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Bubba Broussard Lighthouse Community Church Nikiski
Paul Hartley Nikiski Church of the Nazarene Nikiski
Ron Lambert Lighthouse Baptist Mission Ninilchik
Roland Booth Noatak Friends Church Noatak
Morrison Fisher Community Baptist Church North Pole
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Phil Markwardt Crossroads Community Church Palmer
Dennis Hotchkiss Crossroads Community Church Palmer
Rev. Chalmers Roberts United Pentecostal Church of Petersburg Petersburg
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Lt. Col Lance Jennings Resurrection Lutheran Church Seward
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Keith Randall Peninsula Grace Brethren Church Soldotna
Dan Thornton Peninsula Grace Brethren Church Soldotna
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ALASKA STATE LEGISLATURE
SENATE FINANCE COMMITTEE
March 9, 2006

TESTIMONY OF KEVIN G. CLARKSON, ESQ. REGARDING SJR 20

INTRODUCTION

I would like to thank the Co-Chairs of the Committee, Senator Green and Senator Wilken, the Vice Chair of the Committee, Senator Bunde, and the members of the Committee, Senators Dyson, Hoffman, Olson, and Stedman, for the opportunity to speak today regarding SJR 20, a proposed amendment to the Alaska Constitution to preserve the attributes, benefits and privileges of marriage to married couples.

By way of introduction, I was legal counsel for the Alaska Legislature in 1998 in the legal action that related to whether the Marriage Amendment, Art. I, Section 25 of the Alaska Constitution, would remain on the general ballot so that the People of Alaska could vote to ratify it. I also represented the Alaska Legislature in the original same-sex marriage case itself, and I was one of the primary drafters of the Marriage Amendment.

HISTORICAL BACKGROUND

In order to understand the significance of SJR 20 it is essential to understand the history that has led up to its introduction in the Legislature at this time. Relevant history includes events in the United States Congress, the Lower forty-eight states, and also in Alaska.

I. The Federal Defense of Marriage Act

In 1996, Congress adopted the federal Defense of Marriage Act (DOMA). Pub. L. 104-199, 100 Stat. 2419 (Sept. 21, 1996). Congress passed DOMA because of a decades-long assault that had been made in various courts challenging the definition and constitutionality of marriage, and particularly in response to a Hawaii court decision that suggested there might be a right to same-sex "marriage" in the Hawaii Constitution. The legislative history of DOMA reflects a congressional concern about the effect that legalizing same-sex "marriage" in Hawaii would have on other states, federal laws, the institution of marriage, traditional notions of morality, and state sovereignty. H.R. Rep. No. 104-664 at 1-18 (1996), reprinted in 1996 U.S.C.C.A.N. 2905-23.

DOMA has two sections, one defining "marriage" for purposes of federal law, and the other affirming federalism principles under the authority granted by Article IV, Section 1 of the Constitution, the Full Faith and Credit Clause. The first section states that for purposes of federal law, marriage means a legal union between a man and a woman.

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word marriage means only a legal union between one man and one woman as husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife.

Pub. L. 104-199, sec 1, 100 Stat. 2419 (Sep. 21, 1996), codified at 1 U.S.C. 7 (1997). The second section reaffirmed the power of the states to make their own decisions about marriage:

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Pub. L. 104-199 sec. 2, 100 Stat. 2419 (Sep. 21, 1996), codified at 28 U.S.C. 1738C (1997).

By way of DOMA, all of the various attributes, benefits, and privileges of marriage that are created or assigned by federal law, are assigned or provided only to (1) "marriages," which are limited to only legal unions between one man and one woman as husband and wife and (2) "spouses," which is defined as a person of the opposite sex who is a husband or a wife. None of the various attributes, benefits and/or privileges of marriage that exist under federal law are available to any unmarried couples, whether same-sex or opposite sex.

II. The Alaska Marriage Amendment

The Alaska Marriage Amendment, Art. I. Section 25, was ratified by the People, on a vote of 68%-32% in November, 1998. The Alaska Marriage Amendment can be said to have its origin in reaction to a specific judicial decision. The Marriage Amendment was ratified in response to a decision by a state superior court judge in a case called Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). On February 28, 1998 this superior court judge ruled that the Alaska Constitution provided a fundamental right to marry someone of the same sex.

A. The Evolution of Alaska's Marriage Statute

The origin of Alaska's marriage statute, AS 25.05.011, is a territorial law: "Marriage is a civil contract, which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years."[1] After statehood in 1959, this law was slightly revised to read: "Marriage is a civil contract requiring both a license and solemnization which may be entered into by a male

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[1] *See* Alaska State Legislature Legislative Research Agency, *Memorandum on Legislative History of AS 25.05.011* (March 8, 1995).

who is 21 years of age or older with a female who is 18 years of age or older."[2] In 1970, the statute was modified to reduce from "21" to "19" the age at which a man could marry."[3] Up to this point in time Alaska's marriage statute clearly restricted marriage to one man and one woman.

Something very interesting, and also very unintended, occurred in 1974. The Alaska Revisor of Statutes[4] set upon the task of rendering Alaska's Statutes "gender neutral" in language and in the process made two unintended substantive changes to the marriage statute, one clear and express and the other implicit. The express substantive change which the Revisor of Statute's made was to change the age of permissible marriage for both genders to "19" from the previous "19" for men and "18" for women.[5] The second substantive change, which was only implicit in effect was to eliminate the words "man" and "woman" from the statute and insert the word "person" in their place. While this "gender neutrality" goal may have seemed "noble" and "appropriate" in the context of the codification of Alaska's statutes, from the standpoint of the substantive meaning and effect of the marriage law the result was drastic. By eliminating the words "man" and "woman" from the marriage statute the Revisor's "gender neutral" language had the appearance of changing Alaska's definition of marriage to a civil contract which could be entered into between any two "persons" (presumably of any combination of either gender) age 19 years or older.[6]

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[2]Sec. 1, ch. 58, SLA 1963 (enacting AS 25.05.011).

[3]Sec. 9, ch. 245, SLA 1970.

[4]The Revisor of Statutes is given the responsibility to codify Alaska's statutes and to make technical changes for purposes of clarity. AS 01.05.036. The Revisor of Statutes submits bills to the Alaska Legislature which encompass many subjects, which are supposed to address only technical or grammatical changes to the statutes, and which are not supposed to make substantive changes to the meaning and effect of the law. In fact, because Revisor's bills address multiple subjects throughout the Alaska statutory scheme, if Revisor's bills did propose substantive changes to the meaning and effect of the laws then the Revisor's bill would very likely violate the single-subject requirement of Article II, section 13 of the Alaska Constitution. This conclusion is bolstered by the fact that Article II, section 13 contains language which exempts bills "codifying, revising, or rearranging existing laws."

[5]Sec. 92, ch. 127, SLA 1974. This change in the age of permissible marriage for women was a clear substantive change which exceeded the authority of the Revisor of Statutes. The change appears to have been motivated by the 1972 amendment to Article I, section 3 of the Alaska Constitution to prohibit discrimination on the basis of sex. The title of the Revisor's 1974 bill ("An Act making corrective amendments in the Alaska statutes as recommended by the revisor of statutes") suggests very strongly that the Revisor was exceeding his ("her?") statutory and constitutional authority.

[6]Sec. 92, ch. 127, SLA 1974. According to Representative Norman Rokeberg's Sponsor Statement regarding House Bill 227, Alaska's Defense of Marriage Act ("Little DOMA"), the 1974 Revisor's bill which made the legal age of consent for marriage the same age for both men and women (HB 817) was amended in the Senate Judiciary Committee to remove the words "man" and "woman" and replace them with the word "person." Representative Rokeberg reported in his Sponsor Statement regarding HB 227 that the amendment was the result of an effort championed by former Representative Genie Chance to "locate all terms relating to the sexes, and replacing them with gender neutral words." Sponsor Statement, Rep. N. Rokeberg, HB 227 (undated). Representative Rokeberg reported that he had discussed the matter with former Representative Chance, and that she confirmed that the amendment was not intended to repudiate the traditional definition of marriage as the union of one man and one

The statute was again modified in 1975, this time by the Alaska Legislature itself, to reduce the legal age of marriage to "18" for both men and women. Apparently unaware of the prior apparent substantive change, the Legislature retained the "gender neutral" language without the slightest comment.[7] The marriage statute remained unchanged and unchallenged in this form for the next twenty-one (21) years until 1996.

B. Related Gay Rights Controversies

Previous to the Marriage Amendment drama, a number of controversies regarding similar issues had already been played out in Alaska. The earliest case was decided in 1978. In 1976, the mayor of Anchorage deleted from a draft of the *1976-77 Anchorage Blue Book*, reference to the Alaska Gay Coalition.[8] The Coalition subsequently sued claiming their First Amendment speech rights had been violated because they were not allowed to access the public forum created by the *Blue Book*. The superior court initially granted the Coalition a temporary injunction prohibiting distribution of the *Blue Book*, but later decided against the Coalition after a trial.[9] The Alaska Supreme Court reversed, holding that the *Blue Book* was a public forum and that the mayor had improperly denied the Coalition its First Amendment rights because of disapproval of the Coalition's aims by not allowing their message to be printed in it.[10]

A few years later, the issue of "sexual orientation" was raised in a family law setting. In *S.N.E. v. R.L.B.*[11], a father sough to have the custody of his child changed so as to give him custody. The father alleged that the mother was a lesbian and that the child's best interests, therefore, demanded that he be the primary custodian of the child.[12] The superior court ruled in favor of the

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woman.

[7]Sec. 1, ch. 28, SLA 1975. The Legislature titled its 1975 bill amending AS 25.05.011(a) "An Act relating to the capacity of persons to consent to marriage," which suggests that the Legislature had no intent or notion that it was enacting a marriage statute which, by its plain language, appeared to allow same-sex marriage. The Legislature's lack of intent to allow same-sex marriage by way of the "gender neutral" language changes of 1974 and 1975 is bolstered by the fact that the Legislature retained the terms "husband" and "wife" in several places to refer to the parties to a marriage. See AS 25.05.041(b); AS 25.05.051. If the Legislature truly intended to adopt and confirm the Revisor's 1974 "gender neutral" change as a "substantive" revision of the definition of marriage so as to include same-sex partners, then the Legislature would have replaced the terms "husband" and "wife" from the marriage laws.

[8]*Alaska Gay Coalition v. Anchorage*, 578 P.2d 951 (Alaska 1978).

[9]Id. at 954

[10]Id. at 960.

[11]699 P.2d 875 (Alaska 1985).

