ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9245 HOUSE JUDICIARY

TWO.

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

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

THREE.

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

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

LAST.

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

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

STATEMENT: Robert Wagstaff, lead counsel for lawsuit

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

BACKGROUND: The Plaintiffs

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

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

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

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

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

BACKGROUND: Affidavits Summary

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

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

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

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

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

BACKGROUND: Lawsuit Summary

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

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

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

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

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

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

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

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

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

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

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

(attached)

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

Contact: Rachel King
Executive Director
258-0044

ALASKA CIVIL LIBERTIES UNION SUPPORTS SAME SEX MARRIAGE

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

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

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

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

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

END

Some of the Rights that come with Marriage in Alaska

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

1. Right to file wrongful death action AS 9 55.580
2. Right to notice and consent in adoption proceeding AS 25.23.050
3. Spouse's right of intestate succession AS 13.11.010
4. Intestate succession to Alaska Native Corporation stock AS 13.16.705; 13.11.012
5. Right to authorize anatomical gifts AS 13.50.010
6. Right to revocation of will with marriage annulment AS 13.11.185
7. Surviving spouse's homestead allowance AS 13.11.125
8. Surviving spouse's elective share of estate AS 13.11.070
9. Surviving, omitted spouse's rights AS 13.11.110
10. Applicability of Uniform Disposition of Community Property rights at death AS 13.41.005
11. Surviving spouse's exemptions AS 13.11.130
12. Surviving spouse's family allowance AS 13.11.135
13. Right of notice of guardianship proceedings AS 13.26.135
14. Right to appointment as guardian AS 13.26.145
15. Child custody AS 25.24.150
16. Residency of spouse determining right to Permanent Fund Dividend AS 43.23.015
17. Actions between spouses respecting property AS 25.15.020
18. Authority to act as attorney in fact AS 25 15 040
19. Right to adopt AS 25.023.020
20. Violation of bigamy statute AS 11.51.140
21. Both spouses join in conveyance of family home AS 34.15.010
22. Spouse's services excluded from definition of employee AS 23.30.525
23. Right of first refusal under gasoline product leasing act AS 45.50.825
24. Right to effectuate insurance upon spouse AS 21.42.090
25. Criminal nonsupport rights AS 11.51.120
26. Worker Compensation rights upon spouse's death AS 23.30.215
27. Spouse's right to compensation for permanent partial disability AS 23.30.195
28. Spouse's interest in public employee retirement system AS 39.35.455
29. Spouse's interest in qualified domestic relation orders and retirement plans AS 39.35.455
30. Old age survivor insurance AS 39.30.20
31. Beneficiary public employee group health and life insurance AS 39.30.090
32. Public employee family leave AS 39.20.305; 23.10.500
33. Public employee leave of absence AS 39.20.310
34. Payments due to deceased public employees AS 39.20.360
35. Spouse's interest in supplemental employee benefits AS 39.30 160
36. Spouse's interest in public employee special hazard insurance AS 39.30.130
37. Spouse's interest in public employee's deferred compensation program AS 39.45.010
38. Federal income tax applications
39. Nondischargeability in bankruptcy of spousal support 11 U.S.C. §523 (a) (5)
40. Right to consent to adoption AS 25.23 040

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

(Action against the State because a Marriage License was denied to same-sex applicants. ~~19~~ 18 pages follow.)

FAX 258-2916

Dear MIA *:* (REP. ROKEBERG)

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

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

— Gene & Jay, plaintiffs 566-1663

Robert H. Wagstaff, lead counsel 277-8611

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

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

PLANNED PARENTHOOD OF ALASKA, et al.,	)
Plaintiffs,	)
vs.	)
STATE OF ALASKA,	)
Defendant.	)
CONCERNED ALASKA PARENTS, INC.,	)
Amicus Curiae.	)

Case No. 3AN-97-6014 CI

MEMORANDUM AND DECISION

This matter is before the court on Plaintiffs' Motion for Summary Judgment. The State and Concerned Alaska Parent's, Inc. oppose plaintiffs' motion.

I. INTRODUCTION

There are those in our society who are morally opposed to abortion. There are those in our society who believe that a woman's right to have control over her body is an inalienable right. This decision does not deal with either of those concerns. Rather, this decision deals with the constitutional rights of all citizens of the State of Alaska to make decisions that are personal and intimate to their lives and to be treated equally.

I am asked to interpret the Alaska Constitution, to decide whether a recent enactment of the legislature comports with the fundamental principles set forth in that document.

II. BACKGROUND

On May 2, 1997, HCS CSSB 24 (Fin) ("SB 24" or "the Act") was enacted by the Alaska Legislature. Of relevance here are those provisions of the statute that require a minor to obtain parental consent or a judicial bypass before an abortion may be performed on her. The effective date of SB 24 was July 31, 1997.

On July 25, 1997, Planned Parenthood of Alaska, Jan Whitefield, M.D., Robert Klem, M.D., and ten unidentified Jane Does filed a complaint against the State of Alaska for declaratory and injunctive relief. The complaint seeks, among other things, a declaration that SB 24 is unlawful and void under the Alaska Constitution and a permanent injunction restraining the State of Alaska from implementing or enforcing the act. Subsequently, the non-profit corporation Concerned Alaska Parents, Inc. ("CAP") moved to intervene or, alternatively, to participate as an amicus curiae. This court denied CAP's motion to intervene but allowed it to participate as an amicus curiae.

On July 29, 1997, two days before the statute was to become effective, the plaintiffs moved for a temporary restraining order and a preliminary injunction. On August 5, 1997, this court issued an order temporarily restraining the implementation and enforcement of SB 24 pending resolution of the motion for preliminary injunction. An evidentiary hearing on the preliminary injunction was scheduled for August 13, 1997.

Subsequently, the parties stipulated to extensions of the time for the evidentiary hearing until it was finally scheduled for

.. 2, 1998. The parties and CAP also agreed that the temporary restraining order would remain in effect until the court issued its decision regarding the plaintiffs' motion for preliminary injunction.

On January 7, 1998, the plaintiffs filed this motion for summary judgment, asserting that this court can find as a matter of law that SB 24 is unconstitutional and void on its face. The State and CAP oppose summary judgment disputing plaintiffs' legal theories and contending that material facts are in dispute.

III. SUMMARY JUDGMENT STANDARD OF REVIEW

The proponent of a motion for summary judgment has the burden of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law. Dansereau v. Ulmer, 903 P.2d 555, 570 (Alaska 1995), citing Bauman v. State, Div. of Family and Youth Services, 768 P.2d 1097, 1099 (Alaska 1989). The party opposing a motion for summary judgment need not establish that it will prevail at trial, but merely that there exists a genuine issue of fact to be litigated. Alaska Rent-a-Car, Inc. v. Ford Motor Co., 526 P.2d 1136 (Alaska 1974). All inferences of fact from proffered proofs must be drawn in favor of the non-moving party. Maddox v. River & Sea Marine, Inc., 925 P.2d 1033, 1035 (Alaska 1996).

IV. THE NEW LAW - AS 18.16.010 - 030

Although a copy of the new law is attached to this opinion, I have summarized the relevant provision of the law here, to provide context for the decision.

The Act provides that before an abortion is knowingly performed by a doctor on an unemancipated woman under the age of 17, consent has to be given in writing by one of the parents, or by a legal custodian. AS 18.16.010(a)(3); AS 18.16.020.

Alternatively, the Act provides that an unemancipated minor can apply for "judicial bypass" of the parental consent requirement. To do so, the unemancipated woman must file a complaint in superior court requesting the issuance of an order authorizing the minor to consent to the abortion without the consent of a parent. The complaint must allege either or both of the following: that the minor is mature enough to make that decision by herself, and/or that one or both parents have engaged in physical, emotional or sexual abuse against the minor. AS 18.16.030. Judicial bypass hearings are confidential, and the unemancipated woman, if she has not retained an attorney, shall receive a court appointed attorney. AS 18.16.030(d) and (k). Within five days from the date of the complaint, the Superior Court must hold a hearing to determine if one or both allegations have been proven by "clear and convincing" evidence and must issue a ruling immediately thereafter. AS 18.16.030(e)-(g). Failure by the court to hold a hearing within this 5-day period will result in a "constructive order" which authorizes the minor to consent to the abortion. AS 18.16.030(c).

A physician violating this section may be subject to both criminal and civil penalties. AS 18.16.010(c) and (e).

V. ISSUE PRESENTED

This Act presents a very specific question. It is crucial to identify the narrow contours of the question. This decision does not deal with the general issue of a woman's reproductive rights or the general issue of th constitutionality of abortion. The question presented by the Act is, who should decide when a minor woman wants to have an abortion.

Since the Act does not attempt to regulate abortions directly, it is pertinent to set out exactly what the legislation achieves. First, the Act distinguishes between women based upon their age. For those aged seventeen and above, no consent by a third party is required. Second, with respect to those under the age of seventeen, the Act has limited the right to make a reproductive decision in a very specific way. There is a distinction between a reproductive decision, and the choice to have an abortion. They are not the same. A reproductive decision involves choosing between two options, either to carry the fetus to term or to have an abortion. Therefore, a reproductive decision has two possible outcomes. This legislation restricts only one of those outcomes.

If an unemancipated minor chooses the first option, to carry the pregnancy to term, whatever her age might be, she can make that decision without parental guidance or consent. Thus, the unemancipated, underaged woman's right to choose to carry the fetus to term is not restricted by this Act. Conversely, if a minor wishes to select the second reproductive choice, to abort the

pregnancy, the Act imposes restrictions on the minor's right to make that choice.[1]

VI. THE CONSTITUTIONAL RIGHT TO PRIVACY

A. The Constitutional Right of Privacy

Plaintiffs challenge the new legislation on state, rather than federal constitutional grounds.[2] One difference between Alaska's constitution and the Federal constitution is Alaska's explicit constitutional protection of the right to privacy. Article I sec. 22 of the Alaska Constitution provides:

> Right of Privacy. The right of the people to privacy is recognized and shall not be infringed."

Alaska's privacy guarantee is broader in scope than the implicit right of privacy guaranteed by the federal constitution. Messerli v. State, 626 P.2d 81 (Alaska 1980); Falcon v. Alaska Pub. Offices Commission, 570 P.2d 469 (Alaska 1977). Justice Boochever explained this right to privacy very well in Ravin v. State, 537 P.2d 494, 515 Alaska 1975) when he stated:

> Since the citizens of Alaska, with their strong emphasis on individual liberty, enacted an amendment to the Alaska Constitution

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[1] The Act imposes a "consent requirement," which requires at least one parent to give actual written consent to a minor's decision to have an abortion. This is distinguished from a "notification requirement," which does not require actual parental consent, but which requires the physician or health care provider to notify both parents of the minor's wish to abort, often 48 hours before the abortion.

[2] Based on my analysis of federal constitutional law, the legislation as enacted would most likely satisfy federal constitutional standards. Planned Parenthood v. Ashcroft, 462 U.S. 476, 103 S.Ct. 2517, 76 L.Ed.2d 733 (1983).

> expressly providing for a right to privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution. . . . [I]t includes not only activities within the home . . . but also the right to be left alone and to do as one pleases as long as the activity does not infringe on the rights of others. . . . The right to privacy, however, is not monolithic. For example, the right to decide whether to eat strawberry ice cream cannot be placed on the same level as that of deciding whether to bear a child.

Thus, not all rights of privacy are the same, nor is the right to privacy absolute. In order for the State to interfere or restrict a citizen's right to privacy, the State must have a legitimate reason for doing so. The greater the right to privacy, the more important the State's reason must be to interfere with that right. For rights that are "fundamental rights," the state must show a "compelling state interest" in regulating that right.

