ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8784 HOUSE STATE AFFAIRS

or station and contributions to endowments established to benefit those stations. a person engaged in the business of mining in the state is allowed as a credit against the tax due under this chapter

(1) 50 percent of contributions of not more than $100,000; and

(2) 100 percent of the next $400,000 [$100,000] of contributions.

* Sec. 11. AS 43.65.018(d) is amended to read:

(d) In each tax year, contributions [A CONTRIBUTION] claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, or AS 43.75.018, exceed $450,000 [$150,000].

* Sec. 12. AS 43.75.018(a) is amended to read:

(a) Subject to (d) of this section, for [FOR] cash contributions accepted for direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment, by an Alaska university foundation or by a nonprofit, public or private, Alaska two-year or four-year college accredited by a regional accreditation association, and for contributions accepted by a nonprofit, noncommercial public Alaska educational radio or television network or station and contributions to endowments established to benefit those stations, a person engaged in a fisheries business is allowed as a credit against the tax due under this chapter

(1) 50 percent of contributions of not more than $100,000; and

(2) 100 percent of the next $400,000 [$100,000] of contributions.

* Sec. 13. AS 43.75.018(d) is amended to read:

(d) In each tax year, contributions [A CONTRIBUTION] claimed as a credit under this section may not

(1) be claimed as a credit under another provision of this title; and

(2) when combined with credits taken during the taxpayer's tax year under AS 21.89.070, AS 43.20.014, AS 43.55.019, AS 43.56.018, or AS 43.65.018, exceed $450,000 [$150,000].

* **Sec. 14.** This Act applies to tax years beginning after the December 31 that precedes the effective date of this Act.

* **Sec. 15.** This Act takes effect January 1, 1996.

Alaska State House of Representatives
House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SECTIONAL ANALYSIS for HOUSE BILL 269

Section 1: Purpose statement. Describes which state taxes credits may be applied against for contributions to instate public educational radio and television networks and stations and to endowments to benefit public educational radio and television stations.

Section 2: Extends tax credits for public broadcasting from the insurance premium tax and the tax on title insurance premiums. Increases the maximum credits under the insurance premium tax and the tax on title insurance premiums to $450,000 or 50% of the taxpayer's tax liability. This is a new credit.

Section 3: Explains that contributions claimed as a credit under AS 21.89.070 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 4: Extends tax credits for public broadcasting from the Alaska Net Income Tax program (AS 43.20). Increases the contributions to $500,00 for all programs eligible to receive these contributions.

Section 5: Explains that contributions claimed as a credit under AS 43.20.014 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 6: Extends tax credits for public broadcasting from the Oil and Gas Properties Production Tax program (AS 43.55). Increases the contributions to $500,00 for all programs eligible to receive these contributions.

Section 7: Explains that contributions claimed as a credit under AS 43.55.019 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 8: Extends tax credits for public broadcasting from the Oil and Gas Exploration, Production and Pipeline Transportation Property Tax program (AS 43.56). Increases the contributions to $500,00 for all programs eligible to receive these contributions.

Section 9: Explains that contributions claimed as a credit under AS 43.56.018 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 10: Extends tax credits for public broadcasting from the Mining License Tax program (AS 43.65). Increases the contributions to $500,00 for all programs eligible to receive these contributions.

Section 11: Explains that contributions claimed as a credit under AS 43.65.018 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 12: Extends tax credits for public broadcasting from the Fisheries Taxes program (AS 43.75). Increases the contributions to $500,00 for all programs eligible to receive these contributions.

Section 13: Explains that contributions claimed as a credit under AS 43.75.018 may not exceed $450,000 and may not be claimed as a credit under more than one provision of this title.

Section 14: Clarifies tax year application.

Section 15: Effective date of January 1, 1996.

Alaska State House of Representatives
House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Aklak, Alaska 99552
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Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 269

With reduced funding proposed for public broadcasting, I have introduced House Bill 269 to provide an alternative funding source and lessen the general fund demand for this service.

This legislation provides a tax credit for contributions made to instate public radio and television stations and networks. The credit to public broadcasting is limited to $450,000; 50% of the first $100,000 in contributions and 100% of contributions of the next $400,000. The new limits also apply to the university system and library and museum acquisitions. The tax credit would be applied against a taxpayer's liability under the following tax types: the insurance premium tax (AS 21.09.210), tax on title insurance premiums (AS 21.66.110), corporation income (AS 43.20), oil and gas production (AS 43.55), oil and gas property (AS 43.56), mining license (AS 43.65) and fisheries business (AS 43.75). The credit claimed under one of the tax types may not be claimed under another tax type.

A different maximum for the insurance premium tax and the title insurance tax is established. An attached memorandum from Legislative Counsel Jack Chenoweth explains the limitation.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 23, 1995

SUBJECT: Draft CSHB 269 ( ) (Work Order No. 9-LS0937\F)

TO: Representative Ivan Ivan
ATTN: Tom Wright

FROM: Jack Chenoweth
Legislative Counsel

This bill draft splits the authority for the contributions, leaving the existing contribution schedules for museums, libraries, and University purposes unaffected, but adding a credit for contributions to public educational radio and television networks and stations and endowments established to support them.

Unlike the original bill, this draft expands the credit to cover contributions that may be claimed as credits against insurance tax-related sources under AS 21.89.070--specifically, the insurance premium tax, AS 21.09.210, and the title insurance premium tax, AS 21.66.110. For the credits against that pair of taxes only, a different maximum is established. That ceiling may be lower than is provided in credits against other taxes. The credit ceiling for contributions claims as credits against the insurance taxes is further limited to "50 percent of the taxpayer's liability under [AS 21]." That limitation was in place for contributions made for libraries, museums, and university purposes and I simply extended it to cover contributions for public educational radio and television networks and stations and endowments established to support them.

My recollection is that the "50 percent of the taxpayer's liability under [AS 21]" language was included when the credit was first authorized under AS 21.89.070(a) to reflect the fact that (1) revenue derived from the insurance taxes were not significant--certainly in no way approximated amounts received from the corporate income tax or the severance tax, for example--and (2) that, without that kind of ceiling, it might be possible for the taxpayer to claim the entire amount of tax liability as a credit, thereby leaving no return of revenue to the state. Those considerations prompted me to bring the ceiling concept forward into this draft committee substitute.

JBC:glc
95-260.glc

Talkeetna Community Radio, Inc.

P.O. Box 300
Talkeetna, Alaska 99676

Telephone (907)-733-1700
Fax (907)-733-1700

Honorable Representative Ivan Ivan
Room 503
Alaska State Capitol Building
Juneau, Alaska

March 27, 1995

Dear Representative Ivan,

As a Public Broadcaster in a small rural Alaskan community, I strongly urge all Representatives on the House State Affairs and House Finance Committees to support House Bill Number 269 promoting legislation to allow tax credits for contributions to educational radio and television networks, stations, and endowments. In these lean fiscal times, I believe that such tax credit incentives are a logical, innovative and appropriate measure to insure that some vital educational services continue to be provided to the Alaskan public.

Many rural citizens who listen to educational radio in the Talkeetna, Trapper Creek, and surrounding communities also support such legislation, because their access to these services is increasingly threatened by a lean economic base and decreaasing State funding.

Thank you for your support and attention to this issue.

Sincerely,

Julianne McGuinness
Station Manager
KTNA-FM

KYUK BETHEL BROADCASTING, INC.
Pouch 468 Bethel, Alaska 99559 (907) 543-3131 Fax: 543-3130

March 23, 1995

Representative Ivan Ivan
House of Representatives
State of Alaska
Juneau, AK 99811
FAX:465-2278

Dear Representative Ivan:

A quick note to give my support to HB 269, the Tax Credit bill for public broadcasting. The bill will give public broadcasting entities a tool to use to encourage corporate support of the service.
Thank you.

Sincerely,

John A. McDonald
General Manager
Bethel Broadcasting Inc.

Funded in part by the Alaska Public Broadcasting Commission

HB

308

ATTN: PAULA

Second Regular Session

Sixtieth General Assembly

LLS NO. 96-0749.01D JGG HOUSE BILL 96-1291

STATE OF COLORADO

BY REPRESENTATIVES Musgrave, Acquafresca, Adkins, Agler, Congrove, Dean, Epps, Lamborn, Martin, May, Owen, Pankey, Paschall, Pfiffner, and Prinzler;
also SENATOR Alexander.

REREVISED

STATE, VETERANS & MILITARY AFFAIRS

A BILL FOR AN ACT

CONCERNING THE INVALIDITY OF MARRIAGES BETWEEN PERSONS OF THE SAME SEX.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Creates an exception to the provision that all marriages validly contracted outside this state are valid in Colorado to provide that same sex marriages shall not be valid. Prohibits marriages between persons of the same sex in Colorado.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 14-2-112, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

14-2-112. Application. All marriages contracted within this state prior to January 1, 1974, or outside this state that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state, EXCEPT MARRIAGES PROHIBITED IN THIS STATE UNDER SECTION 14-2-110 (1) (d).

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.

SECTION 2. 14-2-110 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

14-2-110. Prohibited marriages. (1) The following marriages are prohibited:

(d) A MARRIAGE BETWEEN PERSONS OF THE SAME SEX.

SECTION 3. No appropriation. The general assembly finds that this bill can and shall be implemented within the department of law's current appropriation.

SECTION 4. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

1291

-2-1-907-463-3351

ALASKA
CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

April 2, 1996

The Honorable Jeannette James
Alaska House of Representatives
State Capital
Juneau, Alaska 99801-1182

RE: **Constitutional Analysis of SB 308**

Dear Representative James:

I am writing on behalf of the members of the Alaska Civil Liberties Union to express our opposition to Senate Bill 308, on the grounds that the bill is unconstitutional. Senate Bill 308 proposes legislation that will violate the Full Faith and Credit Clause of the United States and Alaska Constitutions. Under SB 308, Alaska judges will be unable to recognize, for any purpose, an entire category of a sister state's valid marriages. Additionally, SB 308 violates the Alaska Constitution's Equal Protection Clause, Privacy Clause, and the prohibition against discrimination based on sex. The legislation SB 308 proposes is highly unusual and unwise, and will leave Alaska hanging out in the fringes of American law begging for an expensive legal challenge.

The ACLU of Alaska urges you, to request that the House State Affairs Committee forward SB 308 to the Judiciary Committee for a full review of the constitutional issues and raised by this letter and the March 28,1996 memorandum written by legislative counsel Terri Lauterbach.[1] After analyzing legislation almost identical to SB 308, Colorado Governor Roy Romer vetoed this legislation for the following reasons:

> Regardless of motivation, this bill I have before me now is simplistic and divisive. It is simplistic because it ignores important legal and constitutional questions and addresses only one part of the issue. It is divisive because it singles out a group of Coloradans for condemnation, equating their relationships with incest and bigamy. That is hurtful, and it is counter to Colorado's rich tradition of tolerance and freedom.

March 25, 1996 letter from Gov. Romer to the Colorado House of Representatives.

Representative James, the Alaska Civil Liberties Union urges you to remember Alaska's own rich tradition of tolerance and freedom, and the language of our Constitution, as you consider SB 308.

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[1] In Terri Lauterbach's opinion:

> SB 308 raises constitutionality issues under both the state and federal constitutions. Sections 1 and 2 of the bill might be successfully challenged under the state constitution's equal protection clause, privacy clause, and the clause prohibiting discrimination based on sex. Section 2 of the bill might be successfully challenged under the federal constitution's 'full faith and credit clause.'

March 28, 1996 Memorandum From Terri Lauterbach to Senator Johnny Ellis.

I. Constitutional Arguments Against SB 303

A. The Full Faith and Credit Clause

Hawaii regards a marriage certificate issued pursuant to its marriage law to be prima facie evidence of a validly contracted marriage.[2] It is no secret that this bill is specifically aimed at Hawaii because Hawaii might, in the future, permit same-sex marriage. Thus, SB 308 is a direct affront to the state of Hawaii. The legislature proposes to place Alaska in a precarious position by declaring that Alaska will never honor a category of Hawaii's legal judgments. Will Hawaii respond by refusing to recognize Alaska judgments? For example, in response to Alaska's new law, a Hawaiian court could refuse to enforce the judgment of an Alaska court in favor of an Alaska business against a creditor residing in Hawaii.

The Alaska and United States Constitutions provide that judgments of one state shall be recognized as valid in other states. The federal Clause reads:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State.

U.S. Const. Art. IV, § 1.

The Supreme Court has not yet ruled on the issue of whether marriages must be accorded Full Faith and Credit. Several state and lower federal courts have ruled that marriages must be given full faith and credit even where the marriage would not be recognized under the laws of the forum state.[3] The Full Faith and Credit Clause establishes a general constitutional policy in favor of uniform recognition of marriages that are validly contracted under the laws of other states.

If SB 308 passes, a legal and practical nightmare will be created. Individuals will find themselves simultaneously married and unmarried in different parts of the country. Such a situation is untenable, both in terms of federalism and in terms of an American's reasonable expectation to exercise their fundamental right of marriage.

It does not take a great deal of imagination to see that passing SB 308 is the first step in creating a country where each state acts independently, leading to the breakdown of the rule of law. Each Alaska Representative should consider whether the risk of the break down of interstate relations is too high a price to pay for a piece of legislation which has been drafted in response to a decision that has not yet even been made by the Hawaii Supreme Court.

B. The Right to Interstate Travel

The right to interstate travel was first recognized by the Supreme Court in Crandall v. Nevada, 73 U.S. (6 Wall) 35 (1867). In 1969, the United States Supreme Court held that a state

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[2] Haw. Rev. Stat. §§ 527-1 and 527-13(c)(1985).

[3] See, e.g., Thomas v. Sullivan, 922 F.2d 132, 134 (2d Cir. 1990)(New York does not recognize common-law marriages but must give full faith and credit to marriages that are valid under the laws of other states); Orsburn v. Graves, 210 S.W.2d 496 (Ak. 1948)(Arkansas must give full faith and credit to validly contracted Texas common-law marriage); Succession of Rodgers, 499 So.2d 429, 295 (Ct. App. La. 1986)(Louisiana does not recognize or permit common-law marriages, but must give effect to them when validly contracted in another state); Commonwealth ex rel. Alexander v. Alexander, 289 A.2d 83, 86 (Pa. 1971)(Pennsylvania must give full faith and credit to a Georgia marriage certificate).

cannot discriminate against people entering its territory by imposing unconstitutional conditions on the right to enter. See Shapiro v. Thompson, 394 U.S. 618, 631 (1969). Cases decided under the right to travel provide strong, additional support for the argument that failure to recognize a marriage that is validly contracted under the law of another state is inconsistent with a person's fundamental right to travel freely throughout all fifty states of the nation.

Alaska's refusal to recognize a marriage validly contracted under the laws of Hawaii places a direct and tangible obstacle in the path of interstate migration. This refusal also implicates other constitutional provisions relating to due process, the right to travel and move freely throughout the nation, equal protection, interstate commerce, and privileges and immunities, as well as the fundamental right to marry itself. For example, a married couple residing in Hawaii who wished to move to another state to accept an employment opportunity or for medical treatment, would have to choose between their marriage and their right to travel.[4] Under the Analysis discussed in footnote 4, below, Alaska will need to demonstrate a compelling interest in banning same sex marriages, since Alaska's law impinges on at least two fundamental rights: the right to marry and the right to travel.

C. Equal Protection

The Supreme Court of Hawaii based its decision on the rationale that banning same sex marriages is invidious discrimination on the basis of sex which violates the Constitution of Hawaii. Baehr v. Lewin, 852 P.2d 44 (Hawaii 1993). Of note, the Alaska Constitution expressly provides that "no person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin." Art. I, § 3. On this point, Legislative Counsel Terri Lauterbach points out:

> The Alaska Supreme Court could very well use the same reasoning as the Hawaii Supreme Court did. Our state also has a constitutional provision that specifically prohibits discrimination based on sex, thereby making it a particularly important classification for purposes of applying the balancing test used under the state's equal protection clause. This means that, in Alaska, the state would also have to show a compelling state interest in prohibiting same-sex marriages if the court found that the prohibition discriminated on the basis of sex. Unless the court could find a compelling interest that escaped the notice of the official commission in Hawaii, the prohibition against same-sex marriages would likely be found unconstitutional as a violation of the state's equal protection clause.

March 28, 1996 Memorandum from Terri Lauterbach to Senator Johnny Ellis (footnote omitted).

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[4] In refusing to recognize a couples' valid marriage, Alaska may be found to be "unduly interfere(ing) with the right to 'migrate, resettle, find a new job, and start a new life.'" Shapiro v. Thompson, 394 U.S. 618, 629 (1969). In Shapiro, the Court found that the Equal Protection Clause incorporated the right to travel and employed a strict scrutiny analysis. The strict scrutiny analysis requires the State to demonstrate a compelling interest in the proposed regulation which cannot be served by a more narrowly tailored means. In Shapiro, the Court found that state and federal provisions denying welfare benefits to persons who had not resided within the jurisdiction for at least a year deterred and penalized travel. Subsequently, in Dunn v. Blumstein, 405 U.S. 330, 339-340 (1972) the Court held that Shapiro did not rest upon a finding that denial of welfare actually deterred travel. The Dunn Court clarified that the compelling state interest test is triggered by "any classification which serves to penalize the exercise of [the right to travel]."

In 1996, those who oppose SB 308 have testified that since marriage is traditionally defined as a union between people of different sexes, same sex marriages do not require recognition. It is important to remember that while marriage has traditionally been defined as a union between people of different sexes, it was also traditionally defined as between people of the same race. As recently as 1967, the majority of state governments denied interracial couples the right to marry. Subsequently, the United States Supreme Court clarified that since Americans have a fundamental right to marry, Virginia's interest in preventing interracial marriages was not sufficient to justify the abridgment of "one of the vital personal rights essential to the orderly pursuit of happiness by free people." Loving v. Virginia, 388 U.S. 1 (1967).

Just as the United States Constitution protects people from discrimination based on race, the Alaska Constitution protects all Alaskans from discrimination based on sex. Therefore, under Alaska law, arguably a marriage license may not be denied on the basis of the sex of either of the applicants. Clearly, under Alaska law, the State's purpose in denying equal protection of law to a citizen based on sex, must be balanced against the nature and extent of the infringement of individual rights. The state's justification that marriage is traditionally defined as a union between men and women, is unlikely to withstand the Alaska Supreme Court's Equal Protection analysis. In thinking about a future legal challenge to SB 308, the legislature should consider whether there is a stronger public policy against same-sex marriages in 1996, than there was against interracial marriages in 1967.

II. Conclusion

The United States and Alaska Constitutions embody a common sense expectation that basic freedoms do not expire when citizens cross state lines. If a person is married in one state, that person has a right to expect all other states to recognize a validly contracted marriage. The Alaska Civil Liberties Union urges you to vote no on SB 308 because the bill is unconstitutional and will tie Alaska up in needless, expensive and protracted litigation which the state will undoubtedly lose.

Respectfully yours,

Lynn Stimler
Executive Director

(1)

Lane-55
Oleg ~~U.S. Citizen~~ Cit of St of AK

freedom, and unless its action affects all alike, it destroys their equality.