[12]Id. at 877.

father and the mother appealed. The Alaska Supreme Court reversed, holding that that there was no evidence that the mother's lesbianism "has or is likely to affect the child adversely" and that any perceived stigma on the child because of the mother's lifestyle could not justify a change of custody.[13]

In January 1993, the Anchorage City Assembly enacted an ordinance that banned discrimination based on sexual orientation in public employment over the veto of Mayor Tom Fink.[14] A group called Citizens to Repeal the Homosexual Ordinance immediately began collecting petition signatures to subject the matter to a vote in the April elections. Within a month, the group submitted 20,000 signatures, even though only 5,700 were needed.[15] The city clerked certified the initiative and a group of plaintiffs sued to challenge the certification.[16] The superior court denied a stay, but that decision was appealed to the Alaska Supreme Court which granted the stay on April 14, 1993.[17] Following the stay, the superior court found that the "referendum petition presented the ordinance in a biased and partisan light" because its title read: "Referendum Petition to Repeal a Special Homosexual Ordinance."[18] Focusing on the disagreement between the ordinance's opponents and supporters about whether or not the ordinance granted "special rights" the superior court held that the petition's characterization was misleading because of its partisanship.[19] The Alaska Supreme Court took this characterization as accurate and held that inaccurate referendum petitions are not "legally acceptable."[20] The basis for this decision was the court's belief that an inaccurate petition undercuts the screening function provided by the requirement that a referendum petition have a certain number of signatures to be certified.[21] Thus, the Alaska Supreme Court invalidated the petition and the ballot initiative was not the subject of a vote.[22]

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[13]Id. at 878.

[14]*Opinions in Anchorage Divided as Gay-Rights Measure Goes to Voters*, SEATTLE TIMES B4 (April 12, 1993).

[15]Id.

[16]*Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1215 (Alaska 1993).

[17]Id. at 1216.

[18]Id.

[19]Id.

[20]Id. at 1218.

[21]Id. at 1220.

[22]Interestingly, however, in the Municipal election in which the Referendum was to appear, the People of Anchorage voted to change the membership of the Municipal Assembly, rejecting several incumbents who had previously voted for the sexual orientation discrimination ordinance. Very shortly after the election, the newly constituted Anchorage Municipal Assembly voted to rescind the sexual orientation discrimination ordinance.

Just a year before the marriage amendment was adopted, the Alaska Supreme Court heard a case involving two employees of the University of Alaska who wanted health insurance for their same-sex partners.[23] The employees challenged the University's decision not to extend the benefits, claiming a violation of the state Human Rights Act's prohibition of marital status discrimination. The superior court ruled in favor of the plaintiffs and held that the University would have to either stop offering benefits for spouses, or provide benefits to the same-sex partners of employees. The University chose to offer the benefits.[24] While the appeal of the superior court's decision was pending, the Alaska Legislature amended the state discrimination law to allow employers to offer different benefits to employees with spouses and children than those without.[25] Thus, at thje conclusion of the appeal, the Alaska Supreme Court could only rule that the University had violated the pre-amendment act.[26]

Each of these decisions contributed to the highly charged atmosphere in which Alaska's marriage statute was challenged in the Brause case.

C. Alaska's Defense of Marriage Act

As referenced above, in early 1995, in addition to the Brause litigation filed in superior court in Anchorage and discussed below, which challenged the traditional opposite-sex definition of marriage, a separate action filed in Superior Court in Fairbanks[27] challenged the University of Alaska Fairbanks' ("UAF") policies limiting spousal benefits to the "husbands" or "wives" of its married employees. A superior court judge in Fairbanks set loose a firestorm when she ruled that UAF could not legally limit spousal benefits to traditional "husbands" and "wives," basing her decision in part upon the Revisor of Statutes' 1974 bill and Senate Judiciary Committee "gender neutral" amendment, tinkering with the marriage statute so as to eliminate the words "man" and "woman" from the definition of marriage and defining "marriage" as a civil contract between two "persons."

Suddenly at that time, the Alaska Legislature was aware of the potential substantive change (and to at least a portion of the Alaska Judiciary a very real substantive change) which had been made to the marriage statute. In March, 1995, Representative Norman Rokeberg introduced House Bill 227, which was designed to amend the Alaska marriage statute to specify that (1) only one man and one woman can legally marry in Alaska, and (2) no out-of-state marriage between individuals

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[23] *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

[24] Id. at 1149-1150.

[25] Id. at 1151.

[26] Id. at 1156.

[27] *See University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

of the same-sex would be recognized as valid in Alaska. At about the same time, Representative Pete Kelly introduced HB 226 proposing very similar changes to the Alaska marriage statute.

When asked for its comments regarding HB 227, the Alaska Department of Law offered the opinion that the legislation was unnecessary. Assistant Attorney General John Gaguine offered the Department of Law's opinion to Representative Rokeberg to the effect that the Alaska Supreme Court would most likely find that the 1974 revisions to the marriage statute were not intended to allow legalized same-sex marriage. Mr. Gaguine explained that oddly enough, this event was not unique to Alaska. Prior to 1970, the State of Washington's marriage statute (RCW 26.04.010) provided that only "males" and "females" could marry each other. In 1970, however, Washington's marriage statute was amended to make the age of consent for marriage the same for both genders, and in these same changes (just as had occurred in Alaska) the words "male" and "female" were eliminated and replaced with the word "persons."

Mr. Gaguine explained that the Washington Court of Appeals had been required to review the changes to Washington's marriage statute in 1974 in a case called Singer v. Hara,[28] and in that case concluded that the changes were not intended to allow same-sex marriage. In reaching this conclusion the Washington Court of Appeals noted that 1972 changes to Washington's community property laws had retained references to "husband" and "wife," therefore, indicating a lack of intention by the Washington Legislature to allow same-sex marriage.

Mr. Gaguine also explained that Courts from other states and jurisdictions in addition to Washington had also concluded that same-sex marriages were not authorized by "gender neutral" language changes to marriage statutes.[29] The courts in these cases decided the question presented to them regarding same-sex marriage upon the simple basis of reviewing the dictionary definition of "marriage" which refers to a relationship between a "man" and a "woman" or between members of "opposite sexes." To these courts, the simple use of the word "marriage" and nothing more signaled legislative intent to limit the marriage relationship to a contract between one man and one woman.

In light of the superior court's ruling in Tumeo, however, the Alaska Legislature was not willing to simply entrust the marriage statutes to the Alaska Judiciary. Accordingly, the Legislature went forward with its proposed changes to the marriage statutes. The changes had two ultimate goals: (1) to clearly provide that for purposes of legal recognition and status, marriage in Alaska could only exist between one man and one woman; and (2) to clearly prevent any same-sex marriage, which might at some time be recognized as valid in another state (at that time, potentially Hawaii), from receiving the legal status and recognition of marriage in Alaska simply because the

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[28] 522 P.2d 1187, 1189 (Wash. App. 1974).

[29] *See Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *Adams v. Howerton*, 673 F.2d 1036 (9th Cir.), *cert. denied*, 458 U.S. 1111 (1982).

participants in that possible same-sex marriage moved their residence to Alaska.

As finally amended, the Alaska marriage statutes provide as follows:"Marriage is a civil contract entered into between one man and one woman that requires both a license and solemnization."[30]

D. The Brause v. Bureau of Vital Statistics Case

The Plaintiffs in the Brause case sought marriage as a doorway to the benefits and privileges that the law bestows upon married couples. The Plaintiffs in Brause argued repeatedly that there are some 115 benefits and privileges available to married couples under Alaska law which they coud not access. The Plaintiffs in Brause sought to use the status of marriage as a doorway by which they could access the various benefits and privileges of marriage, and attach them to their same sex relationship. The Brause litigation treated marital status and marital benefits as being inseparable. In Brause the Plaintiffs specifically sought benefits *based on* marital status. In fact, the superior court's ruling in Brause treated marital status and benefits as being inseparable. "Once married," the superior court noted, "the state provides benefits and imposes duties that are significant and valuable to society as well as to the individual members of the marriage." Brause, 1998 WL 88743 at * 2. Put another way, the superior court's ruling treated the benefits, privileges and duties of marriage as being entirely consequent upon marital status.

The Marriage Amendment presupposed this context. The Marriage Amendment was specifically designed to close marital status as a doorway by which same-sex couples, or any combination of opposite sex individuals other than "one man and one woman," might access the benefits and privileges of marriage. The Marriage Amendment as it was originally introduced in the Legislature as SJR 42 contained three sentences:

> To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this Constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex. Additional requirements related to marriage may be established to the extent permitted by the Constitution of the United States and the Constitution of the State of Alaska.

The third sentence of the Marriage Amendment was dropped by the Legislature during the legislative process.

Before the popular vote, a group of citizens including the Alaska Civil Liberties Union challenged the constitutionality of the proposed amendment in two actions. Bess v. Ulmer, Case No. 3AN-98-7776 Civil (Alaska Super. Ct. 1998); and Dodd v. Ulmer, Case No. 3AN-98-8114 Civil (Alaska Super. Ct. 1998). The Alaska Supreme Court consolidated the cases and then in its decision

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[30] ALASKA REV. STAT. 25.05.011(a) (1998), *amended by* 1996 Alaska S.B. 308.

allowed the Amendment to proceed to a vote, with one change. The Alaska Supreme Court, rightly or wrongly, deleted the second sentence of the Marriage Amendment because the Court viewed the sentence as being "superfluous." See Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999).

The first sentence of the Marriage Amendment was presented to the People of Alaska for ratification and it was ratified by a vote of 68%-32%. See Liz Ruskin, Limit on Marriage Passes in Landslide, Anchorage Daily News, November 4, 1998, § A, p. 1.

Following ratification of the Marriage Amendment, the Brause case did not end. Confirming that their primary focus in that case was the benefits and privileges that are attached to marriage and not marriage itself as a status, the Plaintiffs in Brause continued their quest in that case to receive the 115 benefits and privileges that are attached to marriage. Because marriage status had been foreclosed to them by way of the Marriage Amendment, the Brause Plaintiffs sought to require the State to give them all of the various attributes, benefits and privileges of marriage *outside of marriage*. The Brause Plaintiffs' claims were dismissed, however, because their claims for marriage benefits and privileges were not ripe. See Brause v. Bureau of Vital Statistics, 21 P.3d 357, 358 (Alaska 2001).

III. The ACLU v. State Case

Another case, the ACLU v. State litigation, began shortly after the Marriage Amendment was ratified. In this new case, the ACLU and eighteen individuals who alleged that they comprised nine lesbian or gay couples (hereafter referred to collectively as "the ACLU") filed suit against the State of Alaska and the Municipality of Anchorage. The ACLU complained that the state and the municipality maintained employee benefits programs that offer valuable benefits to their employee's spouses that are not offered to the same sex partners of lesbian and gay employees. In other words, the ACLU argued to the effect that when nearly seventy percent of Alaskans voted to ratify the Alaska Marriage Amendment they voted to command government to give marriage benefits to same sex couples, just as if they were married.

The ACLU also argued that those same Alaskans' vote was part of an invidious discriminatory scheme against lesbian and gay people. According to the ACLU, because the Marriage Amendment was created as part of an invidious discriminatory scheme, and because it foreclosed the option of marriage to same sex couples, the Alaska Constitution had to be interpreted to command government to treat same sex couples just as if they were married. The ACLU argued that public employees with same sex partners were being singled out and treated differently due to "sexual orientation" or "gender," because unlike an unmarried male/female couple who can choose to get married if they want to, the same sex couple "can't get married." And thus, the Amendment that was designed to end the constitutional debate in Alaska over same sex marriage, became the force of the claim that same sex couples must be treated "just as if they are married," even though they are not. Most Alaskan's heads were spinning upon hearing this argument.