Therefore, the first step is to define the level of privacy afforded the right in question here.

B. Reproductive Rights are Fundamental Rights Encompassed Within the Right to Privacy.

In Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), rehearing denied 410 U.S. 959, 93 S.Ct. 1409, 35 L.Ed.2d 694 (1973), the United States Supreme Court ruled that a woman's right to have an abortion was part of her fundamental right of privacy. The Roe majority opinion established what is now known as the "trimester" analysis for determining the permissible degrees of government regulation during the course of a woman's pregnancy. In a nutshell, Roe decided that during the first trimester, the level

allowable state intervention permitted is slight but, after that, the level of allowable state intervention rises until the third trimester, when the state's interest in preserving the fetus becomes compelling.

The Roe decision in 1973 commanded a majority of the United States Supreme Court. Since then, the United States Supreme Court has struggled with the issue in numerous cases leading up to Planned Parenthood v. Casey, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). In Casey, a majority of the Supreme Court affirmed the ruling in Roe that recognized a woman's fundamental right to reproduction choice. However, there was no majority in support of Roe's "trimester" test. To summarize, four justices would have rejected Roe entirely, two justices, although they joined in the majority, would have upheld Roe entirely, while three justices upheld Roe in the majority decision, but with changes. The three "plurality" judges changed the "trimester" test to an "undue burden" test which abandoned the Roe trimester analysis.[3]

In Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice, Op. No. 4906 (Alaska November 21, 1997), the Alaska Supreme Court considered the extent of this state's constitutional right to privacy as it applies to reproductive rights, including the right

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[3] Unlike in Casey and in Roe, where the same analysis applies to a woman's decision to abort her pregnancy no matter what her age, the question of what are the permissible circumstances under which a female is permitted to freely proceed with an abortion is not the question raised here.

to an abortion. In Valley Hospital, the supreme court unanimously held:

> [W]e are of the view that reproductive rights are fundamental, and that they are encompassed within the right to privacy expressed in article I, section 22 of the Alaska Constitution. These rights may be legally constrained only when the constraints are justified by compelling state interest, and no less restrictive means could advance that interest. These fundamental reproductive rights include the right to an abortion. The scope of the fundamental right to an abortion that we conclude is encompassed within article I, section 22, is similar to that expressed in Roe v. Wade. We do not, however, adopt as Alaska constitutional law the narrower definition of that promulgated in the plurality opinion in Casey.

The Alaska Supreme Court specifically concluded that the Alaska Constitution protects a citizen's reproductive autonomy more broadly than does the United States constitution. Therefore, under Valley Hospital, the reproductive rights of citizens, including the right to an abortion, are fundamental rights guaranteed by the privacy provision of the Alaska Constitution.

C. The Fundamental Right to Reproductive Choice Extends to Unemancipated Women Under the Age of Seventeen.

Valley Hospital was a case of general application and did not specifically address the reproductive rights of women under the age of seventeen. Defendant, the State of Alaska contends that the constitutional rights of minors are not coextensive with those of adults and that women under the age of seventeen have diminished

constitutional rights.[4] Plaintiffs contend otherwise. These issues have not been squarely addressed by any Alaska Supreme Court opinions.

In areas where the Alaska Supreme Court has not directly ruled on an issue I look to, and follow the legal principles set out by the Alaska Supreme Court. I also look to other jurisdictions that have faced the same question to see what results those courts have reached, and to follow those legal principles consistent with and closest to Alaska law. Some cases instruct that the status of a minor does not diminish her right of privacy, but is a factor to be considered when deciding whether the State has met its burden of showing a "compelling state interest." Other cases conclude that the privacy interests of minors are lower than those of adults.

1. Cases From Other States with Constitutional Privacy Provisions

As already discussed, the Alaska Constitution contains an explicit privacy provision. In answering the question of whether the privacy interests of minors at stake are considered "fundamental" for purposes of constitutional analysis, other states with a similar and explicit privacy section in their constitution offer guidance. Two states, Florida and California have addressed the same problem, and have concluded in each instance that the rights involved are fundamental.

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[4] Amicus curiae, CAP presents the same argument in its brief.

In Re T.W., 551 So.2d 1186, 1190 (Fla. 1989), the Florida Supreme Court stated that "Florida is unusual in that it is one of at least four states having its own express constitutional provision guaranteeing an independent right to privacy . . . and we opt to examine the statute first under the Florida Constitution." After doing so, the Florida court concluded that "[a] woman's right to make that choice freely is fundamental." Id. at 1193.

In Re T.W. concerned a statute almost identical to the one in question in this case. That statute provided that prior to undergoing an abortion, a minor must obtain parental consent or, alternatively, persuade a court that she is sufficiently mature, or if immature, that an abortion is still in her best interest. To reach its decision, the Florida Supreme Court first addressed the rights of the minor. The court stated:

> The next question to be addressed is whether this freedom of choice concerning abortions extends to minors. We conclude that it does, based on the unambiguous language of the amendment: The right of privacy extends to "[e]very natural person." Minors are natural persons in the eyes of the law and "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, . . . possess constitutional rights. Id. at 1193 [cites omitted].

The Florida Court held that the rights of minors were coextensive with those of adults.

The same analysis was applied by the State of California when that state faced a similar parental consent statute. California's constitution contains a privacy provision much the same as

Florida's. In American Academy of Pediatrics v. Lungren, Op. No. S041459 (August 5, 1997) at 40, the court concluded that minors as well as adults are persons under the Constitution and are entitled to no less protection of their fundamental rights.

Alaska's constitutional protection of the right of privacy is just as broad: the "right of the people to privacy is recognized." Thus, I find the Florida and California state principles consistent with Alaska law.

2. Federal Cases, Where There Are No Explicit Privacy Provisions

The United States Constitution does not contain an explicit privacy provision. Even so, the federal cases also provide guidance on the outcome of this case.

The United States Supreme Court is quite clear that, for women above the age of majority, any third party notification or consent requirement is unconstitutional. Planned Parenthood v. Danforth, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976); Planned Parenthood v. Casey, 505 U.S. 833, 887-97, 112 S.Ct. 2791, 2826-31, 120 L.Ed.2d 674 (1992). The United States Supreme Court has been divided, however, on the issue of what level of privacy rights does a minor enjoy. The justices have different views on the matter.

Some justices would lower the privacy rights of minors. Bellotti v. Baird, 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979), rehearing denied 444 U.S. 887, 100 S.Ct. 185, 62 L.Ed.2d 121 (1979) was a United States Supreme Court case that examined a parental consent statute as well as the adequacy of judicial bypass provisions. Justice Powell spoke for the plurality of the court.

He was joined by Chief Justice Burger, and [illegible]

Rehnquist. In that opinion, Justice Powell found three reasons why the rights of minors were not coextensive with those of adults. He stated:

> We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing. Bellotti, 443 U.S. at 634, 99 S.Ct. at 3043.

The opinion concluded that, based on a minor's reduced right of privacy, a greater intrusion by the state into that right was permissible.

Other justices of the United State Supreme Court, however, have expressed a different view on the privacy rights of minors. In Hodgson v. Minnesota, 497 U.S. 417, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990), the U.S. Supreme Court addressed the constitutionality of a Minnesota statute that provided that no abortion shall be performed on a woman under the age of 18 years old until at least 48 hours after both her parents have been notified. The Minnesota statute contained a judicial bypass provision.

In the concurring and dissenting opinion of Justice Marshall, joined by Justices Brennan and Blackmun, the justices noted that the constitutional right to privacy was broad enough to encompass a woman's decision whether to terminate her pregnancy. The justices also noted that the right to make that choice is fundamental, consistent with the Roe v. Wade decision. In

addressing the scope of that right as applied to minors, Justice Marshall stated:

> Neither the scope of a woman's privacy right nor the magnitude of a law's burden is diminished because a woman is a minor. [cite omitted]. Rather, a woman's minority status affects only the nature of the State's interests. 479 U.S. at 463.

Under Justice Marsnall's analysis, state laws requiring parental consent would be subject to a "strict scrutiny" standard and even one-parent notification statutes (with judicial bypass) would be unconstitutional.

As already discussed, a majority of the justices of the United States Supreme Court have departed from the original fundamental rights formulation enunciated in Roe v. Wade. Given the Alaska Supreme Court's recent rejection of Casey and its assertion that Alaska's constitutional privacy provision is similar to that set out in Roe, the principle in Alaska is to afford its citizens greater protection consistent with that level of protection enunciated by Justice Marshall in Hodgson, supra.

Based on the Alaska Constitution, the Valley Hospital case, and guidance from federal and other state cases, I conclude that the privacy right of minors, as it applies to the question at hand, are co-extensive with those of adults.

The maturity or immaturity of minors and their capacity for decision making does not diminish the right of privacy of that person. Those factors are relevant to question of the state's interests in enacting the Act.

D. <u>The State Must Show a Compelling State Interest and that No Less Restrictive Means to Advance Those Interests Exists.</u>

Establishment of the nature of the right at stake does not end the inquiry. As discussed in section V of this decision, the Act restricts the exercise of a fundamental constitutional right. The legislation takes the right of a minor to elect to have an abortion and places that decision in the hands of her parents in the first instance, or a judge in the last instance.

As stated in Valley Hospital, rights of a fundamental nature can only be constitutionally constrained by a compelling state interest and only where no less restrictive means could advance that interest. Valley Hospital at 12. The burden is on the state to satisfy the two part test before such legislation can pass constitutional scrutiny.

When the legislature passed the Act, the legislature set out a list of compelling state interests as well as findings of fact supporting the legislation.[5] In Valley Hospital, at 20, the court

---

[5] Section 1. PURPOSE; FINDINGS. (a) It is the intent of the legislature in enacting this Act to further the important and compelling state interests of

(1) protecting minors against their own immaturity;
(2) fostering the family structure and preserving it as a viable social unit;
(3) protecting the rights of parents to rear children who are members of their household; and
(4) protecting the health of minor women.

(b) The legislature finds that

(1) immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences;

held that "we cannot defer to the legislature when infringement of a constitutional right results from legislative action." However, in Gulf Oil Corp. v. State, Dept. of Revenue, 755 P.2d 372, 387 (Alaska 1988), the court stated that "while not dispositive, we give legislative findings considerable respect in our analysis."

Thus, to determine whether the State has met its burden with respect to establishing a compelling interest, it would be necessary to examine the legislative statements of purpose and findings of fact as well as to reach findings of fact based upon the evidence produced in this matter.[6] However, because I conclude that summary judgment is appropriate on equal protection grounds, I need not reach the question whether the State has sufficiently

---

(2) the physical, emotional, and psychological consequences of abortion are serious and can be lasting particularly when the patient is immature;

(3) the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(4) parents ordinarily possess information essential to a physician's or surgeon's best medical judgment concerning the child;

(5) parents who are aware that their minor daughter has had an abortion may better ensure that the daughter receives adequate medical attention after the abortion;

(6) parental consultation is usually desirable and in the best interest of the minor; and

(7) parental involvement legislation enacted in other states has shown to have a significant effect in reducing abortion, birth, and pregnancy rates among minors.

[6] When the court is faced with the task of deciding the constitutionality of a statute, the court must, in addition to reaching its own adjudicative findings of fact also consider the legislative findings of fact, that is, the policy considerations and background of the particular statute. State v. Erickson, 574 P.2d 1, 5 (Alaska 1978).

shown that a question of material fact exists as to whether the state has a compelling interest in enacting this legislation.

