

ALASKA LEGISLATURE

1836

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

RECEIVED APR 8 1998

April 8, 1998

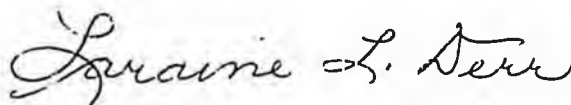
Senator Mike Miller  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Miller:

I am writing in support of SJR 35. The Association has had several discussions regarding "Freedom of Conscience" and "Right to Privacy". Those discussions have ranged from one end of the spectrum to the other -- should we have an amendment that is very broad so it can cover any potential service the hospital might offer, or should it be very narrowly worded so that it is very clear to the individual voter what he/she is voting on?

The Alaska State Hospital and Nursing Home Association favors a narrowly defined amendment to be placed on the ballot...one that speaks specifically to abortion and the rights of an individual or facility to be able to refuse to be involved in a procedure. Therefore, ASHNHA is in support of SJR 35.

Sincerely yours,



Laraine L. Derr  
President/CEO

April 8, 1998

Dear Senator Sharp,

This letter regards both SJR 35, which would allow hospitals and doctors to not participate in abortions, and HB 234, which would assign elective abortion the lowest priority in public funding. I urge you to support both of these important bills.

SJR 35 basically comes down to a person's or institution's conscience and convictions. To force either a person or institution to contradict their convictions is just a half step away from Communism. In a Communist system of government, the government makes all the rules, and the people of the land have no other choice but to obey. America, however, is a democratic system, or at least is supposed to be. One definition of democracy that the American Heritage Dictionary gives is this, "a social condition of equality and respect for the individual within the community." It seems to be that if a person or even an institution is forced to operate outside the bounds of their conscience and convictions, there is no longer a respect shown to that individual or group of individuals.

Regarding HB 234, in cases where abortion is simply an elective procedure, there is no reason why the government should be paying for it. It deserves lowest priority. If people want the government to continue paying for elective procedures, might as well let the state pay for body piercing, tattooing and even plastic surgery.

Again, I urge your support for both SJR 35 and HB 234. Thanks so much for your time and consideration of these issues....and for all the issues for that matter. We do appreciate your hard work.

Sincerely,

Mrs. Chris Schuler  
4066 Deborah Drive  
Juneau, AK 99801  
aecrsas@ptialaska.net

4066 Deborah Drive  
Juneau, AK 99801  
(907) 789-2667  
aecrsas@ptialaska.net  
April 7, 1998

Re: in Support of SJR 35 and HB 234

Dear Senator Sharp:

I will not be able to attend tomorrow's hearings regarding SJR 35 and HB 234, so I am FAXing you my encouragement to support these measures.

As you know, SJR 35 clarifies that people or hospitals would not be required to participate in an abortion. No individual, or group of people (e.g., a private hospital), should be required to act in a manner contrary to their conscious or religious convictions, especially when it results in the taking of an unborn child's life. Requiring people in the medical profession who value *all life* to participate in an abortion is directly analogous to forcing a German soldier, who may consider life as a precious gift from God, to participate in the holocaust. As Americans, we have no business forcing people to act against their conscious, especially on such obvious life and death issues. Please pass SJR 35!

HB 234 is also worthy of support. Life is a precious gift from God. The State has no business to help mothers kill their own offspring. Reprioritizing the State funding of abortion to the lowest level would help get the State out of the abortion business. The State should be spending our limited financial resources on programs that help poor people rather, than kill their offspring.

Thank you.

Sincerely,

Alan E. Schuler

April 13, 1998

Dear Senator Sharp,

This letter refers to SJR 35, the constitutional amendment which would allow persons and health care facilities to refuse to do abortions. I wholeheartedly support this amendment and ask that you do the same.

Abortion has been touted by its proponents as being a woman's FREEDOM OF CHOICE. Unfortunately, the individual woman is the only one who DOES have a choice in the matter. The baby has no choice in the matter obviously, and now since the "Valley Hospital" decision, a health care facility doesn't even have the freedom of choice – it must perform abortions. It seems to me that abortion supporters have an extremely limited concept of "freedom of choice." Someone (or an organization) can have the freedom to choose, provided they choose abortion! It's rather twisted thinking.

Please give this amendment your full support. China is a communist country where health care professionals and facilities are commanded to routinely perform abortions under severe penalties for disobedience. Alaska seems one short step away from communism. Please support SJR 35.

Respectfully,

Mrs. Chris Schuler  
4066 Deborah Drive  
Juneau, AK 99801  
aecrsac@ptialaska.net



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Sen. Fin.

Committee on SJR #35 Committee Name  
Bill / Subject Dated 4-8-98

*This is a decision that needs to be put forth to the governing body, "The people". Therefore I am of the belief that an amendment must be voted upon.*

SIGNED:

*Harry B. Nichols*  
Testifier

*Guardians of Family Rights*  
Representing

*P.O. Box 53455 NP, AK 99705*  
Address / Phone Number

*488-9388*

Lisa Peñalver  
President,  
FAIRBANKS COALITION FOR CHOICE  
P.O. Box 74264, Fairbanks, Ak 99707  
457-1458, fx 457-4243



April 1, 1998

Please submit the following TESTIMONY to the attention of  
the appropriate committee of the Alaska State Senate, Juneau Alaska- for Hearing on April 8

Re: SJR 35: Proposed amendment to the Constitution of the State of Alaska relating to participation in an abortion. The newest version of the bill (Senate Judiciary) would insert the following sentence in the Alaska Constitution's Right to Privacy clause: (Nothing in our Alaskan constitution currently requires a health care facility or person to participate in an abortion procedure).

Dear Senators,

I strongly urge you to *withdraw* the constitutional amendment SJR 35, for the following reasons:

1. This amendment could lead to a ban on all abortions in Alaska. It opens the door for all hospitals in Alaska, even public hospitals, to ban Constitutionally protected abortions. Legislative proponents are trying to give public hospitals the power to do something they themselves can't do, which is to ban abortions legalized by the Roe V. Wade decision.
2. This amendment is a nightmare for public hospital boards. The legislation shifts the battle over abortion from the Legislature to every public hospital boardroom in the state. The Pro-Choice movement in Alaska will be forced to do battle in every hospital board election and fight for every appointment made by a municipal assembly to a local hospital board. Whenever the makeup of a hospital board changes, one side or the other in the ugly debate will have reason to renew the battle. It will be an issue that will consume hours and hours of time every year for each hospital board and it will never go away. Protests at hospitals will become commonplace by one side or the other on this issue. Do public hospitals really want to deal with that? The legislature should not dump this contentious issue on hospital boards. Debate and decisions over public policy on abortion should remain in the Legislature.
3. Proponents of this legislation argue that, under the Supreme Court's decision in Valley Hospital Assoc. v. Mat-Su Coalition for Choice, hospital staff members who oppose abortion will have to participate in abortion procedures. That is not true. The decision states: "Nothing in the permanent injunction granted as part of this Final Judgment shall require any member of the medical staff of Valley Hospital, or any other officer, agent, servant, or employee of Valley Hospital, to participate directly in the performance of any abortion procedure if that person, for reasons of conscience or belief, objects to doing so."
4. Proponents of this legislation have argued that if no employees of Valley Hospital want to perform an abortion, the hospital will have to hire additional staff in order to provide abortions. That is not true. All the Supreme Court held was that the hospital could have not a policy prohibiting abortions if there were doctors on staff who were willing to perform them.
5. Proponents of this legislation also argue that, under the Valley Hospital case, hospitals cannot assert a religious basis for restricting abortions. That also is not true. Private hospitals, such as Providence, are not covered by this decision. The court ruled that Valley Hospital, a nonsectarian hospital built with state funds, did not and could not assert a religious basis for its restrictive abortion policy.

Advocates of this legislation have said that this bill "promotes choice." Nothing could be further from the truth. It could lead to a ban on all constitutionally protected abortions in most, if not all, Alaska communities. Anyone supporting this bill is taking an anti-choice position because passage would provide a barrier against women making a private decision in consultation with their doctor.

As President of the Fairbanks Coalition For Choice, representing several thousand pro-choice voters in the Fairbanks area, I urge you to please vote against this amendment.

Sincerely,

CC: all Senators



# Alaska State Legislature

Please enter into the record my testimony to the Senate ~~Judiciary~~ Finance  
 committee name  
 committee on SJR 35, dated 2/17/98  
 bill/subject

I urge the committee not to pass this resolution proposing an amendment to the State Constitution relating to participation in abortions. Alaska has always been proud of being at the forefront of protecting women's rights - the first territorial legislature in 1912 gave women the vote long before it was required nationally. Great care went into the writing of the constitution.

The terms of this resolution are vague and overbroad. It ~~may~~ allow a statewide ban on constitutionally protected abortions. But most importantly, nothing in the Valley Hospital case required individuals at hospitals to participate in abortion procedures to which they are morally opposed. The decision also preserves a distinction between private and public hospitals. Thus, the constitutional amendment proposed is neither necessary nor appropriate.

Signed:  (Lisa Rieger)  
 Testifier

Representing (Optional)  
2350 Captain Cook Dr., Anchorage, AK 99517  
 Address  
248-5472  
 Phone No.



**SJR 35**

- The US Supreme Court declared a woman has the fundamental right to have an abortion.
- This referendum is an attempt to eliminate second trimester abortions in Alaska. Only 9 percent of abortions occur in the second trimester. These abortions are sought for many reasons, among them are the health of the mother and severe abnormalities of the fetus.
- Under state law including the Valley Hospital decision: "Nothing...shall require any member of the medical staff of Valley Hospital, or any other officer, agent, servant or employee of Valley Hospital to participate directly in the performance of any abortion procedure if that person, for reasons of conscience or belief, objects to doing so." This would apply to any hospital or medical facility.
- Private hospitals can assert a religious basis for restricting abortions. Publicly built hospitals cannot and must serve the entire community and its needs at large.
- This referendum would place undue burden on women in Alaska who are seeking abortions. It would deny women "equal treatment under the law" by denying them access to legal medical care, thus undermining Alaska's constitution.
- This referendum would take major policy making of publicly funded hospitals out of the hands of the legislature and into the hands of a few board members.
- This will establish another reason for a court challenge, this time at the federal level.

SJR 35 is not about protecting an individual's right of conscience. It is about denying it to women because of someone else's religious views. Do not infringe the rights of women. This is not what our constitution is about. You are violating the people's trust. Please work for the common good. We have told you time and again: **Preventing unintended pregnancy prevents abortion. Denying access destroys women's lives and the lives of their families.**

Pauline Utter

PO Box 190908  
Anchorage AK 99579

Pauline Utter

- 76,330 women in Alaska—including 8,220 teenagers—are in need of contraceptive services and supplies.
- 15% of women aged 15-44 in the United States are living in poverty, and 17% do not have private health insurance or Medicaid.
- In Alaska, 11% of women aged 15-44 are living in poverty, and 16% do not have private health insurance or Medicaid.
- 16.5 million women aged 13-44 in the United States—including 4.9 million sexually active teenagers who qualify for public services as a result of their age—are in need of publicly supported contraceptive services.
- 32,480 women aged 13-44 in Alaska—including 8,220

teenagers—are in need of publicly supported contraceptive services.

**MEETING THE NEED**

- Free or low-cost contraceptive services for poor women and teenagers through publicly supported clinics are available in all 50 states and in 85% of U.S. counties.
- 39% of women in need of subsidized contraceptive services in the United States, and 37% of teenagers in need, are served by publicly supported clinics.
- Individual states vary widely in their success at meeting the need for publicly supported contraceptive services. Montana ranks 1st, serving 68% of women in need of contraceptive services and supplies, and

Louisiana ranks last, serving 25% of women in need.

- Alaska ranks 2nd in the provision of contraceptive services to women in need. While the 23 publicly supported family planning clinics in Alaska serve 20,370 women, including 4,870 teenagers, this represents only 63% of all women in need and 59% of teenagers in need.

**IMPACT**

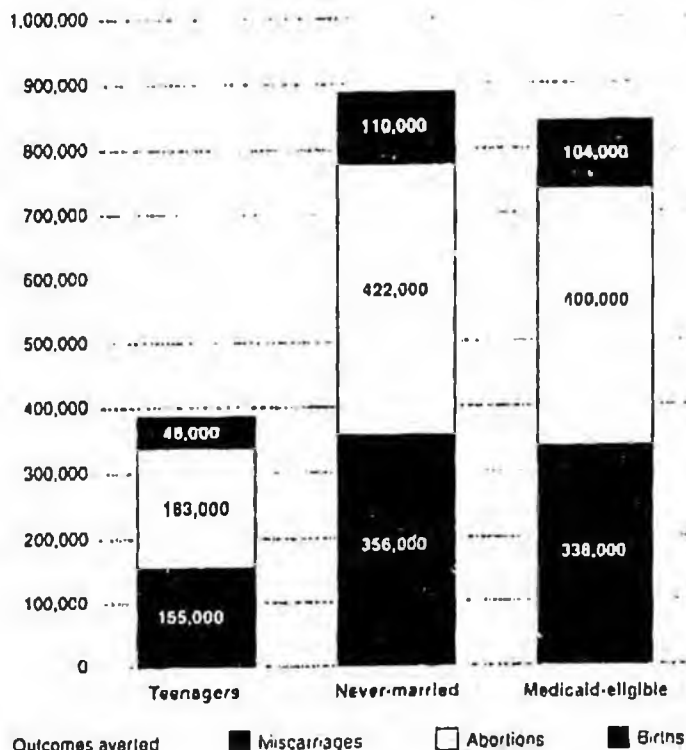
- In 1994, \$715 million in federal and state tax revenues provided contraceptive services and supplies to millions of poor women in the United States—thereby helping to prevent at least 1.5 million unintended pregnancies that would have occurred otherwise. This included 386,000 pregnancies to teenagers, 888,000 to women who have never been married, and 842,000 to women eligible for Medicaid.

- Every dollar spent for contraceptive services saves \$3 in public funds that would have been needed to provide prenatal and newborn medical care alone.