The state superior court dismissed the ACLU's claims. See ACLU v. State, 3AN-99-11179

Civil (Alaska Super. Ct. 1999). The superior court reasoned that public employees with same sex partners are denied marriage benefits, not because of their sexual orientation or their gender, but instead simply because they are not married. The court concluded that no sexual orientation discrimination existed because same sex couples are treated exactly the same as every unmarried heterosexual couple, who also do not qualify for marital benefits. Finally, the superior court concluded that no gender discrimination existed because men and women equally receive marital benefits for their spouses. The ACLU appealed to the Alaska Supreme Court and on October 28, 2005 the Supreme Court reversed the superior court's decision. ACLU v. State, 122 P.3d 781 (Alaska 2005).

The State of Alaska, Department of Law, argued that the Marriage Amendment foreclosed the ACLU's claim that the Alaska Constitution mandated the extension of marriage benefits and privileges to unmarried same-sex partners. The Alaska Supreme Court rejected the State's argument. ACLU, 122 P.3d at 786-87. The Court reasoned that:

> The Marriage Amendment could have the effect of foreclosing the present challenge only if it could be read to prohibit public employees from offering benefits to their employees' same-sex domestic partners. . . . That the Marriage Amendment effectively prevents same-sex couples from marrying does not automatically permit the government to treat them differently in other ways.

Id. Because the Marriage Amendment did not foreclose the legislative and executive branches of government from *voluntarily* choosing to extend benefits to same sex partners, the Court concluded that the Marriage Amendment stood as no barrier to the ACLU's claim that the Alaska Constitution *commanded* the legislative and executive branches of government to extend benefits to same sex partners. Interestingly, the Court did not address another possible interpretation of the Marriage Amendment, which would have simply construed the Amendment to foreclose any judicially commanded extension of marriage benefits and privileges to unmarried same-sex couples under the guise of constitutional interpretation. Id.

The Court, like the ACLU, used the Marriage Amendment as the driving force for its decision that the Alaska Constitution commands government to treat unmarried same sex couples just as if they are married, even though they are not. Id. at 787-88. The Court explained:

> We agree with the [ACLU] . . . that the proper comparison is between same-sex couples and opposite sex couples, whether or not they are married. The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners. In comparison, public employees in committed same-sex relationships are absolutely

> denied any opportunity to obtain these benefits because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying. The programs consequently treat same-sex couples differently from opposite-sex couples.

Id. at 788. In other words, the governments' employee benefits programs that denied marriage benefits to unmarried same-sex couples were discriminatory, and thus in violation of the Equal Protection Clause of the Alaska Constitution, only because the Marriage Amendment forecloses marriage to same-sex couples.

Put another way, according to the Alaska Supreme Court, the Marriage Amendment required the Court to command government to extend marriage benefits to unmarried same-sex partners. Id. The Court put this very conclusion into words in footnote 38 of its Opinion:

> We recognize that the benefits programs became discriminatory only after the legislature acted in 1996 and 1998 and the electorate adopted the Marriage Amendment in 1998.

Id. at 789 n. 38. Thus, apparently, according to the Alaska Supreme Court, when 68% of Alaskans voted to ratify the Marriage Amendment in 1998 they voted to command government to treat unmarried same-sex couples just as if they are married, even though they are not.

IV. Future Impacts of ACLU v. State

A. All of the Benefits and Privileges of Marriage Will Be Required to Be Given to Same Sex Relationships

Although ACLU v. State technically addresses only employment benefits in the context of public employment, State, Borough, or Municipal, the impact of the decision stretches much further. Based upon the logic of ACLU v. State, virtually every distinction that exists in Alaska law and public policy between married couples and unmarried same-sex partners will eventually fall to an equal protection challenge under the Alaska Constitution. There is no logical basis upon which to limit the reach of the ACLU v. State decision to simply public employment benefits. Effectively, the Alaska Supreme Court decision is a first step in the direction of constitutionally mandated domestic partnerships in Alaska just as was imposed upon the State of Vermont by the Vermont Supreme Court in Baker v. State, 744 A2d 864, 886-89 (Vt 1999).

If Alaska Supreme Court believes that unmarried same-sex partners are unconstitutionally discriminated against because the government denies them the employment benefits that are extended to married men and women, it appears a foregone conclusion that the Court will believe

that the state unconstitutionally discriminates against same-sex partners when it denies them other benefits and privileges of marriage, including, but not necessarily limited to, (1) the right of intestate succession; (2) the privilege of not being required to testify against a spouse; (3) the right to receive workers' compensation benefits on the death of a partner; (4) the right to maintain a legal action for loss of consortium, or a wrongful death action for the death of a partner; and/or (5) the right to receive spousal support on the dissolution of a relationship.

B. Private Employers must Extend Marriage Benefits to the Same Sex Partners of Their Employees

It is not a correct statement that the impact of ACLU v. State will be felt only in the context of public employment. The logic of the ACLU v. State decision reaches into private employment as well as public employment. Under Alaska law, every private employment contract between employer and employee contains an implied covenant of good faith and fair dealing. Charles v. Interior Regional Housing Auth., 55 P.3d 57, 62 n. 29 (Alaska 2002); Holland v. Union Oil Co. of Ca., Inc., 993 P.2d 1026, 1032 (Alaska 2000); Belluomini v. Fred Meyer of Alaska, Inc., 993 P.2d 1009, 1012-13 (Alaska 1999). One of the things that the implied covenant of good faith and fair dealing requires is that employers treat "like employees alike." Charles, 55 P.3d at 62 n. 29; Holland, 993 P.2d at 1032; Fred Meyer, 993 P.2d at 1012-13. The legal concept of treating "like employees alike" is much akin to the equal protection concept of not discriminating between "similarly situated individuals." Thus, it requires no stretch of logic to predict that the Alaska Supreme Court will conclude that a private employer violates the implied covenant of good faith and fair dealing when that private employer extends employment benefits to the spouses of its married employees but not to the same-sex partners of its "like" gay or lesbian employees.

V. SJR 20

SJR 20 is designed to allow the People of Alaska the opportunity to address the ACLU v. State decision. SJR 20 is also designed to allow the People of Alaska to decide whether they agree or disagree with the Alaska Supreme Court's interpretation of the meaning and effect of the Marriage Amendment. SJR 20 would add a second sentence to Art. I, Section 25 that would state:

> No other union is similarly situated to a marriage between a man and a woman and, therefore, a marriage between a man and a woman is the only union that shall be valid or recognized in this state and to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned.

The first phrase of SJR 20 is designed to eliminate the fundamental basis for any equal protection claim, in any context, that involves an effort to compare married couples to unmarried same-sex partners, or for that matter to any unmarried combination of opposite sex individuals. The following language of SJR 20 is designed to confirm that marriage benefits and privileges, qualities, effects and obligations, are limited to marriage relationships as previously defined by the Alaska

Constitution. The word benefits is designed to address such things as employment benefits. The word privileges is designed to address such things as the spousal privilege regarding court testimony. The words qualities and effects are designed to address the various legal qualities and effects of marriage under Alaska law. The word obligations is intended to address such obligations as spousal support in a divorce context.

Nothing in SJR 20 would prohibit private employers from voluntarily deciding to extend marriage like benefits to employees with same-sex partners. A few private employers have decided to voluntarily extend employment benefits to the same-sex partners of their employees. SJR 20 would have the effect of precluding a public employer from extending employment benefits to unmarried same-sex partners. However, in this regard, it is important to note that AS 25.05.013(b), passed by the Alaska Legislature in 1996, already prohibits any public employer from extending marriage benefits to same-sex partners. Any public employer who currently extends marriage benefits to the same-sex partners of employees does so in violation of Alaska law.

VI. MARRIAGE AMENDMENTS ACROSS THE COUNTRY

States With Marriage Amendments:

1. Alaska (1998 by 68%)
2. Arkansas (2004 by 75%)
3. Georgia (2004 by 77%)
4. Hawaii (1998 by 69%)
5. Kansas (2005 by 70%)
6. Kentucky (2004 by 75%)
7. Louisiana (2004 by 78%)
8. Michigan (2004 by 59%)
9. Mississippi (2004 by 86%)
10. Missouri (2004 by 71%)
11. Montana (2004 by 66%)
12. Nebraska (2000 by 70%)
13. Nevada (2002 by 67%)
14. North Dakota (2004 by 73%)
15. Ohio (2004 by 62%)
16. Oklahoma (2004 by 76%)
17. Oregon (2004 by 57%)
18. Texas (2005 by 76%)
19. Utah (2004 by 66%)

States where Amendments Are Expected to Be Voted On In 2006:

1. Alabama

2. Arizona
3. Colorado
4. Idaho
5. Indiana
6. New Hampshire
7. South Carolina
8. South Dakota
9. Tennessee
10. Virginia
11. West Virginia
12. Wisconsin

When marriage related Amendments are presented to the People for a vote they routinely pass by overwhelming margins. Marriage amendments voted on by the people across the country have passed by an average pass rate of 71%, ranging from 57% in Oregon to 86% in Mississippi. SJR 20 would have the effect of bringing Alaska's Marriage Amendment into line with marriage amendments that have passed in other states. Eleven of the nineteen existing marriage related amendments that have been passed in other states contain provisions similar to those of SJR 20 and specifically prohibit the extension of marriage benefits and privileges to unmarried same-sex partners. Seven amendments prohibit same-sex domestic partnerships and also prohibit the extension of marriage benefits to same-sex partners. Four other amendments have the effect of prohibiting the extension of marriage benefits to same-sex partners by prohibiting same-sex domestic partnerships.

A. Amendments That, Like SJR 20, Specifically Foreclose the Extension of Marriage Benefits and Privileges to Same-Sex Partners

The Georgia Amendment provides in part that :

. . . . No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. . .

GA CONST Art. I, Sec. IV.

The Kansas Amendment provides in part:

No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage. . . .

The Louisiana Amendment provides in part:

. . . . No official or court of the state of Louisiana shall construe this constitution or

any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. . . .

The North Dakota Amendment provides in part:

. . . . No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

The Ohio Amendment provides in part:

. . . . This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

OH CONST. Art. XV, Sec. 11.

The Oklahoma Amendment provides in part:

. . . . Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

OK CONST. Art. 2, Sec 35.

The Utah Amendment provides in part:

. . . . No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect. . . .

UTAH CONST Art. 1, Sec. 29.

B. State Amendments That Foreclose the Extension of Marriage Benefits to Same-Sex Partners by Foreclosing the Creation or Recognition of Same-Sex Domestic Partnerships or Civil Unions

Some state amendments foreclose the extension of marriage benefits and privileges to same-sex partners by foreclosing the recognition of same-sex domestic partnerships or civil unions.

The Kentucky Amendment provides:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

The Arkansas Amendment provides:

Section 1. Marriage.
Marriage consists only of the union of one man and one woman.

Section 2. Marital status.
Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

ARK CONST Amend. 83.

The Nebraska Amendment provides in part:

. . . . The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.

The Texas Amendment provides in part:

. . . . This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage. . . .

TX CONST Art. 1, Sec. 32.

VII. Potential Federal Constitutional Challenges to SJR 20

Generally speaking, if a law bears a rational relation to a legitimate end, it will be upheld against a federal constitutional challenge.[31] Yet in 1996, using only rational basis review, the United States Supreme Court struck down a Colorado constitutional amendment which classified on the basis of "homosexual, lesbian or bisexual orientation."[32] This case, Romer v. Evans, is the most

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[31] *Romer v. Evans*, 116 S.Ct. 1620, 1627 (1996).

