaska 2014).

And marriage relationship without license is invalid. - A marriage relationship sought to be effected without the benefit of a marriage license is invalid. *Edwards v. Franke*, 364 P.2d 60 (Alaska 1961), decided under former Sec. 21-1-1, ACLA 1949.

Common law marriages are not valid in Alaska. *Burgess Constr. Co. v. Lindley*, 504 P.2d 1023 (Alaska 1972); *United States v. Lustig*, 555 F.2d 737 (9th Cir. 1977), cert. denied, 434 U.S. 1045, 98 S. Ct. 889, 54 L. Ed. 2d 795 (1978).

Obergefell v. Hodges, 135 S.Ct. 2584 (2015)

99 Empl. Prac. Dec. P 45,341, 192 L.Ed.2d 609, 115 A.F.T.R.2d 2015-2309...

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by *Conde Vidal v. Garcia-Padilla*, D.Puerto Rico, March 8, 2016

135 S.Ct. 2584

Supreme Court of the United States

James **OBERGEFELL**, et al., Petitioners

v.

Richard HODGES, Director, Ohio Department of Health, et al.;

Valeria Tanco, et al., Petitioners

v.

Bill Haslam, Governor of Tennessee, et al.;

April DeBoer, et al., Petitioners

v.

Rick Snyder, Governor of Michigan, et al.; and

Gregory Bourke, et al., Petitioners

v.

Steve Beshear, Governor of Kentucky.

Nos. 14-556, 14-562, 14-571, 14-574.

|
Argued April 28, 2015.

|
Decided June 26, 2015.

Synopsis

Background: Same-sex couple brought action alleging that voter-approved Michigan Marriage Amendment (MMA), which prohibited same-sex marriage, violated Equal Protection and Due Process Clauses. The United States District Court for the Eastern District of Michigan, Bernard A. Friedman, J., 973 F.Supp.2d 757, entered judgment in couple's favor, and state appealed. Same-sex couples married in jurisdictions that provided for such marriages brought actions alleging that Ohio's ban on same-sex marriages violated Fourteenth Amendment. The United States District Court for the Southern District of Ohio, Timothy S. Black, J., 14 F.Supp.3d 1036, entered judgment in couples' favor, and state appealed. Same-sex spouses, who entered legal same-sex marriages in Maryland and Delaware, and Ohio funeral director sued Ohio officials responsible for death certificates that denied recognition of spouses' same-sex legal marriages after death of their partners, seeking declaratory judgment and permanent injunction. The United States District Court for the Southern District of Ohio, Timothy S. Black, J., 962 F.Supp.2d 968, entered judgment in plaintiffs' favor, and state appealed. Same-sex couples validly married outside Kentucky brought § 1983 actions challenging constitutionality of Kentucky's

marriage-licensing law and denial of recognition for valid same-sex marriages. The United States District Court for the Western District of Kentucky, John G. Heyburn II, J., 996 F.Supp.2d 542, entered judgment in couples' favor, and state appealed. Same-sex couples who were legally married in other states before moving to Tennessee brought action challenging constitutionality of Tennessee's laws that voided and rendered unenforceable in Tennessee any marriage prohibited in state. The United States District Court for the Middle District of Tennessee, Aleta Arthur Trauger, J., 7 F.Supp.3d 759, granted couples' motion for preliminary injunction, and state appealed. The United States Court of Appeals for the Sixth Circuit, Sutton, Circuit Judge, 772 F.3d 388, reversed. Cases were consolidated and certiorari was granted.

Holdings: The Supreme Court, Justice Kennedy, held that:

[1] The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty, overruling *Baker v. Nelson*, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65, and abrogating *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, *Adams v. Howerton*, 673 F.2d 1036, and other cases, and

[2] States must recognize lawful same-sex marriages performed in other States.

Reversed.

Chief Justice Roberts filed a dissenting opinion, in which Justices Scalia and Thomas joined.

Justice Scalia filed a dissenting opinion, in which Justice Thomas joined.

Justice Thomas filed a dissenting opinion, in which Justice Scalia joined.

Justice Alito filed a dissenting opinion, in which Justices Scalia and Thomas joined.