One of the tenets advocated by the Republican majority in Congress is the lessening of government regulation. This I applaud as a recognition of the independence of the American spirit which is the product of our freedom & equality. Every governmental encroachment on our privacy diminishes our American spirit.

The government itself has no rights other than those granted it by the people. The government, therefore, cannot dictate our private relationships as it has no such power. In Alaska the people took

(I think I skipped all this)

↓

The state does not grant nor take away the rights of American citizens. They are a part of the Constitution that is the foundation of this country. The state may implement or modify these rights for the protection of the rest of the people but it cannot constitutionally infringe on the exercise of rights that do not affect others.

What sets the U.S. apart from other nations and makes it a strong leading nation, is the freedom & equality accorded its people. When the government intrudes into the private lives of its people, it take away from that

(2)

spoken clearly that the right of privacy should be a right of Alaskan citizens. The state therefore cannot infringe on our privacy nor grant to some individuals rights & others without breaching our constitution.

The government should stay out of our bedrooms & car lives. ~~The state~~

Some raise arguments about a "slippery slope" in opposition to our acceptance of the right to control our own dying. This slippery slope could be extended to the right to marry or to recognize marriages - so that maybe one could not marry a left-handed person or a Canadian or a

(3)

native person. These are all part of the same coin - if laws have exist to prohibit marriage between certain persons, where does the government stop?

~~Right to die bill~~

This bill must be defeated to protect the Right of the state of Alaska from being forced into discrimination.

FAX TRANSMISSION SHEET

Date: 4-10-96

To: Melody Fax # 465-2267

Of Home Rule

From: Sylvia L. Short, Attorney at Law
705 West 47th Ave.
Anchorage, AK 99503
Telephone/Fax: (907) 562-4992

Subject: SB 308 Testimony

Transmitted herewith: My notes

Message: With apologies!

Operator: Sylvia

Family News

8686 Explorer Drive
Colorado Springs, CO 80919
(719) 531-3397

UPDATE ON SAME-SEX MARRIAGE BANS

April 3, 1996

ALABAMA: In Senate committee. Introduced by Sen. Armistead. Committee vote scheduled for 4/10. Black caucus keeps putting it on hold they have until May 9th to get it passed.
Sen. Armistead (334) 242-7877.

ALASKA: HB 227 introduced and is currently dead in house education and social services committee. However Senate Bill 308 which is clearer has passed Senate by vote of 16 to 3 on 3/28. In house, waiting to be assigned to committee.
Michael Johnston-Kerusso Ministries (907) 333-4673.

ARIZONA: Introduced legislation Monday March 25th. Prohibits same sex marriage and prohibits other state's marriage. They're using their strike all amendments provision and pulling an amendment adding sexual orientation to a hate crimes package to put in a same sex marriage ban. Has yet to considered.
Len Munsil (602) 922-3101.

CALIFORNIA: passed house by a vote of 41-34, now goes to Senate. hearings not scheduled until April 15th. Defines marriage and prohibits recognizing Hawaii marriages.
Assb. Pete Knight (916) 445-7498.

COLORADO: Passed out of house by one vote and Senate by 20 to 14 vote 3/12. Defines marriage. Romer vetoed bill 3/25 saying Colorado law already prohibits same sex marriage and called the bill devisive.
Rep. Marilyn Musgrave (303) 866-3706

FLORIDA: Is introducing legislation.

GEORGIA: Passed house by vote of 135 to 10, Feb. 14. Passed Senate 47-0 3/14. Defines marriage, refuses licenses from other states. Governor signed into law, April 2nd.
Rep. Ron Crews (770) 451-2038.

HAWAII: Working on constitutional amendment which would solve the same sex marriage issue. Has passed house, tied up in senate, but citizens are lobbying hard. Must pass senate judiciary committee by April 4th, they need one more vote.
Mike Gabbard (808) 523-7739.

IDAHO: Passed the House 66-4 and Senate by 24-6 vote. Governor Batt signed 3/18.

ILLINOIS: Passed out of Senate by a vote of 42 to 9. House recessing until After April 10. Should have enough votes in house to over ride veto as well.
Coalition for Traditional Values Virginia Nurmey (217) 586-4647.

IOWA: Passed house by vote of 86 to 11 Feb. 20. Killed in Senate Judiciary committee. They had enough votes if they get have gotten it out of committee. Already has marriage definition.
Rep. Steve Grubbs (319) 333-2460.

KANSAS: House member introduces amendment to ban same sex marriage to Senate bill 515 dropping requirement that judges must okay underage marriage. It passes 81-24 on March 20th. Now goes back to Senate for conference vote on April 4th.

MISSISSIPPI: Had votes in senate and house to pass it, but with shut downs for weather, the legislature was unable to get to it.

MISSOURI: Introduced two bills in assembly. HB 1454 prohibits marriage of homosexuals. Second bill HB 1455 would prohibit adoptions by homosexuals. Hearing scheduled 3/27 but stalled because of political manuvering.

MICHIGAN: Has a couple bills to ban same sex marriage. One to prohibit state from recognizing marriages from other states and one to outright forbid same sex marriages.

NEBRASKA: Had amendment ready to go, but governor said it wasn't necessary. Attorney General's office says not so. (Bill to legalize same sex marriage was killed.)
AG Don Stenberg (402) 471-2682.

SOUTH CAROLINA: In house judiciary committee. No action taken so far. Has to be out by May 15th in order to be voted on.

SOUTH DAKOTA: Passed house Jan. 31 by 49 to 18 vote and senate Feb. 15 by a 26 to 8 vote, signed by governor. Feb. 17
Rep. Roger Hunt (605) 773-3851.

WASHINGTON: Passed house by 66 to 33, killed by Senate committee. Defined marriage.
Rep. Bill Thompson (360) 786-7892.

KENTUCKY: 3 bills to prohibit recognition of same sex marriage, 1 defines marriage, 1 prohibits recogniztion of same sex marraiges from other states, and 1 amendment. Passed Senate. However died in House.

TENNESSEE: Passed senate almost unanimously with one abstention. Family Institute says they believe it will pass house easily. Has already passed committees, expect house floor vote week of April 15th. State would not recognize same sex marriages performed in other states and it defines marriage.

UTAH: First to pass legislation in '95.

VIRGINIA: Killed in committee early in session.

WISCONSIN: Bill introduced 3/18. Prohibits same sex marriages and those from other states. AB 1042. Running out of time, doubts if it will be able to even come up.
Rep. Lorraine Seratti (608) 266-5660.

WYOMING: bill failed. Budget year, legislature didn't want to deal with it. Will probably pass next year.

LEGAL SERVICES

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

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 28, 1996

SUBJECT: Same-Sex Marriages (SB 308)

TO: Senator Johnny Ellis
Attn: Lynn Kenney

FROM: Terri Lauterbach
Legislative Counsel

You have asked whether there are constitutionality issues raised by SB 308, a bill that would prohibit same-sex marriages in Alaska and prohibit recognition of, or enforcement of contracts relating to, same-sex marriages validly contracted elsewhere.

In my opinion, SB 308 raises constitutionality issues under both the state and federal constitutions. Sections 1 and 2 of the bill might be successfully challenged under the state constitution's equal protection clause, privacy clause, and the clause prohibiting discrimination based on sex. Section 2 of the bill might be successfully challenged under the federal constitution's "full faith and credit clause" (art. IV, sec. 1, U.S. Constitution[1]).

DISCUSSION

Section 1 of SB 308 clarifies existing law by providing that marriage "is a civil contact entered into by one man and one woman," thereby prohibiting marriages from being entered into in Alaska by two men or two women.

The Supreme Court of Hawaii has determined that this type of prohibition discriminates on the basis of sex. Baehr v. Lewin, 852 P.2d 44 (Hawaii 1993). Because "sex" is a suspect classification under the Hawaii constitution, the court held that the statute prohibiting same-sex marriages was "presumptively unconstitutional" under its equal protection clause unless the state could meet a two-pronged "strict scrutiny" test: (1) demonstration of a compelling interest to justify the discrimination and (2) a showing that the law prohibiting same-sex marriages was narrowly drawn to avoid unnecessary abridgment of constitutional rights. The

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[1]The pertinent part of art. IV, sec. 1, of the U.S. Constitution reads as follows: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

court's decision included strong language identifying the "fundamental" nature of marriage as a civil right, including the following passages:

> The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free people.
>
> So "fundamental" does the United States Supreme Court consider the institution of marriage that it has deemed marriage to be "one of the 'basic civil rights of [men and women.]'"

The Hawaii supreme court sent the case back to a lower court to determine whether the prohibition against same-sex marriages could meet the strict scrutiny test.

The lower court has not yet issued its decision under the supreme court's test. However, the Hawaii legislature established an official Commission on Sexual Orientation and the Law to study related issues. It has been reported in the Juneau Empire that this commission issued its final report earlier this year. Among its conclusions, according to the Juneau Empire, was that there were no state interests compelling enough to justify the prohibition of same-sex marriages in Hawaii.

The Alaska Supreme Court could very well use the same reasoning as the Hawaii Supreme Court did. Our state also has a constitutional provision that specifically prohibits discrimination based on sex, thereby making it a particularly important classification for purposes of applying the balancing test used under the state's equal protection clause.[2] This means that, in Alaska, the state would also have to show a compelling state interest in prohibiting same-sex marriages if the court found that the prohibition discriminated on the basis of sex. Unless the court could find a compelling interest that escaped the notice of the official commission in Hawaii, the prohibition against same-sex marriages would likely be found unconstitutional as a violation of the state's equal protection clause.

Section 2 of the bill might also be unconstitutional for the same reason. By withholding recognition of same-sex marriages performed in other jurisdictions while recognizing other marriages performed in those jurisdictions, the state would be discriminating in the same way that it discriminates under section 1 of the bill - on the basis of sex. Our court could well find that, by singling out these marriages as being contracts that are unenforceable in this state, the state is denying equal protection of its laws.

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[2]The Alaska constitution's privacy clause would likely be considered as an additional reason for requiring that a compelling state interest be shown to justify prohibition of same-sex marriages. The rights involved in decisions relating to marriage and family matters have long been recognized to be within the realm of privacy.

Section 2 might also fail under the federal constitution's provision that requires that states give "full faith and credit" to the "public acts, records, and judicial proceedings" of other states. Since marriage is a public act involving a judicial proceeding recorded in the records of sister states, the court could find that our state must recognize those marriages. This could be so even though marriage has long been considered to be an area that may be regulated by the states. The U.S. Supreme Court found unconstitutional a Virginia law under which Virginia would not recognize interracial marriages even though 30 states banned interracial marriages around that time. Loving v. Virginia, 388 U.S. 1 (1967) The states' interests in regulating marriage had to give way when the constitution was violated.

If you have further questions on this issue, please let me know.

TML:glc
96-189.glc

Alaska State Legislature

Sen. Lyda Green, Chairman
Sen. Loren Leman, Vice-Chairman
Sen. Mike Miller
Sen. Johnny Ellis
Sen. Judith Salo

State Capitol
Room 423
Juneau, Alaska 99801-1182
907-465-3762

Senate Committee on Health, Education and Social Services

Sponsor Statement -- SB 308

An Act clarifying a statute relating to persons who may legally marry; relating to same-sex marriages; and providing for an effective date.

Senate Bill 308 amends the existing statute governing marriage in Alaska, to clarify that marriage is a civil contract entered into between "one man and one woman". The current statute uses the gender-neutral term "person". In light of recent litigation on the subject of same-sex marriages, including the case *Brause and Dugan v. State of Alaska*, the existence of such ambiguous language in statute is problematic.

In a March 31, 1995, written opinion the Department of Law expressed that only marriages between persons of the opposite sex would likely be recognized by the courts as authorized under current law, despite the gender-neutral language in the statute. This opinion is based on the fact that the original Alaska Marriage Code of 1963 specified that marriage is a contract entered into by a "man" and a "woman". The change to "person" in 1974 was the result of a revisor of statutes bill. There was no intent by the legislature to change the definition or requirements for marriage in a substantive way.

Nevertheless, the Department of Law acknowledged in its opinion that the existing language is problematic: "Using hindsight, we would have to say that the 1974 revisor's bill should not have amended AS 25.05.011 in the way that it did. First, the change to sex-neutral language *can be viewed as making a major substantive change in the law*, inappropriate for a revisor's bill." [emphasis added] In order to eliminate ambiguity, SB 308 restores the traditional language in the marriage definition.

SB 308 also adds new language to the marriage statute stating that same-sex marriages recognized by other states or foreign countries are void in Alaska. This language is in response to the 1993 decision of the Supreme Court of Hawaii in *Baehr v. Lewin*, in which the court ruled that it may be unconstitutional for

Hawaii to disallow same-sex marriages, absent a compelling interest by the state. The case was remanded to the lower court which will rule on the case in July or August 1996.

The prospect of same-sex marriages being allowed in Hawaii or other states raises the possibility that Alaska would have to recognize such marriages if the "couples" moved to Alaska. Absent a strong legal policy in Alaska which excludes same-sex marriages, the courts could find that a marriage valid in one state is valid in all states. The people of Alaska have not chosen, either directly or through their elected representatives, to recognize same-sex marriages. The issue of same-sex marriages is one that should be decided by Alaskans, not by a court in Hawaii or any other state.

A third component of SB 308 states that a "same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage." This language precludes the state from recognizing same-sex "domestic partnerships" which are not legal marriages, but could be deemed to be entitled to the benefits of marriage, especially in the context of employee benefits.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 308

Revision Date:
Title: "...clarifying a statute relating to persons who may legally marry; relating to same-sex marriages..."
Sponsor: Senate HES
Requester: Senate HES

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services
COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 25.05 to clarify that, in Alaska, marriage is a civil contract entered into by one man and one woman that requires both a license and solemnization. The bill also clarifies that a marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state. The bill further provides that a same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage. The bill therefore clarifies what the Department of Law believes is already the law in Alaska and, consequently, there should not be a fiscal impact for the department.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 3/15/96

Richard L. Pegues, FOR

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 3/15/96
Agency: Department of Law

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Talking Points on Senate Bill 308

States that have enacted bans on same-sex marriage:

Idaho (signed into law, 03-18-96)
Utah (first state to enact law -- 1995)
South Dakota (signed into law, 02-17-96)

States where same-sex marriage bans have passed both houses:

Colorado (vetoed by Governor, 03-25-96)
Georgia (waiting for Governor to take action)

States where same-sex marriage bans have passed one house:

California
Iowa
Kansas
Oklahoma
Washington

States where same-sex marriage bans have been approved by at least one committee of referral:

Alaska
Illinois
Tennessee

States where same-sex marriage bans have been introduced:

Alabama
Arizona
Missouri
Michigan
Kentucky
South Carolina
Wisconsin

TOTAL: 20

Responses to arguments

Argument: SB 308 will inevitably be challenged in court, thus involving the state in expensive and avoidable litigation. The legislature should spend its time on more useful endeavors.

Response: the state is already involved in expensive litigation on this issue (e.g., *Brause & Dugan vs. State of Alaska* and *Tumeo and Wattum vs. University of Alaska*). SB 308 is certainly not the *cause* of this litigation, but it is a prudent *response* to it. In fact, SB 308 may very well help the state *avoid* future litigation on these issues by clarifying statutes which currently have a degree of ambiguity.

Sunday, Sept. 3, 1995

The Anchorage Times

Publisher: BILL J. ALLEN
"Believing in Alaskans, putting Alaska first"
Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN
The Anchorage Times Commentary in this segment of the *Anchorage Daily News* does not represent the views of the *Daily News*. It is written and published under an agreement with former owners of *The Times*, in the interests of preserving a diversity of viewpoints in the community.

Social engineering

AS THE University of Alaska begins a new term, employees are being introduced to a new wrinkle in their health care benefits. It's called "financially interdependent partners."

As mandated in a ruling earlier this year by Fairbanks Superior Court Judge Mary Greene, the university is offering the same health care benefits to unmarried couples as it does to married ones. The UA is appealing Greene's ruling to the Alaska Supreme Court but is implementing the program while it awaits a final resolution.

Unmarried couples qualifying under the interim program are not necessarily heterosexual. Man-man or woman-woman partners are OK, as long as they are living together and sign an affidavit of financial interdependency — meaning each claims to be responsible for the common welfare of the other and for the children either may have.

Up until now, a legal marriage contract was required as the basis for extending employee health care benefits to a spouse and children. Now, apparently, anything goes.

Setting aside the moral and social implications, consider the economic costs involved.

If the decision is allowed to stand, it is a given that it will automatically extend to every state and local government employee, and before too long to the private sector.

Employees would find themselves in a position of almost unlimited possibilities for interdependent partnerships. Just sign an affidavit and bring a friend, relative, neighbor or whoever — and their kids — under the umbrella of state health care insurance.

Sexual intimacy is not one of the conditions needed for partners to qualify under the interim health benefit program. All that is necessary is an informal promise between two people that they intend to live together and support one another.

The potential costs of extending health coverage to many thousands of additional people are substantial. Judge Greene apparently didn't consider those costs. Let's hope the Supreme Court does.

The sanctity of marriage, the legal commitment in the vows of husband and wife, the obligations of raising a family, and the contributions of families to the community are far too important to simply downgrade and dismiss as being on a par with "financially interdependent partners."

It is one thing for consenting adults to choose their own lifestyles and relationships. It's quite another for government to legitimize — or finance — those choices. Government should not be doing that.

Whether or not the high court overturns Judge Greene's ruling, the Legislature next session should take action to clarify state law regarding public employee benefits.

State policy must recognize and uphold, not erode, the legitimacy of the marriage contract.

FORUM / LETTERS

Hawaii's step toward gay marriage too far for U.S.

By LISA SCHIFFREN

As study after study and victim after victim testify to the social devastation of the sexual revolution, easy divorce and out-of-wedlock motherhood, marriage is fashionable again.

And parenthood has transformed many baby boomers into advocates of bourgeois norms.

Indeed, we have come so far that the surprise issue of the political season is whether homosexual "marriage" should be legalized. The Hawaii courts will likely rule that gay marriage is legal, and other states will be required to accept those marriages as valid.

Considering what a momentous change this would be — a radical redefinition of society's most fundamental institution — there has been almost no real debate. This is because the premise is unimaginable to many, and the forces of political correctness have descended on the discussion, raising the cost of opposition.

But one may feel the same affection for one's homosexual friends and relatives as for any other, and be genuinely pleased for the happiness they derive from relationships, while opposing gay marriage for principled reasons.

"Same-sex marriage" is inherently incompatible with our culture's understanding of the institution. Marriage is essentially a lifelong compact between a man and a woman committed to sexual exclusivity and the creation and nurture of offspring.

For most Americans, the marital union — as distinguished from other sexual relationships and legal and economic partnerships — is imbued with an aspect of holiness. Though many of us are uncomfortable using religious language to discuss social and political issues, Judeo-Christian morality informs our view of family life.

Though it is not polite to mention it, what the Judeo-Christian tradition has to say about homosexual unions could not be clearer. In a diverse, open society such as ours, tolerance of homosexuality is a necessity.

But for many, its practice depends on a trick of cognitive dissonance that allows people to believe in the Judeo-Christian moral order while accepting, often with genuine regard, the different lives of homosexual acquaintances. That is why, though homosexuals may believe that they are merely seeking a small expansion of the definition of marriage, the majority of Americans perceive this change as a radical deconstruction of the institution.