[32] *Id.* at 1623.

likely basis for a challenge to SJR 20. It was specifically mentioned by the Alaska Supreme Court in ACLU v. State.

Romer invalidated the following Colorado Constitutional Amendment, thta was put on the ballot by initiative:

> No Protected Status Based on Homosexual, Lesbian, or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.[33]

The United States Supreme Court interpreted this text not merely as repealing ordinances passed by municipalities prohibiting discrimination on the basis of "sexual orientation," but also as prohibiting "all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians."[34] The Amendment "imposes a special disability upon those persons alone." Therefore, the Court explained:

> We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.[35]

Amendment 2 was "at once too narrow and too broad."[36] It was too narrow because it characterized a class of people by "a single trait." It was too broad because, on the basis of that single trait, it

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[33] *Id.* at 1623.

[34] *Id.*

[35] *Id.* at 1627.

[36] *Id.* at 1628.

"then denie[d] them protection across the board."[37] Based on this combination of targeting and potentially limitless breadth, the Court concluded that Amendment 2 could not possibly be justified by the State's purported reasons (i.e., conserving resources, respecting associational privacy). It was not only irrational, it was evil. The rationale of Amendment 2 was "inexplicable by anything but animus toward the class it affects."[38]

> Romer has a narrow and a shallow bite:
>
> It is narrow in the sense that the Court decided only the case before it and avoided creating broad rules that courts might apply in other cases. The decision is shallow in the sense that the Court's reasoning was almost subrational--there is more reflex than reason in Justice Kennedy's opinion in Romer.[39]

Romer is far more notable for what it did not do than for what it did do.[40] Romer would have come out the same way had the Amendment been targeted at *any* "narrowly defined" group. The Court, seemed more concerned about suspect *laws* than suspect *classifications*.[41] It was "the extreme overbreadth of Amendment 2--not the identity of the class of persons covered by the Amendment--that concerned Justice Kennedy and his colleagues in the Romer majority."[42] This can be seen by the fact that Romer left Bowers v. Hardwick standing, and did not hold that sexual orientation is a suspect classification.[43] In sum:

> It was the 'sheer breadth' of Amendment 2, not any perceived 'widespread animus against

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[37] *Id.*

[38] *Id.* at 1627.

[39] Richard F. Duncan, "The Narrow and Shallow Bite of *Romer* and the Eminent Rationality of Dual-Gender Marriage: A (Partial) Response to Professor Koppelman," 6 *Wm. & Mary Bill of Rts. J.* 147, 148 (1997); *see also* Duncan, Wigstock and the Kulturkampf: Supreme Court Storytelling, The Culture War, and *Romer v. Evans*, 72 *Notre Dame L. Rev.* 345, 346-355 (1997).

[40] Duncan 6 *Wm. & Mary Bill of Rts. J.* at 149.

[41] *Id.*

[42] *Id.* at 150.

[43] *Id.* Duncan notes that the Respondents in *Romer* did not ask the Supreme Court to overrule *Hardwick*. *Id.* at 154, n. 42. From this he concludes that *Romer* "did not hold that moral disapproval of homosexual conduct is invidious or irrational." *Id.* at 150. *See Bowers v. Hardwick*, 478 U.S. 186 (1986).

> gays,' that undermined the state's attempt to provide an innocent explanation in support of the law. Romer is not a 'gay rights' case; it is a case about a purposeless and unlimited legal disability.[44]

The "rule of Romer," is something like the following: (1) does a law narrowly target a specific group, and impose upon it a broad and undifferentiated disability? (2) do the justifications offered by the State patently fail to offer a rational purpose for the law? (3) if the answers to (1) and (2) are yes, then one may *infer* the presence of irrational "animus." One does not *begin*, in other words, by searching the public record for "evidence" of "animus." In any heated debate, both sides are likely to hurl some dirt. Instead, one looks at the law itself and the justifications offered for it, and only infers "animus" if these first two conditions are not met.

"Those who wish to use Romer and the rational basis test to overturn conventional marriage laws are tilting at windmills."[45] This is so because:

> Laws defining marriage as a relationship between one man and one woman do not target a class of persons and deny that class the opportunity to protect itself politically against a limitless number of discriminatory harms and exclusions. Marriage laws define and regulate the institution of marriage, but they do not forbid any individual or group that seek the law's protection against *any kind* of public or private discrimination.[46]

Rather than being based upon "animus," marriage laws and laws limiting the benefits and privileges of marriage to married couples have a variety of rational purposes, including, but not limited to (1) encouraging childbirth within marriage, (2) offering and encouraging the advantages of dual-gender parenting, (3) providing positive educative effects, and (4) avoiding a slippery slope whereby marriage becomes anarchic and incoherent.[47]

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[44] Duncan, 6 *W & M B of R J* at 155.

[45] Duncan, 6 *Wm. & Mary Bill Rts. J.* at 157.

[46] *Id. See also generally* Duncan, From *Loving* to *Romer*: Homosexual Marriage and Moral Discernment, 12 *B.Y.U. J. Pub. L.* 239 (1998).

[47] Duncan, 6 *Wm. & Mary Bill Rts. J.* at 158-165; see also Duncan, 12 *B.Y.U. J. Pub. Law* at 245-248.

SJR 20

Public Testimony

Rev. Robert Buttcane
119 Seward St., Ste 1
Juneau, Alaska 99801

March 9, 2006

Alaska Senate Finance Committee
State Capitol
Juneau, Alaska 99811

RE: SJR 20

Dear Senators:

Thank you for this opportunity to participate in the public dialog on SJR 20. I see in the news that people and organizations outside of Alaska have also entered this discussion and it seems this outside effort has contributed to some confusion about the Alaska Supreme Court decision and SJR 20. I think it is important to reiterate what members of this committee undoubtedly realize, that with or without SJR 20, marriage in Alaska is and will continue to be a union of one man and one woman. The Alaska Supreme Court took no action to nullify the one man, one woman marriage provision in our constitution. Enacting or not enacting SJR 20 will not change the simple fact that same sex couples may not be legally married in the State of Alaska.

The Court decision behind SJR 20 is about a benefit of employment. The proponents of SJR 20 seek to prevent a same sex domestic partner of an employed person from accessing employer provided health insurance benefits. But would this resolution do that? The wording in SJR 20 is vague and imprecise. Specifically, what do the words "qualities or effects of marriage" really mean? Does this explicitly apply to employment benefits? Would the impact of this resolution go beyond that and give rise to other equal protection questions that must then be litigated?

I am now retired from state service but through my work with many of you over the years I understand how critical it is to consider the intended and unintended consequences of what we do as we enact laws and public policies. As we consider the consequences of SJR 20, I would propose one over riding question to guide this process. *Do we make the world a better place when we write inequality and discrimination into our constitution?*

Do we make the world a better place when we write inequality and discrimination into our constitution? Arguably not in Ohio where the court there has ruled that because of constitutional provisions similar to SJR 20 domestic violence restraining orders can not be issued in battering cases involving non-married persons. This same issue is being addressed in Utah as well.

Do we make the world a better place when we write inequality and discrimination into our constitution? Apparently not in Nebraska where it was ruled a domestic partner did not have a legal standing to make burial arrangements for his deceased same sex partner.

Do we make the world a better place when we write inequality and discrimination into our constitution? Not for the son of a Rockville Maryland father whose same sex partner had to leave his home before the court would allow him to visit his father in his father's home.

Do we make the world a better place when we write inequality and discrimination into our constitution? How will the provisions of SJR 20 impact equal rights and opportunities for housing, hospital visitation, contracts and probate? How much money and resource is the legislature willing to allocate in the future to answer court challenges to what it means to extend and assign the "rights, benefits, obligations, qualities or effects of marriage."

As a Christian, a minister, an Alaskan I am before you today to go on record in support of the spiritual and constitutional notion that, "all persons are equal and entitled to equal rights, opportunities and protection under the law." (Article 1, Section 1 of the Alaska Constitution.) Again I would ask that we keep one question in mind as we make our decisions about SJR 20. *Do we make the world a better place when we write inequality and discrimination into our constitution?*

Thank you for this opportunity to dialog with you on this matter and thank you for your continued work and service to all of the people of Alaska.

Sincerely,

Rev Robert Butteane

Rev. Robert Butteane

Cc: Senator Lyda Green, Senator Gary Wilken, Senator Fred Dyson, Senator Bert Stedman, Senator Lyman Hoffman, Senator Donny Olson

March 8, 2006

Members of the Senate Finance Committee,

I am urging you to please vote NO on SJR 20. This amendment, which purportedly is to protect marriage, has nothing to do with marriage and everything to do with fairness and equal treatment under the law. It would mandate discrimination and disparate treatment of unmarried individuals.

The idea of adding discrimination of a certain group of Alaskan citizens into our incredible constitution is abhorrent. Aren't we just now celebrating the 50th anniversary of this great document? (for more information please go to www.alaska.edu/creatingalaska/) Once discrimination against one group of persons is established by constitutional amendment, who will be next?

On a personal note, my partner and I (both 25 plus years living in this great state) recently opened our hearts and our home to my nephew's 19-month-old toddler. We are not young and raising a child was certainly not part of our life plan, but here we are. His parents are unable to adequately care for this little boy. I am mentioning this because I want you to realize that not only would this amendment make discrimination against me a law, it would also impact the life of this child. Every dollar my partner and I have to spend on health care (and I am a FNSB employee of 25 years) is a dollar less we can spend on this child. I'm sure most of you know from experience, children cost money!
It is unfair that I cannot share my benefits with my partner (my family) as my fellow married employees can. I've earned that benefit too.
Thank you for taking the time to read my testimony.

Jennine Williamson

Jennine Williamson
PO Box 156
Ester, Alaska 99725

My name is Mari Jamieson.
My testimony is regarding SJR20.
I have already been denied the right to legally recognize my partnership of 8 years in this state. This is not about marriage—the voters of Alaska have already determined that people of the same sex cannot marry, thus taking away the hundreds of tax and financial benefits that most citizens in this country are assured.

This is about equal pay for equal work.

I am a tax-paying citizen of this State and this Country Both my partner and I are self-employed small business owners. By the grace of God we both "get our own health care", as Representative Lynn so generously exhorted. I am speaking for those who need to help care for a spouse or their family and can't afford health care without their spouses help.

I want to know, if my elected representatives will not stand up for my community's rights as a minority, who will stand up for equality for myself and other gay citizens of this state. I do not wish to watch while once again, some rally their pitchforks to drag me and those in my community through the mud of misinformation and bigotry and I am frightened by the gradual erosion of the legal rights of my community. I am a good person and a contributing citizen of this state and country. Who is going to stand up for my rights?

I urge you to protect the rights of all citizens in this state.

March 9, 2005

Senate Finance Committee Hearing on SJR 20

Peter Nakamura, MD
Retired Citizen of Alaska
2346 KaSeeAn Drive, Juneau, Alaska 99801

Thank you for this opportunity to testify on SJR 20.

My name is Peter Nakamura. I am a retired physician and health administrator. I retired in 2001 after serving 10 years, as the State Director of Public Health under two different administrations. I have been married over 40 years and have a lovely wife and two successful children.

I feel fortunate to present my testimony since Thursday is the day that I have committed to delivering Meals on Wheels to the seniors and medically handicapped in the Valley. I see my being here today as an equally important responsibility. I see the need to speak up on an issue which I feel is vital for another group of Alaskans threatened with the loss of needed benefits and rights..