VII. THE CONSTITUTIONAL RIGHT TO EQUAL PROTECTION

A. The Right to Equal Protection

Plaintiffs also challenge SB 24 on State equal protection grounds. The equal protection provision protects a right different from the right to privacy. As with the right to privacy, the Alaska Constitution provides its citizens with greater equal protection rights than those afforded by the United States Constitution. Article I section 1 of the Alaska Constitution provides:

> **Section 1. Inherent Rights.** This constitution is dedicated the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their industry; **that all persons are equal and entitled to equal rights, opportunities, and protection under the law;** and that all persons have corresponding obligations to the people and to the State. (emphasis added).

In interpreting Alaska's equal protection provision, the Supreme Court has adopted a standard more flexible and in some ways, more rigorous, than the one used pursuant to the Federal Constitution. In Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976) the court explained its departure from the "rigid two-tier formulation" and its adoption of a "more flexible and more demanding standard which will be applied in future cases if the compelling state interest is found inappropriate." Later, in Erickson, supra at 12, the court instructed that "[s]uch a test will be flexible and dependent upon the importance of the rights

involved." In the case of Alaska Pacific Insurance v. Brown, 687 P.2d 264, 269-70 (Alaska 1984), the court explained the current three part test as follows:

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review ... Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.
>
> Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
>
> Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.

In explaining its review of classification schemes, the court in State, Dept. of Revenue v. Cosio, 858 P.2d 621 (Alaska 1993) said that, under the sliding scale test, the applicable standard of review is determined not only by the individual rights asserted but also "by the degree of suspicion with which we view the resulting classification scheme." Cosio, supra, at 629, citing State v. Ostrosky, 667 P.2d 1184, 1192-93 (Alaska 1983). As the right

asserted becomes more fundamental or the classification scheme employed becomes more constitutionally suspect, the more rigorous the scrutiny on the sliding scale.

B. The Importance of the Right and the Compelling State Interest

The first two steps of the equal protection analysis are essentially identical to the two steps of the constitutional right to privacy analysis. In this case, the right involved is the fundamental right to privacy. Section VIB and VIC. The question of compelling state interest supporting the legislation has also been examined. The difference between the rights of equal protection and rights of privacy resides in the third prong of the equal protection test.

C. The Classification Scheme and Level of Scrutiny

In Valley Hospital, the Alaska Supreme Court cited with approval Professor Tribe's analysis:

> Of all decisions a person makes about his or her body, the most profound and intimate relate to two sets of ultimate questions: first, whether, when and how one's body is to become the vehicle for another human being's creation; second, when and how -- this time there is no question of "whether" -- one's body is to terminate its organic life. Valley Hospital, supra, at 11-12, citing Laurence H. Tribe, American Constitutional Law 1337-38 (2d ed. 1988).

This legislation, by operation, creates two separate classes of pregnant minors, one class comprised of those who elect to have abortions and another class comprised of those who elect to carry the fetus to term. The statutory treatment of the first class, and the consent requirement imposed, has been discussed in Section IV

of this decision. I now turn to statutory treatment of the second class.

For a minor who elects to continue with her pregnancy, no parental consent is necessary. In addition, the minor can obtain medical services without the consent of her parents.[7] AS 25.20

---

[7] AS 25.20.025. Examination and treatment of minors.

(a) Except as prohibited under AS 18.16.010(a)(3),

(1) a minor who is living apart from the minor's parents or legal guardian and who is managing the minor's own financial affairs, regardless of the source or extent of income, may give consent for medical and dental services for the minor;

(2) a minor may give consent for medical and dental services if the parent or legal guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent; however, where the parent or legal guardian cannot be contacted or, if contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental services shall counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best the provider presumes them;

(3) a minor who is the parent of a child may give consent to medical and dental services for the minor or the child;

(4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;

(5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

(b) The consent of a minor who represents that the minor may give consent under this section is considered valid if the person rendering the medical or dental service relied in good faith upon the representations of the minor.

(c) Nothing in this section may be construed to remove liability of the person performing the examination or treatment for failure to meet the standards of care common throughout the health professions in the state or for intentional misconduct.

025(a)(2) provides that a minor may consent to medical treatment even if a parent withholds consent to that treatment. It is up to the medical provider to "counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best as the provider presumes them." On the subject of a minor's pregnancy, AS 25.20.025(4) provides that "a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease." A minor who is the parent of a child "may give consent to medical and dental services for . . .the child." AS 25.20.025(a)(3).

None of the enunciated legislative interests or findings show that the different treatment of the two classes created by the Act relates to a compelling governmental objective. The first legislative interest and its supporting findings of fact, (1), (2) and (3), which concern the immaturity of minors and their ability to make mature decisions, apply to both classifications equally. Minors faced with pregnancies have to make informed decisions regardless of the decision at which they finally arrive.

With respect to the legislatively enunciated interests of protecting the family structure and protecting the rights of parents to rear children who are members of their household, these same interests are at stake whether the minor seeks the consent of her parents to have an abortion or whether she seeks the consent of her parents to carry a pregnancy to term. The decision to have an

abortion is a very significant and important decision. But similarly, the decisions to have a child, to raise the child or to put the child up for adoption, are also significant and important decisions for both the minor and for her family.

Finally, with respect to the last legislative interest, that of protecting the health of minor women, findings of facts (4) and (5) also apply equally to both classes of pregnant minors. Those findings provide that parents may have information essential to a physician's judgment, and that parents who are aware of their daughter's abortion can better care for their daughter's health immediately following the abortion. Parents' access to or knowledge of a minor's pre-existing health condition is equally applicable to abortion as to medical treatment for or conditions related to pregnancy. The defendant State of Alaska, in its briefing and submissions has not raised an issue of material fact regarding a state interest justifying the classification of minors resulting from the legislation.

In the case of In Re T.W., supra, the court, while discussing the compelling state interest analysis under similar statutory provisions, observed:

> Under this statute, a minor may consent, without parental approval, to any medical procedure involving her pregnancy or her existing child - no matter how dire the possible consequences - except abortion ... [W]e are unable to discern a special compelling interest on the part of the state under Florida law in protecting the minor only where abortion is concerned. We fail to see the qualitative difference in terms of impact on the well-being of the minor between allowing the life of an existing child to come

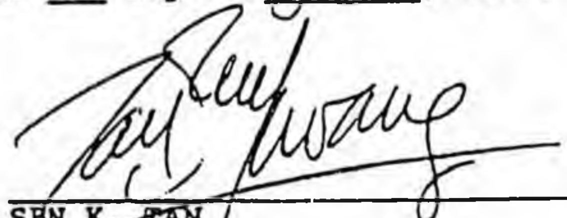
> to an end and terminating a pregnancy, or between undergoing a highly dangerous procedure to end one's pregnancy. If any qualitative difference exists, it certainly is insufficient in terms of state interest. In Re T.W., supra, at 1195.

This same reasoning was adopted in the California case of American Academy of Pediatrics v. Lungren, Op. No. S041459 at 68.

Therefore, based on a high level of scrutiny, no compelling state interest has been established to justify the classification of minors based upon their reproductive choices, and so I conclude that SB 24 violates Art. I section 1 of the Alaska Constitution.[1]

Accordingly, Plaintiff's Motion for Summary Judgment is GRANTED.

DATED at Anchorage, Alaska this 25 day of Oct, 1998.



SEN K. TAN
SUPERIOR COURT JUDGE

[1] In so concluding, I distinguish between the right of privacy and that of equal protection. The challenged legislation might, by requiring all pregnant minors to obtain parental consent (or judicial bypass) before undergoing a medical procedure or treatment related to the pregnancy, satisfy the equal protection provision. But, whether such a statute would satisfy the privacy provision of the Alaska Constitution would still present an issue of fact under this decision.

NASW ALASKA CHAPTER

National Association of Social Workers

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Nome

STUDENT REPRESENTATIVE
Demetria Cave
Fairbanks

STUDENT REPRESENTATIVE
Lynda Meyer
Anchorage

March 9, 1998

RECEIVED
MAR 9 PM 1998
Ans'd............

Senator Robin Taylor, Chair
Judiciary Committee
Alaska State Senate

RE: SJR 42

Dear Chairman Taylor:

The National Association of Social Workers (NASW) asserts that discrimination and intolerance against any group is damaging to the social, emotional, and economic well-being of the affected group and of society as a whole. It is the position of NASW that same-gender sexual orientation should be afforded the same respect and rights as opposite-gender orientation.

NASW opposes attempts to amend the Alaska State Constitution to ban same-gender marriage. Our constitution guards civil rights including marriage, a civil institution. Same-gender couples must be afforded the same legal and economic benefits extended to married opposite-gender couples such as spousal and dependent support benefits, benefits associated with health and other insurance and retirement, income-tax rates benefits, inheritance, child custody and property rights, as well as the simple recognition and equality to enter into a valid marriage contract.

Marriage is an intimate association for which citizens must be afforded the right to privacy. Amending the constitution is an inappropriate effort to restrict the privacy and freedom of Alaskans.

Finally, the referendum demanded by SJR 42 serves no practical purpose for Alaskans, and can only create an atmosphere of hatred and division. We urge you not to pass SJR 42 from committee.

Sincerely,

John Waters

John Waters, LCSW
President, NASW Alaska Chapter

318 4th Street, Juneau, AK 99801 • (907) 586-4438 • FAX: (907) 586-4439 • naswak@alaska.net

ADDITIONAL
INFORMATION

NATIONAL ASSOCIATION OF SOCIAL WORKERS ALASKA CHAPTER
318 4th Street, Juneau AK 99801
586-4438 Fax: 586-4439
naswak@alaska.net

NASW Alaska Policy Statement

Lesbian, Gay and Bi-Sexual Issues

The National Association of Social Workers (NASW) asserts that discrimination and prejudice against any group is damaging to the social, emotional, and economic well-being of the affected group and of society as a whole. It is the position of NASW that same-gender sexual orientation should be afforded the same respect and rights as opposite-gender orientation. NASW recognizes that homosexuality and homosexual cultures have existed throughout history. Homosexuals have been subject to long-standing social condemnation and discrimination. Toward the elimination of this prejudice, NASW recommends legal and political action to:

- work toward implementation of domestic partnership legislation at local, state, and national levels that includes lesbian and gay people.
- encourage adoption of laws that recognize inheritance, insurance, child custody, property, and other rights in lesbian and gay relationships.
- see election of self-identified lesbian, gay and bisexual candidates in all political jurisdictions.

as well as antidiscrimination efforts which:

- seek repeal of, and actively campaign against, any laws allowing discriminatory practices against lesbian, gay and bisexual people.
- encourage broadening of affirmative action statements in state government, social agencies, universities, professional associations, and funding organizations to include sexual orientation.
- work toward implementation of antidiscrimination personnel policies that cover lesbian, gay and bisexual people within the state of Alaska.
- increase public awareness of the discrimination experienced by lesbian, gay and bisexual people and of the contributions to society made by lesbian, gay and bisexual people.

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

Talk to Loren

April 21, 1998

SENT VIA FACSIMILE

Representative Joe Green, Chair
House Judiciary Committee
Capitol Building
Juneau, Alaska

Con Bunde, Vice-Chair
House Judiciary Committee
Capitol Building
Juneau, Alaska

Re: House Judiciary Committee Hearings on Constitutional Amendment SJR 42

Dear Representatives Green and Bunde:

We are writing to urge you to make any upcoming House Judiciary Committee hearings on SJR 42 available to all the Alaskans wishing to testify on the proposed constitutional amendment. While we have no reason to believe you plan to do otherwise, because the public encountered some problems with access on the Senate side, the Alaska Civil Liberties Union thought it might be a good idea to make our case for full public participation in your committee ahead of time.