Some make the conservative argument that making marriage a civil right will bring stability, an end to promiscuity and a sense of fairness to gay men and women. But they miss the point.

Society cares about stability in heterosexual unions because it is critical for raising healthy children and transmitting the values that are the basis of our culture.

Whether homosexual relationships endure is of little concern to society. That is also true of most childless marriages, harsh as it is to say. Society has wisely chosen not to differentiate between marriages, because it would require meddling into the motives and desires of everyone who applies for a license.

In traditional marriage, the tie that really binds for life is shared responsibility for the children.

A small fraction of gay couples may choose to raise children together, but such children are offspring of one partner and an outside contributor. What will keep gay marriages together when individuals tire of each other?

Similarly, the argument that legal marriage will check promiscuity by gay males raises the question of how a "piece of paper" will do what the threat of AIDS has not. Lesbians seem to have little problem with monogamy, or the rest of what constitutes "domestication," despite the absence of official status.

Finally, there is the so-called fairness argument. The government gives tax benefits, inheritance rights and employee benefits only to the married. Again, these financial benefits exist to help couples raise children. Tax reform is an effective way to remove distinctions among earners.

If the American people are interested in a radical experiment with same-sex marriages, then subjecting it to the political process is the right route. For a court in Hawaii to assume that it has the power to radically redefine marriage is a stunning abuse of power.

To present homosexual marriage as a fait accompli, without national debate, is a serious political error. A society struggling to recover from 30 years of weakened norms and broken families is not likely to respond gently to having an institution central to most people's lives altered.

□ Lisa Schiffren was a speechwriter for Vice President Dan Quayle.

to the proposed business improvement District (BID) for downtown Anchorage. I would caution everyone involved to look carefully at the impact to downtown Anchorage from the Native Cultural Center opening next summer.

and ice rinks, at least not one that would justify the kind of expenditure Bystrum is talking about. But be thinks we need one — and need it in an area inaccessible to most Mountain View, Fairview and

Same-sex marriage debated in Senate

■ *Proposed legislation would ban them here*

By MARK SABBATINI
THE JUNEAU EMPIRE

A proposal prohibiting same-sex marriages in Alaska sparked debate today about family values, the Bible and courtrooms.

Supporters said the Senate bill, introduced Friday, is a reaffirmation of traditional marriages. They also said it is needed to clarify current law to avoid legal challenges that could arise this summer when a decision in a Hawaii same-sex marriage court case is expected.

But opponents who testified at a Senate Health, Education and Social Services Committee meeting today called the bill gay-bashing and said current state law already effectively bans such marriages.

"I feel right now like my daughter is being threatened and discriminated against by the same people who were elected to lead us," said Marsha Buck, a member of Parents and Friends of Lesbians and Gays, a Juneau group. "This attempt not only appears to be unnecessary, but mean-spirited and hurtful."

Senate Bill 308 states a legal marriage is "entered into by one man and one woman," denies state benefits to those in same-sex relationships and declares same-sex marriages from other states "void" here. The law would apply to past as well as future same-sex marriages.

Another hearing on the bill, sponsored by the HESS committee, is scheduled Wednesday.

Sen. Loren Leman, an Anchorage Republican who chaired today's meeting, said he considers same-sex marriages wrong and believes government has a duty to protect core institutions of society such as the family.

"Government has a role to uphold several things," he said. "One is to uphold order in society."

Leman said the bill is also needed to reaffirm state law because of a court case in Hawaii where an appeal involving several same-sex marriages is being considered.

The Hawaii Supreme Court ruled in 1993 the state's refusal to issue marriage licenses violated

Please see Marriage, Page 8

Marriage...

Continued from Page 1

the state's constitutional guarantee of equal protection. The case has been referred back to the trial court for review on whether the state has a compelling interest in banning such marriages, and a ruling is expected this summer.

Sara Boesser, a member of the Southeast Alaska Gay and Lesbian Alliance, said the Alaska bill amounts to gender discrimination. She predicted it would be struck down by federal courts, after a costly legal battle by the state.

"This is the most blatantly anti-gay and lesbian bill in the Legislature," she said.

Opposition to the bill was voiced by Rep. Kim Elton, a Juneau Democrat, who said it is unnecessary and a waste of the Legislature's limited time.

"I don't think government has any right to tell me whether my chosen form of happiness is inappropriate," said Elton, who is married to writer MaryLou Elton.

Elton questioned why the bill was able to get a hearing on such short notice when legislation on more important issues is being ignored.

"It is certainly not an issue on the same scale of welfare reform, as short- and long-term budgeting, as managing our natural resources," he said.

(Front page)

Legislation would prohibit same sex marriages

By DAVID GERMAIN
Associated Press Writer

JUNEAU — Same-sex marriages would be prohibited under proposed state legislation, with supporters saying it would preserve traditional families and opponents calling the measure discriminatory.

The bill was debated Monday in the Senate Health, Education and Social Services Committee, which introduced the measure last week. Most testimony at the hearing came from gay men and lesbians who said the measure would deprive them of the same rights granted to heterosexuals.

In practice, Alaska law already prohibits same-sex marriages. Supporters said the bill was introduced to make the law clearer and to preempt a pending court decision on same-sex marriages in Hawaii.

Susan Hargis, board chairman for the Southeast Alaska Gay and Lesbian Alliance, said she has made a lifetime commitment with a woman she would like to legally wed.

"I certainly don't want one, but if I went out and had a sex-change operation, I could get married," Hargis told the committee. "That's bizarre."

Sen. Loren Leman, a committee member, said he believes homosexual marriages undermine traditional families and social values.

"I'm a proponent for monogamous, heterosexual marriages," said Leman, an Anchorage Republican. "I believe that kind of family is the strongest foundation of society, and I think same-sex marriages are inappropriate."

The Rev. Howard Bess, a Baptist minister at the Church of the Covenant in Wasilla, opposed the bill, saying he knows many gay couples.

"They are every bit as committed, every bit as monogamous, every bit as stable, every bit as wholesome as a heterosexual marriage," Bess said.

State law does not specify that marriages must be only between a man and a woman, though the Alaska attorney general's office has said that courts probably would uphold only opposite-sex marriages the way the rules are now written.

Alaska is being sued by two men who were denied a marriage license in Anchorage last year, said assistant attorney general John Gaguine. Their claim is that prohibiting a same-sex marriage is unconstitutional, Gaguine said.

The bill would spell out that marriages could take place only between a man and woman. Leman said that would clarify state law and protect Alaska from a court ruling that might allow same-sex marriages in Hawaii.

The Hawaii Supreme Court in 1993 ruled in favor of three gay couples who claimed they had been illegally denied marriage licenses. The justices sent the case back for trial in a lower court, which is scheduled to hear arguments this summer.

That case has prompted efforts to enact same-sex marriage bans in about 25 states to preempt the chance that Hawaii courts might allow two men or two women to wed. States typically recognize each other's statutes, meaning other states might have to acknowledge same-sex marriages that take place in Hawaii.

Hargis said she and her partner "would be on a plane tomorrow to Hawaii" if same-sex marriages were legal there.

Leman said the proposed legislation would prevent gay and lesbian couples in Alaska from wedding in Hawaii then returning home and seeking to have the marriage legally recognized here.

The measure also would help uphold legislation passed by the state House last month that would allow employers to deny health and retirement benefits to workers' unmarried domestic partners, Leman said. That bill was prompted by a lawsuit last year by two University of Alaska employees with same-sex partners.

With the Legislature's Republican majority at odds with Democrats and Gov. Tony Knowles on balancing the state budget, Democrats said the same-sex marriage bill was wasting time.

"Get real," said Senate Minority Leader Jim Duncan. "There's more important things to address."

In his 1994 campaign, Knowles said he opposed same-sex marriages, but spokesman Bob King said the governor has not had time to review the legislation.

Senate OKs same-sex marriage ban

By DAVID GERMAIN
The Associated Press

JUNEAU — A bill to prohibit same-sex marriages in Alaska passed the state Senate Thursday, with supporters saying it would help preserve traditional families and opponents calling it discriminatory.

The bill would rewrite Alaska law to specify that only marriages between a man and a woman are legal. Current law does not contain that gender provision, though in practice, Alaska already prohibits men from marrying men or women from marrying women.

Sen. Loren Leman, R-Anchorage, who is a key supporter of the legislation, said the bill would clarify the state's policy prohibiting same-sex marriages.

The measure also would protect the state from a pending Hawaii court case that could allow same-sex marriages there, possibly forcing Alaska to recognize such marriages that take place in Hawaii, Leman said.

"All of us are derived from heterosexual unions," Leman said. "Anything we can do to support and enhance traditional, heterosexual families will strengthen society. There's been no good reason given in society why we should allow homosexual marriages."

The Senate approved the bill 16-3, with Democratic Sens. Johnny Ellis of Anchorage and Jim Duncan of Juneau opposing it along with Republican Sen. Steve Rieger of Anchorage.

Ellis said he favors marriages between men and women but that the bill would foster intolerance and hate against gay men and lesbians and deny them the same rights granted to heterosexuals.

"To create a climate that makes it OK to discriminate, single out, hate or revile is the wrong way to go," Ellis said. "You cannot build up one group by tearing down another."

Lynn Stimler, who heads the Alaska Civil Liberties Union, said the measure would open the state up to lawsuits and that courts probably would strike down the law. The state already is defending a lawsuit by two Anchorage men who were denied a marriage license.

Daniel Collison of the Southeast Alaska Gay and Lesbian Alliance said the measure was an attempt to legislate sexual preference.

"Does Senator Leman think that I and every other gay man and lesbian are going to go back into the closet and maintain the front of a heterosexual relationship?" Collison said. "The reality is more gay men and lesbians are coming out of the closet."

Collison said he was disappointed that some members of the Senate's Democratic minority supported the legislation.

Duncan, Senate minority leader, said he did not try to persuade other Democrats to side with him against the bill. The decision is a personal one, though some lawmakers might have been worried about the political consequences of opposing the bill, he said.

Sen. Georgianna Lincoln, D-Rampart, who is running for Congress against Republican Rep. Don Young, said election-year politics did not enter into her decision to support the ban on same-sex marriages.

Constituents who contacted her office about the bill generally favored the legislation, Lincoln said.

News from the Senate Majority

Alaska State Legislature

Contact: Wendy Lindskoog
(907) 465-4582

For Immediate Release: March 28, 1996

Same-Sex Marriage Legislation Passes Senate

Juneau -- Senate Bill 308 that passed the Senate Thursday amends the law governing marriage in Alaska to clarify that marriage is a civil contract entered into between "one man and one woman".

"Senate Bill 308 passed the Senate today with very strong support from the legislature. It clarifies the definition of marriage to be between one man and one woman and not between people of the same sex," said Senator Loren Leman.

Senator Leman noted that while this is a policy that the state of Alaska currently enforces, ambiguity exists because current statute uses the gender-neutral term "person" instead of man and woman. The existence of such ambiguous language is problematic and has led to litigation on the subject of same-sex marriages.

In addition to restoring the traditional language, the bill adds a new provision to the marriage statute stating that same-sex marriages recognized by other states or foreign countries are void in Alaska. A court decision expected later this year in Hawaii may legalize same sex marriages in that state.

"Absent this policy which excludes same-sex marriages, the courts could find that a marriage valid in one state is valid in all states," said Leman.

A third component of SB 308 states that a "same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage. This language precludes the state from recognizing same-sex "domestic partnerships" which are not legal marriages, but could be deemed to be entitled to the benefits of marriage, especially in the context of employee benefits.

"I believe the Alaska Legislature made the right call today when it supported this bill," Leman said.

SB 308 will now move to the House.

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State Capitals newsletters

the OUTLOOK from the STATE CAPITALS

Impartial reports on state and municipal action across the country

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Vol. 50 No.5

States raise alarm over ...

Same-Sex Marriages

In This Issue

The question of whether same-sex marriages should be legal has come to the forefront in state legislatures across the country, as the result of a lawsuit pending in Hawaii. Virtually every state feels the need to address the issue, because typically a marriage that is legal in one state is deemed legal in every other state. In states where homosexuality is not protected by anti-discrimination statutes, the prospect of having to recognize the legality of same-gender marriages is causing legislators to push bills that would deny recognition to such relationships, no matter whether they are legal in other states. Elsewhere, lawmakers are taking the opportunity to rethink their stance on homosexuality and the rights of gays and lesbians. To learn more about this issue, read both Civil Rights and Family Relations in our State Capitals Newsletters series.

THE QUANDARY:

Governor Proposes That Hawaii Replace Its Marriage Laws

Hawaii's legal quandary over same-sex marriages could be resolved if the state got out of the business of issuing marriage licenses and went to a system of domestic partnerships for both homosexuals and heterosexuals, says Gov. Ben Cayetano. "The institution of marriage should be left to the church. The government needs to explore its role in marriages," Cayetano said through his press secretary. "The government should not be in the role of sanctifying marriages. That's when they run into problems."

However, don't expect the legislature to act this year on Cayetano's suggestion, according to two key lawmakers, who said they had not previously heard of the governor's position. "I think he's going further than I or the Senate would support," said Sen. Rey Graulty, chairman

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of the Senate Judiciary Committee. "I don't think there's a lot of public support for something like that." "I wouldn't go that far at this point," said Terrance Tom, chairman of the House Judiciary Committee. "I think there are legitimate reasons for the state to keep marriages under state licensing," he said. "There are many impacts and ramification that need to be explored." "Before we take such drastic measures, we need to see if we are creating bigger problems than the ones we are trying to resolve," said Tom. Tom and Graulty both said they intend to pursue during the coming legislative session the possibility of domestic partnerships for homosexual couples, leaving the state's marriage law intact.

The Rev. Marc Alexander, director of the Hawaii Catholic Conference which represents 232,000 Roman Catholics in the islands, said that while Cayetano's proposal might resolve the state's legal problem, it would be counterproductive to society. "I think it fails to recognize that the reason the state gets involved in marriages is the importance marriages have as the foundation of our society," Alexander said, adding that "lower relationships," such as those between homosexuals, don't rise to the same level as a marriage commitment by couples of the opposite sex.

Cayetano's position was endorsed by American Civil Liberties Union attorney Dan Foley, who represents the three same-sex couples who challenged the state's refusal to grant them a marriage license. Hawaii was pitched into the debate with a surprising ruling by the state Supreme Court on May 27, 1993 that denial of marriage licenses to the three gay couples by the state Department of Health in 1990 was gender discrimination under the Hawaii Constitution. The Supreme Court remanded the case to the Circuit Court, saying that unless the state can show compelling state interests to ban same-sex marriages, marriage licenses should be issued to the same-sex couples. After much heated and emotional debate, the legislature in 1994 passed a bill that asserted that state policy is that marriage is the union between a man and a woman and that any change in that policy is a matter for the legislature, not the courts. A seven-member state Commission on Sexual Orientation and the Law that was established by the legislature last year issued a report Dec. 9, recommending on a 5-2 vote that same-sex marriages be legalized or, if that is unacceptable to lawmakers, that there be a comprehensive "domestic partnership" law.

If Cayetano's proposal were implemented, it could resolve the legal case because it would eliminate any gender-based bias under domestic parternships. Foley said. "It remains to be seen if the governor is going to go to the legislature and push for the legislation," said Foley. "We would have no problem with the governor's position," he said of his clients. Hawaii's public might also support the concept. Foley said, noting that recent polls indicate 2-to-1 support for equal rights for gays and lesbians but 2-to-1 opposition to same-sex marriages.

First Deputy Attorney General Steven Michaels said Cayetano's position will not alter the state's vigorous defense of the existing marriage law in the same-sex marriage case. Being constitutionally independent of the governor's office, the attorney general's office is not bound by the policy shifts made by the governor, Michaels said.

Cayetano is suggesting that the state repeal the existing marriage laws that apply only to heterosexual couples and instead establish a system of domestic partnerships that would spell out the rights and obligations of the partners, whether they are of the same sex or opposite sex, said press secretary Kathleen Racuya-Markrich. Marriage ceremonies would be left to the churches, according to Cayetano.

Hawaii is an extremely tolerant state and was the first to legalize abortions, Cayetano noted. "Exploring the establishment of domestic partnerships would carry on that trend," he said.

Alexander said the tradition of marriages being between a man and a woman predate either state or church. "It's part of who and what we are as human beings," he said. Substituting the marriage law with a domestic partnership law could "open the way to all kinds of relationships and would be counterproductive to the importance we as a community place on the marriage between a man and a woman," he said.

Meanwhile ... the Hawaii Supreme Court has denied a request by the Mormon Church to get involved in the original case between the state and three gay couples who were denied

marriage licenses. The Church of Jesus Christ of Latter-day Saints wanted to join with the state Attorney General's office to fight the granting of marriage licences to same-sex couples. The church argued that it had a stake in the issue because legalizing same-sex marriage would force its ministers to perform ceremonies that are against their religious beliefs. The high court disagreed, saying that the state simply authorizes marriages and does not require the performing of any marriage ceremony.

In related news ... the state House Judiciary Committee virtually closed the door to any action by the legislature this election year on the thorny issue of same-sex marriage. The committee supported Chairman Terrance Tom's recommendation to kill bills variously calling to establish same-sex marriage, provide for domestic partnerships or allow certain benefits for domestic partners. Tom then deferred action on three bills that would put the issue of same-sex marriages to the voters in the form of amendments to the state Constitution. "These matters will be deferred until the committee and myself believe there has been adequate discussion to make a decision on this issue," Tom said following a six-hour hearing in the Capitol auditorium. He said he hasn't decided whether he would arrange for any further discussion on the issue in the current session.

One reason, Tom said, was that the Commission on Sexual Orientation and the Law established by the legislature last year failed to address the question of whether the voters who approved the 1978 constitutional amendment barring sex discrimination should be asked if they intended it to apply to same-sex marriages. It was the gender discrimination amendment that the state Supreme Court cited in its May 1993 ruling that the state could not deny three same-sex couples marriage licenses unless it could show a compelling public interest in such discrimination.

Tom noted that the 1994 legislature voted to reject the high court's interpretation of the constitution and the voters intent when they voted to approve a ban on sex discrimination. The commission majority's proposal to legalize same-sex marriages "glosses over the fact that the majority of the people of this state do not support such a proposal at this time and that such marriages are unlikely to be recognized either by the federal government or other states," Tom said, noting that some states are already acting to bar same-sex marriages. "In a democracy, power flows upward from the people and legislation should never be forced upon them when it is clearly against their wishes," Tom said.

Commission Chairman Tom Gill, who defended the recommendation for same-sex marriages, likened the issue to the civil rights struggle in the 1960s. "I was in Congress when we passed the (1964) Civil Rights Bill. You should have heard the things that were being said about those black people, although they didn't use the word black. The things they said were terrible that you don't give them equal rights, that they were inferior and so forth," Gill said. He said he's hearing a similar argument for denying homosexuals a right to get married.

There was no middle ground as more than 200 people crowded into the state Capitol auditorium to testify for and against same-sex marriages. They were either strongly for it or strongly against it.

A minority member of the commission who opposed the majority's finding was James Hochberg. Societies throughout history "have given unique and special preference to heterosexual marriage because of the benefits that those relationships provides for society in general," Hochberg said. "The overwhelming bulk of the evidence indicates that homosexual relationships threaten the core of society—the family," he said.