Upon reviewing SJR 20, I cannot help but view it as a hateful proposal to target a minority group based on prejudicial beliefs. If enacted, SJR 20 will target individuals whose beliefs and lifestyle are different from that of the originators of this bill as well as that of a cadre of their constituents. I recognize and appreciate that we are all different but those individuals targeted are similar in many ways to the proponents of this bill. They are not "bad Alaskans," "nonproductive contributors to our society and state," or pose an "endangerment to their neighbors." They are not targeted because they are criminals or leeches upon society. Just like you and I, they have a mix of ambitions, needs, educational attainments, personal dreams, contribute to society in different ways, and are good neighbors and friends.

Amending the constitution to achieve the goal of denying defined privileges to a targeted minority group is not only a misdirected cost of time, money, and energy, but a real danger. If successful, it will open Pandora's box to the prejudicial targeting of any minority group resulting in the denial of privileges and benefits. No minority rights will be safe. I believe that it is

our Constitution, with the interpretation of our higher courts, that these rights are intended to be protected.

The question often proposed by the proponents of this bill is whether the total population of this State should be given the opportunity to vote on this issue. There are times and issues where the vote of the populous is not needed and the judgment of our judicial system is to be held responsible for protecting the rights of the few. Voting on highly emotional or volatile issues is often based on prejudicial feelings and not on what is right. The situation in Palestine and Iraq are current examples of the democratic vote gone awry. At a hearing before the Senate Judicial Committee, I responded to this question by wondering if civil rights for Blacks would have been achieved if left to the vote of the residents of the South. I pondered if the fate of my family interned behind barbed wire fences might have been worse if it had been put to the vote of the Public: a public which expressed their opinions with bricks and rocks through store front windows. With their children dying in Pacific Battlefields, who could have expected parents to be concerned about the rights of my family and me? At times, the outcome is as important as the process.

It is only my opinion but I did want to go on record as opposing SJR 20, an unfair, unjust, and harmful, legislative proposal. Will you, Alaska, or I be any better if the proposed amendment is successful? I doubt it. Will some good citizens be harmed? Absolutely!

Thank you for the opportunity to speak up on this issue.

March 8, 2006
To: Senator Lyda Green, Senate Finance Committee
From: M. V. Lee Badgett, Ph.D.
Re: Positive effects on State of Alaska from domestic partner benefits

Including employees' domestic partners in public employers' health care and other benefits will have positive effects on state and local government employers in Alaska. The possibility of cost increases is usually high on the list of concerns, although a great deal of evidence suggests that cost increases will be small (Ash and Badgett, 2005; Badgett, 2000; Badgett, 2001; Badgett and Sears, 2005; Kohn 1999; International Society of Certified Employee Benefits Specialists, 1995). Just as important are the benefits that the State of Alaska will see if public employees' partners are eligible for benefits. Based on my own research and the research of other academics, I believe that the State of Alaska and other public employers will see the following benefits from offering benefits to same-sex and different-sex domestic partners:

1. *Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by $0.8-1.1 million per year.*
2. *Current employees will be healthier, more satisfied, and less likely to leave their jobs.*
3. *Domestic partner benefits will increase the ability of public employers to recruit talented and committed employees.*
4. *In addition to the benefits, health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.*

Below I present some calculations and summaries of studies that support these claims.

1. Spending related to Medicaid and uncompensated health care for uninsured people is likely to fall by $0.8-1.1 million per year.

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same-sex or different-sex partners—are much more likely to be uninsured or on Medicaid than are married people (Ash and Badgett, 2005). That study finds that if employers offer domestic partner benefits, some people who are currently uninsured are likely to receive insurance. Overall, calculations using Census data and other government data suggest that the State of Alaska could save $0.8-1.1 million dollars per year if public employers offer health care coverage to all domestic partners.

Census data show that 326 same-sex couples and 3398 different-sex unmarried couples in Alaska include one public employee (Census data analyzed by Gary Gates,

Ph.D.). Those couples have a total of 4,500 children under 18 living with them. National data suggest that 14% of the same-sex partners and 23% of the different-sex partners will be uninsured, so Alaska will cut the number of uninsured by 1,300-1,800 people by offering partner benefits, depending on how many children of these couples are uninsured. If uninsured partners of public employees sign up for an employee's health plan, then the state will save money on state-supported health care programs since uninsured people still require health care but often cannot pay for it. The state and local government contribution to uncompensated care averaged $276 per uninsured person according to a recent study (Hadley and Holahan, 2003, in 2005 dollars). Providing insurance to 1,300-1,800 people will reduce state and local expenditures for uncompensated care by one-third to one-half million dollars.

In addition, 2% of the same-sex partners and 4% of the different-sex partners are likely to be on Medicaid, suggesting that partner benefits could cut the number of Medicaid recipients by 242-333 people. Since the State of Alaska will pay half of the average Medicaid spending of $2,927 per child and $3,861 per adult, partner benefits could save the state $0.5 to 0.6 million per year. (These figures come from State Health Facts, www.kff.org, and are adjusted for inflation.)

Putting the two effects together—less uncompensated care and fewer Medicaid recipients—shows that the state could save $0.8 to 1.1 million per year in current health care-related expenditures. If the state covers only same-sex partners, the savings will be much smaller, approximately $50,000 per year.

2. Current employees will be healthier, more satisfied, and less likely to leave their jobs.

A growing body of research shows that offering domestic partner benefits has several positive effects on current employees. These effects on employees would likely benefit public employers in Alaska.

First, a supportive workplace climate and supportive policies, including domestic partner benefits, increase disclosure, or "coming out", of lesbian, gay, and bisexual employees. (Badgett, 2001; Button, 2001 Driscoll, Kelly, and Fassinger, 1996; Griffith & Hebl, 2002; Ragins & Cornwell, 2001; Ragins & Cornwell, forthcoming; Rostosky & Riggle, 2002)

Second, this increase in disclosure has positive benefits to worker health. Using different measures of general anxiety or anxiety in particular contexts, several studies found either that people who were more out reported lower levels of anxiety and less conflict between work and personal life, or that more closeted people reported higher levels of anxiety (Jordan & Deluty, 1998; Day & Schoenrade, 1997; Griffith & Hebl, 2002; Hall, 1989).

Third, lesbian, gay, and bisexual workers who are more out will be better workers. Several studies show that out workers report greater job satisfaction (Driscoll, Kelley, and Fassinger, 1996; Day & Schoenrade, 1997; Griffith & Hebl, 2002). In addition, Day & Schoenrade's survey participants who were more out also reported sharing their employer's values and goals more than workers who were more closeted.

However, some studies looked for but did not find this link (Ellis & Riggle, 1995; Ragins & Cornwell, 2001). A study by Ellis and Riggle (1995) shows that more out workers report higher levels of satisfaction with their co-workers. Finally, partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms (Ragins and Cornwell, forthcoming).

3. Domestic partner benefits will increase the competitiveness of public employers in recruiting and retaining talented and committed employees.

Many Alaskan employers already offer domestic partner benefits to employees, including Providence Health Systems Alaska, BP Exploration, Chevron, and Wells Fargo. Therefore, in order to remain attractive to employees who have or might someday have domestic partners, public employers will need to offer comparable benefits. In a national 2004 Harris Interactive/Witeck-Combs Communication poll, one third of heterosexual respondents believed that a law preventing employers from offering domestic partner benefits would have "quite a bit" or "a great deal" of an impact on employers' ability to recruit and retain the most qualified employees.

Indeed, evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found that 6% of heterosexual workers reported that domestic partner benefits would be the most important factor in deciding to accept a new job–more than those who would look for on-site child care. In that study, almost half (48%) of lesbian, gay, and bisexual employees said that partner benefits would be their most important consideration if offered another job. Furthermore, 7% of heterosexual workers who actually changed jobs reported that partner benefits were the most important factor in that decision—a factor almost as common as changing jobs for better retirement benefits (12%).

Offering domestic partner benefits also sends an important positive signal to a much larger group of employees. A 2004 Harris Interactive/Witeck-Combs poll finds significant support for the principle of equal benefits for all employees: 64% of heterosexual employees agreed that "Regardless of their sexual orientation, all employees are entitled to equal benefits on the job, such as health insurance for their partners or spouses." A recent study by Richard Florida found that heterosexual employees, even those without unmarried partners, often look for domestic partner benefits as a signal of an employer that values diversity and creativity. In a follow-up study, Florida argued that regions that do not embrace the benefits of diversity-friendly policies risk alienating the creative workforce that is the key to gaining a competitive edge in the global market. Public recognition of these benefits sends a strong signal to the private sector.

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for public employers, therefore offering partner benefits could lower those costs.

4. Health care costs would increase by a small amount, and the increase would likely be shared by public employers and employees.

The State of Alaska (and some local employers) provides employees with a "benefit credit" with which to pay for health insurance and other employee benefits. If an employee's benefit costs exceed the credit, then the employee pays the difference. In 2005-6, the benefit credit ranged from $705 to $852 per month for state employees whose benefits were administered by the state rather than a union. This benefit credit was sufficient to pay for one of the health care plans offered by the state, but at least employees would need to pay some share of the premium. Most importantly, the state's contribution (and the employee's monthly health premium) does not depend on the number of dependents that the employee has. Therefore, in the short run, the state's (and similar local employers') extra cost for domestic partner benefits would be zero.

Over time, though, as domestic partners and their children sign up for coverage, the state plan and union plans will incur additional expenses. Because the state's Select Benefits medical plan is self-insured, the state plan would be responsible for paying those costs. The costs incurred by the state will depend on whether the state pays for the added costs by increasing the benefit credit or whether those added costs are shifted to employees by keeping the benefit credit fixed while premiums rise.

To estimate the total cost of providing health insurance coverage to the domestic partners of state and local government employees in Alaska, I use the State of Alaska Group Health and Life Fund (from FY2005 financial report) as a proxy for all public employees affected. In 2005, the average annual health care expenses in this fund were $9,945 per employee. If each employee has on average two dependents, then the health care costs per person were $3,315. Multiplying that cost per person by the number of predicted partners gives the total cost increase to state and local employers. To calculate predicted partners we multiply the census figure for partners described earlier by the likely take-up rates for partners and children--19% - 27% for same-sex partners and 26%-35% for different-sex partners (Ash and Badgett, 2005)—since some partners will already have health insurance and others might not take up the coverage because employees will be taxed on any costs borne by employers. The number of new adults and children covered would be 2,100-2,800, adding $7-9 million in costs to state health care plans, which corresponds to a 5-6% increase in health care costs. If public employers extended health insurance benefits to domestic partners and children of same-sex employees only, the added costs would be $400,000 to $550,000, or a 0.3%-0.4% increase in health care costs.

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M. V. Lee Badgett, Ph. D.

M. V. Lee Badgett is a visiting professor at the Williams Project of UCLA Law School for 2005-6. She is also an associate professor of economics at the University of Massachusetts Amherst, where she is also on the faculty of the Center for Public Policy and Administration. Her work focuses on labor market discrimination based on sexual orientation, race, and gender, as well as family policy. She is the author of numerous academic articles and policy reports. Her book, "Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men" (University of Chicago Press), presents her groundbreaking work debunking the myth of gay affluence. Badgett received a Ph.D. in economics from the University of California-Berkeley in 1990, and has a BA in economics from the University of Chicago.