As you may be aware, only limited testimony was taken in the Senate Judiciary Committee hearing on this measure. At the outset of that hearing, Chairman Taylor indicated that the committee planned to move the bill out that day because there were other matters on the calendar to which the committee needed to turn its immediate attention. As a result, of the over one hundred and twenty-five people who showed up statewide to speak before the committee in opposition to the amendment, less than ten were heard. In response to one Senator's objections to the "artificial limit" set on testimony at the Senate Judiciary hearing, committee member Miller explained the committee's rationale for not hearing the measure fully: "the voters will ultimately decide the issue." We believe any effort to treat any constitutional amendment as not worthy of full hearing in the legislature, simply because the voters of the state will have a chance to rule on it, is misguided.

Alaska is not a state where the constitution can be amended by simple referendum, as Senator Miller's comments would tend to suggest. As we all know, in Alaska, under Article XIII, Section 1, amendments to the constitution must receive a two-thirds vote of the Legislature before going to the people. Unlike a referendum-only situation, Alaska's Constitution mandates careful consideration of proposed amendments *before* they are placed before the voters. Legislative review provides an important check on the "tyranny of the majority" over individual rights that would ensue if amendments could be done solely through public referendum.

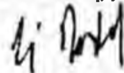
Because of the two-thirds requirement, each legislator's vote is critical both to those opposing and those supporting any constitutional amendment. It is noteworthy that SJR 42 passed the Senate by only one vote. Committee hearings provide the best venue for either side of the issue to persuade individual legislators of their position. In the other Senate Committee to which SJR 42 was assigned, Senate Finance, a subcommittee was appointed to hear public testimony on the measure. Many people from all around the state showed up to express their views to the subcommittee, but, for much of the time there were only two or three subcommittee members present. We respectfully ask that you allow all interested Alaskans to present their views before the full House Judiciary Committee.

We realize that in the final few weeks of the session, you and every other legislator, as well as all the committees, are under tremendous pressure to consider many bills on subjects of immediate and great importance to our state. In the event the House Judiciary committee does not have time to hear full testimony on SJR 42, there is another solution. Rather than take the time for proper legislative deliberation of this constitutional amendment, as required by Article XIII, you could remove SJR 42 from consideration until the courts have issued a final ruling in the Brause litigation. If the House passes SJR 42, a prolonged and heated ballot ratification fight will ensue unnecessarily. The status quo as to who can get married in this state has not changed, nor will it change prior to the convening of the next Legislature.

The Brause decision is far from becoming law in Alaska. At present, the state has asked the Alaska Supreme Court to review Judge Michalski's Superior Court decision. If the Supreme Court accepts review, it probably will be several months before they have finished deliberations and issued a decision. If the court overturns the Superior Court decision, the matter is closed and there will be no need for SJR 42. If the Supreme Court declines to review Judge Michalski's decision, or accepts it for review and affirms it, the case will be returned to the Superior Court for the hearing on "compelling state interest," the result of which no doubt also will be appealed back up to the Supreme Court, for further briefing and prolonged deliberation. As has been acknowledged by the state's attorney on the case, there is no way the court will be done with the case before the 21st Legislature convenes next January. There simply is no need to hear SJR 42 in the next few weeks, during which your committee may have no other choice but to abbreviate its consideration in favor of other equally important, but more time-sensitive, measures.

Please consider carefully the above statements and either allot adequate time for all interested Alaskans, statewide, to testify on SJR 42 before the full House Judiciary Committee, or pull the measure from active review in the 20th Legislature. If you have questions about any of the points raised in this letter, please give me a call at 463-2601. Thank you for your kind consideration of this request.

Sincerely,



Liz Dodd, President
Board of Directors
Alaska Civil Liberties Union

League of Women Voters of Alaska

1542 East 27th Avenue, Anchorage, AK 99508 - Phone/Fax: 272-0366

FAX TRANSMITTAL -- Two pages

April 22, 1998

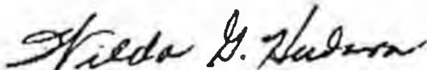
The Honorable Joe Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182
Fax (907) 465-4316

Dear Representative Green:

Transmitted herewith is resolution No. 98-1 passed by the delegates of the League of Women Voters of Alaska at our State Convention which was held in Kenai on April 17-19, 1998.

The League respectfully requests that the Legislature defeat SJR-42, and that you not place this proposed amendment to the Alaska Constitution on the ballot.

Sincerely yours,



Wilda G. Hudson, President
League of Women Voters of Alaska

LEAGUE OF WOMEN VOTERS OF ALASKA
Resolution Number 98-1

A RESOLUTION OPPOSING SJR-42, WHICH PROPOSES AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA, ARTICLE I, DECLARATION OF RIGHTS, RELATING TO MARRIAGE.

Whereas, the League of Women Voters of Alaska considers the Constitution of the State of Alaska a model document that has upheld Alaskan citizens' individual liberties and fundamental rights exceedingly well;

Whereas, constitutions in a democracy exist, in part, to protect the minority from the tyranny of the majority;

Whereas, Article I, Section 3, Civil Rights, of the Alaska Constitution states: "No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.";

Whereas, the position of the League of Women Voters of the United States on Citizen Rights: Individual Liberties is: "The LWVUS believes in the individual liberties guaranteed by the Constitution of the United States. The League is convinced that individual rights now protected by the Constitution should not be weakened or abridged.";

Whereas, the League's national commitment to diversity embraces all citizens regardless of "gender, age, race, ethnicity, disability and sexual orientation," and the League opposes abridging anyone's right to privacy based on membership in any of these groups; and

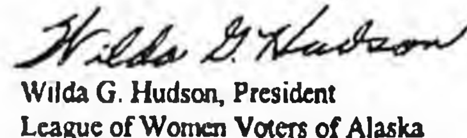
Whereas, a recent Alaskan law that restricted marriage to "one man and one woman" has been found unconstitutional by a Superior Court ruling under Alaska's right to privacy law;

THEREFORE, BE IT RESOLVED, that the League of Women Voters of Alaska opposes any legislative or other attempts to send to the voters amendments to the Constitution of the State of Alaska that would restrict, delete, or make exceptions to rights and liberties in place in the current Alaska Constitution dated January 1, 1998.

FURTHER, BE IT RESOLVED, that the League of Women Voters of Alaska supports equality of opportunity for all citizens. League rejects amendments to the Alaska Constitution that would make some groups of Alaskan citizens less equal than others and/or that would deny whole groups of citizens the same rights and responsibilities enjoyed by other citizens.

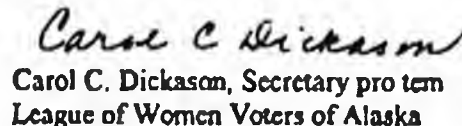
FURTHER, BE IT RESOLVED, that the League of Women Voters of Alaska opposes legislative attempts to pass SJR-42, a bill to amend the Alaska Constitution rather than uphold the Superior Court finding. The League opposes SJR-42 and any law or ballot measure intended to undercut or overturn court decisions which maintain the basic privacy rights of Alaskan citizens.

PASSED on April 19, 1998, by the delegates of the League of Women Voters of Alaska State Convention held in Kenai, Alaska.



Wilda G. Hudson, President
League of Women Voters of Alaska

ATTEST:



Carol C. Dickason, Secretary pro tem
League of Women Voters of Alaska

PEOPLE FOR THE AMERICAN WAY

Your Voice Against Intolerance

FAX COVER SHEET

TO: Alaska State Representatives

FROM: Carole Shields

DATE: 4/22/98 FAX #:

OF PAGES: 3 CODE:
(including cover)

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2000 M Street NW
Suite 400

202 467 4999

PEOPLE FOR THE AMERICAN WAY

Your Voice Against Intolerance

April 22, 1998

Via fax

Hon. Joe Green
State Capitol
Juneau, Alaska 99801-1182

Re: SJR-42

Dear Representative Green:

Last month, I wrote to you on behalf of our organization and our many hundreds of Alaska members in opposition to SJR-42, a proposed amendment to the state Constitution that would relegate gay and lesbian Alaskans to the status of second class citizens by denying them the right to marry the person of their choice, a right enjoyed by all other members of our society. Since then, this unfair, unfortunate and harmful measure has been passed by the Senate by a vote of 14-6. I am writing to you now to ask that you not allow bigotry to be enshrined in the state Constitution, and that you save the citizens of this state from a costly and divisive ballot campaign by stopping this misguided proposal in its tracks.

It is our understanding that since SJR-42 was introduced, the Christian Coalition has urged its members to flood your offices with messages in support of this discriminatory measure. I am not surprised by this news, since the intolerance and virtual demonizing of gay men and lesbians are two of the hallmarks of that group. Our organization tracks the activities of the Religious Right nationwide, and I can tell you that the Christian Coalition is working feverishly around the country to deny fundamental civil rights to gay men and lesbians, as though the world would come to an end if these members of our community were to be accorded the basic human rights that the rest of us enjoy and take for granted, including the right to marry the partner of our choice.

As a Southern Baptist and the daughter and granddaughter of Southern Baptist preachers, I believe that the intolerant message of the Christian Coalition is not a Christian message at all. To the contrary, it is an uncharitable message that violates the American Way of individual liberty and the Alaskan spirit of "live and let live." On behalf of our Alaska members, I strongly urge you not to allow the Alaska Constitution to fall victim to prejudice and intolerance. Civil rights cannot

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pfaw@pfaw.org / E-mail
http://www.pfaw.org

properly be subjected to a vote, and the fundamental protections of the Alaska Constitution should not be put up for grabs.

Please reject SJR-42. Thank you.

Sincerely,

Carole Shields

Carole Shields
President

cc: All Members, House of Representatives

WRITTEN STATEMENT OF PROFESSOR LYNN D. WARDLE
IN SUPPORT OF S.J.R. No. 42 and S.C.R. No. 25
Submitted for Alaska Senate Judiciary Committee Hearing on Monday, March 9, 1998

Mr. Chairman and distinguished members of the Senate Judiciary Committee:

I am honored to present this written statement in support of S.J.R. No. 42 and S.C.R. No. 25. By way of introduction, I am a professor of law.[1] Family Law is my primary area of scholarship; I have taught courses in Family Law, Children and the Law, Origins of the Constitution, Conflicts of Law and Comparative Family Law for twenty years.[2] These proposed Resolutions happen to touch on all of those fields. I also have authored or co-authored a multivolume treatise on family law, two other law books, and more than thirty articles or chapters dealing with family law subjects. Additionally, I am active in both national and international scholarly and law reform organizations dealing with family law and related areas.[3]

I am familiar with the *Brause v. Bureau of Vital Statistics* case, I have read the memoranda filed in the court, read the decision, and have been consulted about it. Thus, I have been invited to give my professional comment and analysis regarding S.J.R. No. 42 and S.C.R. No. 25. Of course, the opinions I express are my own professional views; I do not speak for any of the institutions or organizations with which I am associated.

I will discuss legal three points. First, I will explain about the legal status of same-sex marriage today. Second, I will clarify why S.J.R. No. 42 and S.C.R. No. 25. are reasonable, responsible, and necessary. Third, I will explain why I believe that they are constitutional under federal constitutional standards.

I. Status of Same-Sex Marriage in the World Today

I begin with a little background. No nation of the world permits same-sex marriage today. None. A few jurisdictions allow some form of same-sex domestic partnership. To date, all are in Europe (and arguably Hawaii). According to the International Gay and Lesbian Association, only

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[1]Currently I teach at Brigham Young University Law School. I also have taught at Howard University School of Law in Washington, D.C., at Sophia University Faculty of Law in Japan, and at the University of Aberdeen in Scotland.