Lesbian Susan Reardon said that, as an Irish Catholic, she is intimately aware of the commitment marriage entails, and she said she is ready to assume that responsibility. "I look forward to the day I can partake in this holiest of sacraments," she said.

Hawaii was pitched into the push-and-pull of one of the nation's most contentious social dilemmas in 1993 when the state Supreme Court agreed with three gay couples that they had been unconstitutionally denied marriage licenses in 1990. The justices said that the state had to show a compelling interest to

ban such marriages and sent the case back for trial in a lower court. The court has now scheduled arguments in the same-sex marriage case for July 15.

TO BAN SAME-SEX MARRIAGES ...

Gay Rights Battle Turns From Ballot Box To Washington Legislature

As the battle over gay rights moves from the ballot box to the Washington legislature, foes say they'll focus their efforts this winter on a proposed ban on same-sex marriages. About 100 gay rights activists rallied on the Capitol steps and later visited individual legislators with their message: "Don't legalize discrimination."

Speakers included the state's only openly gay legislator, Rep. Ed Murray, and Col. Margarethe Cammermeyer, a lesbian whose successful court challenge of her dismissal from the Washington National Guard was the subject of a recent made-for-TV movie. Murray said he had just introduced a "gay civil rights" bill—the 15th year it has been filed—and has dubbed it the "Cal Anderson law against discrimination" in honor of the Seattle senator who died of AIDS last fall. The bill would add homosexuals to the state's antidiscrimination laws. With the state House controlled by conservatives, that measure is expected to die without a hearing.

Indeed, gay rights activists said their real work for the session is defensive, trying to beat back at least three measures. Rep. Bill Thompson and a dozen colleagues have introduced a bill to ban same-gender marriage, expecting the Hawaii Supreme Court to legalize the practice in that state. Thompson and Rep. Val Stevens said the state should head off the possibility of homosexuals getting married in Hawaii and returning to Washington to demand the rights of heterosexual couples. That could get expensive for businesses and government, particularly for extra health care costs, they said in interviews. Stevens said her main objection is on moral grounds. "If our society deteriorates to where we no longer honor marriage as an institution as it was intended, we are on a slippery slope," she said. Many of the speakers at the rally said same-gender marriage is a way for gay people to affirm long-term commitments and to receive the benefits and protections they deserve as citizens of equal standing with heterosexuals.

Other legislation anticipated includes a ban on gay adoptions and on public schools teaching about homosexuality in a positive light. Citizen initiatives on both those issues failed to qualify for the ballot last year. Backers of both ballot measures said they have no plans for further initiative campaigns.

"You know the line about winning the battle, but not the war?" said Jan Bianchi, the Seattle attorney who heads the board of Hands Off Washington, the main campaign group for gay rights. "As of this week, the war moves from the initiative front into the statehouse."

Stevens, a leader of the religious conservatives in the state, said the same-gender marriage issue has the most steam and is probably the only one that will pass the House this session. The bill probably will die in the Senate, she and Thompson said.

Gov. Mike Lowry said in an interview that he'll veto any anti-gay rights legislation that hits his desk. In his State of the State address, he raised the issue and told sponsors "hands off" Washington.

"We at least need to get it out and talk about it," Thompson said. "Frankly, this is pretty new to everybody. If it happens, it should come through the front door (as a legislative decision), not through the back door (from the courts)."

Cammermeyer told the rally she finds it ironic and sad that people are still debating basic human rights, rather than using the time and effort to solve pressing problems of the day. She said opponents of gays in the military, gay adoptions or same-gender marriage are "trying to take away our humanity by using stereotypes that are wrong." She wondered aloud whether children of gay and lesbian parents, or those who could otherwise be adopted by them, will be rounded up and put in "orphanages like Newt Gingrich has proposed" for welfare children.

Said Murray: "We cannot be satisfied as long as we live in fear of losing our jobs in Spokane and Bellevue, Yakima and Olympia. We cannot be satisfied so long as the majority can use

the ballot to vote away the rights of any minority."

California City Decides To Permit Symbolic Gay Weddings

Gay couples will be able to say "I do" in a symbolic civil wedding performed in San Francisco, California. Under the approved plan, gay couples who register as domestic partners will pay $30 to have the ceremony, although it will carry no legal weight. The Board of Supervisor voted on the proposal Jan. 29. Five supervisors, three of whom are gay, sponsored the plan.

At least 3,000 unmarried couples, most of them gays, have paid $35 to file as domestic partners in San Francisco since the procedure became legal in February 1991, according to the county clerk. A voter-approved law gives retirement and health benefits to city employees' domestic partners. Adding the symbolic marriage ceremony is expected to double or triple the number of couples registering, according to a memo by Assistant County Clerk Nancy Alfaro. The county clerk traditionally performs civil marriages. If half the couples already registered have a ceremony, that would generate $45,960, according to Alfaro. And she estimates that new couples registering could add another $41,500 this year.

Volunteers would perform the ceremonies, and processing would cost an estimated $3,000, according to the county clerk's office. "A large number of taxpayers have asked for this service from our department," said Alfaro. "Implementing ceremonies would resolve any access and fairness issues."

The proposal comes as the state Assembly considers a bill to prevent California from recognizing same-gender marriages from other states. The state of Hawaii may become the first in the United States to legalize gay marriages.

In 1994, the California legislature passed a bill that would have set up a statewide registry of unmarried domestic partners, but Gov. Pete Wilson vetoed it. Cheryl Deaner at the Alternative Family Project in San Francisco said the proposal seemed like an idea whose time has come. "Although this won't really remedy any legal discrimination, it is a step forward," she said.

In related news ... a bill to preclude California from recognizing gay or lesbian marriages performed in other states is on its way to the Assembly floor. The Assembly Judiciary Committee voted 8-4 for the bill, which was promoted by a court case in Hawaii. Only Republicans voted for the measure. "Preventing the legalization of same-sex marriages in California is turning out to be a strong Republican caucus issue," said the author, Assemblyman Pete Knight. The bill was expected to be easily approved in the Assembly, which is controlled by Republicans. But it could have more trouble in the Senate, which has a Democratic majority.

Religious groups backing the bill said allowing same-gender marriages would condone a "dangerous lifestyle" and put children in a bad environment. "If other states want to trash the foundation of civilization," said Art Croney of the Committee on Moral Concerns, "... we don't think that should be allowed in California." But gay and lesbian groups called the bill "gay bashing" and argued that thousands of same-gender couples are in stable, committed relationships and are already raising children successfully.

Forbidding marriage "has always been a very powerful tool for dehumanizing the disfavored populations," said Assemblywoman Sheila Kuehl, the legislature's only openly gay member. No state currently recognizes same-sex marriages. The bill was prompted by a case pending in the Hawaii courts that could overturn that state's ban on same-gender wedlock.

Knight said that his bill is necessary because that case could be decided this year, and gay and lesbian couples would then flock to the island state to be married. California law currently recognizes marriages performed in all other states. However, John Davidson of the Lambda Legal Defense Fund of Los Angeles, one of the attorneys in the Hawaii case, said that the long trial and appeals process means it won't be settled for at least two years.

The bill would add this sentence to state law: "A marriage contracted outside this state between individuals of the same gender is not valid in this state." "The ramifications of recognizing same-sex marriages in California would be significant," said Knight. He said gays and lesbians would be allowed to adopt children

together, same-sex marriage would have to be taught in high school family living classes and couples would share in health and other job benefits. "This is, in essence, an unfunded mandate on business," he said.

"The best situation for children is that they be raised in a home with a mother and a father," said Randy Thomasson of the Capitol Resource Institute of Sacramento. "Children could be put in homes that are not the best environment for them." Croney said gay couples could adopt children together and "we think homosexuality is a dangerous lifestyle."

Laurie McBride of the LIFE Lobby said Knight was "engaging in gratuitous gay bashing." "The author believes gays and lesbians should not be citizens of this state, at least not visible citizens," she said. She said that lesbian couples, in particular, have fewer sexually transmitted diseases and longer relationships than any other demographic group. "All of us should strive, or do well to strive, to become lesbians," she said.

Francisco Lobaco of the American Civil Liberties Union said the bill was similar to old laws that prohibited interracial marriages. He read from a 1948 court decision in Virginia that said God created races and placed them on separate continents for a reason. "Hopefully, many of us would view this as shameful," he said. "Let's not make the same mistake."

Kueht also noted that California in the past prohibited marriages by Chinese, Japanese and Filipino immigrants. "There are thousands of people in this state who would be married if you will not deny them," she said. "It is a very convenient way if you bar marriage between gays and lesbians to enforce discrimination and characterize relationships as unstable because you require them to be unstable."

One Republican lawmaker objected to bill opponents comparing the measure to miscegenation laws. "I believe it is totally inappropriate to compare our desire to protect the institution between men and women ... to compare that with the terrible struggles of our black brothers and sisters," said Assemblywoman Barbara Alby, who is white.

OR TO RECOGNIZE THEM.

Nebraska Lawmaker's Proposal Would Allow Same-Sex Marriages

Same-sex marriages would be recognized in **Nebraska** under a bill offered to the legislature by Sen. Ernie Chambers. "These are issues that are not going to go away if we ignore them," Chambers said. "Someone needs to bring them into the arena of public debate ... to force the legislature to deal with 21st century issues." Chambers' proposal (LB1260) changes only a few sentences of current law. "A marriage between a man and a woman, between a man and another man, or between a woman and another woman solemnized as provided (by law) is valid in this state," the bill said. Chambers said his plan was prompted in part by a legal case in Hawaii in which same-sex marriages were recognized by a court. "Nebraska law recognizes any marriage that is valid in another state," Chambers said. "I'm not certain if that case is being appealed." He said he expected the measure to draw substantial opposition.

South Dakota House Committee Rejects Bill To Ban Same-Sex Marriages

A bill that would have banned marriages between gay people in **South Dakota** was rejected by a state House committee. The State Affairs Committee voted 8-5 to kill the bill, but the measure's sponsors may try to persuade the full House to debate the bill anyway.

The bill would have changed the legal definition of marriage to require that the relationship be between a man and a woman. The leader of a group that promotes the rights of gay and lesbian people said it would make no sense to outlaw any relationship between people who love each other. Times are changing, and gays and lesbians do not threaten society, said Barry Wick, executive director of Free Americans Creating Equal Status of South Dakota. "It is time to join the 20th century in South Dakota," Wick said.

But the bill's main sponsor, Rep. Roger Hunt, said that the bill is needed to clarify South Dakota's traditional views on marriage. "I think we all agree the traditional definition of marriage has been that of a union of a man and a woman," Hunt said. Hunt sponsored a similar bill last year. That measure was approved by the House but died in the Senate. Hunt said that South Dakota

might be forced to recognize gay marriages from other states unless it passes such a bill.

A court case in Hawaii may mean that state will legalize same-sex marriages. Hunt said. Gay and lesbian organizations have acknowledged that many of their members would get married in a state that allowed such marriages, and they then would seek to have their home states recognize their marriages. he said. If same-sex marriages were recognized in South Dakota, businesses might be forced to provide health insurance to partners of gay employees, Hunt said.

The bill does not discriminate against gay people because discrimination only applies when a group is economically disadvantaged, politically powerless and has a distinguishing characteristic such as race or religion, Hunt said. Other supporters of the measure said if the state recognizes same-sex marriages, it might also have to condone polygamy and other unacceptable practices. But Wick said no state in the nation now recognizes same-sex marriages.

Hunt's measure could eventually mean gay people legally married in other states would be considered unmarried if they traveled in South Dakota. Wick said. Gay and lesbian couples might decide to avoid South Dakota, which would reduce tourism in the state, he said.

More than 400 U.S. companies, including Walt Disney, already offer health insurance and other benefits to partners of gay employees, Wick said.

In the Works Around the Nation

This Week's Highlights from the State Capitals Newsletters ...

ALCOHOLIC BEVERAGE CONTROL

Idaho Rep. Ron Crane introduced a bill to lower from 0.10 percent to 0.08 percent the blood-alcohol level used in drunken driving cases.... A Weymouth man will receive nothing from a **Massachusetts** ski-area bar that he said had "overserved" him and his friend before they were involved in a car accident in which the friend was killed.... A self-proclaimed "beer patriot" has taken on the open container law of Chapel Hill, **North Carolina**, by getting himself arrested carrying a cup of nonalcoholic brew.

ECONOMIC DEVELOPMENT

Supporters of a plan to resurrect the abandoned Milwaukee Road rail line could be derailed by property owners who say **Washington** doesn't own the rights to the abandoned railbeds.... **Maine's** wilderness zoning agency will be weighing public comment on proposed revisions to its comprehensive plan for the 10.3 million acres of unorganized territory within its jurisdiction.... The state Coastal Commission has approved a plan to build 3,300 houses in and around the Bolsa Chica wetlands, one of Southern **California's** largest remaining bird refuges.

MOTOR VEHICLE REGULATION

A **Florida** rulemaking panel changed a 1991 rule on Freon in car air conditioners, saying motorists could refill their car with the refrigerant without having all leaks fixed first.... Some **Kansas** lawmakers appeared skeptical about a proposal to require teenagers who are applying for a driver's license to take four hours of classes about the dangers of alcohol.... The **Hawaii** Senate Consumer Protection Committee approved a no-fault automobile insurance reform bill that Chairman Milton Holt says should cut rates by 40 percent.

LOTTERY, PARI-MUTUEL & CASINO REGULATION

New Jersey regulators told a casino to ante up $20,000 for letting an early-morning craps game continue after the lights went out.... **The Louisiana Attorney General's Office will seek $1 million** or more to pay bills that are running up as a result of closure of the New Orleans land casino.... A Senate committee responded to complaints about youngsters hanging around **Colorado's** casinos by approving a bill banning people under 21 unless accompanied by an adult.

TAXES—PROPERTY

A North Dakota board agreed to cut royalties that North American Coal Corp. must pay if the company goes ahead with plans to dig state-owned property near two lignite mines.... A Republican lawmaker asked the Oklahoma attorney general to decide whether it is legal for a Tulsa vo-tech to tie teacher stipends to the defeat of a ballot measure that would roll back and freeze property taxes at 1993 levels.... Counties in Utah, worried about relying too much on property taxes to pay for services, will ask the 1996 legislature for a share of the state's sales tax.

ENVIRONMENTAL REGULATION

The Kansas Senate Assessment and Taxation Committee endorsed submission of a quarter-cent sales tax to Wabaunsee County voters to build a solid waste facility in the rural county just west of Topeka.... A new, more flexible plan for cleaning up contaminated soil at Harbor Island on the waterfront of Seattle, Washington, will speed up the process and save $6 million, the U.S. Environmental Protection Agency said.... California is scaling back its decade-long, billion-dollar cleanup of underground fuel leaks because a new study says most of the toxic ingredients dissipate naturally.

PUBLIC HEALTH

North Carolina legislators are considering the idea of medical savings accounts, where deposits are made in dollars and withdrawals take the form of health care.... The third-largest health maintenance organization in Oregon has been fined $20,000 for rejecting emergency room bills without a proper investigation.... Scaring teens with a heavy dose of reality is one of the goals of a new Michigan program designed to keep adolescents off drugs and alcohol.

EMPLOYEE POLICY FOR THE PRIVATE AND PUBLIC SECTORS

The Los Angeles, California, City Council has approved a requirement that Police Department recruits repay the city for their academy training if they join another organization before serving five years with the LAPD.... Florida needs more restaurant inspectors and better trained food handlers if it wants to reduce the risk of foodborne illnesses, a state task force recommended.... New school employees and private contractors who provide services to pupils would be fingerprinted and face criminal records checks under a bill passed by the New Hampshire House to the Senate.

PUBLIC SAFETY AND JUSTICE POLICIES

South Dakota Gov. Bill Janklow is promoting a bill that would send teenagers charged with alcohol offenses to adult court.... Attorney General Jeff Sessions has asked the Justice Department for a quick stamp of approval on legislative acts that expanded Alabama appeals courts in 1969, 1971 and 1993 and are now at issue in a racial discrimination case.... A state law taking away the driver's license of Iowans convicted of possession of a controlled substance unconstitutionally punishes people twice for the same crime, the Iowa Supreme court said.

PUBLIC ASSISTANCE & WELFARE TRENDS

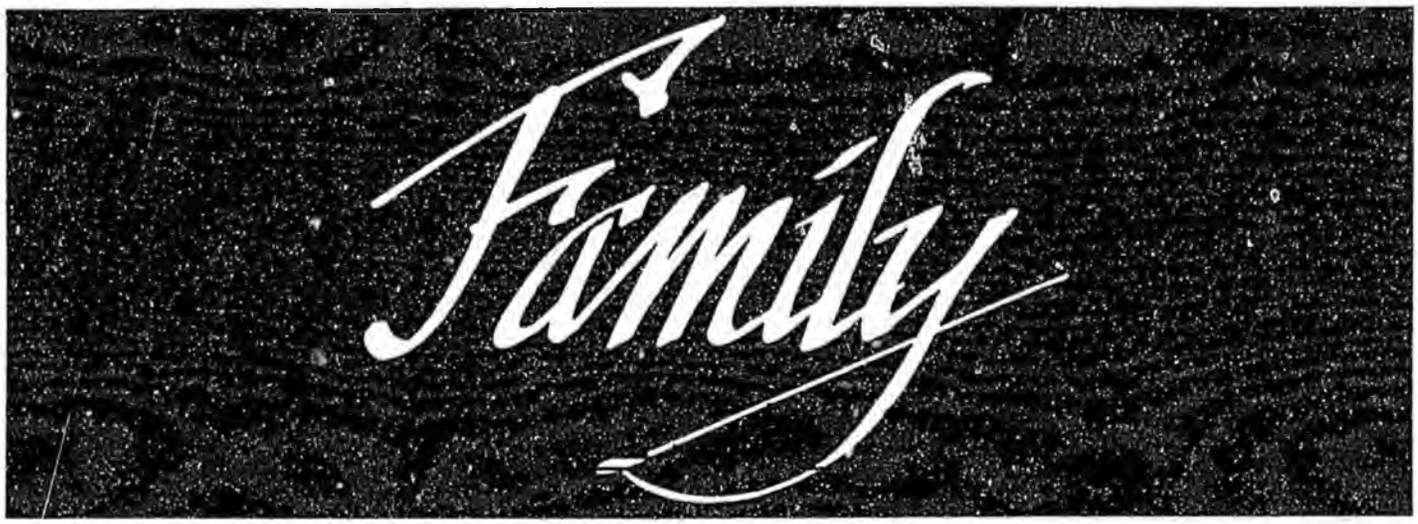
Some landlords say a new Urbana, Illinois, ordinance banning discrimination against housing aid recipients will force them to sign government contracts against their will.... A health care program for Vermont's poorest residents, funded by an increase in the state's cigarette tax, came under bitter fire in the Senate.... Michigan Gov. John Engler has proposed a program aimed at eliminating unemployment among welfare recipients, calling the plan Project Zero because that's his goal for the jobless rate.

INSURANCE REGULATION

A Minnesota lawmaker wants to see some health insurance issues handled by an outside agency instead of legislators.... State insurance officials are being asked to regulate the resale of life insurance policies by terminally ill Texans.... Senate President Pro Tem Stratton Taylor is threatening to authorize a legislative investigation of Oklahoma Insurance Commissioner John Crawford if a state board refuses to cut workers' compensation rates.