I was also little when I first struggled with their orientation. Don't say I don't want to be gay, we gay are hated

I am a heterosexual, retired commissioned officer, grandmother of five, mother of four, and foster mother of 45. Of those 45 foster kids, five identified themselves as gay or lesbian. It was through raising these teens that I came to truly understand that sexual orientation is not a choice. Since sexual orientation is not a choice, why consider denying rights based on it. It SAVes no money - if not gay could marry - all would be covered

As a female, I value my right to vote. It was only 1920 that we gained the right to vote. That was only 20 years before I was born. Probably few Americans now want to deny women the right to vote. It just sounds ridiculous to consider.

I was a young adult during the civil rights movement. We look back on those days and wonder why we denied individual rights based on the color of their skin. It was only 1964 that the 19th amendment was passed that assured the black vote. It seems so ridiculous when we look back. What were we afraid of?

Now we are standing at the pivotal point of rights for gay and lesbian. Let us not make those same stupid mistakes again. Forget about quoting the Bible. ~~There were~~ Bible verses quoted that supported denying rights to both women and blacks at the time. We don't consider them to apply now.

It seems to be such a contradiction of the Republican ideology of "less government" to find that now there is a consideration that the government move into the bedroom and deny rights based on sexual orientation. Alaska prizes its right to privacy as expressed in its Constitution. Government must stay out of the private lives of the people.

My hope is to live long enough to see everyone treated equally. Please help realize this dream by voting no on SJR 20.

Edith M Bailey
1030 Lieselotte Cr
Eagle River AK

Testimony before the Senate Finance Committee regarding SJR20

Jeanne Laurencelle
1136 Ivy Dr.
Fairbanks, AK 99709

I am Jeanne Laurencelle of Fairbanks, Alaska testifying for the Social Action Committee of the Unitarian Universalist Fellowship of Fairbanks.

Unitarians Universalists affirm the inherent worth and dignity of every person.
Our record is one of opposing slavery when it was a divisive issue.
Unitarians supported women's suffrage when it was a divisive issue.
We supported civil rights when other denominations shied away. History bears us out.
I am here today to testify on behalf of all unmarried couples, gay and straight. History will bear us out.

We absolutely reject the call to "let the people decide" in this matter. We assert that the rights of a minority should never be subject to the vote of a majority. This is a matter of justice.

We are proud that our constitution guarantees every Alaskan equal rights, opportunities, and protections under the law. This also is a matter of justice, which should not be undermined by legislation such as the proposed constitutional amendment - an amendment which was crafted with the express intent of depriving a group of Alaskans of rights and benefits.

I am pleased to report that the opinions of Lutherans, Episcopalians, Methodists, Presbyterians are evoloving to a greater recognition that gays and lesbians are valued individuals created and loved by God. A local example: Fairbanks Lutheran Church has adopted a resolution welcoming and valuing all people…regardless of sexual orientation. Gays are welcomed to fully participate in the life of the congregation.

Even Dr. James Dobson of Focus on the Family, who strongly opposes gay marriage and civil unions, is now supporting a benefits bill in Colorado that includes unmarried and same-sex couples. A February 19th article in the Christian Post quotes Dr. Dobson as calling it a "fairness bill." Further it states that "Focus believes the "reciprocal-beneficiary" bill they support will address the issue of benefits separately from marriage."

We are right there with Dr. Dobson. We too believe that this is a matter of fairness, and we too believe that benefits can be address separately from marriage.

If benefits for unmarried couples and gays are morally acceptable to the Christian Right in Colorado, they must be morally acceptable in Alaska too.

As I am sure you know, the cost of implementing benefits for state workers is miniscule. This is not a financial issue.

Focus on the Family endorses benefits legislation to include unmarried couples and same-sex couples in Colorado, so this cannot be a moral issue.

The Alaska Supreme Court found unanimously that the state must provide partner benefits for gay employees, so this is not a legal issue.

By process of elimination it seems that this must be an issue simply of discomfort and dislike, prejudice, driving a push to deprive others of rights and benefits.

I urge you to oppose SJR20, an unabashed attempt to discriminate against Alaskans.

Testimony on Senate Joint Resolution 20
before the Senate Finance Committee

of

James R. Johnsen
Vice President, Faculty and Staff Relations
University of Alaska

March 9, 2006

Thank you Chairs Green and Wilken for the opportunity to testify on this important piece of legislation.

I am here today representing the University of Alaska, an employer of approximately 4,700 full-time faculty and staff across the state. Including employees and their dependents, the university now covers approximately 10,000 lives with health and other benefits. Over the years the university has provided benefit programs that meet the needs of our employees and that, through aggressive management, are very cost effective.

As an employer, the university desires to protect an important benefit it now provides to its employees who are financially interdependent partners. Under the university's program, financially interdependent partners who meet at least thirteen criteria are provided health, tuition, and other benefits comparable to those provided to our married employees. As of November 2005, 111 employees had 147 dependents under the program.

The university wants to protect this benefit because we think it is in the best interest of the university and our employees. While most of our employees are Alaskans when they are hired, by necessity most of our faculty are recruited from a national and international market. In order to compete in that market for the top faculty and staff, we must offer a market competitive compensation package. Since close to half the universities across the nation provide domestic partner benefits, we believe it is critical that we provide similar benefits, for if we do not, we would limit considerably the pools of candidates for our positions.

At the same time this benefit is important for recruitment and retention, it is very inexpensive. The cost is less than 1.5% of the university's annual health benefits cost, under 1% of the university's overall benefits cost, and about one sixth of one percent of our overall compensation cost.

In closing, SJR 20, as currently conceived, would preclude the university from providing a benefit program that we believe is in the interest of our employees. We therefore respectfully request that you protect the university's strong interest in maintaining our financially interdependent partner benefits program.

Thank you.

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In order to protect the rights and benefits of all Alaskans, I urge you to oppose SJR20.

I am here this morning to speak against this bill on behalf of myself, my husband, and the social action committee of the Unitarian Universalist Fellowship of Fairbanks, of which we are members.

The proposed amendment violates my religious beliefs. Our principles affirm the inherent worth and dignity of *every* individual, and our faith has a long history of opposing religious and political intolerance. As people of faith we need to speak out against those would make "tolerance" a dirty word.

This resolution is wrong because it would enshrine the religious beliefs of one group into the state's constitution. When we let our constitution be used as an instrument of intolerance, as an attempt to legalize discrimination, we can no longer celebrate it as an enlightened document as we have this past year.

But this is not fundamentally an issue of religion. It is an issue of *fairness*, which is why the Alaska Supreme Court ruled unanimously that to deny benefits to the same-sex partners of public employees is unconstitutional. Changing the constitution to categorically deny rights to one group of Alaskans, does not make it more fair.

And because the bill is so broadly written it would not only discriminate against gay and lesbian couples and their children, it would deny equal compensation to heterosexual unmarried families as well.

But it not just a question of equality under the law. It is also good business: Nearly three-quarters of *Fortune* 500 companies offer domestic partner benefits. And the number of private companies extending equal benefits to all employees has been growing steadily – with an average of three employers per day adding domestic partner health coverage in 2003, and this trend has continued. Even Dr. James Dobson, head of the conservative Christian organization, Focus on the Family, supports a benefits bill that would include unmarried and gay families.

Bucking this trend will have direct economic consequences for public- and private-sector employers in Alaska. Even more than the anti-marriage amendment, this resolution would restrict competitiveness for companies. They may have to increase pay and other compensation to attract top candidates. They may have a harder time retaining existing workers, increasing their costs for hiring and training. We should leave Alaska employers the flexibility to define their benefits programs as their consciences and their business sense dictates. We should not tie their hands.

And finally, allowing this resolution to be put before voters in a general election is bad governance. The rights of the minority should never be subject to a popular vote by the majority. The rights of minorities must be weighed by a group of reasoned and ethical men and women who have been charged to act in the public interest. That means our elected officials or the courts. I am asking this committee to discharge that duty – and to get it right, so the courts don't have to.

Jana Peirce 820 Rifle Road, Fairbanks, Alaska 99712

Charles L. O'Connell
9851 Basher Drive
Anchorage, Alaska 99507
907-337-6452

My name is Charles L. O'Connell, I am a married 56 year Alaskan resident, with 5 Alaskan children, and I am speaking in opposition to SJR 20 for all 7 of us frequent voters

The First Americans have lived on our continent for at least 30,000 years; Columbus got close in 1492; the Pilgrims arrived in 1620; the Declaration of Independence was signed by 56 delegates on July 4, 1776; and our Constitution was ratified by fourteen states between 1787 and 1791.

Well guess what? Not one single person alive, during this entire period of our Nation's early history, had a marriage license that was issued by a government agency.

I am sure that the millions who were married during this historical period were recognized as married by their respective contemporaries. Why-oh-why is my country so caught up in this "marriage" debate? Marriage is not really a vital government issue, and it is time for politicians to back off...it is not a time to further limit the rights and benefits of citizens who share housing without a government marriage license. The marriage license, after all, was originally, and has always been a tyrannical way to legally oppress minorities.

People promoting this amendment are the same ideological purists who want to make some medical decisions between a woman and her doctor illegal, they want certain religious dogma in courthouses and schools, they brazenly interfere with the right to die, and they oppose enlightened scientific research with stem cells. For me nothing could be more threatening than this stupid continued interference in the personal privacy of some of Alaska's citizens with whom they do not agree.

This entire interference in marriage was created, in the first place, by government oppression of a consensual relationship between consenting adults of mixed race and now there are those in elective office who are seriously considering further limiting these constitutional rights and benefits based solely on who we live with. What the State should do is get out of the privacy of our homes and "provide for our public safety, and promote our general welfare".

Tyranny by the majority is extremely dangerous, remember we are all minorities in some degree!

Racial segregation, separate but equal, voting rights, equal access to educational opportunity, the right to inter-racial marriage, striking down sodomy laws. and the constitutional right to equal benefits are all the result of court decisions. Were it up to the tyranny of the majority, all of these enumerated rights would not exist.

Marriage has long been a vehicle used to oppress minority groups. I urge you to keep your oath of office and uphold the Constitution, don't turn your back and vote to limit it!

I urge you to oppose SJR 20.

Charles L. O'Connell

Charles L. O'Connell 3-9-06

Tim Stallard
1001 MIA Street
Fairbanks, AK 99712

Statement in opposition to SJR 20 – March 9, 2006

My name is Tim Stallard and I own a travel business here in Fairbanks. I am here today to oppose SJR 20 because it is discriminatory, it will hurt our tourism industry, and it is bad for Alaskan families.

I know this resolution will hurt our travel industry from personal experience. In fact this Resolution has already cost a Fairbanks businessman $20,000 in lost business. I am arranging an event for a large group this coming summer. Because of the possibility that the hotel owner might vote for this resolution, I decided to take my business elsewhere. I do not want to subject my customers to a business that might discriminate against them based on their marital status or who the love. Even discriminating against one of my clients is too many.