- Publicly supported contraceptive services in the United States avert 1.5 million pregnancies—unwanted births, abortions and miscarriages—each year.

- Publicly supported contraceptive services in Alaska avert 4,800 pregnancies each year.

**Publicly funded contraceptive services avert many unintended pregnancies each year among the young, the unmarried and the poor**



Source: J.D. Forrest and R. Samara, "Impact of Publicly Funded Contraceptive Services on Unintended Pregnancies and Implications for Medicaid Expenditures," *Family Planning Perspectives*, 28:118-125, 1996.

**CREDITS**

This *Facts in Brief* was made possible by support from The Andrew W. Mellon Foundation and The Rockefeller Foundation. The research on which it is based was supported in part by the Office of Population Affairs of the Department of Health and Human Services and the Prospect Hill Foundation.

**SOURCES OF DATA**

The data in this *Facts in Brief* are the most current available. Most of the data are from research conducted by The Alan Guttmacher Institute and/or published in the peer-reviewed journal *Family Planning Perspectives*.

**The Alan Guttmacher Institute**

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Additional copies of this fact sheet may be purchased for \$0.25 each. Volume discounts are available.

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Submitted by: Pauline Utter,  
 Pro-Choice Alliance

# Contraception Counts: Alaska Information

## PREGNANCY INTENTIONS AND OUTCOMES

- The United States has among the highest rates of unintended pregnancy and teenage pregnancy found in Western nations, and its legal abortion rate is similar to that of many countries in Latin American, where abortion is illegal and contraceptives are not always widely available.
- In the United States, 9 in 10 women who are sexually active, fertile (that is, able to become pregnant) and do not wish to become pregnant report that they use a contraceptive method.
- Yet half of the 6 million pregnancies (the total number of births, abortions and miscarriages) in the United States annually are accidental—unplanned and often unwanted. Among teenagers, 8 in 10 pregnancies are unintended.
- There are 59.4 million women of childbearing age (15–44) residing in the United States, 140,000 of whom live in Alaska.

- Each year in the United States, 111 pregnancies occur per 1,000 women aged 15–44, 62% of which result in live births and 23% in abortions; the remainder end in miscarriage.
- Each year in Alaska, 120 pregnancies occur per 1,000 women aged 15–44, 69% of which result in live births and 16% in abortions.
- Annually, there are 112 pregnancies per 1,000 women aged 15–19 in the United States; 51% result in live births and 31% result in abortions, with the remainder ending in miscarriages.
- Alaska's teenage pregnancy rate ranks 20th nationally. There are 109 pregnancies annually per 1,000 women aged 15–19 in Alaska; 59% result in live births and 27% result in abortions.
- 32% of all births in the United States are to unmarried women.
- 30% of all births in Alaska are to unmarried women.

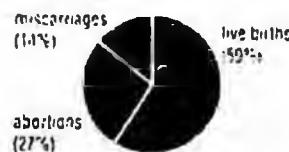
## THE NEED FOR SERVICES

- If women desire small families, the need to practice contraception is great. A woman who is sexually active throughout her reproductive years and wants only two children will need contraceptive protection for more than 20 years of her life.
- The preference for small families is universal in industrialized societies, and is also shared by much of the developing world, where the availability and use of contraceptives is increasing. The average number of children per woman worldwide ranges from less than 2 in several European and East Asian countries to more than 7 in parts of Africa and the Middle East. In the United States, on average, a woman has 2.1 children during the course of her life.
- 33.2 million sexually active women in the United States—including 4.9 million teenagers—are in need of contraceptive services and supplies.

## Pregnancy Outcomes in Alaska



## Teen Pregnancy Outcomes in Alaska



## Definitions

- *Women in poverty* are those whose family income is below the federal poverty level (\$15,369 for a family of four in 1995).
- *Women in need of contraceptive services and supplies* are women aged 13–44 who are 1) sexually active, that is, they have ever had sexual intercourse; 2) fecund, meaning that neither they nor their partners have been contraceptively sterilized and they do not believe that they are infecund for any reason; and 3) during at least part of the year, neither intentionally pregnant nor trying to become pregnant.
- *Women in need of publicly supported contraceptive services* are women aged 20–44 who are in need of contraceptive services and supplies and whose income is below 250% of the federal poverty level (\$38,923 for a family of four in 1995), plus all women younger than 20 who are in need of contraceptive services and supplies. Publicly supported contraceptive services can be obtained either from publicly supported family planning clinics or from private physicians who serve women on Medicaid.
- *Publicly supported family planning clinics* are sites that provide organized family planning services to the general public and receive some form of public or private funding (including Medicaid) that enables them to serve at least some of their clients for free or at a reduced fee.

Submitted by: Pauline Utter,  
Pro-Choice Alliance

RE: SJR 35

This latest bill will effectively eliminate second trimester abortion in Alaska. I want to remind you what the consequences of this bill are:

Rape or incest victims may have great difficulty in coming forward during the first trimester of a pregnancy. If a local hospital will not perform abortions, then this victim may be compelled to travel outside Alaska (if they can afford the expenses) or may be forced to carry the pregnancy to term.

This amendment endangers women's health. What are the options of a woman who faces pregnancy complications that put her life at risk.? How would the lives of her husband, her current children and her parents be effected if she dies?

What should a woman do when during the second trimester she finds that the fetus cannot possibly survive birth or is dying in her womb? Should she be denied an abortion? Could the lack of health care interfere with her ability to have other children in the future?

OR all extremities

What of the fetus with major birth defects, who may be missing a brain? Will a hospital board ban on abortions prevent this woman from the medical care she so desperately needs in her community? Will the board pick up the medical expenses and provide the loving care for a child who may never be able to function beyond the mental age of 2. Will you be willing to pay? Will you take away the pain? Will you daily change the diapers on a 34 year old? Is this your decision? Is it the hospital board's? NO!

I know abortion is controversial. I know many people abhor it, but it is difficult to be in someone else's skin. Men never have to face this issue in the same way that women do. I believe women are as moral as men. Certainly this decision should be left to a woman, her god, and her doctor.

I remind you; it is legal to have an abortion in the United States. I believe this bill will lead to another judicial ruling, this time at the federal level. It will place an undue burden on women. My money goes to support publicly funded hospitals, and I want my money spent to provide women with the best medical care possible. Not the best care that a few people deem "religiously acceptable".

*Robin Smith*  
ROBIN SMITH  
14100 Jarvi  
Anchorage, AK 99515

SJR 35

Mary Osback, Testimony

SJR 35 is an unnecessary proposal to amend the Alaska Constitution. It is indicative of the lengths some legislators will go, even to the point of confabulation to deny women access to safe reproductive care.

The Valley decision has been repeatedly painted by anti-choice legislators as forcing doctors and other health professionals working at federally funded hospitals to provide abortions even if they object to this procedure. This is patently not true. No health professional ever has or ever will be required to perform a procedure -- any procedure -- that they personally object to. This amendment is absolutely unnecessary.

In a time of cutting funding and reducing overhead, I do not think that requiring each public hospital to do battle over abortion is fiscally responsible. Abortion is a highly emotional, vitriolic debate. This amendment will force each city to spend funds that might be used elsewhere -- education, for example, to battle over whether to provide a procedure which is already mandated by the federal constitution.

I object to money continually being drained away by anti-choice radicals. Hundreds of thousands of dollars have already been wasted trying to stop something that is protected under the US Constitution. Anti-choiceettes have recently lost twice in the courts and, no doubt, will loose again. Stop wasting time and money! This amendment should not go one step farther.

Mary Osback  
10231 Lone Tree Dr.  
Anchorage AK 99516



# TELECOPY COVER SHEET

## Fairbanks Legislative Information Office

Office - (907) 452-4448

Fax - (907) 456-3346

TO: SFIN FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM: FBX LIO PHONE: \_\_\_\_\_

INSTRUCTIONS: Written Testimony for STR35 and  
HR234 teleconferenced on 4/8/98

RECEIVED: Date \_\_\_\_\_ Time \_\_\_\_\_

SENT: Date \_\_\_\_\_ Time \_\_\_\_\_

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 2 (Not counting cover sheet)

SENT BY: Fran

**CLARICE DUKEMINIER, M.D.**

1000 COWLES STREET  
FAIRBANKS, ALASKA 99701  
TELEPHONE: (907) 456-3129

April 8, 1998

Dear Senate Finance Committee:

I understand that you are considering testimony regarding SJR 35. I would urge you NOT to pass this resolution.

I have been privileged to serve as a medical staff representative to the local board of Fairbanks Memorial Hospital for the last several years. My observation of this board is that it has items on its agenda that deserve its attention, and that a yearly redebate at election time with single issue candidates would detract from the board's ability to function efficiently.

The services provided by a hospital reflect the training and variety of the doctors on staff and the needs of the community and the equipment the hospital can afford. Very few first trimester abortions are done in hospitals because it is safe and less expensive to do them in clinics or offices. However, it is important to have the ability to do them in hospitals for the occasional high-risk medical patient who might otherwise need to be transferred to another city or state. Second trimester abortions are mandated by state law to be done in hospitals.

If the intent of this resolution is to address the court decision against the Palmer hospital, it would seem that to lift the requirement of performance of second-trimester abortions in hospitals would do that. Cost considerations would allow them to be done in clinic, provided safety issues were the same.

If the intent of this resolution is to decrease the number of abortions done, it would seem to make more sense to devote attention to the prevention of unwanted and untimely pregnancies rather than pass legislation likely to result in litigation costs.

I urge you to vote against passage of SJR 35.

Yours truly,

*Clarice Dukeminier, M.D. /a*

Clarice Dukeminier, M.D.

CD:aj

## ALASKA CIVIL LIBERTIES UNION LEGISLATIVE ALERT:

Several myths are being circulated about the impact and meaning of the Alaska Supreme Court's decision in *Valley Hospital Assoc. v. Mat-Su Coalition for Choice* purely for the political purpose of enacting anti-choice legislation.

Now, learn the truth:

**Myth #1:** Hospital staff who oppose abortion will have to participate in abortion procedures.

**Truth:** The Superior Court's Final Judgment in *Valley Hospital*, which was affirmed in the Supreme Court's decision, expressly provided that:

Nothing in the permanent injunction granted as part of this Final Judgment shall require any member of the medical staff of Valley Hospital, or any other officer, agent, servant, or employee of Valley Hospital, to participate directly in the performance of any abortion procedure if that person, for reasons of conscience or belief, objects to doing so.

**Myth #2:** If no employees of Valley Hospital want to perform an abortion, the hospital will have to hire additional staff in order to provide abortions.

**Truth:** All the Supreme Court held was that the hospital could not have a policy prohibiting abortions if there were doctors on staff who were willing to perform them. The Court based its decision on the fact that a woman's right to make the difficult, painful choice of whether to have a lawful abortion is a fundamental right. The Court acknowledged that reasonable people may disagree with respect to abortion and therefore left it up to each of us as individuals to decide whether and to what extent we will participate in an abortion.

**Myth #3:** Hospitals cannot assert a religious basis for restricting abortions, according to the *Valley Hospital* case.

**Truth:** Valley Hospital, a non-sectarian hospital built with state funds, did not and could not assert a religious basis for its restrictive abortion policy. Private hospitals are not covered by this decision.

Alaska Civil Liberties Union, P. O. Box 201844, Anchorage, AK 99520  
Phone: (907) 258-0044 Fax: (907) 258-0288 E-mail: akclu@alaska.net

Jennifer Rudinger,

AKCLU  
Exec.  
Dir.



**SJR**

**37**

SFIN

FILE

# FISCAL NOTE

No 1  
 Bill Version: CSSJR37(JWD)  
 (S) Publish Date: 3/25/98

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Revision Date (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amend: Relating to consent or</u>	BRU <u>Elective Operations</u>
<u>notification of a parent before abortion is provided to minor</u>	Component <u>General and Primary</u>
Sponsor <u>Senator Leman</u>	
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>#22</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenuniai *Gail Fenuniai*  
 Division Division of Elections  
 Approved by Lt. Governor Fran Ulmer *Fran Ulmer*  
 Agency Office of the Lieutenant Governor

Phone 465-3935  
 Date 3/24/98  
 Date 3/24/98

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EMAIL: senate\_secretary@Legis.state.ak.us

**FOR YOUR IMMEDIATE ATTENTION**

DATE: March 25, 1998

TO: Finance Committee  
(JerryLee/Mindy - Room 520)

FROM: Office of the Senate Secretary

The attached fiscal note or notes relate to the following bill(s) pending in your Committee:

**SENATE JOINT RESOLUTION NO. 37**

Proposing an amendment to the Constitution of the State of Alaska relating to parental consent or notification before an abortion is provided to a minor.

Please place the fiscal note(s) inside the front cover of the blue or yellow committee folder.

Thank you.

Attachment(s)

To: The Senate  
From: Helene Keso  
Subject: SRJ 37

Sen. Slag

Regarding SJR 37: I SUPPORT this resolution and I commend and thank Sen Leman's tenacity.

We have 4 daughters. When one of them got pregnant she came to us and in months to follow gave birth to a beautiful boy. Our grandson is now 9 yrs old and we totally enjoy him. Happy beginnings to what could have ended in tragedy. She married his father and they have another 4 yr old son. She's now 28, divorced, raising her boys and about to graduate law school. She's not alone in caring for her children. Their father, both sets of grandparents, one set of great grandparents, aunts and uncles, cousins and dear friends are very involved in their lives.

We have two girls still at home 14 & 16, and are virgins. If either of these daughters get pregnant while still a minor I would hope that each would come to me so we could develop a plan for that baby's life and hopefully the father and his parents would be a part of that.

Absolutely no one has the right to take my daughters for any reproductive counselling, birth control, let alone abortion! These children are our gift from God not yours. It is Him I will answer to if I purposefully fail my obligations. I take my legal and moral responsibilities to these kids very seriously. I don't have my head in the sand on any issue that faces my children and our family. I love them and want the very best for them.