The AP wire service was utilized in the production of this report

A PUBLICATION OF THE FAMILY RESEARCH COUNCIL



Gay 'Marriage'

Hawaii's Assault on Matrimony

The Hawaii Commission on Sexual Orientation recently voted 5-2 to recommend that same-sex couples be granted identical legal status now conferred on married couples. The majority report declared that the denial of the "benefits" of marriage "purely on the basis of gender" is a violation of "basic human rights" enshrined in Hawaii's constitution.[1]

While the Commission's recommendation is non-binding, it coincides with other pro-homosexual activity in the judicial and executive branches of Hawaii's state government. If these efforts succeed, the institution of marriage will not only be affected in America's 50th state, but in the other 49 as well.

In making its recommendation, a majority of the Hawaii Commission on Sexual Orientation concluded that denial of marriage licenses to same-sex couples deprived applicants of legal and economic benefits, including: (1) joint parental custody; (2) insurance and health benefits; (3) the ability to file joint tax returns; (4) alimony and child support; and (5) inheritance of property and visitation of a partner or child in the hospital.

The majority also concluded that legalization of same-sex "marriage" would be an economic boon to Hawaii, as homosexuals would flock there to get married.

Making gay 'marriage' legal would impose it on all the citizens of Hawaii, and perhaps even on people in the rest of the United States.

(Apparently, they ignored the possibility that traditional honeymooners may choose another destination, and that more than 97 percent of the population is heterosexual.)

The Commission's minority report took issue with virtually every assertion made by the majority, and cited medical, social, historical and legal authorities to make the case that same-sex "marriage" would encourage homosexuality and therefore aggravate health problems associated with homosexual behavior, hurt the island state economically because of possible boycotts, and undermine the moral fabric of Hawaiian society. The report charged the majority with bullying witnesses, altering the official record of meetings, rudely interrupting minority members and generally suppressing information.

The minority concluded that granting marital status to homosexuals would imperil marriage itself and bring Hawaii into conflict with the other 49 states. Its recommendations:

A. The Legislature should adopt a Constitutional Amendment preserving marriage and the marital partnership as between one man and one woman as husband and wife.

B. The legal and economic benefits conferred on married couples in the state of Hawaii should not be extended to homosexual and/or "common law marriage" couples

because the cost is too great.

C. *The legal and economic benefits conferred on married couples in the state of Hawaii should not be extended to homosexual couples for all the same reasons these benefits are not extended to unmarried heterosexual couples engaged in "common law marriage" in Hawaii.*

D. *Rather than extend marital benefits to homosexual couples, the legislature should modify statutes defining family to include all those who share a household, which would include homosexual couples as families. However, the cost of doing so must be analyzed.*

E. *The legislature must create a very broad religious freedom exemption covering religious institutions and individuals who have religiously motivated objections to treating same-sex partnerships as marriage-equivalents.*

Other relationships have not been accorded the same status as marriage because they do not contribute in the same way to a community. No society can survive without marriages and families.

The latter recommendations seem to be fall-back positions in case the state goes ahead with some sort of change in family status. Recommendation "D" is an unwise move toward redefinition of family, and is surprising in light of the minority's conclusion that "homosexuality is a psychological pathology and should not be encouraged."[2]

Commissioner Lloyd James Hochberg, Jr., who voted in the minority, told *The New York Times*, "Why would we want to take a pathological condition and make it the equivalent of heterosexual marriage as a goal that society is teaching children? Once homosexual marriage or domestic partnership is permitted, the schools are going to have to teach that it's equivalent."[3]

Background

In May 1993, the Hawaiian Supreme Court ruled 3-1 in *Baehr v. Lewin*[4] that the state's exclusion of same-sex couples from marital status may be unconstitutional because it amounts to discrimination. Two homosexual men had applied for a marriage license, were denied, and then sued the state. The case eventually made its way to the state Supreme Court, which remanded it to a lower court with instructions to the state to prove "compelling state interests" for limiting marriage to opposite-sex couples.

The lower court is expected to rule on the case in July 1996. If the State of Hawaii loses the case, and the court thereby legalizes same-sex marriage, it can appeal to the state Supreme Court. But that is unlikely because the governor and the lieutenant governor are on record as favoring same-sex marriage and/or domestic partnerships (legal equivalency of marriage without the term "marriage").

In April 1994, the Hawaiian legislature overwhelmingly passed a bill (21-4 in the Senate and 36-12 in the House) reaffirming the traditional one-man, one-woman definition of marriage. If the lower court rules for same-sex marriage, it would strike down this state law. A likely reaction would be a voters' drive for a constitutional amendment to replace the stricken statute. Meanwhile, other states are already moving to protect the traditional definition of marriage.

Majority v. Minority Reports

The minority report begins with a wry observation: "The irony of this 'minority' report is that its conclusions actually reflect the view of a majority of Hawaii's residents."[5] Indeed, a series of polls revealed that two-thirds of Hawaiians disapprove of same-sex "marriage."[6] Even so, many observers expect the liberal Hawaiian courts to mandate gay "marriage."

Gay 'marriage' is an oxymoron, an ideological invention designed to appropriate the moral capital of marriage and family toward the goal of government-enforced acceptance of homosexuality. As such, the term is a counterfeit and a fraud.

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Hawaii has earned a reputation for being on "the cutting edge" of social experimentation. It was the first state to legalize abortion (1970), the first to ratify the Equal Rights Amendment (1972) and the fifth to offer special employment protections to homosexuals (1991).

The majority report, mimicking arguments used by homosexual activists, compares the same-sex quest for marital status with the civil rights struggle by black Americans. Most prominently cited is an interracial couple's victory in *Loving v. Virginia*.[7] In that historic case, the U.S. Supreme Court struck down laws preventing marriage between people of different races as violating the equal protection and due process clauses of the Fourteenth Amendment to the Constitution.

But the court never came close to redefining the institution of marriage itself, which is what would have to occur for same-sex relationships to be accorded marital status. The false equation of a benign, nonbehavioral characteristic such as skin color with an orientation based precisely on behavior finds no support within the law. Perhaps it is no wonder that the majority equates all sexual behavior. At the very first meeting of the commission the majority voted to ban all discussion of homosexuality because some members might find it offensive or inflammatory.[8] Thus, the truth about homosexual behavior was deliberately kept out of the proceedings.

The majority report also cites a number of flawed studies to give the impression that homosexuality and heterosexuality are essentially no different and have no implications for health or for the well-being of children. The report provides no medical data to sustain its assertion that "testimonies stating [that] the extension of benefits to same-gender couples would threaten public health are inaccurate." The report also states that "there is no evidence that children of gay and lesbian parents develop any differently than [sic] the children of opposite-sex parents."[9] In making this point, the report ignores considerable evidence that children are more likely to experiment with homosexuality or identify as homosexuals when raised in a homosexual household.[10]

The majority expresses an odd understanding of the role of morality and the law when it states, "[W]hile each person has the right to practice their individual religious and moral beliefs, they do not have the right to impose those on others."[11] Making gay "marriage" legal would impose it on all the citizens of Hawaii, and perhaps even on people in the rest of the United States.

Same-sex 'marriage' threatens not only the integrity of the marital definition but also religious freedom.

The majority goes on to state, "Under our constitutional government the fact that some religious [sic] or churches condemn same-sex marriages does not mean that those religious beliefs can be imposed on others."[12] In the very next paragraph, the report notes, "The Buddhists asked the Commission to support stable relationships between loving people regardless of whether those people are the same gender."13 So, while saying that no religion can impose its beliefs on others, the report openly and unselfconsciously adopts the Buddhist position. Incidentally, the commission itself was formed, then regrouped, only after two representatives from the Catholic Church and two Mormons were expelled on grounds of "separation of church and state."

Societal Implications

In the 1970s, homosexuals unsuccessfully challenged marriage laws in Minnesota, Kentucky and Washington state. In the Minnesota case, the state Supreme Court noted, "The institution of marriage as a union of man and woman, uniquely involving the procreating and rearing of children within a family, is as old as the book of Genesis....This historic institution is more deeply founded than the asserted contemporary concept of marriage and societal interests for which petitioners contend."[14]

Other relationships have not been accorded the same status as marriage because they do not contribute in the same way to a community. To put it bluntly, societies can get along quite well —in fact, better — without same-sex sexual relationships, but no society can survive without marriages and families. In fact, because the term "heterosexual marriage" is redundant, the term "marriage" will mean in this essay what it has always meant: the social, legal and spiritual union of a man and a woman. Gay "marriage" is an oxymoron, an ideological invention designed to appropriate the moral capital of marriage and family toward the goal of government-enforced acceptance of homosexuality. As such, the term gay "marriage" is a counterfeit and a fraud. It would undermine support for marriage by ending

marriage's unique legal and cultural status. It would also undermine support for natural families, whose foundation is marriage.

Same-sex "marriage" threatens not only the integrity of the marital definition but also religious freedom. Although the majority report recommends that religious institutions not be forced to perform same-sex ceremonies, it offers no defense for the conscientious Christian, Jew or Muslim (or Hindu or atheist, for that matter) who will not legally recognize same-sex "marriage." Law carries the potential use of force against those who will not abide by it. If a businessman declines to extend marital benefits to same-sex couples, the law would open him to lawsuits and state coercion. Schools would be forced to teach the acceptability of gay "marriage" in family life courses. Homosexuals' efforts to adopt children would be made easier if marriage is stripped of its unique status.

All institutions except specifically religious ones would be subjected to state enforcement. That would include Christian bookstores, radio and TV stations, and other nondenominational businesses owned by religious people. And religious institutions themselves may enjoy immunity only for a short time. "Religious exemption" implies that the policy itself is at odds with the moral order, but when push comes to shove, the state often prevails. For example, the Supreme Court swept away Bob Jones University's tax-exempt status because the college, citing religious reasons, prohibited interracial dating. The justices said that the state's compelling interest in ensuring equality overrode the college's religious views. Almost all Christians would view the university's stance as unbiblical, but the point is that religious freedom is at the sufferance of the courts, which are acting increasingly like lawmakers instead of law interpreters. Religious freedom can be curtailed anytime a court decides the state wants to do so for "compelling" reasons. Religious exemptions, therefore, are most likely a temporary step on the way to total acceptance of homosexuality.

Other States Fight Back

A constitutional conflict looms should the Hawaii court legalize gay "marriage," because under the U.S. Constitution's full faith and credit clause, states must accord reciprocity to other states in such matters as marriage and drivers' licenses. So, theoretically, a homosexual couple could marry in Honolulu, move to California and demand that the Golden State recognize their "marriage." Because states do vary in their marital requirements (such as minimum age), the general rule has been to apply the law of the state where the marriage was performed to determine a marriage's validity, unless it "violates the strong public policy" of the state in which the couple reside.[15]

So, theoretically, a homosexual couple could 'marry' in Honolulu, move to California and demand that the Golden State recognize their 'marriage.'

Observers in some states have already moved to bolster this common law protection by making the point more explicitly.

- In March, 1995, Utah's legislators voted to deny recognition of any out-of-state marriages that do not conform to Utah law.
- In South Dakota, a similar bill (H1184) passed the House of Representatives but failed by one vote to get on the Senate calendar.
- In Alaska, a bill was introduced in early 1995 to make clear that "marriage is a civil contract entered into by one man and one woman."
- In Minnesota in 1993, a bill (H3016) which specified that "a marriage contracted between persons of the same gender and recognized as valid in another state is not valid in this state" failed in a House committee.
- In New Hampshire in 1994, a bill (SB557) failed in a Senate committee that would have barred recognition of marriage "between persons of the same gender." Even this might have proved ineffective given the ongoing drive by feminists at United Nations-sponsored conferences on women to redefine gender into no less than five categories (male heterosexual, female heterosexual, male homosexual, female homosexual and transsexual/bisexual).
- In early 1996, marriage protection bills were introduced in several state legislatures, including California, Idaho and Washington. Legislators in others states, such as Alabama, Virginia and Georgia, were preparing bills.

The Importance of Definition

In all cultural struggles, a primary battleground is the use of lan-

guage. Compromising the integrity of a term or phrase can advance a particular agenda, or, at least, sow confusion and uncertainty. A term such as "marriage" can either lose the power of its original meaning or be commandeered to mean something entirely different. In 1828, Noah Webster defined "marriage" as:

The act of uniting a man and woman for life; wedlock; the legal union of a man and woman for life. Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for domestic felicity, and for securing the maintenance and education of children. "Marriage is honorable in all and the bed undefiled. Heb. xiii."[16]

This definition is so vague that multiple-partner unions are not excluded, nor any imaginable combination of persons, including a fishing boat crew. The whole point is to demote marriage to a level with all other relationships.

A more recent (1981) Webster's definition retains the essential elements of the earlier version:

Marriage\ a: the state of being united to a person of the opposite sex as husband or wife b: the mutual relation of husband and wife: wedlock c: the institution whereby men and women are joined in a special kind of social and legal dependence for the purpose of founding and maintaining a family.[17]

No jurisdictional unit in the United States — town, city, or state — recognizes same-sex couples as "married." In 1975, Boulder, Colorado granted a marriage license to a same-sex couple, but it was struck down by a federal court in 1982. Protections favoring marriage are built into the law and the culture because of the central importance of the family unit as the building block of civilization. In 1888, the U.S. Supreme Court described marriage "as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution."[18]

However, some jurisdictions are moving toward redefining the family to include same-sex relationships, and there is a movement within the legal community to overhaul the definitions of marriage and family. A note in the Harvard Law Review in 1991 advocated replacing the formal definition of family with an elastic standard based "mainly on the strength or duration of emotional bonds," regardless of sexual orientation. The note recommends redefining the family through "domestic partner" or family "registration" statutes that go beyond the limited benefits now conferred by existing domestic partnership laws so as to "achieve parity" between marriage and other relationships.[19]

In 1990, San Francisco Mayor Art Agnos appointed lesbian activist Roberta Achtenberg (later Assistant Secretary of the U.S. Department of Housing and Urban Development under President Clinton) to chair the Mayor's Task Force on Family Policy. The final report of the task force defines the family this way:

"A unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption, whose central purpose is to create, maintain, and promote the social, mental, physical and emotional development and well being of each of its members."[20]

An English study also published in the journal AIDS found that most 'unsafe' sex acts occur in steady relationships.

In this definition, which could reasonably be described as a formulation by homosexual activists, marriage is no longer the foundation for families but secondary to "strong social and emotional bonds." This definition is so vague that multiple-partner unions are not excluded, nor any imaginable combination of persons, including a fishing boat crew. The whole point is to demote marriage to a level with all other relationships.

To place same-sex relationships on a par with marriage destroys the definition of marriage altogether. When the meaning of a word becomes nonspecific, the exclusivity that it previously defined is lost. For instance, if the state of Hawaii decided to extend the famous — and exclusive — "Maui onion" appellation to all

onions grown in Hawaii — even on, say, Oahu —, the term "Maui onion" would lose its original meaning. Consumers would lack confidence in buying a bag of "Maui onions" if all onions could be labeled as such. The same goes for any brand name. Wine from California could be falsely labeled as wine from Bordeaux, France, thus destroying the uniqueness of both appellations. If "marriage" in Hawaii ceases to be the term used solely for the social, legal, economic and spiritual bonding of a man and a woman, the term "marriage" becomes useless.

Sorokin found that virtually all political revolutions that brought about societal collapse were preceded by sexual revolutions in which marriage and family were no longer accorded premiere status.

A key point to remember is that no one of marriageable age is prevented from marrying in Hawaii provided they don't marry blood relatives, underage persons, nonhumans or more than one person. Homosexuals are not denied the right to marry; but they have to fulfill the requirements like anyone else. They cannot call a same-sex relationship "marriage," since it lacks a basic ingredient — an entire sex. The joining of the two opposite sexes in permanence is the very essence of marriage. Once the "one man, one woman" definition is abandoned, there is no logical reason for limiting "marriage" to two people or even to people. Why not have three partners? Or why not a man and his daughter? Or a man and his dog? The logical reason to extend "marriage" to homosexual couples has nothing to do with marital integrity, but only reflects the fact that homosexuals want the same status regardless of its real meaning. Anything less, they say, is a denial of human rights. If so, then a threesome or a foursome seeking marital status can similarly claim that their sexual proclivities must be recognized by society and the law as the equal of marriage or they are facing discrimination.

The Real Agenda

Homosexual activist Tom Stoddard acknowledges that "enlarging the concept to embrace same-sex couples would necessarily transform it into something new....Extending the right to marry to gay people — that is, abolishing the traditional gender requirements of marriage — can be one of the means, perhaps the principal one, through which the institution divests itself of the sexist trappings of the past."[21] In other words, while many homosexual spokesmen say they want only to be left alone to enjoy the benefits of marriage, Stoddard rightly sees the expanded definition as a way of attacking the institution itself.

In 1992, organizers of the homosexuals' 1993 March on Washington met in Texas to draft a platform of demands. Known as "the Texas platform," it was later toned down to make it more palatable to a mass audience. The original section on "family," however, is revealing as to the intentions of the movement. In addition to Demand No. 40, "the recognition and legal protection of all forms of family structures," the writers make Demand No. 45, "legalization of same-sex marriages," and Demand No. 46, "legalization of multiple partner unions."[22]

An enormous body of research indicates that monogamy is not the norm for the average homosexual.[23] But even when it is, the result is not necessarily healthier behavior. A study published in the journal *AIDS* found that men in steady relationships practiced more anal intercourse and oral-anal intercourse than those without a steady partner.[24] In other words, the exclusivity of the relationship did not diminish the incidence of unhealthy behavior that is the essence of homosexual sexual activity. Curbing promiscuity would help curb the spread of AIDS and the many other sexually transmitted diseases that are found disproportionately among homosexuals, but there is little evidence that "monogamous" homosexual relationships function that way. An English study also published in the journal *AIDS* found that most "unsafe" sex acts occur in steady relationships.[25]

One can no more 'expand' a definition or moral principle than one can continually expand a yardstick and still use it as a reliable measure.

Former homosexual William Aaron explains why "monogamy" has a different meaning among homosexuals: "In the gay life, fidelity is almost impossible. Since part of the compulsion of homosexuality seems to be a need on the part of the homophile to 'absorb' masculinity from his sexual partners, he must be constantly

on the lookout for [new partners]. Consequently the most successful homophile 'marriages' are those where there is an arrangement between the two to have affairs on the side while maintaining the semblance of permanence in their living arrangement."[26]

Sexual Revolution: A War on Families

As the research of the late Harvard sociologist Pitirim Sorokin reveals, no society has loosened sexual morality outside of marriage and survived. Analyzing studies of cultures spanning several thousand years on several continents, Sorokin found that virtually all political revolutions that brought about societal collapse were preceded by sexual revolutions in which marriage and family were no longer accorded premiere status.[27] To put it another way, as marriage and family ties disintegrated, the social restraints learned in families also disintegrated. Societal chaos ushers in tyrants who promise to restore order by any means.

Self-governing people require a robust culture founded on marriage and family, which nurture the qualities that permit self-rule: deferred gratification, self-sacrifice, respect for kinship and law, and property rights. These qualities are founded upon sexual restraint, which permits people to pursue long-term interests, such as procreating and raising the next generation, and securing benefits for one's children.