[2]I have written or co-authored several books and several dozen law review articles or chapters in books about family law. Two of my most recent publications (published this year) are law review articles examining constitutional arguments for same-sex marriage, Lynn D. Wardle, *A Critical Analysis of Constitutional Claims for Same-Sex Marriage*, 1996 B.Y.U.L.Rev. 1-101, and the rules and practices regarding international recognition of marriages, Lynn D. Wardle, *International Marriage and Divorce Regulation and Recognition: A Survey*, Family Law Quarterly, vol. 29, pp. 497-517 (Fall 1995).

[3]Presently I am the Secretary-General of the International Society of Family Law, an international learned society of 550 scholars and judges from 56 different nations devoted to the study of family law, and I am an active member of the American Law Institute consultative group that is working on a "Family Law Project."

six (of forty-nine listed European jurisdictions) permit some sort of legal domestic partnership. [4] Since 1989, Denmark,[5] Norway,[6] Sweden,[7] Iceland,[8] and the Netherlands,[9] have each enacted legislation authorizing the formal registration of same-sex "domestic partnerships" and extending to such relationships most of the economic and many of the noneconomic legal incidents of marriage.[10] Also, after a decision by the national supreme court, the legislature in Hungary legalized common-law same-sex live-in companionship for purposes of recognizing their mutually-owned purchases and acquisitions.[11] But none of these jurisdictions allow same-sex marriage. Even the most liberal of these domestic partnership laws clearly distinguishes domestic partnership from marriage, denies same-sex domestic partnerships significant marital benefits (especially pertaining to assisted procreation, adoption, and the official celebration, status, and dignity of marriage) and imposes significant restrictions not applicable to marriage. No jurisdiction on the face of the earth today recognizes same-sex marriage, and it appears safe to say

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[4]ILGA publishes this and other information on the internet at: http://inet.uni2.dk/~steff/survey.htm (search March 7, 1998).

[5]Danish Registered Partnership Act, No. 372 (June 7, 1989). *See generally* Linda Nielsen, *Family Rights and the 'Registered Partnership' In Denmark,* 4 INT'L J. L & FAM. 297 (1990); Marianne H. Pedersen, *Denmark: Homosexual Marriages and New Rules Regarding Separation and Divorce*, 30 J. FAM. L. 289 (1991-92).

[6]The Norwegian Act on Registered Partnership for Homosexual Couples, Act No. 40 of 30 April 1993.

[7]Law Regarding Registered Partnership of 23 June 1994 (Bert Andersen, trans. 1995). *See also* Deborah M. Henson, *A Comparative Analysis of Same-Sex Partnership Protections: Recommendations for American Reform,* 7 Int'l J. L. & Fam. 283, 287-288 (1993).

[8]Law on approved cohabitation, articles 1-9 (June 12, 1996)(Kristjan Matiesen trans. 1996); *see generally Iceland gives gay marriages legal stamp*, Reuters World Service, June 27, 1996 (Icelandic legislature has legalized "gay marriage" following Denmark, Norway & Swedish precedents).

[9]Joanne von Alroth, *Gay Couples' Registry Backed in Oak Park*, Chi. Trib. July 26, 1997 at 3. *See further* Rex Wockner, *supra* note 30; Steffen Jensen, *Partnership Law in the Netherlands*, ILGA, Euroletter 51 (July 1997).

[10]Certain restrictions commonly are imposed on same-sex domestic partnerships do not apply to heterosexual marriages, such as the requirement that at least one of the partners be a citizen or resident national of the country, and limitations re: joint custody, adoption, artificial insemination, state-church weddings, and exemption from marital status under international treaties, are common. *See generally* Nielsen, *supra* note 5, at 300.

[11]Year of 1996, XLII Law §§ 1-3 (May 21, 1996) (Stuart Schulte transla. 1996). *See also Hungary's gays welcome law on rights as first step*, Reuters World Service, May 22, 1996.

that no nation in history ever has allowed same-sex legal marriage (though some have tolerated widespread homosexual practices or conferred some social or legal status on some kinds of homosexual partners).

The overall global picture shows overwhelming support for exclusively heterosexual marriage. No legislature of any jurisdiction in the world has ever approved of same-sex marriage. Many jurisdictions (including most of the American states and Congress) have recently enacted laws denying legal recognition to same-sex marriage from other jurisdictions.[12] Likewise, in the past twenty-five years, dozens of lawsuits have been filed in the USA seeking judicial legalization of same-sex marriage, and all of these, unanimously, rejected the claim that there is a fundamental right to same-sex marriage.[13] Even the highly criticized *Baehr* case in Hawaii rejected, like all American trial and appellate courts before it, the claim that there is a fundamental right to marry someone of the same sex. Moreover, virtually all international conventions that describe marriage have defined it as the union of a man and a woman.[14] Polls have repeated found that the people in America strongly oppose legalizing same-sex marriage.[15]

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[12]In the past three years, Congress and the legislatures of more than half of the American states have enacted legislation forbidding recognition of same-sex marriage. *See generally* Marriage Law Project, *Bills Concerning Same-Sex Marriage, 1997 Legislative Update*, June 16, 1997 (available at http://www.pono.net).

[13]*See Constitutional Claims, supra* note 2 at 9-10, nn. 22-26, and *id.* at 56-57 nn. 252, 253 (identifying more than a dozen different lawsuits seeking marital status for same-sex unions). *See also* Storrs v. Holcomb, 1996 WL 379613 (N.Y. Sup.Ct. 1996).

[14]*See* Universal Declaration of Human Rights, Article 16 ("Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."); [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively Article 12 ("Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."); American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V./II.82 doc.6 rev.1 at 25 (1992) Article 17("the right of men and women of marriageable age to marry and to raise a family shall be recognized"); HabitatII Conference, Istanbul, Turkey, 3-14 June 1996, The Habitat Agenda (http://www.undp. org/un/habitat/agenda/ch-2.html) ("Marriage must be entered into with the free consent of the intending spouses, and husband and wife should be equal partners. The rights, capabilities and responsibilities of family members must be respected."). *See also* Hong Kong Bill of Rights Ordinance, 30 I.L.M. 1310, *1318 (Effective June 8, 1991) ("The right of men and women of marriageable age to marry and to found a family shall be recognized.").

[15]Portland Oregonian, April 19, 1997, at A01 (1997 WL 4165366) (March 1996 Gallup poll shows Americans oppose same-sex marriage 68-to-27); Associated Press, Aug. 19, 1996 (Lou Harris Poll reports 63-64% of Americans oppose legalizing same-sex marriage; 10-11% favor); *supra* note 28 (70 percent of Hawaiians oppose legalizing same-sex marriage); Fresno Bee

In December, 1996, a trial court in Hawaii ruled that the state had no compelling reason to deny marriage licenses to same-sex couples, and ordered the state to issue marriage licenses to same-sex couples who apply for them.[16] That ruling has been appealed to the state supreme court, and the order has been stayed pending appeal. Just months after that ruling, the Hawaii legislature passed an amendment to the state constitution which, if ratified by the people of Hawaii in November 1998, will effectively overturn the basis for the court's ruling that the denial of same-sex marriage constitutes constitutionally impermissible sex discrimination.[17] The people of Hawaii overwhelming and consistently oppose legalizing same-sex marriage,[18] but they could be forced by their state courts to issue marriage licenses for same-sex marriages, at least temporarily.[19] There are movements to legalize same-sex marriage in a few European countries, but historically and to this day, same-sex marriage is legal in no jurisdiction.

II. Why S.J.R. No. 42 and S.C.R. No. 25 are Necessary and Prudent

The constitutional crisis that has led to these proposed resolutions today is about a radical judicial redefinition of marriage. That is what this whole controversy is all about.

May 25, 1997 at E6 (1997 WL 3904007) (1996 Los Angeles Times poll found Californians oppose legalizing same-sex marriage 60-to-31); *but see* Irish Times, Aug. 10, 1996, at 10 (1996 WL 11037747) (Germans favor legalizing same-sex marriage 48-to-42).

[16]Baehr v. Miike, No. 91 Civ. 1394 (Haw. Cir. Ct. Dec. 3, 1996), 23 FAM. L. REP. (BNA) 2001 (Dec. 3, 1996).

[17]Hawaii H.B. 117 (1997).

[18]Voters strongly oppose gay unions, Honolulu Star-Bulletin, Feb. 24, 1997, at 1 (currently 70% of those polled oppose legalizing same-sex marriage; 20% favor it; opposition has grown about 12% and support fallen 12% during four years).

[19]In *Baehr v. Lewin*, 852 P.2d 44 (1993), the Hawaii Supreme Court rejected the claim that the "right to marry" protected by the Hawaii Constitution extends to same-sex couples and held that there is no "fundamental constitutional right to same-sex marriage" because such relationship is not "rooted in tradition" or "at the base of all our civil and political institutions." *Id.* at 55, 57. However, a plurality concluded that Hawaii's marriage license law facially "discriminates based on sex against the applicant [same-sex] couples" on account of gender, in apparent violation of the state constitutional provisions protecting equality. *Id.* at 57-62. The December, 1996 ruling in *Baehr v. Miike* was on remand from this decision. If the Hawaii Supreme Court affirms the trial court decision in *Miike* before November 1988, same-sex marriage could be legalized before the people get to vote on the constitutional amendment. While the amendment, if passed, could effectively undo the supreme court decision, the same-sex couples who married in the interim could pose a significant political and legal dilemma. For a discussion of the *Baehr* case, *see* Lynn D. Wardle, *A Critical Analysis of Constitutional Claims for Same-Sex Marriage*, 1996 B.Y.U. L. Rev. 1.

Last month, in *Brause v. Bureau of Vital Statistics*,[20] Alaska Superior Court Judge Michalski held that the privacy provision of the Alaska Constitution protects as a fundamental right the right of two persons of the same sex to marry, and that the denial of marriage licenses to same-sex couples constitutes sex discrimination, and that denial of same-sex marriage may only be upheld if it is justified under the very strict "compelling state interest" test. While that ruling is not a final ruling, it establishes a legal standard and principle as a matter of Alaskan constitutional law that seriously jeopardize Alaskan marriages, constitutional integrity, state legislative authority, interstate marriage recognition, and national harmony. It creates an enormous quagmire that needs to be promptly corrected.

A. The Importance of Exclusively Heterosexual Marriage

Marriage between a man and a woman is the foundation of our society. You can have marriage without society, but you cannot long have society without protecting and preserving the institution of marriage. The Supreme Court of the United States has repeatedly recognized this reality. Nearly 120 years ago, the Supreme Court said of marriage: "Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal."[21] More than a century ago the Court both glorified the legal status of marriage and the affirmed importance of legislative control of it when he noted that "[m]arriage, as creating the most important relation in life, [has] more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature."[22] In 1923, in Meyer v. Nebraska,[23] the Court acknowledged that "without doubt" among the liberties protected by the fourteenth amendment was the right "to marry, to establish a home ...." In 1942, in Skinner v. Oklahoma,[24] the Court declared that "[m]arriage and procreation are fundamental to the very existence and survival of the race." Twenty-three years later, the Court repeated this viewpoint with even greater emphasis in Griswold v. Connecticut. [25]

> We deal with a right of privacy older than the Bill of Rights--older than our political parties, older than our school system. Marriage is the coming together for better or worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony of living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

In 1967, the Court struck down a Virginia anti-miscegenation statute in Loving v. Virginia, noting: "Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. ... To deny this fundamental freedom on so unsupportable a basis as the

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[20]Civil No. 3AN-95-6562-CI (Anchorage Super. Ct., Feb. 27, 1998).

[21]Reynolds v. United States, 98 U.S. 145, 165 (1878).

[22]Maynard v. Hill, 125 U.S. 190, 205-6 (1888).

[23]262 U.S. 390, 393 (1923).