The school doesn't take them on field trips without a permission slip or dispense medication without permission. Shouldn't my permission be asked on something so serious. YES! At some point, children [and adults] need to know and see exactly what an abortion is. Perhaps through commercials like the ones that are being shown to expose the danger of drugs, cigarettes, alcohol and unsafe sex. Maybe knowing how the saline burns the skin off that baby while alive, or how the sharp instruments cut and puncture without anesthesia for the pain, kill that baby.

Why should anyone besides a child's parents have the right to endorse an abortion that will change that child's life forever. That child will have to live with the consequences of murdering her child. Are you going to be there after the abortion to hear her crying at night; cope with her destructive behavior and emotions? What about a month or years later? That child needs the help of her family to formulate a plan to decide what's right for her baby. We are a family forever. You are strangers passing by.

I whole heartedly thank those who work in our legal system to protect the family and the life of unborn babies. God Bless You,

Helene Keso  
4020 Ridge Way  
Juneau, Ak 99801  
(907) 780-4848

H. Keso  
4/6/98

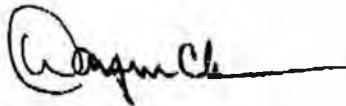
MARCH 6, 1998

Dear Senator BERT SHARP  
fax 465-2070

I support SJR37 in that I strongly believe that minors should have parental consent before having an abortion. I believe that abortions are wrong in the first place, but to allow a minor to make that decision without consulting their parents is not good wisdom. What happens if the minor has complications or dies, don't you think the parents should know. For goodness sakes, where are our priorities? There are many things we do not allow minor children to do without parental consent, to take a live should be one of the highest!

Senator please support SJR37 and please let me know how you feel and vote on this issue. Thank you.

Wayne L. Clark



157 Old Steese Hwy  
Fairbanks, AK 99701 907/452-1907 fax 907/452-3915  
email graphicn@polarnet.com



# Alaska State Legislature

Please enter into the record my testimony to the

SFIN

committee name

committee on

SJR 37

, dated

Mar 19, 1998

bill # / subject

As a victim of abortion myself, having been threatened into obtaining one by my husband of 2 months and ushered hastily through the process by Kenai Public Health and the abortion provider at Humana Hospital, I have first hand experience of need for support in such a life changing decision. It is the one decision I've made in my life that I was the least prepared to make and has been the least revocable. I was a 23 year old woman. A younger woman, a minor, would be even more vulnerable to coercion than I was. Abortion is not a safe, simple, short lived experience. It can affect someone in a deep and permanent way, and also affects the relatives of the baby being terminated. The ripple affect of

Signed:

Rebecca L Perry

(Testifier)

Kenai - Soldotna Right to Life

Representing (Optional)

P.O. Box 3623 Soldotna AK 99667

Address

(907) 260-3887

Phone number

2

the abortion tears through multiple lives and leaves permanent scars. It is incredible to think that a minor cannot obtain an aspirin from a school nurse without parental consent, but can be referred and obtain an abortion without parental knowledge or consent.

I have friends who are sterile on account of their abortions as a teen, and have read accounts of teenagers dying from their secret, "safe," illegal, abortions. Many, many more deaths from abortions occur than are formally recorded in national statistics, because of cover-ups.

I hear opponents of this bill raising opinions about minor girls victimized by abusive adults, or peers, and finding themselves pregnant, wounded, confused and angry, and shouldn't they be free to end the unwanted pregnancy? I can guarantee that the death of a child + the invasive experience of abortion is far more damaging than adoption. Also, has anyone considered the risk of being further abused, including sexually, by the abortionist? Abortion providers are generally not persons of integrity. In fact, many of them are marginal in their practice of medicine, many are immigrant risk. - +.



profitability of <sup>the</sup> abortion industry. I have a book entitled, "Line 5" that is a treatise on this subject. The cases of abuse from abortion providers is extremely high. Some of the acts perpetrated by these practitioners are indescribably ugly.

Would you want your daughter in any of the situations I have described without your knowledge or protection?

**SJR**

**42**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/4/98

The FINANCE Committee considered:

CSSJR 42(FIN)

CS FOR SENATE JOINT RESOLUTION NO. 42(FIN)

CONSTITUTIONAL AMENDMENT RE MARRIAGE

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

recommends it be replaced  the same title  
 with the following committee substitute \_\_\_\_\_  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal note(s) \_\_\_\_\_

fiscal note(s) Gov, 3/10/98

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Craig Theriault</i> Theriault	x			
<i>Mark Hanley</i> Hanley	x			
<i>Alan Mulder</i> Mulder	x			
<i>Terrence Martin</i> Martin	x			
<i>Henry J. Davis</i> Davis	x			
<i>P. W. Kelly</i> Kelly	✓			

CHAIR'S SIGNATURE *Craig Theriault* *Mark Hanley*

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SJR42

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Office of the Governor  
 Title Const. Amend: Relating to marriage BRU Elective Operations  
 Component General and Primary  
 Sponsor Senate HESS Committee  
 Requester Senate Judiciary Committee Component Serial No. #22

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenwick  
 Division Division of Elections  
 Approved by C Lt. Governor Fran Ulmer  
 Agency Office of the Lieutenant Governor

Phone 465-3935  
 Date 3/6/98  
 Date 3/6/98

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information, call the Governor's Legislative Office

Carol Hedlin  
P.O. Box 211284  
Anchorage, AK 99521  
Voter Number: 1284987

*Carol Hedlin*  
*May 4, 1998*

Testimony In Opposition To SJR-42:

"Proposing an amendment to the Constitution of the State of Alaska relating to marriage.  
Be it resolved by the legislature of the state of Alaska:

Section 15: Marriage Contract. Each marriage contract in this State may be entered into only by one man and one woman. The legislature may, by law, enact additional requirements relating to marriage."

Thank you for the opportunity to testify before this committee. I am speaking in opposition to Senate Joint Resolution 42. I believe we would be making a grave error in amending the Alaska State Constitution to specifically remove the fundamental rights of ANY group and, in effect, to disallow the choice of a spouse. This bill is apparently in response to a recent Alaska Superior Court decision. The decision has been appealed, and continues to be considered by the courts. I believe that is an appropriate venue for a civil rights issue such as this and that serious harm to families and youth as well as a general 'divisiveness' throughout the state will be the result of the decision to put this question on a statewide ballot.

The Alaska Constitution consistently reflects the value Alaskans place on allowing individuals to make their own decisions regarding their personal lives. It generally provides for individual differences without direct attack from those with an opposing perspective. I believe it would be folly to attempt to specify who has which rights and who doesn't in a country where equal rights for all citizens is a cornerstone we have built upon for over 200 years.

The choice of a life partner can only be made by the individuals involved; it is fundamentally a personal choice whether to marry and whom to marry. In addition, there are economic and legal benefits associated with marriage which should not be denied to couples of the same sex who make the decision to marry each other.

There is certainly no shortage of law governing marriage. Whether a man and a woman marry, or couples of the same sex marry they are all entitled to both the personal or religious ceremonies expressing their commitment to each other, and the legal rights and responsibilities those laws provide.

Thank you.

05/04/98  
09:20:48

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (TESTIFIERS ONLY)  
TCN:80808 SCHEDULED FOR:05/04/98 08:00 TO 10:30  
PUBLIC HEARING HOUSE FINANCE

LTN1150  
BY:JNU  
FOR:ALL

LOCATION: ANCHORAGE

SJR 42	MR	TOM	RACHAL	TESTIFY
SJR 42	MR	AL	INCONTRO	TESTIFY
SJR 42	MS	PATRICIA	MARK	TESTIFY
SJR 42	MS	JENNIFER	RUDINGER	TESTIFY
SJR 42	MS	ALLISON	MENDEL	TESTIFY
SJR 42	MR	FREDERICK	HILLMAN	TESTIFY
SJR 42	MR	ELLIOTT	DENNIS	TESTIFY
SJR 42	MR	NORMAN	SCHLITTLER	TESTIFY
SJR 42		CONNIE	FAIPEAS	TESTIFY

LOCATION: FAIRBANKS

SJR 42	MS.	NANCY	KAILING	TESTIFY
SJR 42	MS.	MARI	GALEREAVE	TESTIFY
SJR 42	MR.	PATRICK	MARLOW	TESTIFY
SJR 42	MR.	RICHARD	COLLINS	TESTIFY
SJR 42	MS.	WILLA	FREY	TESTIFY
SJR 42	MS.	JANET	ROBERTS	TESTIFY
SJR 42	MR.	RICHARD	KEMNITZ	TESTIFY
SJR 42	MS.	CHRISTINE	MCGARVIN	TESTIFY
SJR 42	MS.	PATTY	KEARON	TESTIFY
SJR 42	MR.	ROWENA	GROSS	TESTIFY
SJR 42	MS.	ELAINE	WILLIAMSON	TESTIFY
SJR 42	MS.	MARINA	DAY	TESTIFY

LOCATION: MATSU

SJR 42	MR	HOWARD	BESS	TESTIFY
--------	----	--------	------	---------

Teshman of  
Kirsten Bremer  
5/14/98 Sen F

STR 42 ~~and this~~

I am here to urge you to stop ~~this attempt to change our constitution.~~

~~You don't have to decide to discard the issue forever - you simply do not have to fling yourself headlong into creating an atmosphere of ugliness at this time.~~

Because I am a lawyer, I am very disturbed at the disregard and disrespect that is being shown for our state's judiciary by attempting to short-circuit the court's review

*And* Because I am a citizen ~~desperately~~ seeking good leadership, I will also ask each of you to consider your individual role as a leader in this state, and to reflect upon the damage you can do when you make leadership decisions ~~without due~~ *in haste* deliberation.

First of all, There is no need to proceed with this kind of haste

To make a change to our state's constitution,

*basic governing document*

~~This is the document that embodies the most fundamental principles by which we operate our state.~~

The court's ~~intermediate~~ *preliminary* decision ~~only~~ *addressed only a part of the case and* came out at the end of February

Within a few days of the news, this constitutional amendment was thrown together

As if with the jerk of a knee  
without time for examination and reflection  
without weighing alternatives and allowing for extended public debate  
without even allowing the court the courtesy of completing the case

The legislature ~~is speeding headlong into a constitutional amendment without allowing the court to reach a final decision in this case~~

*lower* even though after the lower court's final decision,

There would not suddenly be gay marriages - there would then be an appeal to the Supreme Court - an appeal process that will likely take another year or two *or three*

This is not a subject that has been generally discussed for more than a decade; this is not a subject that has long been considered an option for constitutional amendment for more than five years, such as *like subsistence* subsistence.

*dozen years* This court case has been a topic of discussion for barely a dozen weeks

Once the public has received a widespread hearing and education on an issue, over a course of years - as it has on subsistence, then it should be considered for our constitution.

This is not an issue that has been duly deliberated



I have not been able to find any other constitution that bears such language  
This is not constitutional language - our constitution forms a baseline for protecting rights

It is not language that protects rights, but is designed to limit them.

*But*  
And it is the nature of this upcoming campaign that I want to ask you to ~~take~~ *think about*  
*smile* This will result in an intense hate-filled campaign

Even though you may not want to believe that it will happen -  
one need only look at the other communities in which an attempts are made to  
limit the rights of homosexuals - ~~to make certain that gay people are not to be~~  
~~considered equals with others~~ - to see the damage it has caused to the peace of the  
community

*I have a very particular experience*

~~You've been witness to~~ *(history)*  
I have come to examine the role of leaders and leadership in a very particular  
way in the past year because of my experiences in a ver<sup>y</sup> troubled part of the  
world, in the newly formed country of Bosnia y Herzigovina. I was ~~honored~~ *privileged* to  
be selected by the State Department as one of the American representatives to  
travel to Bosnia last fall to serve as an elections supervisor to monitor the  
process to assure that free democratic elections took place. My first trip was  
for country-wide elections; the second trip was for elections in the Serb  
Republic part of the country.

Anyone who has ever traveled through the former Yugoslavia would barely  
recognize the place today, especially in the heart of Bosnia, where the fighting of  
neighbor against neighbor took place. Cities divided; small communities of houses,  
three or five of a group of eight houses shelled and destroyed. And many lives  
destroyed.

~~I spoke with people when I could - about their experiences, their lives~~  
~~I read and studied to get an understanding of how this could happen to a country, a~~  
~~people.~~

I had to conclude that the main fault was with the leadership  
they had poor leadership  
though that seems too weak a term - they had horrible leadership

*to resolving  
the  
differences  
on the  
USSR*

In Yugoslavia, leaders played to religious and ethnic differences -  
played to the hostile and negative segment of their constitutions  
and led their people into death, hostility, and economic ruin

Your actions can either lead legitimay to hostility towards  
gay people ~~or~~ - or can (2) encourage a ~~harsh~~ harsh approach

What is it that people need from their leaders?

They need thoughtfulness and deliberation - ~~they need their leaders to tell the truth~~

But most of all, in order to thrive, ~~(people need leaders who will help differing interests in their communities find a path to reconciliation)~~

They need leaders who will help people see their common interests

To help people work together to make a community work for the common good

Those are the traits of good leaders

When people have bad leaders, those leaders promote a focus on peoples' differences

They exploit the differences amongst those in their communities and create divisiveness

they promote agendas of discrimination and hatred

Slobodan Milosevic went to Kosovo and saw a political opportunity *in the early 90s*

By siding with an angry, hostile crowd, against another group of that country's citizens,

he saw a way to advance his own political future, and his country was torn apart

Yes, many people admire Milosevic, even as he drives Serbia into economic ruin

Yes, many people in the south admired George Wallace as he blocked the attempts of school children *to attend school.*

But is that the kind of leader you want to be? *you are someone who admires the actions of these men* If it is, then you aren't really going to hear my appeal anyway, so I'm not really talking to you

But, for the rest of you, I know that you know

Good leadership does not create a platform for feeding divisiveness

It does not fan flames of hatred or fears based on ignorance

For you, as Alaska's leaders, to be promoting this divisiveness - and so *no matter if there is an extremist constituency out there.* unnecessarily - given the years you have ahead of you to address this issue - is an example of poor leadership

at least, for now, I will call it "poor leadership"

until - a friend or loved one of mine is hurt or killed in the ensuing *habe* campaign

or any Alaskan or person visiting Alaska is injured in a hate crime

And then it should appropriately be called **horrible** leadership

Because you all know - you have plenty of time to debate and educate and deliberate on this issue

It will be years before the courts will be done with it  
If you, instead, choose to promote divisiveness -  
and an agenda of discrimination and hatred  
Then be ready to accept the full responsibility for what you create  
Because you will be setting it in motion  
And, no, you will not be able to control the outcome

(If you read the Juneau Empire yesterday, even Radovan Karadic is now trying to use the excuse that he "lost control of the Bosnian Serb army" when the troops massacred the people of Srebrenica.)