In the 1981 Apostolic Exhortation Familiaris Consortio, John Paul II summarized the importance of marriage-based families this way:

"The family has vital and organic links with society since it is its foundation and nourishes it continually through its role of service to life: It is from the family that citizens come to birth and it is within the family that they find the first school of the social virtues that are the animating principle of the existence and development of society itself." [28]

According sex outside marriage the same protections and status as the marital bond would destroy traditional sexual morality, not expand it. One can no more "expand" a definition or moral principle than one can continually expand a yardstick and still use it as a reliable measure.[29]

At the federal level, Congress may well consider legislation mandating the one-man, one-woman definition of marriage for all federal purposes.

Marriage-based kinship is essential to stability and continuity. A man is more apt to sacrifice himself to help a son-in-law than some unrelated man (or woman) living with his daughter. Kinship entails mutual obligations and a commitment to the future of the community. Homosexual relationships are a negation of the ties that bind — the continuation of kinship through procreation of children. To accord same-sex relationships the same status as a marriage is to accord them a value that they cannot possibly have. Marriages benefit more than the two people involved, or even the children that are created. Their influence reaches children living nearby, as young minds seek out role models. The stability they bring to a community benefits all.

Conclusion

Some people in Hawaii are beginning the process of fashioning a constitutional amendment to protect their state's law on marriage, should the courts radically redefine it. Other states are taking action to defend their laws regarding marriage. If more states strengthen their laws, they would also strengthen the marriage defenders in Hawaii, who can cite the "compelling state interest" of heading off a constitutional crisis. At the federal level, Congress may well consider legislation mandating the one-man, one-woman definition of marriage for all federal purposes, including the military, federal benefits, federal agency employment policies, and the law in federal territories such as Puerto Rico and Guam.

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- by Robert H. Knight, Director of Cultural Studies. FRC Research Assistant Ken Ervin also contributed to this article.

ENDNOTES

1 As cited in the commission's report, pgs. 27-28: "Article I, sections 2, 3, and 5 of the Constitution of the State of Hawaii states clearly that all persons in Hawaii are entitled to equal protection under the law, including the right to enjoy their inherent and inalienable rights to life, liberty and pursuit of happiness, and be free from illegal discrimination or the denial of basic rights on the basis of gender."

2 Minority report, at 101.

3 Quoted in David Dunlap, "Panel in Hawaii Recommends Legalizing Same-Sex Marriage," *The New York Times*, December 11, 1995, at A-18.

4 74 Haw. 530 (1993).

5 Draft Minority Report Outline, Minority Report, Commission on Sexual Orientation and the Law, November 22, 1995, at 50.

6 "Five Hawaii Polls on Legalizing Same-Sex "Marriages," appendix to Minority Report, *op. cit.*

7 338 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967).

8 Minority Report, at 91.

9 Majority Report, at 32.

10 See, for instance, the compilation of data in studies done by lesbian researchers which reveals that children are four times as likely to act out homosexual behavior. From Dr. Paul Cameron, as quoted in "Homosexual Parenting: Bad for Children, Bad for Society," *Insight*, Family Research Council, April, 1994, pgs. 2-4.

11 Majority Report, at 32.

12 *Ibid.*, at 37.

13 *Ibid.*

14 Baker v. Nelson (1971), as cited in Stoddard, *op. cit.*, p. 400.

15 The Restatement (Second) of Conflict of Laws 283 (2) (1971) states: "A marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage." This, courtesy of Brigham Young Law Professor Lynn D. Wardle, from a March 4, 1995 memorandum regarding Utah's revision of its Marriage Code.

16 Noah Webster, *American Dictionary of the English Language*, (1828).

17 *Webster's Third New International Dictionary of the English Language Unabridged*, Merriam-Webster Inc., Springfield, Mass., 1981, p. 1284.

18 Maynard v. Hill, 125 U.S. 190, 205 (1888).

19 "Legal Definition of the Family," 104 *Harvard Law Review* 1640, 1991.

20 Roberta Achtenberg, et al., "Approaching 2000: Meeting the Challenges to San Francisco's Families," The Final Report of the Mayor's Task Force on Family Policy, City and County of San Francisco, June 13, 1990, p. 1.

21 *Ibid.*

22 "Texas Platform Agreement for Next Year's March," *The Washington Blade*, May 22, 1992.

23 See, for instance, Leon McKusick, et al., "AIDS and Sexual Behavior Reported by Gay Men in San Francisco," *American Journal of Public Health*, May 1985, Vol. 75, No. 5, pp. 493-496; A.P. Bell and M.S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women*, Simon and Schuster, New York, 1978, pp. 308-309. Also, M. Pollak, "Male Homosexuality," in *Western Sexuality: Practice and Precept in Past and Present Times*, ed. P. Aries and A. Bejin, Basil Blackwell, New York, 1985, pp. 40-61, cited in Nicolosi, *op. cit.*, pp. 124-125.

24 A.P.M Coxon, et al., "Sex Role Separation in Diaries of Homosexual Men," *AIDS*, July 1993, pp. 877-882.

25 G.J. Hart, et al., "Risk Behaviour, Anti-HIV and Anti-Hepatitis B Core Prevalence in Clinic and Non-clinic Samples of Gay Men in England, 1991-1992," *AIDS*, July 1993, pp. 863-869, as cited in "Homosexual Marriage: the Next Demand," Position Analysis paper by Colorado for Family Values, Colorado Springs, Colorado, May, 1994.

26 William Aaron, *Straight*, Bantam Books, New York, 1972, p. 208, cited in Joseph Nicolosi, *Reparative Therapy of Male Homosexuality*, Jason Aronson Inc., Northvale, New Jersey, 1991, p. 125

27 Pitirim Sorokin, *The American Sex Revolution*, Porter Sargent Publishers, Boston, 1956, pp. 77-105.

28 John Paul II, Apostolic Exhortation, *Familiaris Consortio*. (December 15, 1981): Section 42.

29 This analogy has been made by social critic Joseph Sobran in regard to the Warren Court's concept of the "Living Constitution," whose seemingly infinite flexibility undermines the document's authority.

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March 31, 1995

Representative Norman Rokeberg
Alaska House of Representatives
Room 110 State Capitol
Juneau, AK 99811-1182

Re: Whether current Alaska law allows same-sex marriages

Dear Representative Rokeberg:

You have asked for our opinion on whether HB 227, a bill that you have introduced and that would amend the Alaska marriage code (AS 25.05) to specify that only a man and a woman can marry, would change the current law. It is our opinion that your bill would not change the law.

In our conversations with your staff we indicated that our opinion rested on our belief that the common law in Alaska would not allow same-sex marriages. On further research, however, our opinion now rests on our belief that a court would construe the Alaska Marriage Code (AS 25.05) as allowing only marriages between a man and a woman, notwithstanding the current, sex-neutral language of the code.

When first enacted in 1963, the Alaska Marriage Code (AS 25.05) did specifically restrict marriage to a man and a woman. Sec. 1, ch. 58, SLA 1963 (enacting AS 25.05.011). The references to "man" and "woman" were deleted, and replaced with sex-neutral language, in 1974. Sec. 92, ch. 127, SLA 1974. However, chapter 127 was the bill of the revisor of statutes, submitted under AS 01.05.036. That bill is generally limited to technical changes,

and is not supposed to make major substantive changes in the law[1]. Thus we believe that if a court were confronted with the question, it would rule that AS 25.05.011 still implicitly contains the requirement that only members of different sexes may marry, because of the way in which the current sex-neutral language was adopted.[2]

Our conclusion is bolstered by the fact that the marriage code still uses the terms "husband" and "wife" in several places to refer to the parties to a marriage. See AS 25.05.041(b); 25.05.051. Had the legislature intended, either in 1974 or 1975, to authorize same-sex marriages, it would presumably have replaced these terms.

The Washington Court of Appeals reached a similar conclusion in Singer v. Hara, 522 P.2d 1187, 1189 (Wash. App.

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[1] Revisor's bills encompass many subjects, and, if they contain substantive changes in the law, they might well violate the single-subject requirement of article II, section 13 of the Alaska constitution. Instead, revisor's bills are exempted from the single-subject requirement by the portion of section 13 exempting bill "codifying, revising, or rearranging existing laws."

Using hindsight, we would have to say that the 1974 revisor's bill should not have amended AS 25.05.011 in the way that it did. First, the change to sex-neutral language can be viewed as making a major substantive change in the law, inappropriate for a revisor's bill. Second, the bill did make an unquestionably substantive change in the law (albeit not a major one), establishing an age of consent of 19 for both sexes, instead of the previous 19 for men and 18 for women (a change that presumably resulted from the 1972 amendment to article I, section 3 of the Alaska constitution to prohibit sex discrimination). Give the title of the bill - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" - this change was not in our opinion appropriate.

[2] The sex-neutral language was retained when AS 25.05.011(a) was amended in 1975, to change the age set out in that statute. Sec. 1, ch. 28, SLA 1975. However, because the sex-neutral language was not changed, we do not believe that a court would view the 1975 amendment as making the substantive change that a revisor's bill cannot. The title of the 1975 bill amending AS 25.05.011(a), "An Act relating to the capacity of persons to consent to marriage," does not reflect an intent to change the law to allow same-sex marriages.

1974). Like AS 25.05.011(a), the Washington statute at issue in Singer, RCW 26.04.010, provided that "persons" may marry. The court, however, noted that, prior to 1970, the statute referred to males and females, and that these terms were eliminated when the age of consent was made the same for both sexes. The court also noted that 1972 amendments to Washington's community property laws retained references to "husband" and "wife." It concluded that, in light of these facts, the legislature had not intended to authorize same-sex marriage.

Three other courts have concluded that same-sex marriages are not authorized under sex-neutral statutes like AS 25.05.011(a) because of the use of the word "marriage." 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). These courts all looked at the dictionary definition of "marriage," which invariably refers to a relationship between a man and a woman, or between members of opposite sexes. They concluded that the use of the word indicated legislative intent to limit the ability to marry to a man and a woman.

To our knowledge, there are no published judicial decisions holding that a statute like AS 25.05.011(a) allows same-sex marriages. Therefore we believe it quite likely that the Alaska courts would follow the decisions discussed above and rule that the Alaska marriage code does not authorize same-sex marriages.[3]

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[3] The well-known, recent Hawaii case of Baehr v. Lewin, 852 P.2d 44 (Hawaii 1993), rests on constitutional grounds, not on statutory interpretation; the statute challenged explicitly limited marriage to a man and a woman. Whether or not AS 25.05 is interpreted to allow same-sex marriages is of course a totally different issue from whether a ban on same-sex marriages is constitutional.

Please feel free to contact us if you have further questions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: John B. Gaguine
Assistant Attorney General

cc: Pat Pourchot
Legislative Liaison
Office of the Governor

Deborah Behr
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MEMORANDUM March 17, 1995

SUBJECT: HB 227, An Act clarifying a statute relating to persons who may legally marry (Work Order No. 9-LS0711\C)

TO: Representative Norman Rokeberg
Attn: Mia Costello

FROM: Terri Lauterbach
Legislative Counsel

You have asked for a legal discussion of how passage of HB 227 might affect the validity of marriages contracted outside Alaska by persons of the same sex, considering the existence of the full faith and credit clause (art. IV, sec. 1) of the federal constitution.[1]

Actually, in addition to the full faith and credit clause, there are two other legal principles to consider in order to answer your question about the treatment of marriages performed outside Alaska if HB 227 were to be enacted. Those principles concern comity and conflict of laws.

After reviewing general legal literature about these principles, it is my opinion that passage of HB 227 in its current form probably would not invalidate the marriages of persons of the same sex who legally married outside Alaska and then lived in Alaska.[2]

If the legislature's only intent is to prohibit same-sex marriages in Alaska while allowing same-sex marriages from other states to be valid here, then HB 227 achieves that goal, although the intent could be strengthened by the addition of a comity clause.

If the legislature's intent is to not only prohibit same-sex marriages in Alaska, but also to invalidate same-sex marriages legally obtained outside the state, then HB 227 would be more likely to achieve that goal if it were amended by the addition of some or all of the following

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[1]Art. IV, sec. 1, of the United States Constitution reads as follows: **Full faith and credit among states.** Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

[2]While I know of no state where a same-sex marriage has been held to be valid as of this date, this memo must assume, in order to answer your question, that same-sex marriages may some day be validly contracted in another state.

provisions: (1) a strong policy statement explaining why there is a compelling state interest in prohibiting same-sex marriages, (2) an amendment of AS 25.05.021 prohibiting same-sex marriages, (3) a statute specifying that marriages contracted in other states are invalid in Alaska if they could not have been contracted validly here, and (4) criminal sanctions generally considered applicable primarily to same-sex relationships, such as an anti-sodomy statute. Bear in mind, however, that none of these statutory changes would matter if the prohibition of same-sex marriages were found by an Alaska court to be unconstitutional.

DISCUSSION

HB 227 amends the requirements for the performance of a marriage contract in Alaska, clarifying that, in Alaska, marriage is a contract between one man and one woman. Assuming for the purposes of this memo that a same-sex marriage may be (now or some time in the future) validly contracted outside Alaska, you have asked whether HB 227 could affect the validity of those marriages if the married couple became residents of Alaska after the marriage. You have asked particularly about the full faith and credit clause of the federal constitution. (Please see the text of this clause in footnote 1 of this memo.)

The purpose of the full faith and credit clause rights acquired or confirmed under public acts and judicial proceedings of one state by requiring recognition of their validity in others. Pink v. A.A.A. Highway Express, Inc., 314 U.S. 201 (1941), reh. den., 314 U.S. 712. This clause is most often applied with respect to court proceedings so that litigation once pursued to judgment is as conclusive of the rights of the parties in every other court as in that in which the judgment was rendered. Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943), reh. den. 321 U.S. 801, (ovrld on other grds., Thomas v. Washington Gas Light Co., 448 U.S. 261).

I have not found any case law that construes the full faith and credit clause with respect to the type of situation you have posed in your question. Your question primarily concerns two other legal principles: conflict of laws and comity. If there is a conflict of laws between two states whose laws both have a bearing on a particular case, then a court will use conflict of laws principles to decide which state's law should apply in the case. The choice of governing law may also be influenced by application of the comity principle under which a court in one jurisdiction may, out of deference and respect, not obligation, apply the law of another jurisdiction. A state court may by comity give a remedy which the full faith and credit clause does not compel. 16 Am. Jur. 2d, Conflict of Laws, sec. 10, page 28. The tendency of modern decisions is toward a broader comity in the enforcement of rights created by the legislature of sister states. 16 Am. Jur. 2d, Conflict of Laws, supra.

Application of these general principles of law has yielded the following general rule with respect to marriages: a marriage valid where contracted is valid everywhere. 71 A.L.R.2d 687, at 694; 3 A.L.R.2d 240, at 241; Restatement of the Law 2d, Conflict of Laws 2d, sec. 283; and Homer Clark, Jr., The Law of Domestic Relations in the United States (2nd ed. 1987), p. 96. This rule is particularly true where the parties or at least one of the parties, at the time of the marriage, were domiciliaries of the state where the marriage was performed.

71 A.L.R.2d 687, at 695 and 701; 3 A.L.R.2d 240, at 245. However, courts are divided on the validity of a marriage contracted outside a state where the marriage would not have been valid by persons who were domiciliaries of the state where the marriage would have been invalid, who left the state to get married, and who returned to the domiciliary state after the marriage. Some courts have upheld the validity of these marriages and some have not. 71 A.L.R.2d 687, at 700.

There is a notable exception to the general rule that initially valid marriages are valid everywhere. The exception concerns the public policy of the state where the validity is being questioned. If recognition of the marriage contracted elsewhere would violate a strong public policy of the state where the marriage is being questioned, a court may not recognize the marriage, but there is authority on both sides of this question. 71 A.L.R.2d 687, at 702. As to how strong the public policy of the state needs to be on the question, it has been stated that "it is everywhere accepted that marriages should be invalidated only for the most compelling reasons." Clark, supra; Restatement of the Law 2d, Conflict of Laws 2d, sec. 283.

How a court will determine what a state's "public policy" is and how strong it is becomes the issue at this point. Some courts have found that a marriage validly performed outside the state is not necessarily against public policy just because it would be invalid or even "absolutely void" under the laws of the state where the marriage is being questioned. State v. Graves, 228 Ark. 378, 307 S.W.2d 545 (1957); Keith v. Pack, 182 Tenn 420, 187 S.W.2d 618 (1945). Even in the face of noncompliance with substantive standards like age or parental consent requirements and affinity (remote incest) prohibitions, courts may, and according to some commentators, usually will recognize the validity of the marriage if it was valid where contracted. Krause, Family Law, (Nutshell Series, 2d ed.); Restatement of the Law 2d, supra. Under contract law, a contract is not necessarily contrary to the public policy of a state merely because it could not validly have been made there. Enforcement of a contract valid by the law governing the contract ordinarily will not be denied on the grounds of public policy unless a "strong case" for such action is presented. 16 Am.Jur.2d Conflict of Laws 2d, sec. 20.

As to how a "strong case" could be made, some commentators have suggested that the public policy may need to be expressed clearly in a statute. 3 A.L.R.2d 240, at 241; Restatement of the Law 2d, supra. Such a statute could be a policy statement, a criminal sanction against the type of conduct that would violate the public policy, a statute expressly invalidating marriages that would be invalid if attempted in the state, or a combination of these provisions.[v] Statutes of this type would guide a court on it choice of laws governing a marriage that is questioned in this state but validly performed in another state.

---

[v]As of 1987, statutes in four states (Illinois, Vermont, Massachusetts, and Wisconsin) provided that a marriage of domiciliaries contracted in another state that is void by the law of the domicile will not be recognized in the domicile. Clark, Jr., The Law of Domestic Relations in the United States (2nd ed. 1987), page 96.

Absent a statutory directive on the choice of law, a court will apply other choice-of-law principles, such as the needs of the interstate and international systems, the relevant policies of other interested states and the relative interest of those states in the determination of the particular issue, the protection of justified expectations, the basic policies underlying the particular field of law, predictability and uniformity of results, and ease in the determination and application of the law to be applied. Restatement of the Law 2d, Conflict of Laws 2d, sec. 6. It is in the context of applying these principles that the strength of the public policy opposing same-sex marriages becomes important. In order to outweigh the factors concerning the expectations of the parties, the interests of the other states in having their marriages recognized, and the goal of uniformity of results, there would probably have to be a very compelling Alaska interest in invalidating a same-sex marriage validly contracted elsewhere.

In applying the foregoing discussion of general legal principles to HB 227, it is my conclusion that the bill as currently written would only clarify that marriage licenses would not be granted to same-sex couples in Alaska. HB 227 does not clarify how same-sex marriages validly contracted in other states would be treated here. In the absence of clarifying language, it is my opinion that HB 227 would not stand in the way of an Alaska court upholding a same-sex marriage contracted elsewhere. Using the full faith and credit clause, choice of laws principles, and comity, an Alaska court would probably follow the general rule that a marriage valid where contracted is valid in Alaska.