West Headnotes (22)

elections.

Cases that cite this headnote

[21] **Constitutional Law**
🔑 Marriage; bigamy

Religions, and those who adhere to religious doctrines, may advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned; the First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. U.S.C.A. Const.Amend. 1.

6 Cases that cite this headnote

[22] **Marriage**
🔑 Effect of foreign union

There is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

30 Cases that cite this headnote

West Codenotes

Held Unconstitutional

Ky.Const. § 233A; KRS 402.005, *2588 402.020(1)(d), 402.040(2), 402.045; M.C.L.A. Const. Art. 1, § 25; M.C.L.A. §§ 551.1, 551.271, 551.272; Ohio Const. Art. 15, § 11; Ohio R.C. § 3101.01; T.C.A. Const. Art. 11, § 18; T.C.A. § 36-3-113.

Recognized as Unconstitutional

1 U.S.C.A. § 7

*Syllabus**

Michigan, Kentucky, Ohio, and Tennessee define marriage as a union between one man and one woman. The petitioners, 14 same-sex couples and two men whose same-sex partners are deceased, filed suits in Federal District Courts in their home States, claiming that respondent state officials violate the Fourteenth Amendment by denying them the right to marry or to have marriages lawfully performed in another State given full recognition. Each District Court ruled in petitioners' favor, but the Sixth Circuit consolidated the cases and reversed.

Held : The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State. Pp. 2593 – 2608.

(a) Before turning to the governing principles and precedents, it is appropriate to note the history of the subject now before the Court. Pp. 2593 – 2598.

(1) The history of marriage as a union between two persons of the opposite sex marks the beginning of these cases. To the respondents, it would demean a timeless institution if marriage were extended to same-sex couples. But the petitioners, far from seeking to devalue marriage, seek it for themselves because of their respect—and need—for its privileges and responsibilities, as illustrated by the petitioners' own experiences. Pp. 2593 – 2595.

(2) The history of marriage is one of both continuity and change. Changes, such as the decline of arranged marriages and the abandonment of the law of coverture, have worked deep transformations in the structure of marriage, affecting aspects of marriage once viewed as essential. These new insights have strengthened, not weakened, the institution. Changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations.

This dynamic can be seen in the Nation's experience with gay and lesbian rights. Well into the 20th century, many States condemned same-sex intimacy as immoral, and homosexuality was treated as an illness. Later in the century, cultural and political developments allowed same-sex couples to lead more open and public lives. Extensive public and private dialogue followed, along with shifts in public attitudes. Questions about the legal treatment of gays and lesbians soon reached the courts, where they could be discussed in the formal discourse of the law. In 2003, this Court overruled its 1986 decision in *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92

L.Ed.2d 140, which upheld a Georgia law that criminalized certain homosexual acts, concluding laws making same-sex intimacy a crime “demea[n] the lives of homosexual persons.” *2589 *Lawrence v. Texas*, 539 U.S. 558, 575, 123 S.Ct. 2472, 156 L.Ed.2d 508. In 2012, the federal Defense of Marriage Act was also struck down. *United States v. Windsor*, 570 U.S. —, 133 S.Ct. 2675, 186 L.Ed.2d 808. Numerous same-sex marriage cases reaching the federal courts and state supreme courts have added to the dialogue. Pp. 2595 – 2598.

(b) The Fourteenth Amendment requires a State to license a marriage between two people of the same sex. Pp. 2597 – 2607.

(1) The fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 31 L.Ed.2d 349; *Griswold v. Connecticut*, 381 U.S. 479, 484–486, 85 S.Ct. 1678, 14 L.Ed.2d 510. Courts must exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. History and tradition guide and discipline the inquiry but do not set its outer boundaries. When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these tenets, the Court has long held the right to marry is protected by the Constitution. For example, *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 1010, invalidated bans on interracial unions, and *Turner v. Safley*, 482 U.S. 78, 95, 107 S.Ct. 2254, 96 L.Ed.2d 64, held that prisoners could not be denied the right to marry. To be sure, these cases presumed a relationship involving opposite-sex partners, as did *Baker v. Nelson*, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65, a one-line summary decision issued in 1972, holding that the exclusion of same-sex couples from marriage did not present a substantial federal question. But other, more instructive precedents have expressed broader principles. See, e.g., *Lawrence*, *supra*, at 574, 123 S.Ct. 2472. In assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected. See, e.g., *Eisenstadt*, *supra*, at 453–454, 92 S.Ct. 1029. This analysis compels the conclusion that same-sex couples may exercise the right to marry. Pp. 2597 – 2599.