[24]316 U.S. 535, 541 (1942).

[25]381 U.S. 479, 486 (1965).

racial classification embodied in these statutes ... is surely to deprive all the State's citizens of liberty without due process of law."[26] Four years later, in Boddie v. Connecticut,[27] the Court emphasized that "marriage involves interests of basic importance in our society." In 1977, in Zablocki v. Redhail,[28] the Court invalidated a state law restricting marriage of indigent support-obligated father of child receiving public assistance "reaffirming the fundamental character of the right to marry." In numerous other cases in recent years, the Court has reiterated and enhanced the fundamental importance and preferred status of marriage.[29]

Three things are undeniable from this long line of decisions of the U.S. Supreme Court. First, it is clear that for a long time the Court has been absolutely convinced, and it remains convinced, that marriage is of fundamental, critical importance to our society. Second, it is clear that the Court agrees that protecting marriage is essential to our constitutional form of government. Third, it is absolutely certain that the relationship that the Court was talking about as marriage in all of these cases was the exclusively heterosexual marriage relationship of a man and a woman.

B. Heterosexual Marriage Is Uniquely Beneficial to Society

Marriage is unique and uniquely beneficially to society and its members. Marriage is unique because the relationship between a man and a woman is different than the relationship between two persons of the same gender. Men and women are different, and thereby the relationship of two persons of opposite gender (in marriage) is different from other kinds of relations including same-sex relations that seek to imitate marital status.

Advocates of same-sex marriage are "trapped in a Kelsean dream,"[30] where they erroneously believe that they can create social order out of moral chaos by merely enacting positive laws. They embrace "the myth about the 'law-maker' and the 'legal system'" that is based upon an erroneous "impression of the origin, content and structure of law. . . . It hides the fact that the central elements of a legal order cannot be 'invented' by a law-maker, but must be rooted in a normative practice."[31] Shared normative values are "the basic element in what we call

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[26]388 U.S. 1, 12 (1967).

[27]401 U.S. 371, 376 (1971) (invalidating requirement that indigent parties pay divorce filing fees).

[28]434 U.S. 374, 383-386 (1978). *See also* Turner v. Saffley, 482 U.S. 578 (1987) (invalidating a state prison regulation permitting marriage by inmate only in case of pregnancy or child born out of wedlock).

[29]*See, e.g.*, Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977); Paul v. Davis, 424 U.S. 693, 713 (1976); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974); United States v. Kras, 409 U.S. 434, 444, 446 (1973);

[30]Anna Christensen, *Polycentricity and Normative Patterns*, in LEGAL POLYCENTRICITY: CONSEQUENCES OF PLURALISM IN LAW 235, 239 (Hanne Petersen & Henrik Zahle eds. 1995).

[31]*Id.* at 236.

society,"[32] and what we call law.

Advocates of same-sex marriage fallaciously believe that if they can get the label of "marriage" for their gay and lesbian relationships, they will magically acquire the socially and individually beneficial characteristics associated with marriage for millennia. That is very strange thinking.[33] Abraham Lincoln once lampooned the flaw of this thinking with a homespun story: He asked how many legs a dog would have if you counted a tail as a leg. To the response "five legs," Lincoln said, "No; calling a tail a leg doesn't make it a leg."[34]

The relationship between two persons of the same sex is fundamentally different from heterosexual "marriage" because men and women are fundamentally different. Marriage is unique. No other companionate relationship provides the same great potential for benefitting individuals and society as the life-time covenant union of a man and a woman. That is why only certain committed heterosexual unions are given the legal status of marriage. It is not the marriage certificate, label, or legal status that makes the heterosexual marital relationship uniquely beneficial to individuals and society, but it the nature of the relationships itself that is so valuable, and that is why such unions are given the preferred legal status (and label) of *marriage*. Pluralistic arguments for same-sex marriage are simply self-alienating.[35] Their thesis of relational equivalence is a simplistic notion that fails to recognize that "something more complex is going on than can be explained" by saying "my sexual preference is as good as your sexual preference."[36]

Same-sex unions do not match the contributions to society that are made by heterosexual marriages. The public purposes for which marriage has been created are best achieved by cross-gender unions; same-sex unions fail to promote those social interests in any comparable degree. Let me mention just a few examples. Heterosexual marriage provides, *inter alia*, (1) the best setting for the safest and most beneficial expression of sexual intimacy; (2) the best environment into which children can be born and reared (the profound benefits of dual-gender parenting to model intergender relations and show children how to relate to persons of their own and the opposite gender are lost in same-sex unions); (3) the best security for the status of women (who take the greatest risks and invest the greatest personal effort in maintaining families); (4) the strongest and most stable companionate unit of society (and thus the most secure setting for intergenerational transmission of social knowledge and skills); (5) a functional and historic social

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[32]*Id.*

[33]It is ironic that gay and lesbian critics who often chide their opponents for trying to "legislate morality" seek to radically transform the essential normative characteristics of their relationships by have the legislature (or judiciary) label them "marriages."

[34]*See generally* J. Bartlett, The Shorter Bartlett's Familiar Quotations 218d (1961) *cited in* Stephen A. Newman, *Baby Doe, Congress and the States: Challenging the Federal Treatment Standard for Impaired Infants*, 15 Am. J. L. and Med. 1, *15 (1989).

[35]Jeremy Waldron, Review Essay, *On the Objectivity of Morals: Thoughts on Gilbert's Democratic Individuality*, 80 CALIF. L. REV. 1361, 1376 (1992) (Moral relativism is self-alienating; a moral relativist is "a person who could not take his own side in an argument.").

[36]*See generally id.* at 1381.

stability that same-sex marriage would undermine; and (6) the best seedground for democracy and the most important schoolroom for self-government. From the perspective of these social interests underlying marriage, same-sex unions are not equivalent to heterosexual marriages.

C. *The Opinion in* Brause *is Seriously Flawed and Dangerously Radical*

Judge Michalski's opinion in *Brause* is very interesting and even thought-provoking. I think he writes well. But there are at least three serious flaws in Judge Michalski's opinion. First, the opinion is very radical, extremely out of the mainstream of law and experience. Never before has any court held that same-sex marriage is protected by a fundamental constitutional right. Even the Hawaiin courts in their controversial *Baehr* opinions unanimously rejected that claim, as has every other court (now dozens total) to consider similar claims. Nor has any court so abruptly and summarily concluded that equal protection in implicated by the historic limitation of marriage to opposite-sex couples.

Second, the opinion seems to overlook some very fundamental points. One point overlooked is precedent. Judge Michalski's offers none of the kinds of support or evidence for his dramatic conclusions that are considered elementary and essential in the legal profession. For instance, the opinion cites no textual or historical support for the conclusion that there is a fundamental right to same-sex marriage. It does not cite anything in the record of the drafting or the debates of the privacy provision to support that radical conclusion. There is no evidence cited in the opinion to show that the people of Alaska intended to create or protect a fundamental right to same-sex marriage when they adopted Article 1, Section 22 (the right to privacy). The reason no evidence is cited is because none exists. I can find absolutely nothing in the Alaska Constitution or history or cases interpreting it that supports the notion that the people of Alaska intended to create a fundamental right to marry persons of the same gender, or anything to suggest that they believed that limiting marriage to opposite-sex couples implicates gender discrimination.

Another flaw is the superficiality of the analysis. For example, the opinion overlooks a subtle but significant distinction between public toleration of private choices and private claims to public preferences. The right to privacy of the Alaska Constitution protects certain private conduct from public penalty, but never before has any court anywhere held that a right to privacy compels the public to confer benefits, privilege and public preferences on private choices. Judge Michalski's opinion erases the critical distinction between public and private.

In *Breese v. Smith*,[37] and *Ravin v. State*,[38] the two cases cited heavily by Judge Michalski, the Alaska Supreme Court recognized that the public could not reach out and penalize certain private choices (how long a student grows his hair and private possession of marijuana for personal use by an adult in a private home). Applying that principle to same-sex relations might support an argument that the state should not penalize some private sexual choices among consenting adults. However, that is very different than saying that the state must affirmatively confer a public status and valuable legal benefit like marriage upon mere private preferences. Judge Michalski's conclusion that the privacy provision requires Alaska to confer public legal status of marriage on same-sex couples is like saying that Alaska constitutionally must provide

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[37]501 P.2d 159 (Alaska 1972).

[38]537 P.2d 494 (Alaska 1974).

free Rogaine or tax deductions for Rogaine expenses because individuals have a private right to grow their hair as long as they want, or that Alaska must provide crop subsidies and tax breaks for persons who want to exercise their private right to grow and possess marijuana.

Moreover, the opinion announces a radical right of "choice of life partner" but does not announce any principled boundaries of that right. If the Alaska Constitution's right to privacy really confers a broad right to marry on two adults of the same sex, logically it would also protect the right to marry of two adults who are closely related (incest), or three adults (polygamy). Those private relations may be as meaningful and loving as homosexual relations. Thus, under the *Brause* decision laws forbidding incest and polygamy also would infringe upon this broad fundamental right to marry.

The analysis of the right to privacy also seems to confuse tolerance and preference. Relations and conduct may be legally categorized in at least three different ways -- as "prohibited," "tolerated" or "preferred."[39] Marriage is the classic example of a *preferred* relationship. It is one of the most highly-preferred, historically-favored relations in the law. Thus, the claim for same-sex marriage is not a claim for mere tolerance, but for special preference. The principle of tolerance or privacy does not justify legalization of same-sex marriage because marriage is much more than a *tolerated private* relation, it is a legally a *preferred public* status.

Similarly, the gender equality analysis in the opinion ignores the fact that there is a critical distinction between sexual differences and sexual discrimination. It does not violate gender equality for the government to provide pregnancy services only to women, or prostate cancer treatment only to men because only women can become pregnant, and only men can get prostate cancer. Likewise, it does not violate gender equality for the government to give marital status only to male-female couples, because only male-female couples can constitute a cross-gender union that is the essence of marriage. "[T]he Equal Protection Clause does not mean that the physiological differences between men and women must be disregarded.... The Constitution surely does not require a State to pretend that demonstrable differences between men and women do not really exist."[40] Judge Michalski's opinion, moreover, overlooks the fact that heterosexual marriage is the oldest gender-equality institution in the law. The requirement that marriage consist of both a man and a woman emphasizes the absolute equality and equal necessity of both sexes for the most fundamental unit of society. It recognizes the indispensable and equal contribution of both genders to the basic institution of our society.[41]

D. *Legalizing Same-Sex Marriage Would Create A National Crisis*

The matter at issue in *Brause* is not only about how Alaska treats same-sex unions, but it is also about how Alaska treats other states and the federal government. Any resolution of the same-sex marriage debate in Alaska must take into account the effect that Alaska's action will

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[39]Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Social Privacy - Balancing the Individual and Society Interests*, 81 MICH. L. REV. 463, 546-547 (1983); Bruce C. Hafen & Jonathan D. Hafen, *Individual Autonomy, Student Rights, and the U.N. Convention on Rights of the Child" DeJure vs. De Facto Autonomy for Children* 69 ST. JOHN'S L. REV. 601, 653-656 (1995).

[40]450 U.S. at 481 (Stewart, J., concurring).

[41]*See Constitutional Claims, supra* note 2, at 83-88.

have on the 49 other states and the federal union. In many ways, possibly including operation of the Full Faith and Credit clause, Alaska's legalization of same-sex marriage will be manipulated in an effort to override other states' and Congress' strong marriage policies. Legalizing same-sex marriage would prompt a constitutional crisis as other states and the federal government seek to avoid having same-sex marriage imposed in those other jurisdictions. Alaska has a compelling state interest in not drastically redefining marriage in a way that imperils the interjurisdictional recognition of some Alaskan marriages, that produce divisive, coercive pressures on the other states that may severely strain its relations with sister states, and which could precipitate a constitutional crisis.