If this is not the desired result of HB 227, the bill should be amended in one or more of the following ways: (1) amendment of AS 25.05.021 to prohibit same-sex marriages; (2) inclusion of a strongly-worded policy statement explaining why the state has a compelling state interest in prohibiting same-sex marriages; (3) addition of a criminal statute generally indicating disapproval of same-sex unions, such as an anti-sodomy statute; and (4) a law specifying that a marriage contracted elsewhere that would not have been validly contracted in Alaska is invalid in Alaska.

Conversely, if the intended result of HB 227 is to prohibit same-sex marriages from being licensed in Alaska, but to recognize same-sex marriages validly licensed elsewhere, then HB 227 would be clarified by the addition of a section specifically providing that marriages contracted outside the state that are valid by the law of the state in which they were contracted are valid in Alaska."

"As of 1987, four states had such a law: Arkansas, California, Colorado, and New Mexico. Clark, Jr. The Law of Domestic Relations in the United States (2nd Ed. 1987).

It should be noted, however, that even with changes in HB 227 such as those described in this memorandum, if an Alaska court were to find that prohibition of same-sex marriages violates the state constitution, HB 227 could not overturn that result.[5]

I realize that this memorandum does not give you a definitive answer to your question. A definitive answer is not possible, considering all of the different factors that a court will consider. However, I believe I have given you enough information so that you can decide whether and how to amend HB 227 to give further guidance to any potential court decision. Please let me know if I can be of further assistance.

TML:klb:pl
95-173.klb

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[5]The constitutionality of prohibiting same-sex marriages in Hawaii is currently being litigated in Baehr, et al. v. Lewin, (Civ. No. 91-1394), after remand from Hawaii's Supreme Court in 1993.

Legislative Research Agency

Alaska State Legislature

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March 8, 1995

MEMORANDUM

TO: Representative Norman Rokeberg

FROM: Carol R. Vandor CRV
Legislative Analyst

RE: **Legislative History of AS 25.05.011 (Requirements for Marriage)**
Research Request 95.152

You asked for a legislative history of AS 25.05.011 which addresses marriage requirements. Alaska Statute 25.05.011 states that marriage is a civil contract requiring a license and solemnization which may be entered into by a person who is 18 years of age or older; those who qualify for a license under section 171[1]; or a member of the armed forces of the U.S. while on active duty.

This provision has been simplified over the years. Initially, it established a minimum age for a *male* as 21 years and for a *female* as 18 years. In 1970 the minimum age of a male was lowered to 19. In 1974 the legislature amended the law again to specify that a *person*, rather than a male or female, be at least 19 years of age. A year later the minimum age was lowered to 18, and members of the armed forces on active duty were included.

Alaska Statute 25.05.011 traces its origin to a territorial law (§ 21-1-1) which read

> 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 who are otherwise capable; provided, however, that no person shall be joined in marriage in this Territory until a license shall have been obtained for that purpose from a duly appointed and qualified United States Commissioner, or Marriage Commissioner as provided by Section 1211, Compiled Laws of Alaska, 1933 [§ 21-1-31 herein]. That nothing in Section 1189, Compiled Laws of Alaska, 1933, as amended [§ 21-1-11 herein], shall prevent a Marriage Commissioner from issuing a marriage license.

---

[1]AS 25.05.171 addresses persons capable of consenting to marriage, minimum ages, and consent of parents or guardian.

After statehood, the legislature began to adopt territorial laws as Alaska statutes. The territorial law was revised somewhat and formally adopted as a state law by Chapter 1 SLA 1963. It was renumbered as AS 25.05.010 which read

> Marriage is a civil contract, which may be entered into by males of the age of 21 years, and females of the age of 18 years who are otherwise capable. However, no person shall be joined in marriage in the state until he obtains a license from a person authorized by law to issue marriage licenses.

Section 1, Chapter 58 SLA 1963, repealed AS 25.05.010 and enacted AS 25.05.011 as follows:

> (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
>
> (1) a male who is 21 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or
>
> (2) those who qualify for a license under sec. 171 of this chapter.
>
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Section 9, Chapter 245 SLA 1970 amended AS 25.05.011(a)(1) to read (emphasis added):

> (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
>
> **(1) a male who is 19 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or**
>
> (2) those who qualify for a license under § 171 of this chapter.
>
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Section 92, Chapter 127 SLA 1974 amended AS 25.05.011(a)(1) to read (emphasis added):

> (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
>
> **(1) a person who is 19 years of age or older, who is otherwise capable, or**
>
> (2) those who qualify for a license under § 171 of this chapter.
>
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Section 1, Chapter 28 SLA 1975 amended AS 25.05.011(a) to read (emphasis added):

> (a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by
>
> **(1) a person who is 18 years of age or older, who is otherwise capable, or**
>
> (2) those who qualify for a license under § 171 of this chapter, or
>
> **(3) a member of the armed forces of the United States while on active duty.**
>
> (b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Minor revisions were made in the law after 1977. Alaska Statute 25.05.011 currently reads (emphasis added):

> (a) Marriage is a civil contract requiring both a license and solemnization that may be entered into by
>
> (1) a person who is 18 years of age or older, who is otherwise capable,
>
> (2) those who qualify for a license under **AS 25.05.171**, or
>
> (3) a member of the armed forces of the United States while on active duty.
>
> **(b) A** person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. **A** marriage performed in this state is not valid without solemnization as provided in this chapter.

Copies of the session laws and the replacement statutes are attached. We hope this information is useful to you. If we may be of further assistance, please contact this office.

Attachments

COPY

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS
Office of the General Counsel
3211 4th Street N.E. Washington, DC 20017-1194 (202)541-3300 FAX (202)541-3337 TELEX 7400424

August 21, 1995

MEMORANDUM

TO All Bishops

FROM Mark E. Chopko

SUBJECT: Same-Sex Marriage Litigation in Hawaii

I am writing to apprise you of ongoing litigation in Hawaii concerning the civil regulation of marriage that may have repercussions in other states.

Background

Three gay and lesbian couples sought a marriage license in Hawaii. State officials denied the applications because, as in other states, only male-female couples are eligible to marry in Hawaii. The aggrieved couples filed suit in State court, seeking a declaration that the Hawaii marriage statute, by restricting marriage licenses to male-female couples, violates the plaintiffs' right to privacy and equal protection of the law as guaranteed by the Hawaii Constitution. The case, captioned *Baehr v. Lewin*, was dismissed, and the plaintiffs appealed.

In May 1993, the Hawaii Supreme Court reversed the judgment of the trial court. The Supreme Court held that there is no "fundamental right" to "marry" someone of the same sex under the State Constitution's guarantee of privacy. Nevetheless, the court held that by denying couples of the same sex the legal rights and benefits that flow from marital status, the Hawaii marriage statute violates the State Constitution's guarantee of equal protection *unless* the State can demonstrate that (a) compelling state interests justify unequal treatment, and (b) the statute is narrowly drawn to accomplish those interests. Since the trial court earlier had dismissed the case on the pleadings, *i.e.*, without hearing any evidence, the Supreme Court remanded the case to the trial court to give the State an opportunity to prove whether the Hawaii marriage statute meets this two-pronged test. The case is currently pending in the trial court where it awaits further submissions by the parties and eventual trial.

Wider Ramifications

In response to *Baehr*, the Diocese of Honolulu has publicly advocated support for Hawaii's existing marriage statute and has sought amendments to strengthen the State's position that couples of the same sex may not marry. The Diocese's public statements have revolved around three points.

First, society, family, and children are best served when procreation takes place in a committed relationship between a man and woman, namely, in marriage. Second, the fundamental complementarity of men and women demands a special role and place in society. Third, while the civil rights of all persons, including homosexuals, should be protected, marriage between couples of the same sex is not such a right. At this time, the Diocese is preparing an *amicus* brief for filing in the trial court in the *Baehr* case, and continues to build coalition partners and develop strategy.

We believe this case to be potentially of signal importance. If the Hawaii courts rule that homosexual couples are entitled to marry, it is widely expected that homosexual couples married in Hawaii will seek to have their marriages recognized in other states under the "full faith and credit clause" of the U.S. Constitution. U.S. Const., Art. IV, § 1. Under that provision, rights and privileges recognized under the laws of a state are generally entitled to recognition in *other* states unless the extension of those rights and benefits would be illegal, violate a fundamental public policy, or allow citizens purposefully to evade legal restrictions in their own state. Early in this century, for example, before reform of the divorce laws, some jurisdictions (*e.g.*, Nevada) came to be known as "divorce havens." Non-residents would travel to these places, establish residency (usually only a several-day wait), and obtain a divorce. Upon returning to their home state, the divorced couple would argue that the "full faith and credit" clause of the Constitution required that their divorce be given effect. Sometimes these arguments were successful, sometimes not. By analogy, same-sex couples who marry in Hawaii would likely insist that their marriages are entitled to recognition in other states. Whether they prevail would depend on several factors, such as the nature and strength of state policy in favor of heterosexual marriages and in opposition to same-sex marriages.

We have begun to advise State Catholic Conferences on these issues. We are aware that last year in at least a dozen states, marriage laws came to the floor of the legislature often with amendments offered by both opponents or proponents of same-sex marriage. It will be important for local Conferences to seek to strengthen existing state marriage laws to favor male/female marriage and disfavor same-sex unions. State laws favoring traditional marriage and prohibiting same-sex marriage will be helpful in restricting the reach of any adverse decision in the Hawaii case. We are also conferring with other USCC staff in their areas of expertise and the NCCB Committee on Marriage and Family Life to provide appropriate cultural, doctrinal, pastoral, anthropological, and other support for the litigation in Hawaii. In addition, we will be assisting the Diocese of Honolulu and Hawaii Catholic Conference by reviewing a draft of the amicus brief they have prepared in the *Baehr* case.

We will, of course, continue to advise you and your State Catholic Conferences as these issues develop.

THE NATIONAL LEGAL FOUNDATION

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March 27,1996

OPINION LETTER

It is the opinion of the National Legal Foundation that Senate Bill 308 is constitutional under both the United States and Alaska Constitutions.

No federal or state court has ever found any law or policy denying homosexuals the right to marry (or limiting marriage to one man and one woman) to be unconstitutional on federal equal protection or due process grounds. *Dean v. District of Columbia*, 653 A.2d 307 (D.C. App. 1995); *Baker v. Nelson*, 191 N.W. 2d Minn. 1971) *appeal dismissed*, 409 U.S. 810 (1972); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *M.T. v. J.T.*, 140 N.J. Super. 77, 355 A. 2d 204 (App. Div. 1976); *Singer v. Hara*, 522 P.2d 1187 (Wash. 1974); *DeSanto v. Barnsley* 476 A.2d 952 (Pa. 1984); *Baehr v. Lewin*, 852 P.2d 44 (Hawaii 1993).

Furthermore, no court until the Hawaii Supreme Court had ever expressed any concerns on state constitutional grounds either. See cases cited above. It is important, therefore, to examine the concerns expressed in the Hawaii case, *Baehr v. Lewin*.

First of all, the Hawaii court declared that "the right to privacy does not include a fundamental right to same-sex marriage." Id. at 55 (emphasis added). We believe that the Alaska courts would come to the same conclusion relying on the same federal cases for guidance (although they are not limited to these cases as guidance). The Hawaii court relied on *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Meyer v. Nebraska*, 262 U.S. 390 (1923); and *Maynard v. Hill*, 125 U.S. 190 (1888) to correctly conclude that: "The foregoing case law demonstrates that the federal construct of the fundamental right to marry--subsumed within the right to privacy implicitly protected by the United States Constitution—presently contemplates unions between men and women." *Baehr* at 56. The court then concluded that there was no fundamental right to same-sex marriage under the Hawaii Constitution either.

Because the right of privacy arises from a due process context, the Hawaii court, quoting *Zablocki*, also held that there was no federal or state due process problem: "the right to marry is part of the fundamental 'right of privacy' implicit in the Fourteenth Amendment's Due process Clause." *Baehr* at 55. Since there was no violation of the right to privacy, there was no violation of due process.

The National Legal Foundation believes that the Senate Bill 308 is constitutional in light of the above brief analysis of privacy and due process issue both under the United States Constitution and under Article 1, Sections 1, 3, 7, and 22 of the Alaska Constitution. Furthermore, the National Legal Foundation believes that the Alaska courts would adopt a similar

analysis. Any other analysis would fly in the face of every other federal and state court that has ever addressed the issue, including the Hawaii Supreme Court in *Baehr*.

It is true however, that the Hawaii Supreme Court remanded the case to the trial court. It did so because it believed the trial court had erred in granting judgment on the pleadings. *Baehr* at 52-55. The supreme court held that the trial court had erred in applying a rational basis test to the Hawaii marriage statute and remanded the case with instructions to apply strict scrutiny. *Id.* at 59-68.

It is critical to notice two things. First, the Hawaii Supreme Court went through unconvincing logical contortions to reach the conclusion that strict scrutiny was the proper standard. *Id.* The dissenting opinion thoroughly points out why strict scrutiny should not be applied. *Id.* at 70-74. No fundamental right is involved, the law is not invidiously discriminatory, and no suspect class is involved. *Id* at 72. The law does not discriminate on the basis of sex since "the statute applies equally to *all* unmarried persons, both male and female, who desire to enter into a legally recognized marriage." *Id.* (emphasis original).

But more important than the fact that the Hawaii Supreme Court erroneously applied the strict scrutiny standard, is the fact that the Alaska courts will not have the opportunity to apply this standard. As the Hawaii Supreme Court noted, under its state constitutional jurisprudence, "Whenever a denial of equal protection of the laws is alleged, as a rule our initial inquiry has been whether the legislation in question should be subjected to 'strict scrutiny' or to a rational basis' test." *Id.* at 63 (citations omitted). However, in Alaska the case is otherwise. The Alaska courts do not use a strict scrutiny test for statutes not affecting a fundamental right. A statute must only pass the rational basis test: "Under the rational basis test, in order for a classification to survive judicial scrutiny, the classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Hilbers v. Municipality of Anchorage*, 611 P.2d 31 (Alaska 1980).

The following points from our earlier discussion are germane here. Rational basis is the proper standard since no fundamental right is involved. All persons similarly circumstanced are treated alike. Also implicit in the fact that every court to ever address the issue of same-sex marriage (until the *Baehr* court) has denied the homosexuals' challenges to these laws is the acknowledgment that there is a rational basis for prohibiting same-sex marriage. Various reasons are cited in *Zablocki, supra*; *Skinner supra*; *Meyer supra*; and *Maynard supra*. Perhaps the two most common reasons cited in these cases are that the "traditional" family is the nucleus of society; and the procreative aspect of male-female marriages.

In addition, the United States Supreme Court has stated that "majority sentiments about the morality of homosexuality" are adequate grounds upon which to base a statute. *Bowers v. Hardwick* 478 U.S. 186,196 (1986).

The National Legal Foundation believes that the Senate Bill 308 is constitutional in light of the above brief analysis of equal protection issues under Article 1, Sections 1 and 3 of the Alaska Constitution. Furthermore, the National Legal Foundation believes that the Alaska courts would adopt a similar analysis based on their required use of the rational basis test.

In summary, the National Legal Foundation believes Senate Bill 308 to be completely constitutional and further believes that the Alaska courts would so find.

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FACSIMILE TRANSMISSION COVER SHEET

TO: Senator Loren Lewis

TELE-FAX NUMBER: 907-465-3810

FROM: Steve Fitschen

DATE:

PAGES: ____ PLUS ONE COVER SHEET.

MESSAGE: We did not set this up in the typical "Questions, Answers, Analysis" format because we weren't sure of the uses you would make of this and the politics of an analysis from us to you. If you would like to see a different format let us know. We've covered your four questions. Michael Johnston is supposed to be faxing you an opinion of the Tennessee A-6 that covers federal Equal Protection

* If you did not receive a complete transmission, please call: (804) 424-4242.

ALASKA
CIVIL LIBERTIES UNION

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March 28, 1996

The Honorable Loren Leman
Alaska Senate
State Capital - Room 113
Juneau, Alaska 99801-1182

RE: **Constitutional Analysis of SB 308**

Dear Senator Leman:

I am writing on behalf of the members of the Alaska Civil Liberties Union to express our opposition to Senate Bill 308 on the grounds that the bill is unconstitutional. Senate Bill 308 proposes legislation that will violate the Full Faith and Credit Clause of the United States and Alaska Constitutions. Under SB 308, Alaska judges will be unable to recognize, for any purpose, an entire category of a sister state's valid marriages. The legislation SB 308 proposes is highly unusual and unwise, and will leave Alaska hanging out in the fringes of American law begging for an expensive legal challenge.

I. Constitutional Arguments Against SB 308

A. The Full Faith and Credit Clause

The Alaska and United States Constitutions provide that judgments of one state shall be recognized as valid in other states. The federal Clause reads:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State.

U.S. Const. Art. IV, § 1.

Hawaii regards a marriage certificate issued pursuant to its marriage law to be prima facie evidence of a validly contracted marriage.[1] It is no secret that this bill is specifically aimed at Hawaii because Hawaii might, in the future, permit same-sex marriage. Thus, SB 308 is a direct affront to the state of Hawaii. The legislature proposes to place Alaska in a precarious position by declaring that Alaska will never honor a category of Hawaii's legal judgments. Will Hawaii respond by refusing to recognize Alaska judgments? For example, in response to Alaska's new law, a Hawaiian court could refuse to enforce the judgment of an Alaska court against a creditor residing in Hawaii.

The Supreme Court has not yet ruled on the issue of whether marriages must be accorded Full Faith and Credit. Several state and lower federal courts have ruled that marriages must be given full faith and credit even where the marriage would not be recognized under the laws of

---

[1] Haw. Rev. Stat. §§ 527-1 and 527-13(c)(1985).

the forum state.[2] The Full Faith and Credit Clause establishes a general constitutional policy in favor of uniform recognition of marriages that are validly contracted under the laws of other states.

If SB 308 passes, a legal and practical nightmare will be created. Individuals will find themselves simultaneously married and unmarried in different parts of the country. Such a situation is untenable, both in terms of federalism and in terms of an American's reasonable expectation to exercise their fundamental right of marriage.

It does not take a great deal of imagination to see that passing SB 308 is the first step in creating a country where each state acts independently, leading to the breakdown of the rule of law. Each Alaska Senator should consider whether the risk of the break down of interstate relations is too high a price to pay for a piece of legislation which has been drafted in response to a decision that has not yet even been made by the Hawaii Supreme Court.

B. The Right to Interstate Travel

The right to interstate travel was first recognized by the Supreme Court in Crandall v. Nevada, 73 U.S. (6 Wall) 35 (1867). In 1969, the United States Supreme Court held that a state cannot discriminate against people entering its territory by imposing unconstitutional conditions on the right to enter. See Shapiro v. Thompson, 394 U.S. 618, 631 (1969). Cases decided under the right to travel provide strong, additional support for the argument that failure to recognize a marriage that is validly contracted under the law of another state is inconsistent with a person's fundamental right to travel freely throughout all fifty states of the nation.

Alaska's refusal to recognize a marriage validly contracted under the laws of Hawaii places a direct and tangible obstacle in the path of interstate migration. This refusal also implicates other constitutional provisions relating to due process, the right to travel and move freely throughout the nation, equal protection, interstate commerce, and privileges and immunities, as well as the fundamental right to marry itself. For example, a married couple residing in Hawaii who wished to move to another state to accept an employment opportunity or for medical treatment, would have to choose between their marriage and their right to travel.[3] Under the Analysis discussed in footnote 3, below, Alaska will need to demonstrate a compelling interest in banning same sex marriages, since Alaska's law impinges on at least two fundamental rights: the right to marry and the right to travel.