So please pay heed - this is an issue you can afford to set aside for now  
It should be part of a lengthy and informed public debate - not subject to a hasty knee-jerk reaction

And let the courts carry out their deliberations

*easily*  
~~with your undertake to educate~~  
~~the public~~

May 27  
April 27, 1998

I'm Sara Boesser of Juneau, with Committee for Equality. I believe it's far too early to consider amending the Constitution's basic privacy rights just to match some people's religious views, because, gratefully, other religious people clearly DO support us. There's no need to interfere with the constitution (especially for implied religious reasons) before the courts are through with a case.

Despite Senator Leman's coaching people to be polite, it's been awful, sitting through these hearings. They prove this ballot campaign would declare open season on us and our families. For example, at Senate Finance recently a pastor declared "the Bible says homosexuals should be stoned to death." As an out lesbian, his words make me afraid. Because if that's not a call to violence, I don't know what is. Of course the Bible says many others "deserve death" too (like bankers, people who eat shellfish, men who shave their beards-- but he didn't go into that).

*other Bible quotes were against women's vote, disabled rights, etc.*  
Religious beliefs differ. In America, at least, constitutions are supposed to protect us from exactly the kind of religious persecution that this ballot campaign would impose.

I'd like to put "marriage" aside, for a moment; because the real issue here is that this bill is premature. Why? Because the lower court decision has a long way to go to resolve at state and possible federal court appeals. There's no need to put Alaska through this ugly, potentially unnecessary campaign, now. By voting "no" you can save us from this premature and possibly unnecessary tear in our social fabric.

Speaking of social fabric, your "no" vote can prevent pain within families, too. Speaking for myself, I have two young nieces who would hear so many untrue hateful things about me and people like me if this went to the ballot. Why should they have to endure that grief? And, more at risk of permanent damage, are those young people my nieces' ages who are just now, in junior high and high school, first realizing they themselves are lesbian or gay. Think of the pressures this ballot measure would place on them; what intense fear they'd feel; what despair they'd suffer, listening to this bombardment of rejection at their vulnerable ages. These youth and their families will suffer more than you can imagine if this premature bill goes to the ballot.

SJR-42 should die in committee. The constitutional debate should stay in the courts; the religious debate should stay in the churches. These hearings are a mild microcosm of the pain-packed fury ahead for the entire state if you proceed. So please -- vote no on this bill.

Sara Boesser

Does the state have the right to define who  
to recognize in marriage?

# Freedom to Marry & the Pursuit of Happiness

by Roger Winters  
© 1997, Roger Winters

**M**arriage is *the* paramount adult relationship in our world. It is considered so fundamental and intimate it has primacy over citizenship. For example, in most states, you cannot be compelled to testify against your spouse. Thus, the relationship between mates is more important than the relationship of a citizen to government or society.

Hardly anyone argues that people *must* be married. Few today support compelled or arranged marriages. Marriage is nevertheless encouraged by every means of persuasion society has.

It is easy to enter legal marriage. Marriage has no substantial qualifications. There is no test of competence as partner or parent, no requirement that there be sex, no penalty for failing to have children, no proof that love be present. Marrying persons must be of opposite sexes, able to complete the applications, take required blood tests, competent to make a contract, and not too closely related by blood.

Criminals, prisoners, child molesters, serial batterers, the infertile, and asexual are able to get legally married. Even gay and lesbian people are allowed to marry legally ... provided they marry the opposite sex.

Marriage is *the* ticket of admission to true adulthood. There are many responsibilities and protections of law in marriage. To be free to choose to marry gives you material access to much that is important in life, especially at life's most difficult moments: the crisis of divorce, illness, or death.

Resistance to *legal* same-sex marriage is at root an effort, conscious or not, to keep lesbians and gay men a fringe, less-than-grownup class, not allowed to be full partners in adult society. One simply cannot be an adult without *freedom to marry* (legally). Another key example: same-sex couples do not get to choose their next of kin. Their kinship is determined solely by blood, whether relatives are supportive and loving or hostile and punitive.

That many same-sex couples are involved in long-term relationships indicates people are able to be *really* married, though considered legal strangers. That many churches hold ceremonies and since friends and neighbors attend these "weddings" shows same-sex "marriages" today often are socially and religiously affirmed and supported. Many same-sex couples wear traditional signs of marriage, such as rings on the wedding ring finger, and have the same surnames (by hyphen or by law).

Freedom to marry is a huge part of the pursuit of happiness. It is *wrong* to deprive people of this fundamental American value based solely on their sex.

Employee benefits, anti-discrimination policies, abolition of sodomy laws, and other equality issues should be easier to achieve once gay men and lesbians are acknowledged as real persons, grownups with rights, responsibilities, and real life issues. This comes when all, including same-sex couples, are free to choose whether and, if so, whom to marry.

Submitted to the record by Mary Graham  
Juneau, Alaska

*Testimony: House Finance Committee  
Monday, May 04, 1998*

My name is Kim Poole and I speak today in opposition to SJR 42 the proposed ballot initiative to define marriage as a contract between one man and one woman.

On June 1<sup>st</sup> of this year I begin my 20<sup>th</sup> year of ordained ministry in my denomination. During those 20 years I have conducted numerous weddings. Most of the weddings have been traditional church weddings and some have been as unconventional as a horseback wedding in the Texas Panhandle and a ceremony on top of one of the glaciers here in Juneau. Some of these couples have endured the trials and tribulations that come with a committed relationship and some have not. The ones that have endured have several qualities in their pre-marriage and post marriage lives. Qualities such as the ability to communicate with each other their needs and their dreams, the desire to make things work rather than to walk away, and the commitment that only the bond of love brings between two people. Those are qualities that cannot be legislated.

*"I believe God has created us with a variety of possibilities in life. Marriage between a man and a woman is one of them, the dominant and normative one in our culture. However, many have found it is not the exclusive one, that a happy and positive relationship can be had between people of the same sex. Some of these people are members of churches. If we find these to be good relationships, then, there might well be some ritual that blesses and confirms those relationships in order to help make them whole."*

There are many of my friends sitting behind me today who would like to have their long term relationships of love recognized by the church and the state. Some have been together longer than the 20 years I have been ordained. I would love to be able to conduct their ceremonies of marriage and commitment.

It has been said that recognizing same-sex marriage will lead next to recognizing a marriage relationship between a father and a mother, or a brother and sister. We are not talking about incestuous relationships. There is no love in incest. We are talking about two consenting adults who desire to spend the rest of their lives together, something we should value for the stability of society.

During these hearings we have heard that if this resolution is passed and placed on the ballot the rhetoric around this issue will grow heated and probably unkind. The head of the Christian Coalition here even suggested that we could find ways to debate this issue civilly. In the past week I have found that perhaps the prediction is more true that this will breed hate language. Since last Monday's testimony before the House Judiciary committee I have started receiving anonymous phone calls, untraceable by caller-ID. I have been called a "fag lover" and even a "queer". At 2:00 in the morning they are rather disturbing calls. I do not have the option, professionally of "turning off" my telephone to avoid the calls.

I am and always have been single. I hope some day to fall in love and marry. When I do, no matter who it is I love – a man, a woman, or a purple people eater from Mars – if someone tries to tell me I cannot marry the love of my heart, I hope someone will sit in this chair and defend my right to marry. Only I hope their phones don't ring in the middle of the night for doing so.

Please vote "No". Thank you.

Kim Poole, Douglas Alaska

Good morning. My name is Mark Boesser. I have been a resident of Alaska since 1959. I have served as an Episcopal priest for 46 years, 37 of them in Alaska. My wife, Mildred, and I have 4 grown daughters, 4 grandchildren, and we are coming up on our 50th wedding anniversary in December.

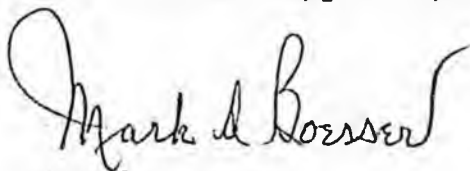
I appeal to you. Do not pass Senate Joint Resolution 42. In my opinion it is divisive, hurtful, alienating and discriminatory.

This very morning members of the House will be receiving a letter from the Episcopal Bishop of Alaska stating the Episcopal Church's stand nationally and in Alaska - expressing the conviction that homosexual persons are entitled to equal protection of the laws with all other citizens and calling upon our society to see that such protection is provided in actuality.

This proposed legislation would plainly deny equal rights and equal protection to a number of the citizens of this State.

And may I call your attention to the little discussed section giving the legislature permission to enact additional requirements related to marriage. Where, I ask you, might this start or end? Any ~~5 of us~~ <sup>number of persons</sup> in this room could come up with a downright frightening array of possible restrictions on marriage - or divorce, for that matter - including ones with "who-knows-what" price tags attached to them.. Think about it.

In the name of compassion, respect, justice, and love, not to mention common sense, please, do not pass this resolution.



Thank you.

Mark Boesser  
17585 Lena Loop Road  
Juneau, Alaska 99801

Phone & Fax (907) 789-1445

Testimony on Senate Joint Resolution No 42 (SJR-42)  
House Finance

This coming December my husband and I celebrate our 50th year of marriage. I am a mother of 4, grandmother of 4, all being raised in Alaska and I have been a voting resident of Alaska since 1959. I am also a clergy wife of 50 years. We came to Alaska as missionaries for the Episcopal Church. You may be thinking that given who I am, I speak for SJR42.

But, I am here today because I oppose any attempt to change the Constitution of this State to disallow same-sex marriage. Whatever you feel about gay and lesbian persons is not the issue here. The issue is about changing the Constitution to make sure that some of our citizens are forever denied equal treatment. . It's about writing into our Constitution that it's all right to discriminate.

If we do this, it opens the door to future possibilities which chill my blood. Who will we choose to discriminate against next time? Have we forgotten the incredible injustice done to so many innocent people by the infamous McCarthy witch hunts in the 30s, not to mention the unspeakable horror of the persecution of the Jews in the Holocaust AND during that same time the execution of homosexual persons, a fact not often mentioned in connection with the holocaust? Make no mistake, any time a government condones the marginalization of a group of its citizens, the door is opened to unbelievable hatred and violence which are sure to follow.

Mildred P. Boesser  
17585 Lena Loop  
Juneau, Alaska 99801  
Phone and FAX 789-1445



## TESTIMONY ON SJR 42

BY

CHARLES NORTHRIP  
2810 Fritz Cove Rd.  
Juneau, AK 99801  
789-3554

I've testified before many legislative committees over the years: for over 20 years on telecommunications matters; for the last five years on various economic development subjects. I must tell you not one of those occasions was as important to me as this one; because...one of my children is gay.

I am a born-again Christian, an ordained Deacon, and Elder. I have directed choirs, taught Sunday school and been a member of Christian churches for 46 years. I continue to be, though, earlier this year, my wife, daughter and I had to leave the church we've attended for many years, because...a member of our family is gay.

I urge you to stop the progress of SJR 42...today. My urging is due to my respect and admiration for our Alaska Constitution, for its guarantees of privacy and freedom from discrimination, but, most of all, because one of my children is gay.

My 35 years in Alaska have taught me many valuable lessons. I'd like to share one with you. I was born and raised in Florida in the 40's and 50's. I knew the white race was superior. Segregation a way of life. Schools, churches and families all reinforced my convictions. Then, when I was a high school freshman, the U. S. Supreme Court handed down the decision that ended segregation.

That decision convulsed our society. Statements were made in public and private that the Courts were running roughshod over traditional values; that the courts were obviously out of step with the will of the people. Bills and resolutions were proposed...some were passed...to try to turn back the decision or find a way around it. I determined I would become the attorney who successfully led the fight to reverse that decision!

I did go to college, but I didn't study law. My university experience brought me the intellectual understanding that my life-long convictions about race might just need some adjustment. After graduation, I landed my first job in Fairbanks, Alaska. What a surprise, as a Southern Baptist, to find that the church I joined in Fairbanks had Black and Alaska Native members! But, you know, it was all right. My world did not collapse. I found that my fellow church members were fine people. Later, when I was ordained as a deacon, the individuals who came and laid their hands on me were just that, individuals, and I accepted them each as God's special creation. Because Alaska had an accepting attitude, I learned to have one, too. Alaska helped me put into practice concepts I had grown to intellectually accept, but had had no opportunity to experience.

SJR 42 is clearly a reaction to a court decision...a very Alaskan decision, made in the spirit of Alaska's strong protection of individual rights. I have learned that the courts can be right, even when an apparent majority feels they are wrong. SJR 42 is a knee jerk, and perhaps understandable reaction, but I urge you to take a longer and more thoughtful look.

I have a wonderful marriage. The life commitment service that my wife and our other children helped our son and his partner celebrate over two years ago does not diminish our marriage in the slightest. I find nothing wrong or evil in caring, love and commitment, wherever it can be found in this day and age.

Let the appeals process work. We have a good constitution and we can and should take pride in its protection of our rights as individuals. I am willing to live with the ultimate court decision. I hope you are, as well. Please stop SJR 42 here, today. A Statewide ballot on this issue will bring to our public and private forums an ugliness that I can remember from another context and time. Please don't take the route I witnessed in my youth. Let the courts do their job. I urge this action because I believe it is the right one, but, most of all, because one of my children, and, if you'll think about all those in your circle of acquaintance, at least one you know and love is or has a child who is, gay.