(2) Four principles and traditions demonstrate that the reasons marriage is fundamental under the Constitution

apply with equal force to same-sex couples. The first premise of this Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U.S., at 12, 87 S.Ct. 1817. Decisions about marriage are among the most intimate that an individual can make. See *Lawrence*, *supra*, at 574, 123 S.Ct. 2472. This is true for all persons, whatever their sexual orientation.

A second principle in this Court’s jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. The intimate association protected by this right was central to *Griswold v. Connecticut*, which held the Constitution protects the right of married couples to use contraception, 381 U.S., at 485, 85 S.Ct. 1678, and was acknowledged in *Turner*, *supra*, at 95, 107 S.Ct. 2254. Same-sex couples have the same right as opposite-sex couples to enjoy intimate association, a right extending beyond mere freedom from laws making same-sex intimacy a criminal offense. See *Lawrence*, *supra*, at 567, 123 S.Ct. 2472.

*2590 A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070. Without the recognition, stability, and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated to a more difficult and uncertain family life. The marriage laws at issue thus harm and humiliate the children of same-sex couples. See *Windsor*, *supra*, at —, 133 S.Ct., at 2694–2695. This does not mean that the right to marry is less meaningful for those who do not or cannot have children. Precedent protects the right of a married couple not to procreate, so the right to marry cannot be conditioned on the capacity or commitment to procreate.

Finally, this Court’s cases and the Nation’s traditions make clear that marriage is a keystone of the Nation’s social order. See *Maynard v. Hill*, 125 U.S. 190, 211, 8 S.Ct. 723, 31 L.Ed. 654. States have contributed to the fundamental character of marriage by placing it at the center of many facets of the legal and social order. There is no difference between same- and opposite-sex couples with respect to this principle, yet same-sex couples are denied the constellation of benefits that the States have linked to marriage and are consigned to an instability

many opposite-sex couples would find intolerable. It is demeaning to lock same-sex couples out of a central institution of the Nation's society, for they too may aspire to the transcendent purposes of marriage.

The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest. Pp. 2598 – 2602.

(3) The right of same-sex couples to marry is also derived from the Fourteenth Amendment's guarantee of equal protection. The Due Process Clause and the Equal Protection Clause are connected in a profound way. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet each may be instructive as to the meaning and reach of the other. This dynamic is reflected in *Loving*, where the Court invoked both the Equal Protection Clause and the Due Process Clause; and in *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 L.Ed.2d 618, where the Court invalidated a law barring fathers delinquent on child-support payments from marrying. Indeed, recognizing that new insights and societal understandings can reveal unjustified inequality within fundamental institutions that once passed unnoticed and unchallenged, this Court has invoked equal protection principles to invalidate laws imposing sex-based inequality on marriage, see, e.g., *Kirchberg v. Feenstra*, 450 U.S. 455, 460–461, 101 S.Ct. 1195, 67 L.Ed.2d 428, and confirmed the relation between liberty and equality, see, e.g., *M.L.B. v. S.L.J.*, 519 U.S. 102, 120–121, 117 S.Ct. 555, 136 L.Ed.2d 473.

The Court has acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See *Lawrence*, 539 U.S., at 575, 123 S.Ct. 2472. This dynamic also applies to same-sex marriage. The challenged laws burden the liberty of same-sex couples, and they abridge central precepts of equality. The marriage laws at issue are in essence unequal: Same-sex couples are denied benefits afforded opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial *2591 works a grave and continuing harm, serving to disrespect and subordinate gays and lesbians. Pp. 2602 – 2605.