---

[2] See, e.g., Thomas v. Sullivan, 922 F.2d 132, 134 (2d Cir. 1990)(New York does not recognize common-law marriages but must give full faith and credit to marriages that are valid under the laws of other states); Oxsburn v. Graves, 210 S.W.2d 496 (Ak. 1948)(Arkansas must give full faith and credit to validly contracted Texas common-law marriage); Succession of Rodgers, 499 So.2d 429, 295 (Ct. App. La. 1986)(Louisiana does not recognize or permit common-law marriages, but must give effect to them when validly contracted in another state); Commonwealth ex rel. Alexander v. Alexander, 289 A.2d 83, 86 (Pa. 1971)(Pennsylvania must give full faith and credit to a Georgia marriage certificate).

[3] In refusing to recognize a couples' valid marriage, Alaska may be found to be "unduly interfere(ing) with the right to 'migrate, resettle, find a new job, and start a new life.'" Shapiro v. Thompson, 394 U.S. 618, 629 (1969). In Shapiro, the Court found that the Equal Protection Clause incorporated the right to travel and employed a strict scrutiny analysis. The strict scrutiny analysis requires the State to demonstrate a compelling interest in the proposed regulation which cannot be served by a more narrowly tailored means. In Shapiro, the Court found that state and federal provisions denying welfare benefits to persons who had not resided within the jurisdiction for at least a year deterred and penalized travel. Subsequently, in Dunn v. Blumstein, 405 U.S. 330, 339-340 (1972) the Court held that Shapiro did not rest upon a finding that denial of welfare actually deterred travel. The Dunn Court clarified that the compelling state interest test is triggered by "any classification which serves to penalize the exercise of [the right to travel]."

C. Equal Protection

The Supreme Court of Hawaii based its decision on the rationale that banning same sex marriages is invidious sex discrimination which violates the Constitution of Hawaii. Of note, the Alaska Constitution expressly provides that "no person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin." Art. I, § 3. In 1996, those who oppose SB 308 have testified that since marriage is traditionally defined as a union between people of different sexes, same sex marriages do not require recognition.

It is important to remember that while marriage has traditionally been defined as a union between people of different sexes, it was also traditionally defined as between people of the same race. As recently as 1967, state governments denied interracial couples the right to marry. Subsequently, the United States Supreme Court clarified that since Americans have a fundamental right to marry, no State may not discriminate against protected classes of people by denying them a marriage license. Loving v. Virginia, 388 U.S. 1 (1967).

Just as the United States Constitution protects people from discrimination based on race, the Alaska Constitution protects all Alaskans from discrimination based on sex. Therefore, under Alaska law, arguably a marriage license may not be denied on the basis of the sex of either of the applicants. Clearly, under Alaska law, the State's purpose in denying equal protection of law to a citizen based on sex, must be balanced against the nature and extent of the infringement of individual rights. The state's justification that marriage is traditionally defined as a union between men and women, is unlikely to withstand the Alaska Supreme Court's Equal Protection analysis. In thinking about a future legal challenge to SB 308, the legislature should consider whether there is a stronger public policy against same-sex marriages in 1996, than there was against interracial marriages in 1967.

II. Conclusion

The United States and Alaska Constitutions embody a common sense expectation that basic freedoms do not expire when citizens cross state lines. If a person is married in one state, that person has a right to expect all other states to recognize a validly contracted marriage. The Alaska Civil Liberties Union urges you to vote no on SB 308 because the bill is unconstitutional and will tie Alaska up in needless, expensive and protracted litigation which the state will undoubtedly lose.

Respectfully yours,

Lynn Stimler
Executive Director

FAX

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Date March 28,1998

Number of pages including cover sheet 4

SB 308

Senator Leman

From: Lynn Stimler, Executive Director

Phone

Fax Phone

CC:

Phone 1-907-258-0044

Fax Phone 1-907-258-0288

REMARKS:

☐ Urgent ☒ For your review ☒ Reply ASAP ☐ Please comment

Dear Senator Leman:

Please find attached a legal analysis on the constitutionality of the legislat on proposed by SB 308.

Please feel free to contact me at 258-0044 if you have any questions.

Sincerely,

Lynn Stimler

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243-0497

February 13, 1996

OPINION NO. 96-016

Constitutionality of SB 2305, prohibiting same-sex marriages.

QUESTIONS

1. Senate Bill 2305 prohibits same-sex marriages in Tennessee and declares that same-sex marriages entered into in another state are void in this state. Would this bill violate the Full Faith and Credit Clause of the United States Constitution?

2. Is there precedent for a state passing such a law regarding marriage (e.g. racial, sexual orientation, and familial)?

3. Does Senate Bill 2305 violate the Equal Protection Clause of the United States Constitution?

OPINIONS

1. Senate Bill 2305, if enacted into law, is constitutionally defensible under the Full Faith and Credit Clause.

2. Yes. Utah has passed similar legislation.

3. Senate Bill 2305 is constitutionally defensible under the Equal Protection Clause of the United States Constitution.

ANALYSIS

This opinion addresses only the constitutionality of Senate Bill 2305 under the Full Faith and Credit and Equal Protection Clauses of the federal constitution. No question has been asked concerning the constitutionality of the bill under the Tennessee Constitution.

1. Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause, states that "Full Faith and Credit shall be given in each State to the public acts, Records and judicial Proceedings of every other State." This provision, however, does not mean that every legal action taken in another state will override a conflicting Tennessee public policy and be recognized as legal in this state.

> Prima facie, every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the Full Faith and Credit Clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. It follows that not every statute of another state will override a conflicting statute of the forum by virtue of the Full Faith and Credit Clause....

Alaska Packers Ass'n v. Industrial Accident Commission of California, 294 U.S. 323,547-48, 55 S. Ct. 518, 523(1935). *See also Sun Oil Co. v. Wortman*, 486 U.S. 717, 722, 108 S.Ct. 2117, 2122, 100 L.Ed.2d 743 (1988) (Full Faith and Credit does not compel one state to substitute statutes of other states for its own statutes dealing with subject matter with which it is competent to legislate); Herman, *The Fusion of Gay Rights and Feminism: Gender Identity and Marriage after Baehr v. Lewin*, 56 Ohio State L. Rev. 985, 991 n.25 (1995)(observing that in family law questions the United States Supreme Court seems to balance the forum state's public policy interests against the interests of comity[1]).

Tennessee follows the rule that "a marriage valid where solemnized is valid everywhere." *Rhodes v. McAfee*, 224 Tenn. 495, 499, 457 S.W.2d (1970). This rule complies with the Full Faith and Credit Clause and comity among the states. It is not, however, without exception.

> [W]here the statute in State A prohibiting a marriage is expressive of settled public policy, a marriage solemnized in State B and valid in State B will not be valid in State A on the ground such marriage is in conflict with the public policy of the State regarding public morals or good order of society.

Id., 224 Tenn. at 499; *see also* Garrett, *Tenn. Divorce, Alimony, and Child Custody* (1995 ed.) § 1-3 (marriages solemnized in another state in order to evade Tennessee statutes, marriages contrary to the law of nature and marriages prohibited by Tennessee law as affecting the morals or good order of society will not be recognized in Tennessee). In *Rhodes*, the Tennessee Supreme Court refused to recognize the validity of a marriage between a man and his stepdaughter solemnized in Mississippi and stated as follows:

> Where our statute prohibiting the marriage is expressive of settled

---

[1]The principle of comity is that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not out of obligation, but out of deference and mutual respect. *Black's Law Dictionary* 242 (5th ed. 1979).

> public policy regarding public morals or good order in society, a marriage entered into in violation of the statute is void in Tennessee, which is true whether the marriage is solemnized in Tennessee or in another state where the marriage would be valid.

Id, 224 Tenn. At 501.

Section 1 of Senate Bill 2305 states:

> (a) It is hereby declared to be the public policy of this state to recognize the union only of man and woman. No same sex marriage shall be recognized as entitled to the benefits of marriage.
>
> (b) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by persons of the same sex, where such license is issued by another state or foreign jurisdiction, shall be void in this state and any contractual rights granted by virtue of such license, including its termination, shall be unenforceable in the courts of this state.

If enacted into law and if not unconstitutional on some other ground, Senate Bill 2305 would probably provide the expression of state public policy necessary to justify an exception to the Full Faith and Credit Clause so that this state would not be required to recognize the validity of a same-sex marriage obtained in another jurisdiction.

2. There is precedent from another state for enactment of a law similar to Senate Bill 2305. The State of Utah has enacted the following two statutes:

Utah Code Ann. § 30-1-2. Marriages prohibited void.

The following marriages are prohibited and declared void:

> (1) when there is a husband or wife living, from whom the person marrying has not been divorced; (2) when the male or female is under 18 years of age unless consent is obtained as provided in Section 30-1-9; (3) when the male or female is under 14 years of age; (4) between a divorced person and any person other than the one from whom the divorce was secured until the divorce decree becomes absolute, and, if an appeal is taken, until after the affirmance of the decree; (5) between persons of the same sex.

Utah Code Ann. § 30-1-4. Validity of foreign marriages - Exceptions.

> A marriage solemnized in any other country, state, or territory, if valid where solemnized, is valid here, unless it is a marriage; (1) that would be prohibited and declared void in this state, under Subsection 30-1-2(1),(3), or (5); or (2) between parties who are related to each other within and including three degrees of consanguinity.

It is our understanding that California and South Dakota have similar legislation pending in their legislatures.

3. The Equal Protection Clause of the United States Constitution requires that "all persons simi[illegible]rcumstanced shall be treated alike." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S. Ct. 560, 562, 64 L. Ed. 989 (1920). It does not require things that are different to be treated the same. *Plyer v. Doe*, 457 U.S. 202, 216, 102, S. Ct. 2382, 2394, 72 L. Ed. 2d 786 (1982). If a fundamental right or suspect class is involved, courts use a strict scrutiny analysis. If no such matters are involved, a rational basis test is used.

United States Supreme Court cases clearly establish that marriage is a fundamental right. *Zablocki v. Redhail*, 434 U.S. 274, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978); *Skinner v. Oklahoma*, 316 U.S. 535, 62 S. Ct. 110, 86 L. Ed. 1655 (1942); *Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923). But the *Zablocki* court expressly stated that it did "not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny." *Zablocki*, 434 U. S. At 386, 98 S. Ct at 681. The Supreme Court of Hawaii has observed that "the federal construct of the fundamental right to marry... presently contemplates unions between men and women." *Baehr v. Lewin*, 852 P. 2d 44, 56 (Haw. 1993). Using language based on Justice Goldberg's concurrence in *Griswold v. Connecticut*, 381 U.S. 479, 493, 85 S. Ct. 1678, 1686-87, 14 L. Ed. 2d 510 (1965), the Supreme Court of Hawaii also said:

> We do not believe that a right to same-sex marriage is so rooted in the traditions and collective consciousness of our people that failure to recognize it would violate the fundamental principles of liberty and justice that lie at the base of all our civil and political institutions. Neither do we believe that a right to same-sex marriage is implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if either were sacrificed. Accordingly, we hold that the applicant couples do not have a fundamental constitutional right to same-sex marriage arising out of the right to privacy or otherwise.

Baehr v. Lewin, 852 P. 2d at 57. *See also Baker v. Nelson*, 291 Minn. 310, 191 N.W. 2d 185 (1971), appeal dismissed for want of a substantial federal question, 409 U.S. 810, 93 S. Ct. 37, 34 L. Ed. 2d 65 (1972); *Singer v. Hara*, 11 Wash. App. 247, 522 P. 2d 1187 (1974). Therefore, it appears that

no court has recognized a fundamental right under the federal constitution for persons of the same sex to marry.

Strict scrutiny is also required if a suspect class is involved. Homosexuals have not been held to constitute a suspect class. *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati*, 54 F.3d 261 (Sixth Cir. 1995), petition for cert. filed, 64 U.S.L.W. 3122 (U.S. August 10, 1995)(No.95-239); *Ben Shalom v. Marsh*, 881 F. 2d 454 (Seventh Cir. 1989), *cert. denied* 494 U.S. 1004, 110 S.Ct. 1296, 108 L.Ed.2d 473 (1990). No high-level scrutiny is mandated by a classification by sexual preference. *Gay Inmates of Shelby County Jail/Criminal Justice Complex v. Barksdale*, No. 84-5666 (6th Cir. June 1, 1987). *See also Collins v. Collins*, Tenn. Ct. App. No. 87-238-II (March 30, 1988) (Tomlin, P.J., concurring) (homosexuals are not offered the constitutional protection that race, national origin and alienage have been afforded); *Singer v. Hara*, supra.

It could also be argued that Senate Bill 2305 contains a gender based classification and is thus subject to a heightened standard of review. This argument is primarily supported by analogy to *Loving v. Virginia*, 388 U.S. 1, 87, C. Ct. 187, 18 L. Ed. 2d 1010 (1967). In that case, the United States Supreme Court determined that a Virginia statute prohibiting interracial marriages was invalid because it was based on an impermissible racial classification. Just as laws prohibiting interracial marriage involve racial classifications, it could be argued that laws prohibiting same-sex marriage involve gender classification, because, for example, such laws permit women to marry men but forbid men from marrying men. Using this rationale, the Supreme Court of Hawaii has held that Hawaii's marriage laws, which restrict marriage to unions between male and female, are gender-based discrimination under the Hawaii Constitution's equal protection guarantee and must be subjected to a heightened scrutiny analysis. *Baehr v. Lewin, supra.*

Singer v. Hara, supra, dealt with the state of Washington's Equal Rights Amendment and marriage laws. The Court of Appeals of Washington held that the state's marriage laws did not authorize same-sex marriages and that this did not violate the Washington constitutional amendment providing that "Equality of rights and responsibility under the law shall not be denied or abridged on account of sex." The state maintained that the sexes were treated equally because male couples and female couples were both denied marriage licenses. The plaintiffs argued that *Loving* required a different result. The Court, however, distinguished *Loving* as involving a racial classification invalidating a marriage, whereas the plaintiffs' relationship did not involve a marriage at all. *Loving*, the Court said, did not alter the basic definition of marriage as involving only two persons who are members of the opposite sex. *Id.*, 522 P. 2d at 1191-92. The failure to recognize same-sex marriages "is based upon the state's recognition that our society as a whole views marriage as the appropriate desirable forum for procreation and the rearing of children." *Baehr* rejected the reasoning in *Singer* as an "exercise in tortured and conclusory sophistry." 852 P. 2d at 63.

It is unclear whether Senate Bill 2305 would be considered a gender based classification. Arguably, however, for the reasons cited by the Washington court in *Singer, supra*, Senate Bill 2305 does not benefit or burden the sexes unequally; and this office is not aware of any decision by a

federal court holding that state law prohibitions against same sex marriages should be viewed as gender discrimination subject to heightened scrutiny under the federal constitution. Assuming Senate Bill 2305 is not held to be a gender classification under the federal equal protection guarantee, a rational basis test would be applied, which the statute would likely be held to satisfy. *Singer v. Hara, supra*; *Baker v. Nelson, supra*; *cf. Bowers v. Hardwick*, 478 U.S. 186, 196, 106 S.Ct. 2841, 2846-47, 90 L. Ed.2d 140 (1986) (holding that majority sentiments about the morality of homosexuality are constitutionally sufficient to support state criminal laws prescribing sodomy between consenting adults in private).

Charles W Burson

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Andy D. Bennett

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CHARLES W. BURSON
Attorney General and Reporter

NEWS RELEASE **Not for Publication until Noon, August 4, 1995**

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

Jay Brause or Gene Dugan, plaintiffs
907 566-1663 voice mail

Same-Sex Marriage Legal Action Filed in Alaska

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

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

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

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

# # #

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiffs pray that this Court:

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

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

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

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

DATED this 2nd day of August, 1995.

Robert H. Wagstaff
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Anchorage, Alaska 99501
(907) 277-8611

Erik LeRoy, P.C.
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Attorneys for Plaintiffs

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Memorandum — *Alaska Court System*

TO: Vital Statistics

FROM: Karl S. Johnstone
Presiding Judge

DATE: May 17, 1993

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

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

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

KSJ:ln

RECORDING DISTRICT

CITY OR TOWN

MARRIAGE LICENSE DOCKET

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
BUREAU OF VITAL STATISTICS
JUNEAU, ALASKA 99811

NO. 941842

IN THE MATTER OF A MARRIAGE LICENSE FOR

AND

APPLICATION

APPLICATION MADE BY (Name)

DATE OF APPLICATION: 08-04-94

MAILING ADDRESS OF APPLICANT

—IDENTIFYING STATEMENT—

MALE	FEMALE
NAME (First, Middle, Last): GENE - DUGAN	NAME (First, Middle, Last): JAY KARL BRAUSE
MAIDEN NAME (if different from above):	MAIDEN NAME (if different from above):
RESIDENCE (City, State): ANCHORAGE, ALASKA	RESIDENCE (City, State): ANCHORAGE, ALASKA
DATE OF BIRTH: DECEMBER 10, 1951	DATE OF BIRTH: [illegible] 6/3/54
PLACE OF BIRTH: BROOKLYN, NEW YORK	PLACE OF BIRTH: [illegible], MINN

IMPORTANT: IF MARRIED PREVIOUSLY, REVERSE SIDE MUST BE COMPLETED

RELATIONSHIP TO APPLICANT (Any blood relationship between Bride and Groom?): ☐ YES ☐ NO	RELATIONSHIP TO APPLICANT (Any blood relationship between Bride and Groom?): ☐ YES ☐ NO
ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLEMNIZED? NO	ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLEMNIZED? NO
I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief.	I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief.
SIGNATURE:	SIGNATURE:

BOTH PARTIES: SIGN HERE

Subscribed and sworn to before me on _____, 19 ____	Subscribed and sworn to before me on _____, 19 ____
8-4-94 D. Charlene Davis NP 2	
SIGNATURE, TITLE, AND SEAL	SIGNATURE, TITLE, AND SEAL

MAGISTRATE — COMMISSIONER

—CONSENT—

MALE	FEMALE
(Necessary if under age 18) ☐ GIVEN	(Necessary if under age 18) ☐ GIVEN
MARRIAGE LICENSE NO.	DATE ISSUED

REMARKS: DO NOT ISSUE WITHOUT WRITTEN AUTHORIZATION OF PRESIDING JUDGE

GROOM		BRIDE	
NUMBER OF THIS MARRIAGE (Specify First, Second, etc.): 1ST	IF PREVIOUSLY MARRIED, LAST MARRIAGE ENDED BY: ☐ Death ☐ Divorce ☐ Dissolution	NUMBER OF THIS MARRIAGE (Specify First, Second, etc.): FIRST	IF PREVIOUSLY MARRIED, LAST MARRIAGE ENDED BY: ☐ Death ☐ Divorce ☐ Dissolution
RACE—Specify Filipino, Black, Native, White, etc.		RACE—Specify Filipino, Black, Native, White, etc.	

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

AFFIDAVIT OF JAY BRAUSE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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

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

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

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

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