If Alaska were to legalize same-sex marriage, it would create a major deviation from the concept and definition of marriage accepted in all forty-nine of the other states. The disruption, conflicts and disharmonies that would arise between Alaska and the other states in the union are potentially devastating. Marriage and marital status play a role in literally *hundreds* of government laws and programs in each separate jurisdiction -- both state and federal.[42] "When the State defines a spouse it has the effect of pushing the first domino in a parade of dominos."[43]

The threat of being forced to recognize same-sex marriage is not a speculative or trifling concern. The other states have reacted with unusual alacrity to the situation. The seriousness of this potential crisis is underscored by legislation and executive decrees enacted last years. In the past three years, *Congress and more than half of the states have enacted laws barring recognition of same-sex marriage.*[44] The Defense of Marriage Act passed both houses of Congress by overwhelming, bi-partisan majorities, and was signed by President Clinton. Alaska has joined the majority of the states by enacting a similar state law refusing to recognize same-sex marriages.[45] Yet *Brause* raises the very specter of a serious national marriage recognition crisis that that Alaska legislation and that DOMA are designed to avoid.

Marriages valid in the state where performed that have been denied recognition by another

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[42]Congress identified more than 800 federal statutory provisions incorporate the terms "marriage," and over 3000 use "husband, "wife," "spouse," and the like. H. Rep. 104-664, 104th Cong. 2d Sess, on Defense of Marriage Act, July 9, 1996, at 10.

[43]Report of the Commission on Sexual Orientation and the Law in Hawaii (Dec. 8, 1995) at 6.

[44]Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (Sep. 21, 1996) (defining marriage for purpose of federal law as exclusively heterosexual, thus barring federal court or agency recognition of same-sex marriage in federal law, and expressly providing that each state may choose whether or not it will recognize same-sex marriages from other states); *See generally* Marriage Law Project, *Bills Concerning Same-Sex Marriage, 1997 Legislative Update*, June 16, 1997 (available at http://www.pono.net).

[45]1996 Alaska Sess. Laws 21 ("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.").

state when they are incompatible with a strong public policy of the second state are legion.[46] As another court recently noted, "no state is bound by comity to give effect in its courts to the marriage laws of another state, repugnant to its own laws and policy."[47] Thus, *Brause* jeopardizes the rights and interests of many Alaska citizens, and create years of costly, confusing litigation for both the people and for the state. Individuals rights to property interests, alimony, child support, custody, visitation, insurance benefits, inheritance, succession, public benefits would be insecure for years to come. Alaska's compelling interest in "minimizing the susceptibility of its own" marriages to nonrecognition in other states provides ample justification for immediate passage of S.J.R. No. 42. *Sosna v. Iowa*, 419 U.S. 393, 407 (1975).

Internationally, the position of nearly all nations appears to be that it would violate their strong public policy to recognize same-sex marriage, and in some nations that opposition to same-sex marriage could be so strong that same-sex marriages from Alaska could impair relations between the jurisdictions.[48] No nation in the world recognizes same-sex marriage. Even the nations that have allowed same-sex domestic partnership do not expect those domestic partnerships to be recognized abroad.[49] Same-sex marriage would be found incompatible with public policy in most of the nations of the world.[50] Marriages that "are incompatible with the public policy" of a country will not be recognized in that country, even if the marriage is deemed valid under the law of the state where celebrated or by the law of the parties' nationality or

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[46]*See, e.g.*, Metropolitan Life Insurance Co. v. Chase, 294 F.2d 500 (3d Cir. 1961); In re Estate of Levie,123 Cal. Rptr. 445, 447 (Cal. App. 1975); Catalano v. Catalano, 170 A.2d 726, 728-729 (Conn. 1961); Laikola v. Engineered Concrete, 277 N.W.2d 653, 656 (Minn. 1979); Nelson v. Marshall, 869 S.W.2d 132 (Mo. App. 1993); Stein v. Stein, 641 S.W. 2d 856, 858 (Mo. App. 1982); Randall v. Randall, 345 N.W. 2d 319, 322 (Neb. 1984); Bucca v. New Jersey, 128 A.2d 506, 511 (N.J. Superior Court 1957); Rhodes v. McAfee, 457 S.W.2d 522, 524 (Tenn. 1970); Seth v. Seth, 694 S.W. 2d 459 (Tex. Ct. App. 1985); Farah v. Farah, 429 S.E.2d 626, 334-335 (Va. App. 1993); *see generally* Restatement (Second) Conflict of Laws § 283, Reporter's Note, comments j-k.

[47]Hager v. Hager, 3 Va. App. 415, 349 S.E.2d 908, 909 (1986), *citing* Toler v. Oakwood Smokeless Coal Corp., 173 Va. 425, 430, 4 S.E.2d 364, 366 (1939)); State v. Austin, 234 S.E.2d 657, 663 (W. Va. 1977). *See generally* Rhodes v. McAfee, 224 Tenn. 495, 457 S.W.2d 522 (1970); Seth v. Seth, 694 S.W.2d 459 Ct. App. Texas, 1985); Godt v. Godt, 1990 WL 123047 (Del. Super., Aug. 7, 1990); *see further* In re Estate of Jenkins, 133 Misc.2d 420, 506 N.Y.S.2d 1009 (1986); Anderson v. Anderson, 27 Conn.Supp. 342, 238 A.2d 45 (1967); Farah v. Farah, 429 S.E.2d 626 (Va. App. 1993).

[48]*See generally* Lynn D. Wardle, *International Marriage and Divorce Regulation and Recognition: A Survey*, 29 Family L. Q. 497-517 (Fall 1995).

[49]Marrianne Hojgarrd Pedersen, *Denmark: Homosexual Marriages and New Rules Regarding Separation and Divorce*, 30 J. Fam. L. 289, 290 (1991-92).

[50]Lynn D. Wardle, *International Marriage and Divorce Regulation and Recognition: A Survey*, Family Law Quarterly, vol. 29, pp. 497-517 (Fall 1995).

domicile.[51] Thus, parties to Alaskan same-sex marriages would expect, but be denied rights based upon marital status in foreign nations, including property, succession, inheritance, insurance, employment benefits, pensions, etc., in other nations. Other Alaskan marriages might also would be viewed with suspicion as well, resulting in disadvantages for many Alaskans seeking benefits in other countries.

Alaska has a valid interest in not becoming the "Reno" of same-sex marriages. The potential detriment to the local economy (the public costs could easily overwhelm any minor increase in revenues), as well as the potential impact on Alaskan culture and on the environment in which to raise families are legitimate and substantial concerns.

Moreover, *Brause* compounds an already serious national constitutional crisis. Advocates of same-sex marriage argue that under the Full Faith and Credit Clause of the Constitution, art. IV, sec. 1, all states are obligated to give "full faith and credit" to public acts and records of sister states, and that includes marriages.[52] On the other side, opponents of same-sex marriage and supporters of the DOMA argue that the Supreme Court of the United States has never held that marriages must be given full faith and credit, but traditionally states have been permitted to decline to recognize marriages from other states that violate strong local public policy,[53] and that DOMA is constitutional under the last sentence of the Full Faith and Credit clause which specifically provides that "Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[54]

The point is not *which* position will ultimately be proven correct. Rather, the point is that a *serious* constitutional confrontation involving states, Congress, which overwhelmingly passed the Defense of Marriage Act, and the American judiciary is inevitable if Alaska legalizes same-sex marriage. In the confrontation, the judiciary will be asked to force states to recognize same-sex marriage over their own objections, and over the emphatic opposition of Congress. The only way to win that kind of confrontation is to avoid it.

Finally, Judge Michalski's February 27th opinion in *Brause* is not the end of the case.

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[51] *See* Lennart Palsson, Marriage in Comparative Conflict of Laws: Substantive Conditions 3 (Martinus Nijhoff Publishers 1981); *see also* Lennart Palsson, *Chapter 16, Marriage and Divorce*, in Vol. III, Private International Law, International Encyclopedia of Comparative Law 59 (1978).^

[52] *See* Hearing Before the Subcomm. on the Constitution of the Committee on the Judiciary, U.S. House of Representatives, 104 Cong., 2d Sess., on H.R. 3396, May 15, 1996 (Serial No. 69) at 202 (Rabbi David Sapperstein); Hearing Before the Committee on the Judiciary, United States Senate, 104 Cong., 2d Sess., on S. 1740, July 11, 1996 (S. Hrg. 104-553) at 42-47 (Prof. Cass R. Sunstein).

[53] *See generally*, Restatement (Second) Conflict of Laws § 283(2) (1981); Robert A. Leflar, American Conflicts Law § 221 (4th ed. 1986); 1 Lynn D. Wardle, Christopher L. Blakesley, & Jacqueline Y. Parker, Contemporary Family Laws § 2:03 (1988).

[54] Hearings Before the Subcommittee on the Constitution of the Judiciary Committee of the House of Representatives, May 15, 1996, at 158-180 (Prof. Lynn D. Wardle); Rep. Tom Campbell, *Perspective on Same-Sex Marriages*, L.A.Times, July 12, 1996, at B9.

Certainly I believe that the state has several very compelling justifications for not permitting same-sex marriage, and a court might (and I believe should) so rule. Thus, some might argue that the legislature should take no action until both the trial court and Alaska Supreme Court have rendered their final judgments. There are three deficiencies of that argument. First, as a practical matter, the *Brause* ruling casts an immediate and serious cloud on the issue of same-sex marriages and on other laws passed by the Alaska legislature. It will have precedential influence on other cases in Alaska (and, indirectly, elsewhere). It seriously implicates what the Alaska legislature is doing, what it should do, in passing new legislation, amending old laws, etc. The legislature need not wait another year or two to determine if laws it is now passing are unconstitutional. Second, *Brause* immediately sends a dramatic and terribly mistaken message about how marriage is understood in the Alaska Constitution. The legislature has responsibility for the state constitution as well as the court. As the people's representatives, the legislators have a duty to guard the values and policies that the people have embodied in the Constitution of Alaska. You need not wait to correct such a seriously flawed misreading of the will of the people of Alaska. The people deserve to be heard on this issue now. Third, if the legislature delays, it could be like waiting to close the barn door until after the animals have gotten out. If the legislature waits to begin the process of letting the people clarify their understanding of marriage, and the *Brause* decision is affirmed and same-sex marriage is legalized in Alaska by judicial interpretation of the state constitution, several months, possibly years, could pass before the process of constitutional amendment is completed and the same-sex marriage interpretation is overturned. During that time, same-sex couples will be marrying, and filing suits, demanding benefits, moving to other states and other countries, etc. After a few weeks, months or years of that, even a constitutional amendment rejecting same-sex marriage will not practically remedy all the confusion generated in the interim.

III. Proposed Resolutions Nos. 25 and 42 Are Constitutional

Undoubtedly opponents of these Resolutions will claim that they are unconstitutional under the U.S. Constitution. However, that is simply political jawboning. I will focus on S.J.R. No. 42, because it is the operative Resolution, but the analysis is equally applicable to S.C.R. 25.