If our great state passes a discriminatory constitutional amendment, this will have negative repercussions across the travel industry. I think everyone has heard Las Vegas' travel slogan "what happens in Vegas, stays in Vegas." In other words, people go to Las Vegas – a very popular destination - to have fun and not to be judged. If Alaska rolls out a conditional welcome mat that says "Visit Alaska as long as you are not unmarried, divorced, gay, etc.," less people will want to come here. Just like a politician's campaign message, our travel industry's marketing message needs broad appeal that does not alienate potential visitors. The obvious discrimination of SJR 20 will scare visitors away from our state.

I know on a personal level that this resolution is anti-family and will have devastating affects on family finances. In addition to my travel business, I also work at the University of Alaska. My partner and I are enrolled in the the domestic partner benefits program. Through this program I am able to provide health care and other benefits to our children. I don't think I need to emphasis the importance of health insurance to Alaskan families. But, I fail to see any public policy benefit to denying health insurance to Alaskan families. As you probably know, the domestic partner

benefits program costs UA less than 2% of the total benefit program costs. So the cost is small, but the benefit to families and the employer are huge.

It is not UA who is out of touch with economic and social reality, it is the radical backers of this resolution. Approximately half of the Fortune 500 companies offer domestic partner benefits and more do each year. This includes companies such as Alaska Airlines, BP, Ford Motor Company, Home Depot, Motorola, and Wells Fargo. Offering domestic partner benefits is an industry best practice, which helps companies attract and retain the best, most creative employees.

My final point is that discrimination against non-traditional unmarried families is bad public policy. I am 32 years old and many in my generation are reluctant or wait a long time to get married. While my own parents have been married for more than 30 years, overall my parents' generation made a mess of marriage. Many of my friends don't want to get married because of their parent's rocky marriage relationships and ugly divorces. Also, many divorced parents are reluctant to marry their new partners. Regardless of the reasons that Alaskan parents are not married, it is personal and family business, not the State's.

The State's business is protecting children and that is why I ask you to kill this resolution in this committee. SJR 20 will ~~only~~ might save the state a small amount of money, while hurting our travel industry, and a having devastating financial impact on Alaskan families.

SJR20 March 9, 2006

My name is Karen Taft Wells. I have worked for the State of Alaska for 27 years.

The State Constitution supposedly says I have equal protection under the law.

What some of your colleagues have proposed to do is to take that right away from a certain class of people and say everyone in the state is protected except for gays and lesbians. By placing an initiative on the fall ballot you will be asking for discrimination against a certain class of people. I am one of those people. I sit before you to ask that you stop this bill right now.

The Supreme Court was right in their unanimous determination that same sex domestic partners should be entitled to State employee benefits. The Alaska constitution bars us from marrying and without that particular document; we are not able to receive the same benefits as our married co-workers and are being discriminated against.

Do you really believe the people of this state can navigate the legal waters better and more fairly than the Alaska Supreme Court? I don't. I think the wording of this initiative is mean spirited and seeks to discriminate against a class of employees that you, as the body that represents us, are responsible for protecting. Or, are you going to concur with these mean spirited people and say, yes, everyone in the state is equally protected except for gays and lesbians. A better question would be Lawyer of equal rights if they want to limit the = protection clause so that it no longer applies to unmarried couples

Please stop this initiative today by keeping it in this committee. Please see that I am human, just like you, that love arises in me the same as it does you and that there is no difference in that quality of love. Who cares if my love is for a woman rather than a man, what business is it of yours or the people of this state to judge who and how I love? It is just love, a source of energy available to me that adds to the goodness in the world and takes nothing away. It is pure, it is beautiful and worthy of the same treatment my married co-workers receive. I work side by side employees who are allowed to marry, thus qualifying for benefits. Those people receive benefits for their spouses and children. Since I am legally barred from marrying, I should be entitled to receive those same benefits from the state through domestic partnership criteria. Otherwise as I see it, you will be discriminating against me.

And lastly, what scares me the most is that amending the constitution for this purpose will set a standard for any other group that is not in the majority. Because I am a part of a minority group, should not lessen my value or worth as an employee. What group will be next? I bet you dare not speak it for you would be accused of an "ISM" or a "phobia". Why is homophobia ok, why are special interest groups coming from Colorado to widen the gap of intolerance and fear? Do you see what this is doing to me, to those I love, to the people of this state, the country, the world? We need tolerance of one another's differences and I think as our elected leaders, it is your responsibility to show the capacity for tolerance through leadership and not allow hate and fear to taint or communities. I will end with my favorite quote "If you bring forth what is within you, what you bring forth will save you, if you do not bring forth what is within you, what you do not bring forth will destroy you. Gospel of St Thomas Logan.

March 9, 2006
RE: SJR 20 – Senate Finance Committee

Senators,

This bill is playing with fire, and could be hugely expensive. From the fiscal note, the State apparently hasn't analyzed the cost of having same-sex families covered by employer-provided insurance vs. serving them under, for example, Medicaid, which is largely State funded. Or the extra cost of being forced by lack of insurance to postpone care until it requires an emergency room visit. These are tangled questions, but only the tip of the iceberg.

Of course, the financial impacts on the men, women and children in same-sex families of being denied health and other benefits can be severe, and I'm sure that many testifying here will describe those impacts. I'm not gay, and I have no first-hand experience being denied employment benefits on the basis of my personal identity.

I do, however, have personal experience growing up in a country divided by discrimination, and I think it's important to confront the costs of that. Surprising as it may seem today, when I was in high school, interracial marriage was illegal in most of the US. That was the will of the people. Blacks and whites were not free to marry until a unanimous decision of the Supreme Court in 1967. I'm not arguing in favor of gay marriage; that point is settled in Alaska. I'm talking about the incalculable costs, in family dissolution, poverty, bad schools, high crime, disproportionate access to health care, etc., etc. of trying to create and enforce a group of second class citizens. And I'm talking about the spiritual cost of injustice.

SJR 20 fuels ignorance and divisiveness. Putting this measure on the ballot invites the same types of costs as racial discrimination, and there are many more gays in Alaska than there are blacks. Further, public opinion is changing. Time Magazine recently cited a poll that showed only eleven percent of Americans think that gays are exercising a conscious choice. Sixty percent of all women and thirty-nine percent of men already understand that sexual orientation is innate – a quality that a person is born with – like skin color.

SJR 20 targets Alaskans and their children based on who they are. I would like to see some analysis of the implications of that, fiscal and otherwise, and I hope you would too. To get a qualitative idea of the cost of anti-gay discrimination, as a member of the Perseverance Theatre board of directors I invite you to our spring production of *The Laramie Project*, a play about the real-life hate-murder of a gay college student in Wyoming in 1998.

Thank you.

Scott Miller
4010 Ridge Way
Juneau, AK 99801

Friday, ~~March 17~~, 2006
April 28,

Good morning members of the committee. My name is Karen Wood and I am representing myself and my family. This is my partner of 14 years, Darla Madden, and this is our wonderful daughter, Willa NianFan Madden-Wood, who ~~will be~~ 6 years old ~~at the end of the month~~. Darla and I are two of the plaintiffs in the lawsuit against the State of Alaska whose Supreme Court decision brought this legislation before you.

I have lived in Juneau for nearly 17 years. I am employed by the State of Alaska and have been for 9 and 1/2 years. I currently work for the Office of Children's Services as a front line Child Protection worker. I have taken personal leave to be here today. Please allow me to share a little bit of our family's story and how this legislation, if passed, will continue to affect us personally. In 1999 when we joined the class action lawsuit, our daughter had not even been born yet. Darla and I became part of the lawsuit because we believed we were being discriminated against by not being able to cover one another under our respective health insurance policies. To date, we have spent 10's of thousands of dollars out of pocket that our married co-workers and their spouses did not have to spend. This affects our family in many ways, not only financially, but emotionally as it is yet another message to us that we are not equal to or as good as our straight, married co-workers.

Then came Willa! In 2001 we adopted our daughter as a tiny 10 month old infant. Our desire was for me to stay home with Willa for at least a few years because we believe it is important for a child to have that time with a parent to help with attachment and bonding. Because I could not be covered under Darla's health insurance and I have medical conditions that necessitate health care coverage, it was not an option to stay home with my daughter. Nor was it an option to work part-time as the State only provides insurance benefits to employees who work 30 hours a week or more. This decision not only affected Darla's and my life, most importantly, it affected our daughter's life.

This brings me to the most crucial issue for our family. If this legislation is passed and something happens to one of Willa's parents, the surviving parent cannot access survivor

benefits or the deceased partner's health benefits. This would certainly put our family at great risk financially. By writing discrimination into Alaska's constitution, you would not only be discriminating against us as gay and lesbian people, you would be discriminating against our children. I know that everyone here who is a parent wants and works for the very best life for our kids. We are no exception. Why should this child whom I love deeply and want to protect and provide for, be offered less than any child in this state whose parents are married? Why shouldn't she be allowed the same financial security and economic options as those children? There are thousands of children who live in families like ours throughout the State of Alaska. Please, do what you know in your hearts is right to allow our kids to be provided for as equals to the other children in our state.

If you are hesitating regarding your decision, I ask you to look at this face, right here beside me, as you would look into your own child's face, and please, do the right thing.

Thank you all for your valuable time and consideration.

Sincerely,

Karen E. Wood
9626 Stikine St.
Juneau, AK 99801
PH. 790-2941

"Injustice anywhere is a threat to justice everywhere". - Dr. Martin Luther King Jr.

UAS Faculty Senate
March 24, 2006

RESOLUTION

ON

CONSTITUTIONAL AMENDMENT: BENEFITS & MARRIAGE
(SJR 20 AND HJR 32)

WHEREAS, Discrimination against faculty on the basis of marital status is expressly prohibited by the University of Alaska Board of Regents Statement of Non-discrimination; and

WHEREAS, the UAS Faculty Senate affirms the importance of complying with university non-discrimination policies; and

WHEREAS, to comply with SJR 20 and HJR 32 the university would deny financially interdependent partners (FIPs) insurance benefits, family membership at the Student Recreation Center, tuition waivers, faculty housing, and other valuable benefits currently offered counter to university policy prohibiting discrimination based on marital status; and

WHEREAS, The Faculty Senate affirms that providing insurance and other benefits to FIPs is a valuable way to recruit and retain excellent faculty; now

THEREFORE BE IT RESOLVED, That the UAS Faculty Senate is opposed to SJR 20/HJR 32; and

BE IT FURTHER RESOLVED, That the UAS Faculty Senate commends the University of Alaska statewide administration for its ongoing support of financially interdependent partner (FIPs) benefits.

Pres-elect for Lynn Shepherd. 3/29/06

Signature Date

Lynn Shepherd, UAS Faculty Senate Chair

Senate Finance Committee Testimony
In opposition to SJR 20

My name is Marsha Buck. I am here representing PFLAG Juneau. PFLAG stands for Parents, Families, and Friends of Lesbians and Gays. I am here to testify in opposition to SJR 20.

Throughout history there have been people who are marginalized by their culture, and the costs of that marginalization to the society has been enormous. In biblical times the people who were treated as "the least" were the lepers, the mentally ill, and of course the poor. In our own country in the past, Africans or blacks were placed on the margins as slaves, and later were treated as if they were of little value by the way in which education and rights were parceled out. Today my daughter, who loves and has children with another woman, and others like her are being intentionally placed on the margins of our society in the USA. Gay, lesbian, bisexual, and transgender citizens are being treated by a faction in our nation - and by this Resolution - as if they are of less value than you and me, as if they are not fully human and therefore not worthy of equal rights and benefits.