(4) The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Same-sex couples may exercise the

fundamental right to marry. *Baker v. Nelson* is overruled. The State laws challenged by the petitioners in these cases are held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples. Pp. 2604 – 2605.

(5) There may be an initial inclination to await further legislation, litigation, and debate, but referenda, legislative debates, and grassroots campaigns; studies and other writings; and extensive litigation in state and federal courts have led to an enhanced understanding of the issue. While the Constitution contemplates that democracy is the appropriate process for change, individuals who are harmed need not await legislative action before asserting a fundamental right. *Bowers*, in effect, upheld state action that denied gays and lesbians a fundamental right. Though it was eventually repudiated, men and women suffered pain and humiliation in the interim, and the effects of these injuries no doubt lingered long after *Bowers* was overruled. A ruling against same-sex couples would have the same effect and would be unjustified under the Fourteenth Amendment. The petitioners' stories show the urgency of the issue they present to the Court, which has a duty to address these claims and answer these questions. Respondents' argument that allowing same-sex couples to wed will harm marriage as an institution rests on a counterintuitive view of opposite-sex couples' decisions about marriage and parenthood. Finally, the First Amendment ensures that religions, those who adhere to religious doctrines, and others have protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths. Pp. 2605 – 2607.

(c) The Fourteenth Amendment requires States to recognize same-sex marriages validly performed out of State. Since same-sex couples may now exercise the fundamental right to marry in all States, there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character. Pp. 2607 – 2608.

772 F.3d 388, reversed.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C.J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

Attorneys and Law Firms



January 18, 2018

Honorable Representative Matt Claman, Chair
House Judiciary Committee
Alaska State Legislature
State Capital
Juneau, Alaska 99801

Re: Support for HB 15 – Marriage & Spouses

Dear Chair Claman and Committee Members,

Alaskans Together For Equality (ATE) supports House Bill 15 as written: "An Act relating to marriage, adoption, birth certificates, state custody of a minor, divorce, dissolution, and legal separation; replacing the terms 'husband' and 'wife' in certain statutes relating to loans, trusts, spousal immunity and confidential marital communications, probate and nonprobate transfers, life and health insurance, workers' compensation, and property ownership; and making conforming amendments."

ATE represents hundreds of members across the state of Alaska. We are a nonpartisan, civil rights organization with a mission to advance civil equality for all Alaskans through education, grassroots organizing, and advocacy. While ATE's primary focus is on lesbian, gay, bisexual, and transgender (LGBT) Alaskans, ATE advocates for all Alaskans because the stronger the foundation of equal civil rights across institutions and practices, the more Alaskans are enabled to take advantage of opportunities to create healthy lives and produce income that allows for a stronger state.

HB15 resolves standing issues with gendered language on State of Alaska paperwork regarding individuals and relationships; the current conventions may potentially result in unnecessary harm, confusion, and costs that could negatively impact the State. HB15 brings all state forms into alignment with state and federal laws for all Alaskans.

Thank you for addressing this important issue that has been left undone, we thank you on behalf of the LGBT community, and appreciate your efforts to align our state statutes with existing federal laws.

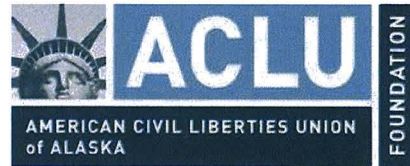
Sincerely,

A handwritten signature in black ink, appearing to read 'E. Rojas', with a stylized flourish at the end.

Elias Rojas
Board President

CC: Andy Josephson, Representative

Representative.Andy.Josephson@akleg.gov



January 19, 2018

House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801

Re: ACLU of Alaska Support for House Bill 15

Dear Chair Claman and Members of the House Judiciary Committee:

The ACLU of Alaska supports House Bill 15. The mission of this bill is simple: clean up obsolete laws. More important, however, is the message this bill sends: that the Legislature—and this Committee—stands up for all Alaskans and will erase laws that fail to recognize some Alaskans, condemning them to second-class status.