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Report of the  
Secretary's Task  
Force on  
**Youth  
Suicide**

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
Public Health Service  
Alcohol, Drug Abuse, and Mental Health Administration

sences and sometimes academic failure. Remafedi reports 28 percent of his subjects were forced to drop out because of conflicts about their sexual orientation (5). Gay youth are the only group of adolescents with no peer group to identify with or receive support from. Many report extreme isolation and the loss of close friends.

Gay youth also face discrimination in contacts with the juvenile justice system and foster and group home placements.\* Many families and group homes refuse to accept or keep an adolescent if they know he or she is gay. A report by the San Francisco Juvenile Justice Commission found that gay youth stay in detention longer than other youth awaiting placement because of a lack of appropriate program resources (11). Many programs are unable to address the concerns or affirm the identity of a gay adolescent. They can be subjected to verbal, physical, and even sexual abuse with little recourse. Even sympathetic staff often don't know how to relate to a gay youth or support them in conflicts with other residents. They frequently become isolated, ignored by youth and staff who feel uncomfortable with them. They are easy targets for being blamed and scapegoated as the "source" of the problem in efforts to force them to leave.

The result of this rejection and abuse in all areas of their lives is devastating for lesbian and gay youth and perhaps the most serious problems they face are emotional ones. When you have been told that you are sick, bad, and wrong for being who you are, you begin to believe it. Gay youth have frequently internalized a negative image of themselves. Those who hide their identity are surrounded by homophobic attitudes and remarks, often by unknowing family members and peers, that have a profound impact on them. Hank Wilson, founder of the Gay and Lesbian Teachers Coalition in San Fran-

\*It is my observation that youth are experiencing more frequent contact with the juvenile court due to 1) increased conflicts in their home communities because of their sexual orientation which require intervention and removal from the home and 2) being open about their sexual identity at an earlier age than before.

cisco, believes these youth constitute a large group who are silently scapegoated, especially vulnerable to being stigmatized, and who develop poor self esteem (12). Gay youth become fearful and withdrawn. More than other adolescents, they feel totally alone often suffering from chronic depression, despairing of life that will always be as painful and hard as the present one.

In response to these overwhelming pressures, gay youth will often use two coping mechanisms which only tend to make their situation worse: substance use and professional help. Lesbian and gay male youth belong to two groups at high risk for substance abuse: homosexuals and adolescents. Rofes found, in a review of the literature, that:

Lesbians and gay men are at much higher risk than the heterosexual population for alcohol abuse. Approximately 30 percent of both the lesbian and gay male populations have problems with alcoholism (13).

Substance use often begins in early adolescence when youth first experience conflicts around their sexual orientation. It initially serves the functional purposes of (1) reducing the pain and anxiety of external conflicts and (2) reducing the internal inhibitions of homosexual feelings and behavior. Prolonged substance abuse, however, only contributes to the youth's problems and magnifies suicidal feelings.

Several studies have found that a majority of gay youth received professional help for conflicts usually related to their sexual identity (5,6). These interventions often worsen conditions for these youth because the therapist or social worker is unwilling to acknowledge or support an adolescent's homosexual identity. Many gay and lesbian youth are still encouraged to "change" their identities while being forced into therapy and mental hospitals under the guise of "treatment."

Those who seek help while hiding their identity often find the source of their conflicts is never resolved because the therapist is un-

# Alaska State Legislature

Senator Gary Wilken, Chairman  
Senator Loren Leman, Vice Chairman  
Senator Lyda Green  
Senator Jerry Ward  
Senator Johnny Ellis



State Capitol  
Room 510  
Juneau, Alaska 99801  
(907) 465-3762

## Senate Committee on Health, Education and Social Services

### Sponsor Statement – Senate Joint Resolution 42

Senate Joint Resolution 42 proposes an amendment to the state constitution that defines marriage as a union between one man and one woman. When approved by voters, SJR 42 will protect the definition of marriage in current statute. That statute was declared to be potentially unconstitutional by Superior Court Judge Peter Michalski in a Feb. 27 ruling in the case of *Brause and Dugan vs. State of Alaska*. In a decision rich with ironies, Judge Michalski concluded that the state's "failure... to provide public recognition" of a person's homosexual relationship is contrary to the state constitution's right to *privacy* [emphasis added]. Michalski's ruling applies the "strict scrutiny test" to the state's law, meaning that the state cannot deny marriage licenses to same-sex couples unless it can prove a "compelling governmental interest." The compelling interest test is an exceedingly difficult legal burden.

The court's ruling ignores the clear public policy statement made by the Legislature in 1996 when it passed Senate Bill 303 by overwhelming margins. Introduced by the Senate HESS Committee, SB 308 reaffirmed the "one man, one woman" definition of marriage that has been operative in Alaska since statehood and also under the territorial government. The laws of all 50 states currently limit marriage to individuals of opposite sex. If the court orders the state to recognize homosexual marriages, thousands of same-sex couples can be expected to travel to Alaska and obtain marriage licenses. Many of these couples will then return to their home states and seek to have their unions recognized under the "full faith and credit clause" of the U.S. Constitution, which generally provides that rights acquired under the public acts or judicial proceedings of one state must be held valid in other states. This will precipitate multiple constitutional crises across the country as dozens of state governments are forced to confront the issue.

If a court orders recognition of homosexual marriages, it will place Alaska in conflict with federal law in incredibly diverse ways. In 1996 the U.S. Congress approved and President Clinton signed into law H.R. 3396, now Public Law 104-199. Known as the "Defense of Marriage Act," this law specifies that marriage under federal law means a union *only* of one man and one woman. According to the U.S. House Judiciary Committee, the word "marriage" appears in more than 800 sections of federal statutes and regulations, and the word "spouse" appears 3,100 times. In the administration and enforcement of these laws, the federal government defines marriage as a union of "one man and one woman" – regardless of what Alaska law states. The I.R.S. will probably not recognize joint tax returns filed by homosexual "married" couples, nor will these couples be eligible for the leave benefits provided by the Family & Medical Leave Act of 1993. Hundreds of other programs and benefits are also implicated, and an explosion of litigation can be expected to result.

Because recognition of same-sex marriages raises the most profound cultural and legal issues, it is only appropriate that the issue be decided by voters, as SJR 42 will allow. It is not appropriate for one unelected and unaccountable judge to set social policy for the entire state of Alaska.

Contact: **Robert H. Wagstaff**, lead counsel  
907 277-8611 office

**Jay Brause or Gene Dugan**, plaintiffs  
907 568-1663 voice mail

## **Same-Sex Marriage Legal Action Filed in Alaska**

(August 4, 1995) In Anchorage Superior Court today, two men filed legal action against the Bureau of Vital Statistics, Alaska Department of Health & Social Services, for denying their application for a marriage license one year ago on August 4, 1994.

The two men, Jay Brause and Gene Dugan, are 16-year life-partners, who, with their attorneys, Robert Wagstaff and Erik LeRoy, assert that prohibiting Dugan and Brause's marriage was unconstitutional under Alaska's constitutional equal protection and right to privacy provisions.

Today's action was taken to overturn an administrative memorandum issued by the Anchorage Superior Court presiding judge in 1993 which stated in part that, "... I have concluded that marriage between persons of the same sex is not contemplated by our statutory scheme. Therefore, a marriage license shall not be issued for the purpose of marrying two persons of the same sex."

The action by Dugan and Brause follows the 1993 decision by the Hawai'i Supreme Court that the State of Hawai'i must show a "compelling interest" in denying an application for marriage from persons of the same sex, as based on its interpretation of the Hawai'i Constitution's equal protection provisions. Alaska's Constitution contains an almost unique provision specifically guaranteeing its citizens privacy. Dugan and Brause's claim focuses on this provision of Alaska's Constitution.

• • •

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN, )  
 )  
 Plaintiffs, ) CASE NO. \_\_\_\_\_  
 )  
 vs. )  
 )  
 BUREAU OF VITAL STATISTICS, )  
 ALASKA DEPARTMENT OF HEALTH & )  
 SOCIAL SERVICES, and the STATE )  
 OF ALASKA. )  
 \_\_\_\_\_ Defendants. )

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Jay Brause, a thirty-five year Alaskan, and plaintiff Gene Dugan, a seventeen year Alaskan, at all material times have been and are residents of the Municipality of Anchorage, State of Alaska. They bring this lawsuit in the public interest.

2. Defendants are empowered by law to issue marriage licenses in the State of Alaska.

3. On or about August 4, 1994, plaintiffs Jay Brause and Gene Dugan personally appeared at the Bureau of Vital Statistics in the State of Alaska Courthouse in Anchorage before an agent of defendant authorized to issue marriage licenses and filed with said agent an application for a marriage license pursuant to A.S. § 25.05.091.

4. Mr. Brause's and Mr. Dugan's application for a marriage license was denied by defendant's agent solely for the reason that Mr. Brause and Mr. Dugan are of the same sex, as directed in a memorandum dated May 17, 1993, a true copy of which is attached as Exhibit 1 to this complaint. Upon information and belief,

1 - Complaint for Injunctive  
and Declaratory Relief

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defendants adhere to the construction of the Alaska Marriage Code set forth in Exhibit 1.

5. Plaintiffs have complied with all marriage license requirements under Alaska Statute §§ 25.05.091-25.05.171, and any other applicable provision of Title 25 of the Alaska Statutes on marriage.

6. Plaintiffs are otherwise eligible to secure a license to marry from a licensing officer of the State of Alaska absent the construction of Alaska Statute § 25.05 et seq. excluding couples of the same sex from securing licenses to marry.

7. The construction and application of AS § 25.05 et seq. to deny a couple of the same sex from securing a license to marry unconstitutionally violates plaintiffs' rights to privacy under § 22 of Article I of the Alaska Constitution.

8. The construction and application of AS § 25.05 et seq. to deny plaintiffs' application for licenses to marry unconstitutionally deny plaintiffs equal protection and due process of the law under Article I, §§ 1 and 7, respectively, of the Alaska Constitution.

9. The construction and application of AS § 25.05 et seq. to deny plaintiffs' application for licenses to marry unconstitutionally deny plaintiffs due process of law under Article I, § 3 of the Alaska Constitution.

10. The acts and omissions of defendants, including its agents and employees acting in their official capacities, were under color of State law and have deprived plaintiffs of their

2 - Complaint for Injunctive  
and Declaratory Relief



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constitutional rights under the Alaska Constitution as described in this complaint.

11. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged in this complaint. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendant's acts, policies, and practices unless plaintiffs are granted the relief prayed for in this complaint.

WHEREFORE, Plaintiffs pray that this Court:

A. Declare the construction and application of AS § 25.05 et seq. to deny an application for a license to marry because the applicant couple is of the same sex is unconstitutional;

B. Enter a permanent injunction against defendants and his agents, prohibiting the construction and application of AS 25.05 et seq. to deny an application for a marriage license solely because the applicant couple is of the same sex;

C. Award costs and attorneys fees to plaintiffs as public interest litigants; and

D. Award such further relief as may be just and proper.

DATED this 2nd day of August, 1995.

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Robert H. Wagstaff  
425 G Street, Suite 610  
Anchorage, Alaska 99501  
(907) 277-8611

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Erik LaRoy, P.C.  
1016 W. 6th Avenue, Suite 420  
Anchorage, Alaska 99501  
(907) 277-2006  
Attorneys for Plaintiffs

3 - Complaint for Injunctive  
and Declaratory Relief

# Memorandum

Alaska Court System

To: Vital Statistics

FROM: Karl S. Johnstone   
Presiding Judge

DATE: May 17, 1993

SUBJECT: Application for Marriage License by Two Persons of the Same Sex

Recently we had an application for a marriage license by two persons of the same sex. I have reviewed the statutory provisions relating to marriage and considered the historical foundations for this institution in our society, and I have concluded that marriage between two persons of the same sex is not contemplated by our statutory scheme.

Therefore, a marriage license shall not be issued for the purpose of marrying two persons of the same sex.

KSJ:ln

# MARRIAGE LICENSE DOCKET

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
BUREAU OF VITAL SERVICES  
ANCHORAGE, ALASKA 99504

941842

CITY OR TOWN

IN THE MATTER OF A MARRIAGE LICENSE

AND

<b>APPLICATION</b>	<b>APPLICATION</b>
APPLICATION MADE BY:	DATE OF APPLICATION
MAILING ADDRESS OF APPLICANT	08-04-94

<b>IDENTIFYING STATEMENT</b> (To be given before the Marriage License is issued)	<b>—IDENTIFYING STATEMENT—</b>			
	<b>NAME</b> FIRST LAST	<b>NAME</b> FIRST LAST	<b>NAME</b> FIRST LAST	<b>NAME</b> FIRST LAST
	GENE DUGAN	JAY KARL BRAUSE		
	RESIDENCE CITY, STATE ANCHORAGE ALASKA		RESIDENCE CITY, STATE ANCHORAGE ALASKA	
DATE OF BIRTH DECEMBER 10, 1951		DATE OF BIRTH JANUARY 6, 1954		
PLACE OF BIRTH BROOKLYN, NEW YORK		PLACE OF BIRTH BRIMMER, MINN		

<b>IMPORTANT: IF MARRIED PREVIOUSLY, REVERSE SIDE MUST BE COMPLETED</b>	
RELATIONSHIP TO APPLICANT (Any blood relationship between bride and groom) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	RELATIONSHIP TO APPLICANT (Any blood relationship between bride and groom) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLICITED? NO	ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLICITED? NO

I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief. SIGNATURE: <i>[Signature]</i>	I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief. SIGNATURE: <i>[Signature]</i>
---	---

Subscribed and sworn to before me on _____ 19____  SIGNATURE, TITLE, AND SEAL <div style="text-align: center;">                     8-11-94                      W. Charlene Davis                      M R                 </div>	Subscribed and sworn to before me on _____ 19____  SIGNATURE, TITLE, AND SEAL
---	---

<b>CONSENT</b> (Bride) <input type="checkbox"/> GIVEN MARRIAGE LICENSE NO.	<b>—CONSENT—</b> (Groom) <input type="checkbox"/> GIVEN DATE ISSUED
---	--

DO NOT ISSUE WITHOUT WRITTEN AUTHORIZATION OF PRESIDING JUDGE

*[Signature]*

NUMBER OF THIS MARRIAGE (Specify First, Second, etc.) 1 <sup>st</sup>	IF PREVIOUSLY MARRIED LAST MARRIAGE DISSOLVED BY Death <input type="checkbox"/> Divorce <input type="checkbox"/>	NUMBER OF THIS MARRIAGE (Specify First, Second, etc.) FIRST	IF PREVIOUSLY MARRIED LAST MARRIAGE DISSOLVED BY Death <input type="checkbox"/> Divorce <input type="checkbox"/>
PLACE—Specify City, State, County, etc.		PLACE—Specify City, State, County, etc.	