I have no desire to display my sexuality before you as a committee any more than I have a desire to display my religion, but it is clear to me that there are those who, in the name of Christianity, are loudly and repeatedly advertising an agenda that in effect says that it is OK to think less of my daughter, that it is OK to offer less benefits for my grandchildren, and that somehow it is legitimate to discriminate against the family I love. I am deeply Christian and I find this strategy to be not Christ like.

I sincerely believe we all need to remember, at our peril, the words spoken long ago, words that are still true today: "In as much as you have done it unto one of the least of these, my brethren, you have done it unto me." (Matthew 25: 40)

Please vote NO on SJR 20.

Marsha Buck
April 25, 2006

222 Seward Street, Suite 210
Juneau, Alaska 99801

Telephone (907) 586-2200

DIXIE A. HOOD, M.A.
Marriage, Family & Child Counselor

April 28, 2006

Senate Finance Comm.
State of Alaska Legislature

Madam Chair and Members,

I am a Licensed Marriage and Family Therapist in private practice in Juneau. I have been a resident of Alaska for more than 30 years.

As a citizen, I am alarmed and offended that our representative democracy at the State, as at the national level, is being undermined in so many ways through political opportunism.

Proposing an amendment to our State constitution which would further deprive many Alaskans of their civil rights and equal protection is unjust and totally contrary to the ideals of our democracy.

For hundreds of years, women and Blacks in the United States were denied equality by laws determined by the majority.

I'm old enough to remember World War II and the german condemnation of Jews, gypsies and homosexuals.

I participated in the civil rights movement of the 1960's I have continued as an advocate for civil rights on behalf of women, the elderly, gays and persons with disabilities.

Putting civil rights up for a popular vote is shameful. There have been scientifically valid surveys of public opinion measuring support for the Bill of Rights. When these historic statements were not identified as amendments to the U.S. Constitution, the majority of American subjects sampled were opposed to them!

Discrimination based on self-interest, ignorance or righteousness is all too common in this day and age. It has no place in Alaska.

I urge yonall to stand up for our highest aspirations as a democratic Society. Stop this proposal to deny rights and benefits based on marital status.

Yours truly,
Dixie A. Hood

Alaska State Legislature

Please enter into the record my testimony to the SENATE FINANCE committee name

committee on SJR 20 bill/subject, dated 3-8-06.

SENATE JUDICIARY CMTE. 2-28-06

I was on hold for the teleconference for a long time and had to get back to work. I just wanted to state my opposition to SJR 20. This resolution would force me to try to explain to the twelve year old and nine year old I'm raising with my partner why their government is trying to legislate against their family. This resolution, if passed, would force me to try to explain irrational hate and fear to the youngest members of my family.

There are many theocratic reasons why people will support this resolution. But, I would like to remind the committee that we live in a democracy not a theocracy, and as you know, a theocracy is government ruled by or subject to religious authority; whereas a democracy is defined by the principles of social equality and respect for the individual within a community.

The timing of this resolution, the timing of the hate speech, legislation and fear mongering regarding homosexual people always tends to gear up when we are running up to elections- whether they be local- state- or federal. I'm making a plea, an honest plea- please stop playing politics with my family. Please stop using my life to divide our communities our state and our nation. And I know that a great deal of supporters of this resolution take issue with being called Nazi's- as anyone would. But, I think it is important to remind the committee that Jews, Catholics, Gypsy's as well as Gays and Lesbians were legislated against and then systemically persecuted. And while I would NOT call anyone on the committee a Nazi; I think it is important to recognize that there are real historical examples of governmental persecution that scare people-that the possibility that it COULD happen is real SIMPLY b/c it has. I would suggest the committee examine why the parallels are being drawn by some.

And, on a personal note, I would like to say hello to Senator Seekins who was on my number one rated morning show in Fairbanks on Wolf 98.1fm when he was running against John Davis. And I was openly gay at that point in my life and I'm fairly certain that the Senator knew that, b/c after all it is Fairbanks.

Thank you for your time,
Michelle R. Wozniak
8405 Jupiter Drive
Anchorage, AK 99507

Representing (Optional)

Address

Phone No.

Testimony on Senate Joint Resolution 20
before the Senate Finance Committee

of

James R. Johnsen
Vice President, Faculty and Staff Relations
University of Alaska

March 9, 2006

Thank you Chairs Green and Wilken for the opportunity to testify on this important piece of legislation.

I am here today representing the University of Alaska, an employer of approximately 4,700 full-time faculty and staff across the state. Including employees and their dependents, the university now covers approximately 10,000 lives with health and other benefits. Over the years the university has provided benefit programs that meet the needs of our employees and that, through aggressive management, are very cost effective.

As an employer, the university desires to protect an important benefit it now provides to its employees who are financially interdependent partners. Under the university's program, financially interdependent partners who meet at least thirteen criteria are provided health, tuition, and other benefits comparable to those provided to our married employees. As of November 2005, 111 employees had 147 dependents under the program.

The university wants to protect this benefit because we think it is in the best interest of the university and our employees. While most of our employees are Alaskans when they are hired, by necessity most of our faculty are recruited from a national and international market. In order to compete in that market for the top faculty and staff, we must offer a market competitive compensation package. Since close to half the universities across the nation provide domestic partner benefits, we believe it is critical that we provide similar benefits, for if we do not, we would limit considerably the pools of candidates for our positions.

At the same time this benefit is important for recruitment and retention, it is very inexpensive. The cost is less than 1.5% of the university's annual health benefits cost, under 1% of the university's overall benefits cost, and about one sixth of one percent of our overall compensation cost.

In closing, SJR 20, as currently conceived, would preclude the university from providing a benefit program that we believe is in the interest of our employees. We therefore respectfully request that you protect the university's strong interest in maintaining our financially interdependent partner benefits program.

Thank you.

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Rev. Robert Butteane
119 Seward St., Ste 1
Juneau, Alaska 99801

March 9, 2006

Alaska Senate Finance Committee
State Capitol
Juneau, Alaska 99811

RE: SJR 20

Dear Senators:

Thank you for this opportunity to participate in the public dialog on SJR 20. I see in the news that people and organizations outside of Alaska have also entered this discussion and it seems this outside effort has contributed to some confusion about the Alaska Supreme Court decision and SJR 20. I think it is important to reiterate what members of this committee undoubtedly realize, that with or without SJR 20, marriage in Alaska is and will continue to be a union of one man and one woman. The Alaska Supreme Court took no action to nullify the one man, one woman marriage provision in our constitution. Enacting or not enacting SJR 20 will not change the simple fact that same sex couples may not be legally married in the State of Alaska.

The Court decision behind SJR 20 is about a benefit of employment. The proponents of SJR 20 seek to prevent a same sex domestic partner of an employed person from accessing employer provided health insurance benefits. But would this resolution do that? The wording in SJR 20 is vague and imprecise. Specifically, what do the words "qualities or effects of marriage" really mean? Does this explicitly apply to employment benefits? Would the impact of this resolution go beyond that and give rise to other equal protection questions that must then be litigated?

I am now retired from state service but through my work with many of you over the years I understand how critical it is to consider the intended and unintended consequences of what we do as we enact laws and public policies. As we consider the consequences of SJR 20, I would propose one over riding question to guide this process. *Do we make the world a better place when we write inequality and discrimination into our constitution?*

Do we make the world a better place when we write inequality and discrimination into our constitution? Arguably not in Ohio where the court there has ruled that because of constitutional provisions similar to SJR 20 domestic violence restraining orders can not be issued in battering cases involving non-married persons. This same issue is being addressed in Utah as well.

Do we make the world a better place when we write inequality and discrimination into our constitution? Apparently not in Nebraska where it was ruled a domestic partner did not have a legal standing to make burial arrangements for his deceased same sex partner.

Do we make the world a better place when we write inequality and discrimination into our constitution? Not for the son of a Rockville Maryland father whose same sex partner had to leave his home before the court would allow him to visit his father in his father's home.

Do we make the world a better place when we write inequality and discrimination into our constitution? How will the provisions of SJR 20 impact equal rights and opportunities for housing, hospital visitation, contracts and probate? How much money and resource is the legislature willing to allocate in the future to answer court challenges to what it means to extend and assign the "rights, benefits, obligations, qualities or effects of marriage."

As a Christian, a minister, an Alaskan I am before you today to go on record in support of the spiritual and constitutional notion that, "all persons are equal and entitled to equal rights, opportunities and protection under the law." (Article 1, Section 1 of the Alaska Constitution.) Again I would ask that we keep one question in mind as we make our decisions about SJR 20. *Do we make the world a better place when we write inequality and discrimination into our constitution?*

Thank you for this opportunity to dialog with you on this matter and thank you for your continued work and service to all of the people of Alaska.

Sincerely,

Rev. Robert Butteane

Rev. Robert Butteane

Cc: Senator Lyda Green, Senator Gary Wilken, Senator Fred Dyson, Senator Bert Stedman, Senator Lyman Hoffman, Senator Donny Olson

To: Senate Finance Committee March 7, 2006

RE: Please VOTE NO on SJR-20; it's an over-reaction, & not sound financial practice

For the record, I am Sara Boesser of Juneau, and, for the record, I'm very surprised at the over-reaction of forces behind SJR-20. You'd think, from all the fuss being made, that the Alaska Supreme Court had required the state to recognize civil unions. You'd think domestic partnerships had somehow been given legal status like marriages. You'd think that, suddenly, every employer in the state was required to give benefits to gay couples. None of that is true. I don't see anything like that in last fall's court opinion.

Now, I'm not a lawyer, but I can read. All I see in that opinion is something about public employees and their benefit system. I see the court saying that people sitting next to each other doing the same work for the state or the city should be compensated with the same kind of benefits for their families. That's how the merit system should work – equal pay and equal benefits based on job performance.

I can see how people can disagree about what can be called a marriage and what can't be. I can see how people can disagree about whether or not there should be a statewide system of granting civil unions. I can even see why some people might not want to elevate domestic partnerships to the same legal status as marriage. But, what I don't see is why it's so hard for people to agree that the merit system of public employment demands that all employees receive the same benefits for their families.

You're the Finance Committee. Regarding good financial decisions: nearly 50% of Fortune 500 businesses grant domestic partner benefits because it's good business practice. National AARP grants DP benefits because it's good for their employees. If domestic partner benefits are sound enough financial decisions for this wide a range of worker compensation plans, then I can't see how anyone would think it a bad financial decision for the State of Alaska.

Same sex marriage is not at issue, despite what people crying wolf would have you believe. Same sex marriage was made illegal in 1998 and it's still illegal after the court decision. Marriage restricted to one man one woman is not under any threat by the court workers' benefit decision.

I think the legislature should just implement that very narrow court decision, and NOT pass out SJR 20. SJR 20 is a severe over-reaction, not at all necessary. We're all being made to spend a lot of time and energy on a red herring, a straw argument, a problem that doesn't exist. The court decision was about the benefits system for state and city employees, period. Just fix the benefits system, let SJR 20 die, and let's be done with this divisiveness.

Thank you,
Sara Boesser

Sara Boesser 9365 View Drive, Juneau, AK 99801 bsara.alaska@gci.net 907-586-0769