Representative Josephson accurately points out in his sponsor statement that after the court in *Hamby v. Parnell* recognized marriage as a fundamental constitutional right available to all couples, and struck down Alaska laws to the contrary, it prohibited state officers from enforcing those laws.¹ Thus, HB 15 does not alter the legal obligations of the state in recognizing those marriages. But even with this holding, the court cannot and does not rewrite the laws on the books to reflect its holding. As a result, the laws are obsolete. Without sensible cleanup these laws pile on top of other laws and cause confusion among those charged with enforcing them.

It is foreseeable that a well-meaning local clerk who looks to dutifully apply a statute as written, may deny a benefit without knowing the law's judicially-determined unconstitutionality. This would be subject to an immediate and costly lawsuit that city or borough is destined to lose. Passing HB 15 will prevent that kind of unnecessary and easily avoidable litigation.

More importantly, however, words matter. Keeping these outmoded laws on the books degrades Alaskans and corrodes law and public policy. The legal rights of same-sex spouses and parents have been decided, and openly choosing to have our laws not

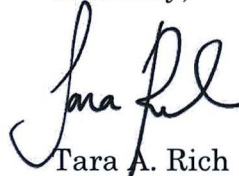
¹ *Hamby v. Parnell*, 56 F. Supp. 3d 1056, 1071 (D. Alaska, Oct. 12, 2014) (holding that the “state of Alaska, including state officers, personnel, agents, government divisions, and other political entities” were immediately enjoined from enforcing laws that prohibit otherwise qualified same-sex couples from marrying and refusing to recognize lawful same-sex marriages from other states).

House Judiciary Committee
ACLU Support for HB 15
January 19, 2018
Page 2 of 2

reflect that does nothing more than perpetuate hurtful, hateful, and discriminatory views that Alaska has moved beyond.

House Bill 15 combats the perpetuation of ambiguity created when the Legislature keeps obsolete laws on the books. In making this change, we encourage you to find that all Alaskans deserve to have the all laws recognize them.

Sincerely,

A handwritten signature in black ink, appearing to read "Tara Rich", written in a cursive style.

Tara A. Rich
Legal & Policy Director

- c: Representative Zach Fansler, Vice Chair
- Representative Jonathan Kreiss-Tomkins
- Representative Gabrielle LeDoux
- Representative Chuck Kopp
- Representative Lora Reinbold
- Representative Charisse Millett
- Representative Louise Stutes

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 15
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB015-DHSS-BVS-1-13-18
Title: MARRIAGE & SPOUSES
Sponsor: JOSEPHSON
Requester: House JUD

Department: Department of Health and Social Services
Appropriation: Public Health
Allocation: Bureau of Vital Statistics
OMB Component Number: 961

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/20

Why this fiscal note differs from previous version/comments:

Not applicable; initial version.

Prepared By:	Jay C. Butler, MD, Chief Medical Officer/Director	Phone:	(907)269-6680
Division:	Public Health	Date:	04/03/2017
Approved By:	Shawnda O'Brien, Asst. Commissioner	Date:	04/05/17
Agency:	Health and Social Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. HB015

Analysis

This bill amends a number of statutes related to marriage, adoption, birth certificates, state custody of a minor, divorce, dissolution, and legal separation; loans, trusts, spousal immunity and confidential marital communications, probate and nonprobate transfers, life and health insurance, workers' compensation, and property ownership by replacing gendered terms such as husband, wife, mother, and father to the gender-neutral terms of spouse(s) or parent(s), respectively. This language change pertains to the Department of Health and Social Services' Health Analytics and Vital Records Section through the *Alaska Vital Statistics Act* and indirectly through the *Alaska Marriage Code*.

Related to the changes in the *Alaska Marriage Code*, the operational impact to the section would be minor. Changes would include gendered language on birth, adoption, and paternity affidavit forms and certificates. In 2014, in light of the *Obergefell* decision, marriage certificates and their corresponding forms were changed to comply with the ruling. For the most part, this change has been reflected in birth certificates, and other forms would need to be updated, which requires minor programming by staff already in progress.

The changes to the Paternity subsection in the *Alaska Vital Statistics Act* (AS 18.50.160(d)) are substantial. If this bill were to pass, regulatory changes would be required to maintain consistency of language between statute and regulations.

This is a zero fiscal note. The department believes it can absorb these costs and does not require an appropriation.