48 FORM 307  
8-1983 REV. 8-83

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN,  
Plaintiffs,

CASE NO. \_\_\_\_\_

vs.

BUREAU OF VITAL STATISTICS,  
ALASKA DEPARTMENT OF HEALTH &  
SOCIAL SERVICES, and the STATE  
OF ALASKA.

Defendants.

AFFIDAVIT OF JAY BRAUSE

STATE OF ALASKA )  
THIRD JUDICIAL DISTRICT ) ss.

JAY BRAUSE, being first duly sworn, states as follows:

1. I am a plaintiff in this case. I make this affidavit upon personal knowledge and belief.

2. I have lived in Alaska and in the Municipality of Anchorage since 1959. In 1978, I met my co-plaintiff Gene Dugan. Since 1979, we have shared our lives as a couple.

3. On August 4, 1994, Gene and I went to the Vital Statistics office in the Alaska State Courthouse in Anchorage. We submitted for filing an application for a marriage license. We were told by the person who accepted the application for filing that it was denied because we were of the same sex. We were given a memorandum from the Presiding Judge of the Superior Court, a true copy of which is Exhibit 1 to the complaint in this case. We were not given any other reason for the denial of our application for a marriage license.

1 - Affidavit of Jay Brause

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First National Bank Building  
425 G Street, Suite 610 • Anchorage, Alaska 99501  
Telephone (907) 277-8611 • Facsimile (907) 256-7329

4. My date of birth is June 3, 1954. I do not have a husband or wife now living. I am not related to Gene by the fourth degree of consanguinity or closer, whether of the whole or half blood, computed according to the rules of the civil law.

5. The application we submitted for filing was completed and our signatures affirmed before D. Charlene Doris, deputy clerk, according to law. At the time of filing, we identified ourselves to the satisfaction of the licensing officer, and neither of us was under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding.

DATED AT ANCHORAGE, ALASKA this \_\_\_\_ day of \_\_\_\_\_,  
1995.

\_\_\_\_\_  
JAY BRAUSE

SUBSCRIBED and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

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2 - Affidavit of Jay Brause

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN, )  
 )  
 Plaintiffs, ) CASE NO. \_\_\_\_\_  
 )  
 vs. )  
 )  
 BUREAU OF VITAL STATISTICS, )  
 ALASKA DEPARTMENT OF HEALTH & )  
 SOCIAL SERVICES, and the STATE )  
 OF ALASKA. )  
 )  
 Defendants. )

AFFIDAVIT OF GENE DUGAN

STATE OF ALASKA )  
 ) ss.  
 THIRD JUDICIAL DISTRICT )

GENE DUGAN, being first duly sworn, states as follows:

1. I am a plaintiff in this case. I make this affidavit upon personal knowledge and belief.

2. I have lived in Alaska and in the Municipality of Anchorage since 1978. In that year, I met my co-plaintiff Jay Brause. Since 1979, we have shared our lives as a couple.

1. On August 4, 1994, Jay and I went to the Vital Statistics office in the Alaska State Courthouse in Anchorage. We submitted for filing an application for a marriage license. We were told by the person who accepted the application for filing that it was denied because we were of the same sex. We were given a memorandum from the Presiding Judge of the Superior Court, a true copy of which is Exhibit 1 to the complaint in this case. We were not given any other reason for the denial of our application for a marriage license.

1 - Affidavit of Gene Dugan

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Telephone (907) 377-6611 • Facsimile (907) 358-7129

4. My date of birth is December 10, 1951. I do not have a husband or wife now living. I am not related to Jay by the fourth degree of consanguinity or closer, whether of the whole or half blood, computed according to the rules of the civil law.

5. The application we submitted for filing was completed and our signatures affirmed before D. Darlene Doris, deputy clerk, according to law. At the time of filing, we identified ourselves to the satisfaction of the licensing officer, and neither of us was under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding.

DATED AT ANCHORAGE, ALASKA this \_\_\_ day of \_\_\_\_\_,  
1995.

\_\_\_\_\_  
GENE DUGAN

SUBSCRIBED and sworn to before me this \_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission expires: \_\_\_\_\_

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2 - Affidavit of Gene Dugan

## **BACKGROUND: The Attorneys**

**Robert H. Wagstaff** (lead counsel) was born in Kansas City, Missouri and graduated from Dartmouth College and the University of Kansas School of Law. He was admitted to the Alaska Bar in 1968. Mr. Wagstaff has personally argued over 50 cases before the Supreme Court of the State of Alaska including the landmark privacy case of Ravin v. State of Alaska which decriminalized the private possession and use of marijuana by adults. He has personally argued two cases before the United States Supreme Court: Davis v. Alaska (1974) involving the right of the defendant to cross-examination when accused by a juvenile witness and Hicklin v. Orbeck (1978) in which the United States Supreme Court held that the Alaska Hire law requiring oil and gas employers to first hire and last fire Alaska residents violated the privilege and immunities clause of the federal constitution. Mr. Wagstaff is a former member of the National Board of Directors of the American Civil Liberties Union in New York and was president of the Alaska Bar Association in 1988.

**Erik LeRoy** (cooperating counsel) graduated from the Evergreen State College and the University of Wisconsin Law School. He has practiced commercial and bankruptcy law in Alaska since 1983. He has climbed extensively in Alaska and the Western United States. He is an avid amateur cabinetmaker and boatbuilder. He has been married for 13 years and he and his wife have two children and live in Anchorage.

## **STATEMENT: Jay Brause and Gene Dugan, the plaintiffs**

**WE BELIEVE** that the denial of legal recognition of same-sex couples by the State of Alaska is illegally discriminatory, unconstitutionally limiting marriage benefits to opposite-sex couples, while depriving a whole class of persons those important benefits. Our Constitution was designed specifically to protect such civil rights.

If opposite-sex couples who planned to be married were denied the right to marry by the state, they would speak out against such injustice. So must we.

ONE.

**WE BELIEVE** that love, economic partnership, and commitment are the bedrock of marriage—not the sex of the partners or their potential to procreate.

**WE BELIEVE** the proof of our relationship of 16 years and that of many other same-sex couples secures our demand for marriage as rightful and legitimate.

**WE BELIEVE** that with the rights accrued with marriage there are corresponding responsibilities. We recognize that we are first responsible for our partner's physical and emotional health, financial welfare, and relationship to family, friends, and community. In fact, it is these responsibilities that keep many people—heterosexual and homosexual—from forming committed (married) relationships. We claim the right to become responsible marriage partners in our society.



TWO.

**WE BELIEVE** that the legacy of prohibiting same-sex marriage has been destructive to same-sex partnering in our society and that the double-standard of commending heterosexual marriage while condemning homosexual marriage must give way to equal treatment and support for both forms of relationships.

**WE BELIEVE** we are part of a larger movement in history working toward full recognition and integration of gay and lesbian persons into a society that supports these individuals becoming the best persons they may become.

THREE.

**WE BELIEVE** that religious and cultural justification for depriving law-abiding adults of equal treatment in the law to be abhorrent to the democratic exercise of liberty and equality.

**WE BELIEVE** there must be a formal recognition of two separate constructs in recognizing marriage in our society: that of legal rights and responsibilities bestowed by the state and that of the moral imperative bestowed by religion. To confuse these two distinct and legally separate constructs is a consistent fallacy of those who believe a state-approved marriage is necessarily tied to a religious one.

LAST.

**WE BELIEVE** that marriage, while difficult, is still the best tool society has in assisting the stable, harmonious conduct of human sexual, emotional, and economic needs. Alternatives to marriage may exist, but these alternatives are untested as to whether they will work as well or better for the majority of people.

This said, we support the examination of other forms of relationships, while we more fully support marriage; that, in fact, is why we have brought this action for ourselves, our gay and lesbian friends and our entire community.

**STATEMENT: Robert Wagstaff, lead counsel for lawsuit**

I am participating in this lawsuit because I believe more than anything else that all persons are created equal under law. Our Constitution prohibits the government from denying rights and benefits because of (un)popularity. The benefits and privileges given some must be extended to all regardless of who they are. Jay Brause and Gene Dugan's relationship is one of choice, one of validity, and is legitimate. They are entitled to the same benefits of others similarly situated.

**BACKGROUND: The Plaintiffs**

**JAY BRAUSE** and **GENE DUGAN** are life-partners of 16 years, who first met in the Alaska Gay Community Center in Anchorage in September, 1978. Like many other people who fall in love, they decided to recognize their relationship in a religious ceremony. That ceremony was co-celebrated by Jay's father, the Rev. Floyd Brause, a Lutheran minister, on August 4, 1979. It was understood that this ceremony was not a state-recognized marriage. In 1986, Brause and Dugan began their effort to become legally married in the State of Alaska.

Dugan and Brause are employed in Anchorage by Out North as artistic director and managing director, respectively.. They are non-profit administrators as well as community activists who are best known for building a professional contemporary arts organization with an international reputation for works that speak to the experiences of diverse communities.

Gene Dugan, an Alaskan since 1978, was born in Brooklyn, New York on December 10, 1951, and raised on Long Island. He received his Masters degree in drama from the University of Essex in England, and was a cultural worker in England before being employed by Alaska Repertory Theatre, Arts Alaska, Alaska State Theatre Association, and Rural Alaska Community Action Program. He received a national award from the Department of Defense for his work as a stage director at Fort Richardson, Alaska. The founder of Out North, he has directed Alaska premieres of new plays such as My Children! My Africa! and Reckless, and the West Coast premieres of Keely and Du and Slavs! Last December he spoke to the annual conference of the National Performance Network on the challenges of presenting openly gay and lesbian performance artists in a conservative environment.

Jay Brause, an Alaskan resident since 1959, was born in Brainerd, Minnesota on June 3, 1954, and raised in Anchorage. He studied music at the University of Alaska Fairbanks, and political science at the University of Alaska Anchorage. He worked for the Center for the Arts in Purchase, New York, Alaska Repertory Theatre, the Center for Alcohol and Addiction Studies UAA, and the U. S. Census. He has been a human service administrator and is the editor and co-author of several public policy studies and research papers; most importantly, the first state-wide evaluation of Alaska's Lesbian and Gay population in 1985 as well as a Municipality of Anchorage sponsored study of sexual orientation discrimination patterns in housing and employment in 1989. He served on the national board of the American Civil Liberties Union, and most recently participated on an international panel on the economic effects of censorship at playRites'95 in Calgary, Alberta, Canada.

They are also known nationally for their stand on artistic censorship. In 1993 Dugan and Brause received an award at the Museum of Modern Art in New York from the Robert Sterling Clark Foundation, the Nathan Cummings Foundation, the Joyce Mertz-Gilmore Foundation, the Rockefeller Foundation, and the Andy Warhol Foundation for their "contribution to upholding the principle of freedom of expression in American life."

#### **BACKGROUND: Affidavits Summary**

Jay Brause and Gene Dugan have lived in Alaska 35 and 17 years, respectively, and have shared their lives as a couple since 1979.

On August 4, 1994, Jay Brause and Gene Dugan went to the Vital Statistics office of the Alaska State Courthouse in Anchorage and applied for a marriage license. That license was denied by an agent of the State of Alaska solely on the basis of their being of the same sex.

The birthdates of Jay Brause and Gene Dugan are June 3, 1954 and December 10, 1951, respectively, and each is not otherwise legally barred from being married under the laws of the State of Alaska. The application was witnessed by Jay's brother, Corey Brause; sister-in-law, JoAnne Brause; and mother and father, Lucille and Floyd Brause.

The clerk affirmed the applicants' signatures and filed their marriage license application for no future action.

Because of this denial, the applicants undertook finding legal representation to bring suit against the State of Alaska in order to secure their desired right to marry.

#### **BACKGROUND: Lawsuit Summary**

The plaintiffs are Jay Brause, 35 year resident of Alaska, and Gene Dugan, 17 year resident of Alaska. They bring the lawsuit in the public interest.

The defendant is the Bureau of Vital Statistics, Department of Health and Social Services, in the State of Alaska.

On August 4, 1994, Messrs. Dugan and Brause's application for marriage was denied by defendant's agent solely on the grounds that the plaintiffs were of the same sex. The plaintiffs otherwise qualify for marriage under the laws of Alaska.

The claim is made that such denial of marriage license is unconstitutional in Alaska law because it violates the Alaska Constitution's provisions for right to privacy (§ 22, Article I), equal protection and the due process of law (§ 1, 3 and 7, respectively, Article I).

**Plaintiffs have no adequate or complete remedy to redress the wrongs stated in this complaint and ask:**

1. to declare the denial to marry because the applicant couple is of the same sex unconstitutional;
2. to prohibit the defendant and his agents the ability to deny application for a marriage license solely because the applicant couple is of the same sex;
3. to award costs and attorney fees to plaintiffs as public interest litigants;
4. to award such further relief as may be just and proper.

**STATEMENT OF SUPPORT: Floyd and Lucille Brause, parents of Jay Brause**

Exactly a year ago we accompanied Jay and Gene in their attempt to obtain a Marriage License and be legally declared a married couple. As an ordained Lutheran pastor and father of Jay, I have always abhorred the discrimination directed against minorities and I have waged private and public battles against those who would limit the rights of fellow human beings. We, as parents, have seen and experienced Jay's and Gene's love and commitment to each other, and in our eyes their long and compatible union should be legally validated. The injustice of the discrimination against homosexuals is a travesty which must be dealt with in the legal system of our free land. All human beings deserve to be treated equally whether they are homosexual or heterosexual.

**STATEMENT OF SUPPORT: Alaskans for Marriage, Melissa Green, President 566-1663**

Alaskans for Marriage fully supports Gene and Jay in their laudable effort to remove discriminatory limitations on marriage and its benefits. We formed this organization to ensure that costs of the lawsuit will get paid during what will likely be a lengthy legal process. Gene and Jay are in this for the long haul; Alaskans for Marriage will be behind them all the way.

**STATEMENT OF SUPPORT: Alaska Civil Liberties Union, Rachel King, Exec. Dir.**

(attached)

**CIVIL LIBERTIES UNION/FOUNDATION**

*An Affiliate of the American Civil Liberties Union*

P. O. Box 201844 Anchorage, AK 99520-1844

Phone: 1-907-258-0044 Fax: 1-907-258-0288

Contact: Rachel King  
Executive Director  
258-0044

**ALASKA CIVIL LIBERTIES UNION SUPPORTS SAME SEX MARRIAGE**

The Alaska Civil Liberties Union supports the legal action taken by Jay Brause and Gene Dugan to secure marriage rights in recognition of their long-term relationship. The Alaska Civil Liberties Union, an affiliate of the American Civil Liberties Union, believes that discrimination based on sexual orientation, like that based on race, alienage, age, national origin, political persuasion, religion, disability or gender, denies individuals equal protection of the laws. The AkCLU also believes that an individual's right to privacy includes private sexual behavior between consenting adults.

The AkCLU supports legal recognition of lesbian and gay relationships, including the right to marry. Such recognition is imperative for the complete legal equality of lesbian and gay individuals. Rights or benefits available to married couples such as insurance benefits, should be extended to those lesbian and gay couples who are similarly situated to married couples, except for their marital status. Rights or benefits available to unmarried heterosexual couples should of course be extended to lesbian and gay couples.

"We fully support Jay and Gene's action and are behind them 100%," said Rachel King, Executive Director of the AkCLU. "Jay and Gene are taking a courageous first step to securing the right to marry for gay and lesbian couples.

Discrimination against gays, lesbians and bisexuals continues in all facets of life in Alaska and will only change when their relationships are given the same legal recognition as heterosexuals."

The ACLU has supported same sex marriage cases in other parts of the country, most recently filing an *amicus curiae* brief in support of the Hawaii case, *Baehr v. Lewin*.

END

## Some of the Rights that come with Marriage in Alaska

The State of Alaska attaches legal significance to the marriage relationship. State and federal laws award spouses numerous rights simply because of their status as a party to a marriage. The following is a list of some of those rights.

1. Right to file wrongful death action AS 9 55.580
2. Right to notice and consent in adoption proceeding AS 25.23.050
3. Spouse's right of intestate succession AS 13.11.010
4. Intestate succession to Alaska Native Corporation stock AS 13.16.705; 13.11.012
5. Right to authorize anatomical gifts AS 13.50.010
6. Right to revocation of will with marriage annulment AS 13.11.185
7. Surviving spouse's homestead allowance AS 13.11.125
8. Surviving spouse's elective share of estate AS 13.11.070
9. Surviving, omitted spouse's rights AS 13.11.110
10. Applicability of Uniform Disposition of Community Property rights at death AS 13.41.005
11. Surviving spouse's exemptions AS 13.11.130
12. Surviving spouse's family allowance AS 13.11.135
13. Right of notice of guardianship proceedings AS 13.26.135
14. Right to appointment as guardian AS 13.26.145
15. Child custody AS 25.24.150
16. Residency of spouse determining right to Permanent Fund Dividend AS 43.23.015
17. Actions between spouses respecting property AS 25.15.020
18. Authority to act as attorney in fact AS 25 15.040
19. Right to adopt AS 25.023.020
20. Violation of bigamy statute AS 11.51.140
21. Both spouses join in conveyance of family home AS 34.15.010
22. Spouse's services excluded from definition of employee AS 23.30.525
23. Right of first refusal under gasoline product leasing act AS 45.50.825
24. Right to effectuate insurance upon spouse AS 21.42.090
25. Criminal nonsupport rights AS 11.51.120
26. Worker Compensation rights upon spouse's death AS 23.30.215
27. Spouse's right to compensation for permanent partial disability AS 23.30.195
28. Spouse's interest in public employee retirement system AS 39.35.455
29. Spouse's interest in qualified domestic relation orders and retirement plans AS 39.35.455
30. Old age survivor insurance AS 39.30.20
31. Beneficiary public employee group health and life insurance AS 39.30.090
32. Public employee family leave AS 39.20.305; 23.10.500
33. Public employee leave of absence AS 39.20.310
34. Payments due to deceased public employees AS 39.20.360
35. Spouse's interest in supplemental employee benefits AS 39.30.160
36. Spouse's interest in public employee special hazard insurance AS 39.30.130
37. Spouse's interest in public employee's deferred compensation program AS 39.45.010
38. Federal income tax applications
39. Nondischargeability in bankruptcy of spousal support 11 U.S.C. §523 (a) (5)
40. Right to consent to adoption AS 25.23.040

Important Legal Documents Attached:  
Brause & Dugan v. State of Alaska

(Action against the State because a Marriage License was denied to same-sex applicants. ~~29~~ pages follow.)

18

FAX 258-2916

Dear MIA :

(REP. ROBERT WAGSTAFF)

We'll be filing this complaint at 10am on Friday, August 4 at the office of the Clerk of the Court in Anchorage.

If you want to talk with us or with our attorney, that will be a good time to do it.

— Gene & Jay, plaintiffs 566-1663

Robert H. Wagstaff, lead counsel 277-8611

*This information is not to be released in any form before Noon, August 4, 1995. Thank-you.*



presented, it is useful to first review the basic role of the state in marriage.

The state issues marriage licenses, solemnizes marriages and keeps a docket of applications for marriage licenses available for public review. The state also distributes basic information to applicants about the effects alcohol, drugs and battering can have upon a fetus. Other than that, the state does not become involved, except to require that the applicants be at least 18 years of age or, if minors, have the proper consents or be on active duty with the armed services. ( The Marriage Code now specifically prohibits same-sex marriage, bigamy and marrying anyone closer than one's first cousin. ) Applicants for marriage are under a duty to swear that the contemplated marriage meets the requirements of the law, give their names, relationship, occupations, ages (and, where appropriate, guardians), and give descriptions of any prior marriages and their dissolutions. The issuing officer has a duty to issue the license if "all requirements are met and there is no legal objection to the contemplated marriage, and neither party is under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding . . ." A.S. 25.05.111. The license is to issue after a three day waiting period and is good for three months thereafter. A.S. 25.05.091; A.S. 25.05.121.

This description of the state's role in marriage focuses on the establishment of the marriage itself and is not inclusive, nor is it intended to be, of the many rights and consequences

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IN THE SUPREME COURT FOR THE STATE OF ALASKA

BUREAU OF VITAL STATISTICS,	)	
ALASKA DEPARTMENT OF HEALTH &	)	
SOCIAL SERVICES, the STATE	)	
OF ALASKA, and the ALASKA	)	
COURT SYSTEM,	)	
	)	
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
JAY BRAUSE and GENE DUGAN,	)	
	)	
	)	
Respondents.	)	Supreme Court No. S-
	)	Super. Ct. No. 3AN-95-6562 CI

PETITION FOR REVIEW

This petition seeks review of an order of the superior court at Anchorage, Hon. Peter Michalski, in a case challenging the constitutionality of Alaska's statutory prohibition on same-sex marriage. The court, in the instant order (attached to this petition as Exhibit A), denied the defendants' motion for summary judgment on the constitutional question, and ordered a hearing at which the defendants will have to show a compelling state interest in the prohibition in order to sustain it.

**FACTS**

The facts of this case, as set out in the superior court's opinion, are simple and undisputed. Plaintiffs Jay Brause

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1 and Gene Dugan are two male residents of Anchorage who sought a  
2 license to be married. Based on a memorandum from former  
3 Presiding Judge Karl Johnstone which concluded that the Alaska  
4 statutes did not authorize same-sex marriage, the court clerk  
5 denied their application. Other than their sex, Brause and Dugan  
6 met the other qualifications for issuance of a marriage license.  
7

8  
9 Brause and Dugan brought suit in Anchorage superior  
10 court, contending that the statutory prohibition on same-sex  
11 marriage is unconstitutional. Their claims rested primarily on  
12 the privacy section of the Alaska constitution, art. I, sec. 22,  
13 and the civil rights section, art. I, sec. 3. They subsequently  
14 moved for partial summary judgment, seeking a ruling that the  
15 Alaska constitution implicates the right to same-sex marriage, and  
16 that that prohibition must fail unless the state can show a  
17 compelling state interest in it. The defendants cross-moved,  
18 arguing that the Alaska constitution does not implicate a right to  
19 same-sex marriage, and that, even if it does, the prohibition is  
20 constitutional because of the basic biological differences between  
21 same-sex couples and opposite-sex couples.  
22  
23

24  
25 In his order, entered on February 27, 1998, Judge  
26 Michalski granted the plaintiffs' motion and denied the  
defendants' cross-motion, and ordered the parties "to set

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1 necessary further hearings to determine whether a compelling state  
2 interest can be shown for the ban on same-sex marriage found in  
3 the Alaska Marriage Code." Exhibit A, at 13.  
4

5 STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

6 Whether the superior court erred in ruling that there is  
7 a fundamental right under the Alaska constitution to "choose one's  
8 life partner and have a recognized nontraditional family" [Exhibit  
9 A, at 11], which in effect constitutes a right to same-sex  
10 marriage.  
11

12 Whether the superior court erred in denying the  
13 defendants' motion for summary judgment and in not dismissing the  
14 plaintiffs' action.  
15

16 WHY REVIEW SHOULD NOT BE POSTPONED

17 Immediate review of the superior court's decision is  
18 warranted under Appellate Rule 402(b)(2). The court's decision  
19 clearly "involves an important question of law on which there is  
20 substantial ground for difference of opinion," and immediate  
21 review will both "materially advance the ultimate termination of  
22 the litigation" and "advance an important public interest which  
23 might be compromised if the petition is not granted."  
24  
25

26 Substantial ground for difference of opinion. The  
superior court's decision in this case, holding in effect that

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1 there is a fundamental right to same-sex marriage, departed from  
2 every American decision of which the defendants are aware. See,  
3 e.g., Storrs v. Holcomb, 645 N.Y.S.2d 286 (Sup. Ct. 1996); Baehr  
4 v. Lewin, 852 P.2d 44 (Hawaii 1993); Dean v. District of Columbia,  
5 653 A.2d 307 (D.C. 1992); Adams v. Howerton, 673 F.2d 1036 (9th  
6 Cir.), cert. denied, 458 U.S. 1111 (1982); Singer v. Hara, 522  
7 P.2d 1187 (Wash. App. 1974); Baker v. Nelson, 191 N.W.2d 185  
8 (Minn. 1971), appeal dismissed, 409 U.S. 810 (1972). In addition,  
9 the court's ruling that a trial on the plaintiffs' claims is  
10 required is inconsistent with every decision of which the  
11 defendants are aware, except for the Baehr decision. Thus the  
12 substantial ground for difference of opinion is clear.  
13  
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15

16 Advancing an important public interest. In recent  
17 years - since the Hawaii Supreme Court's 1993 decision in Baehr v.  
18 Lewin - same-sex marriage has become one of the "hot button"  
19 social issues in the United States. Its "hot button" status in  
20 Alaska is reflected in the Alaska legislature's response to the  
21 Baehr litigation, the enactment of a so-called "defense of  
22 marriage" act, and in the proceedings surrounding the enactment of  
23 that act. AS 25.05.013, enacted by ch. 21, SLA 1996, provides  
24 that same-sex marriages will not be recognized in Alaska, even if  
25 they are legal under the law of the jurisdiction where there  
26

1 marriage takes place.<sup>1</sup> The legislative history of the bill that  
2 became chapter 21 illustrates the inflammatory passions that this  
3 subject unleashes.<sup>2</sup>  
4

5 Thus the principal reason why this court should grant  
6 immediate review of the superior court's decision is that the  
7 trial which that court has ordered is certain to be extremely  
8 contentious, and has the potential of stirring up widespread  
9 animosity and prejudice. Clearly the avoidance of such a trial,  
10 if it is not necessary, is strongly in the public interest. And  
11 if the defendants' arguments before the superior court were  
12 correct, such a trial would not be necessary, and summary judgment  
13 for the defendants would be the proper course.  
14  
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18 <sup>1</sup> Chapter 21 also amended AS 25.05.011, so that it now states  
19 explicitly that marriage is limited to one man and one woman.  
20 This amendment was made even though no one, including the  
21 plaintiffs in this action, contended that the old sex-neutral  
22 language of AS 25.05.011 authorized same-sex marriage.

23 <sup>2</sup> For instance, the minutes of the House State Affairs  
24 Committee on the bill (found on the BASIS database) show one  
25 witness before the committee calling homosexuals "perverted" and  
26 homosexuality "an abomination"; another saying that the bill would  
prevent the "immorality of the few," an obvious reference to  
homosexuals, from being imposed on the majority; and a third  
referring to "the average homosexual [who] had over 500 partners  
in a lifetime which did nothing more than spread sexually  
transmitted diseases." Even a legislator said that "homosexual  
relationships were not the will of God according to the Bible."

1                    Material advancement of the ultimate termination of the  
2  
3 litigation. If the superior court erred, and the defendants'  
4 contentions are correct, then the trial which the Superior court  
5 has ordered will be unnecessary. Review of that court's ruling  
6 now, rather than after a trial, will obviously advance the  
7 termination of this litigation.  
8

9                    **WHY THE DECISION BELOW IS ERRONEOUS<sup>3</sup>**

10                   "The Founding Fathers did not establish the United  
11 States as a democratic republic so that elected officials would  
12 decide trivia, while all great questions would be decided by the  
13 judiciary." Compassion in Dying v. State of Washington, 79 F.3d  
14 790, 858 (9th Cir. 1996) (en banc) (Kleinfeld, J., dissenting),  
15 reversed, \_\_\_ U.S. \_\_\_, 138 L.Ed.2d 772 (1997).  
16

17                   Whether or not there should be same-sex marriage in  
18 Alaska is indeed a great question, as was the question of assisted  
19 suicide at issue in Compassion in Dying. The same-sex marriage  
20 question is also a question that the legislature, and not the  
21  
22

---

23                   <sup>3</sup> The 15-page limit on petitions for review precludes the  
24 petitioners from discussing in detail why the superior court's  
25 decision was erroneous. The petitioners have appended to this  
26 petition as Exhibit B a copy of their memorandum in opposition to  
the plaintiffs' motion for partial summary judgment and in support  
of their own cross-motion for summary judgment, which sets out  
their arguments in detail.

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1 judiciary, should decide (and, as noted above, one that the  
2 legislature has already decided). The superior court's intrusion  
3 here into the province of the legislature was its most fundamental  
4 error.  
5

6           The superior court failed to recognize that the  
7 provisions of the Alaska constitution invoked by the plaintiffs do  
8 not even implicate the right to same-sex marriage. This court has  
9 repeatedly held that the Alaska constitution should be construed  
10 consistently with the intent of the framers. See Arco Alaska,  
11 Inc. v. State, 824 P.2d 708, 710 (Alaska 1992); Kochutin v. State,  
12 739 P.2d 170, 171 (Alaska 1987); Hammond v. Hoffbeck, 627 P.2d  
13 1052, 1056 n.7 (Alaska 1981). Thus, unless there is evidence  
14 indicating intent by the framers that a constitutional provision  
15 be construed to provide for rights inconsistent with long-standing  
16 law at the time of its adoption, a provision should not be  
17 construed to provide for such inconsistent rights. Cf. Hootch v.  
18 Alaska State-Operated School System, 536 P.2d 793, 800 (Alaska  
19 1975) ("an historical perspective is essential to an enlightened  
20 contemporary interpretation of our constitution").<sup>4</sup> Here, there  
21  
22  
23  
24

25 <sup>4</sup> See also Moore v. City of East Cleveland, 431 U.S. 494, 502  
26 (1977) (plurality opinion) (footnote omitted; emphasis in original):



1 is no such evidence, and Judge Michalski totally ignored the  
2 absence of any such evidence.<sup>5</sup>  
3

4 In 1955 and 1956, when the Alaska constitution was  
5 drafted and adopted by the constitutional convention and ratified  
6 by the people, the idea of same-sex marriage had been basically  
7 unheard of in the Western world for centuries.<sup>6</sup> The statutes of  
8

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9  
10 There are risks when the judicial branch gives  
11 enhanced protection to certain substantive  
12 liberties without the guidance of the more  
13 specific provisions of the Bill of Rights. As the  
14 history of the *Lochner* era demonstrates, there is  
15 reason for concern lest the only limits to such  
16 judicial intervention become the predilections of  
17 those who happen at the time to be Members of this  
18 Court. That history counsels caution and  
19 restraint.  
20

21 The answer, according to the Court plurality: "Appropriate limits  
22 on substantive due process come not from drawing arbitrary lines  
23 but rather from careful 'respect for the teachings of history  
24 [and] solid recognition of the basic values that underlie our  
25 society.'" Id. at 503 (internal quote and bracketed word in  
26 original).

<sup>5</sup> The plaintiffs also essentially ignored the defendants'  
arguments on history and framers' intent, responding to them in  
the plaintiffs' summary judgment reply memorandum with the comment  
that the relevant constitutional provisions are of a "forward  
looking nature."

<sup>6</sup> See W. Eskridge, Jr., A History of Same-Sex Marriage, 79 Va.  
L. Rev. 1419 (1993). Professor Eskridge shows that same-sex  
marriage has existed historically, especially in non-Western  
cultures. However, he states that in the West (i.e., in Europe)  
attitudes turned against same-sex marriage in the 13th century.  
Id. at 1469. (Continued)

1 the Territory of Alaska had, since before their first codification  
2 in 1913, provided that a marriage must be between a man and a  
3 woman. CLA 1913, § 431; CLA 1933, § 1181; ACLA 1949, § 21-1-1.  
4 There is no reference in the minutes of the Constitutional  
5 Convention to same-sex marriage. Thus it cannot be said that the  
6 framers, in adopting the constitution, intended to confer a right  
7 to same-sex marriage, or intended that the proposed constitution  
8 in any way alter existing law on the subject of marriage.  
9

10  
11 By 1972, when art. I, sec. 22 was adopted and art. I,  
12 sec. 3 was amended to add its reference to sex, litigation seeking  
13 the right to same-sex marriage had begun in the Lower 48.  
14 However, none of this litigation had been successful, and none had  
15 taken place in Alaska. Thus again it cannot be said that the  
16 legislature and the electorate, in proposing and adopting these  
17 two constitutional changes, intended to confer a right to same-sex  
18 marriage or to alter the existing marriage law.  
19

20  
21 In fact, the limited amount of history behind these two  
22 changes that is now available suggests no such intentions. The  
23

24 In a recent newspaper article, a sociology professor noted  
25 that in the 1950s and 1960s articles in a major gay publication  
26 discussed the pros and cons of same-sex marriage. P. Nardi,  
Saying "I Do" to Broadening the Debate, L.A. Times, Feb. 5, 1996,  
at B5. This article does not indicate that any such articles  
appeared in the "mainstream" press during this period.

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1 privacy amendment was apparently enacted to address specific  
2 concerns about access to criminal justice information, a subject  
3 obviously having nothing whatsoever to do with any right to marry.  
4 G. Harrison, Alaska's Constitution - A Citizen's Guide, at 44-45  
5 (3rd ed. 1992). The amendment to art. I, sec. 3 was apparently  
6 intended to give the state constitution a counterpart to the  
7 proposed federal Equal Rights Amendment then undergoing the  
8 ratification process before the legislatures of the states (and  
9 which the Alaska legislature had ratified quickly during its 1972  
10 session). But the framers and proponents of the federal ERA  
11 specifically denied that that amendment would confer a right to  
12 same-sex marriage.<sup>7</sup> Thus there is no reason to give a different  
13 construction to the Alaska ERA.  
14

15  
16  
17 The superior court erred in ruling that the plaintiffs  
18 have a fundamental right to be married. As noted above, the  
19 superior court's conclusion that the same-sex plaintiffs had a  
20 fundamental right to "choose [their] life partner and have a  
21 recognized nontraditional family" (i.e., to be married) departs  
22

23  
24 <sup>7</sup> See 118 Cong. Rec. 4389 (1972) (statement of Sen. Bayh, an  
25 ERA sponsor, that the ERA would not require the states to  
26 recognize same-sex marriage); Note, The Legality of Homosexual  
Marriage, 82 Yale L.J. 573, 584 n.50 (1973) (quoting a similar  
view by one of the legal scholars who originally drafted and  
propounded the federal ERA, Yale Professor Thomas Emerson).

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1 from every other court decision to ever consider the matter.  
2  
3 Judge Michalski ignored the correct analysis in Baehr (also  
4 reflected in other cases), where the court stated that "we do not  
5 believe that a right to same-sex marriage is so rooted in the  
6 traditions and collective conscience of our people that failure to  
7 recognize it would violate the fundamental principles of liberty  
8 and justice that lie at the base of all our civil and political  
9 institutions." 852 P.2d at 57. The judge ignored the fact that  
10 Alaska has a test virtually identical to that of Hawaii for  
11 determining when "constitutional rights and privileges" should be  
12 "develop[ed]" under the Alaska constitution: when the courts "find  
13 such fundamental rights and privileges to be within the intention  
14 and spirit of our local constitutional language and to be  
15 necessary for the kind of civilized life and ordered liberty which  
16 is at the core of our constitutional heritage." Baker v. City of  
17 Fairbanks, 471 P.2d 386, 402 (Alaska 1970) (footnote omitted).  
18 Instead Judge Michalski improperly recharacterized the question as  
19 whether there is a basic right "to choose one's life partner,"  
20 Exhibit A, at 8, then found that there was such a right.

21  
22  
23  
24  
25 In reaching this conclusion, the judge relied primarily  
26 on Breese v. Smith, 501 P.2d 159 (Alaska 1972). Breese, in which  
this court invalidated hair length rules of the Fairbanks school

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1 system, is the first of the major Alaska privacy cases, even  
2 though it predated the adoption of art. I, sec. 22. But there is  
3 a huge and controlling difference between this case and Breese.

4  
5 Breese involved an outright prohibition against conduct  
6 - the wearing of long hair in the schools. By contrast, the  
7 marriage laws at issue here do not outlaw conduct. They do not  
8 prohibit same-sex couples from taking wedding vows in a ceremony,  
9 from living together as a couple, from holding themselves out to  
10 the world as wed. They simply deny formal legal recognition of  
11 that relationship as a marriage. As one of the leading scholars  
12 on same-sex marriage has written, in comparing state marriage laws  
13 to sodomy laws (which Alaska no longer has), "[T]here is a legally  
14 recognized and profound difference between the state not punishing  
15 private homosexual behavior between consenting adults and the  
16 state endorsing or recognizing a public right to engage in such  
17 behavior." Lynn D. Wardle, A Critical Analysis of Constitutional  
18 Claims for Same-Sex Marriage, 1996 Brigham Young U.L.R. 1, 40.  
19 Professor Wardle's analysis is equally applicable for comparing  
20 Breese with the case at bar.

21  
22 The superior court here ignored the basic holding of  
23 Breese - that the right to privacy is essentially the right to be  
24 let alone. 501 P.2d at 168. As just discussed, the state

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1 marriage laws do let Brause and Dugan alone - they simply deny  
2 official recognition of a private decision.  
3

4 The superior court also erred in giving a very expansive  
5 reading to the early privacy cases - Breese and Ravin v. State,  
6 537 P.2d 494 (Alaska 1974) - when subsequent Alaska cases have  
7 indicated that those cases should not be read so expansively. See  
8 Hilbers v. Municipality of Anchorage, 611 P.2d 31, 41-42 (Alaska  
9 1980); Friedman v. District Court, 611 P.2d 77 (Alaska 1980);  
10 McKenzie v. Municipality of Anchorage, 631 P.2d 514, 518 (Alaska  
11 App. 1981). It is especially difficult to square the superior  
12 court's reading of Breese with Friedman, a decision which upheld  
13 the right of the state district court to require that an attorney  
14 appearing before it wear a coat and a tie, and which rejected the  
15 attorney's Breese-based argument.  
16  
17

18 Professor Wardle, in the article cited above, observed  
19 that "[a]sking the judiciary to impose a radical redefinition of  
20 marriage upon the American people is a very troubling  
21 proposition." L. Wardle, supra, at 5. It is especially troubling  
22 when the people, speaking through their elected representatives,  
23 have so recently rejected the radical redefinition. By finding a  
24 fundamental right in the case at bar, the superior court went a  
25  
26

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1 long way toward this radical redefinition.<sup>8</sup> The court erred in so  
2 doing.  
3

4 The superior court erred in ruling that the prohibition  
5 on same-sex marriage constitutes sex discrimination. In an  
6 alternate holding, the superior court ruled that the prohibition  
7 on same-sex marriage constitutes sex discrimination banned by  
8 art. I, sec. 3 of the Alaska constitution.<sup>9</sup> The court offered  
9 only a very brief discussion on this issue and did not even cite  
10 to Baehr. Despite the divergence of judicial and academic views  
11 on this question, Judge Michalski opined that "[s]ex-based  
12 classification can hardly be more obvious."  
13  
14

15 With due respect to the judge, the petitioners must  
16 strongly disagree. The same-sex prohibition is in fact sex-  
17 neutral: both men and women may marry members of the opposite sex,  
18

19 \_\_\_\_\_  
20 <sup>8</sup> It is of course extremely difficult for the state ever to  
21 meet the compelling state interest test under Alaska  
22 constitutional analysis. The State of Hawaii, on remand from the  
23 Baehr decision, was unable to do so to the satisfaction of the  
24 Hawaii circuit court. Baehr v. Miike, Civ. No. 91-1394 (Findings  
of Fact and Conclusions of Law, entered Dec. 3, 1996). That court  
ruling is currently on appeal to the Hawaii Supreme Court.

25 <sup>9</sup> This was an alternate holding because the court had already  
found that, in light of its holding about a fundamental right to  
26 choose one's own life partner, the state must show a compelling  
interest to have the same-sex marriage prohibition upheld under  
the general equal protection clause, art. I, sec. 1.

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1 but may not marry members of their own sex. The better analysis  
2 on this issue is found not in the superior court's opinion or in  
3 Baehr, but in the opinion in Singer v. Hara, 522 P.2d at 1190-91.  
4

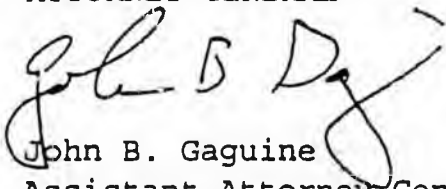
5 PRECISE RELIEF SOUGHT

6 The petitioners ultimately seek from this court an order  
7 that reverses the superior court's grant of partial summary  
8 judgment to the plaintiffs and its denial of complete summary  
9 judgment to the defendants, and that orders the superior court to  
10 dismiss the action with prejudice. However, because of the  
11 complexity and importance of the issues that this petition  
12 presents, the petitioners are not seeking such an order based on  
13 this petition and any opposition to it that may be filed. Rather  
14 the petitioners seek only an order accepting the petition and  
15 ordering full briefing.  
16  
17

18 DATED this 9<sup>th</sup> day of March, 1998, at Juneau, Alaska.

19  
20 BRUCE M. BOTELHO  
21 ATTORNEY GENERAL

22 By:

23   
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26



**Marriage Amendment  
Research**

**March 1998**

**Prepared for:**

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*Alaska Opinion Research*