One argument that might be asserted against these Resolutions is the claim that it violates federal equal protection for Alaska to deny same-sex marriage. But every court that has addressed this claim has rejected it.[55] Again, the reason is simple. Heterosexual marriage is a unique relationship, that makes unique contributions to society, and equal protection law does not require treating things are equal that are different. Is denial of same-sex marriage like denial of interracial marriage that was declared unconstitutional in *Loving v. Virginia*? No, it is not. Prohibiting marriage because of race is different that prohibiting homosexual marriage. Race is different than sexual preference. Race is immutable and passive; sexual relationship is active and a matter of decision and choice. As General Colin Powell put it: "Skin color is a benign non-behavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral

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[55] *See* Wardle, *Constitutional Claims, supra note* 2, at 74-95.

characteristics. Comparison of the two is a convenient but invalid argument."[56] I agree totally with the judgment of the Supreme Court in *Loving* that racial classifications are totally irrelevant to any legitimate policy the state may have relating to marriage regulation, whereas sexual-behavior choices are of legitimate social concern, especially regarding marriage.

Another argument that might be raised is that S.J.R. No. 42 is unconstitutional under *Romer v. Evans.* Two years ago, the Supreme Court of the United States struck down Amendment 2 to the Colorado Constitution in *Romer*. That amendment was intended to generally prohibit the enactment of laws giving special preferences to persons on the basis of homosexual behavior. But it was drafted very broadly and the Supreme Court struck down the amendment. But it did so on grounds and logic that clearly distinguish S.J.R. No. 42. First, the Colorado amendment classified and discriminated in law on the basis of "homosexual, lesbian or bisexual orientation," and not solely on the basis of conduct, behavior or relationship. How someone feels or thinks or believes, including one's feelings or beliefs regarding sexual attraction, interest, or orientation, is not a permissible basis for legal discrimination; to legally classify persons on the basis of their "orientation" status is constitutionally forbidden.[57] By contrast, S.J.R. No. 42 does not discriminate on the basis of any "orientation" but it is conduct (marriage) and action (actual same-sex relationships) that are the permissible basis for distinguishing heterosexual marriage from same-sex unions.

Second, Colorado Amendment Two did not merely deny legal preference to persons with homosexual orientation, but it denied them basic protections of the law. The Supreme Court held that the Colorado amendment did not merely "put[] gays and lesbians in the same position as all other persons,"[58] as the supporters said they intended, but it arguably stripped them from even basic civil rights protections. The Colorado amendment arguably forbade specific protection of any kind for gays and lesbians,[59] and the Court noted that it could be construed to "deprive[] gays and lesbians even of protection of general laws."[60] Thus, police protection, fire protection, access to public libraries, and other basic protections arguably might have been denied gays and lesbians.

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[56]*See* Gen. Colin L. Powell, Letter to Representative Patricia Schroeder, May 8, 1992, in David F. Burrelli, HOMOSEXUALS AND U.S. MILITARY PERSONNEL POLICY, Jan. 14, 1993, at 25-26; *see also Gays in the Military, Hearing of the Military Forces and Personnel Subcomm. of the House Armed Serv. Comm.* (Statement by Joint Chiefs of Staff Chairman Colin Powell), FED. NEWS SERV. July 21, 1993, at 26. *See also* Baker v. Nelson, 191 N.W.2d 185, 197 (Minn. 1971) ("[I]n commonsense and in a constitutional sense, there is a clear distinction between a marital restriction based merely upon race and one based upon the fundamental difference in sex."). A *Wall Street Journal* article recently observed that "many African-Americans and Hispanics rejected the argument that gays are another minority group just like themselves, struggling for equal rights." Dennis Farney, *Shaky Ground*, WALL ST. J., Oct. 7, 1994, at A1, A6.

[57]116 S.Ct. at 1623.

[58]*Id.* at 1624.

[59]*Id.* at 1626.

[60]*Id.*

There is a tremendous and constitutionally significant difference between depriving persons of potentially all protection of the laws, as Colorado Amendment Two apparently did, and merely refusing to extend one specific, unique legal status (marriage) to same-sex relations, as S.J.R. No. 42 does.

Third, similarly, the form of the Colorado amendment was open-ended. It did not focus solely on the specific areas of abuse that the voters had been concerned about. It was an "across the board" prohibition of legal protection.[61] The "sweeping and comprehensive" Colorado rule singled out gays and lesbians, and no others, for comprehensive non-protection status.[62] While the amendment's alleged purpose to prevent certain special advantages for gays and lesbians was not improper, "[t]he breadth of the Amendment is so far removed from these particular justifications that we find it impossible to credit them."[63] S.J.R. No. 42, by contrast, focuses specifically upon one particular legal relationship and on that relationship only. It is precise, specific, and exact as to the subject and kind of legal protection that is set aside for exclusive protection.

Fourth, the Supreme Court said that Colorado Amendment did not survive mere rational basis scrutiny. Despite the intention of its backers, the Court stated that: "We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective."[64] By contrast, protecting the institution of heterosexual marriage has repeatedly been recognized not merely as a legitimate purpose of legislation, but an essential and important duty of the legislature. In light of the history of the unique legal and social importance of heterosexual marriage, it would require extraordinary intolerance to argue that S.J.R. No. 42's purpose to preserve the unique legal status of heterosexual marriage is irrational.

Fifth, the Supreme Court emphasized that the Colorado amendment was really motivated by "animus" against gays, lesbians and bisexuals. In other words, it was invidious in its motive as well as its potential effect.[65] S.J.R. No. 42, by contrast, avoids any negative language or intent. It does not degrade or denigrate any class. It is positive and emphasizes the contributions and importance of conventional marriage to society, without condemning or punishing any class of alternative relationships.

Finally, the same day the Supreme Court announced the *Romer* decision, it also rendered another decision that underscored how important it is to protect each state's ability to decide important legal policy issues for itself without having other states impose their policies extraterritorially upon co-equal sovereign states. In *BMW of North America, Inc. v. Gore*,[66] the Court discussed whether Alabama courts could impose punitive damages upon a defendant for

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[61] *Id.* at 1628.

[62] *Id.* at 1625.

[63] 116 S.Ct. at 1628.

[64] 116 S.Ct. at 1628.

[65] *Id.* at 1627-1628.

[66] BMW, Inc. v. Gore, 116 S.Ct. 1589 (1996). This case is discussed *supra*.

doing something in other states that was legal in those states but illegal in Alabama.[67] It is impermissible, wrote Justice Stevens for the Court, for one state to"impose its own policy choice on neighboring States. See Bonaparte v. Tax Court, 104 U.S. 592, 594, 26 L.Ed. 845 (1881) ('No State can legislate except with reference to its own jurisdiction.... Each State is independent of all the others in this particular')."[68] The court emphasize the need for each state "to respect the interests of other States . . . ."[69] The Court emphasized that"*these principles of state sovereignty and comity*" forbid one state giving its laws and legal policy extraterritorial effect that "*infring[es] on the policy choices of other States,*" because the Constitution requires each state "[t]o avoid such encroachment."[70]

One of the reasons for enacting S.J.R. No. 42 is to avoid interstate conflict over recognition of same-sex marriages from Alaska. If protection of state sovereignty is required for mere state economic regulations, it is even more important that one state not legislate a radical redefinition of marriage and then impose it on the other states. Since the very day the Court decided *Romer* it also validated one of the core principle upon which S.J.R. No. 42 is based - the importance of protecting state sovereignty in setting its own legal policies from extraterritorialism of other state's contradictory laws - I do believe that S.J.R. No. 42 is valid under *Romer*.

Conclusion

I believe that S.J.R. No. 42 and S.C.R. No. 25 are generally well-considered and well-crafted. I believe that they are necessary and prudent. While some fine-tuning may be appropriate, some careful amendment may be considered, the thrust and focus of these Resolutions are important and timely. I recommend that this committee, this chamber, and this legislature enact S.J.R. No. 42 and S.C.R. No. 25 and submit the proposed Amendment of S.J.R. No. 42 to the people forthwith.

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[67]BMW had repainted parts of a new car that had suffered some paint damage while being transported from Germany to the United States, and then sold the car as a new car in Alabama without disclosing that it had been partially repainted at a cost of $601.37. That was lawful in other states, but a recent Alabama case made it improper there. The plaintiff introduced evidence that that lowered the resale price of the car about 10% and the jury awarded the buyer $4,000 in compensatory damages (10% of the car's price). BMW had sold about 1,000 such repainted cars in the United States, including 14 cars in Alabama. The jury mathematically awarded $4,000,000 in punitive damages, reduced on appeal to $2,000,000. The Supreme Court reversed and remanded, 5-4, noting that the award was so grossly excessive as to violate due process, in part because the award appeared to be based on out-of-state conduct that was lawful where it occurred and had no impact in Alabama.

[68]116 S.Ct. at 1596-97.

[69]*Id.* at 1597 (citing Healy v. Beer Institute, 491 U.S. 324, 335-336 (1989); Edgar v. MITE Corp., 457 U.S. 624, 643 (1982).

[70]*Id.* at 1597-98 (emphasis added).

PRESS RELEASE

For Immediate Release March 9, 1998

STATEWIDE EFFORT UNDERWAY TO HALT CONSTITUTIONAL AMENDMENT ON SAME SEX MARRIAGE

Statewide civil rights groups are mobilizing to fight a legislative proposal that seeks to add a provision to the Alaska Constitution prohibiting marriage between people of the same sex. The first hearing on the proposed constitutional amendment (SJR 42), is set for today at 1:30 p.m. before the Senate Judiciary Committee. Civil rights groups from across the state are planning to show up in force in hopes of stopping the measure in committee. "This proposal would turn our State Constitution into a document that would mandate unequal treatment and violations of privacy," said Sara Boesser of Committee for Equality. "We expect citizens from all walks of life to step forward in opposition to this unprecedented attack on individual rights in our state," added Boesser.

Senator Loren Leman pushed to have the proposed constitutional amendment introduced by the Senate Health, Education and Social Services Committee earlier this month, after an Anchorage Superior Court judge ruled unconstitutional the legislature's recent rewrite of the state's marriage statute. The re-worked statute restricted marriage to "one man and one woman." Judge Peter Michalski ruled such a restriction discriminates on the basis of sex and violates individual privacy rights guaranteed in the state Constitution. "This legislature has been notorious for passing unconstitutional laws," said Liz Dodd, President of the Alaska Civil Liberties Union. "Now that some of these laws aren't passing constitutional muster in the courts, the Legislative majority has decided that instead of obeying our Constitution, it might be easier to dupe Alaska's voters into amending our Constitution in ways that weaken individual rights. "I think they underestimate the public," said Dodd.

Opponents of SJR 42 point out Judge Michalski's ruling rightfully extends the rights and

responsibilities that flow from a marriage license to all of Alaska's qualified citizens. Marriage bestows many social and economic benefits -- such as joint tax status, health insurance benefits for family members, the right to visit family members in the hospital, to choose how one's life partner will be buried, and numerous other legal rights -- which unjustly have been denied Alaska's many same-sex couples. Individuals and members of the civil liberties and civil rights groups who will be appearing before the Legislature later today intend to counter arguments that granting marital rights to same-sex couples will result in the disintegration of society. Rather, they will argue, the extension of these rights simply will provide stability and security to families that already exist.

Opponents of the constitutional amendment warn it isn't just same-sex couples who should be worried about SJR 42 advancing through the Legislature. "What we have here is an attempt to weaken everyone's constitutional rights, by attacking the rights of one group the Legislature perceives to be unpopular," said Elliot Dennis, past president of Parents, Family and Friends of Lesbians and Gays-Anchorage (PFLAG). "Individual liberty has always been 'inherent' in our state Constitution, but this measure changes that. I can't think of anything more un-Alaskan," he added.

Representatives from the groups opposing SJR 42 will hold a press conference on the steps of the Capitol Building following today's hearing. For more information, contact Sara Boesser in Juneau (789-9604); Allison Mendel in Anchorage (279-5001); or Ilena Cramer in Fairbanks (452-4222).

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Rights & Benefits of Marriage

What is Marriage, Anyway?

Most importantly, it's not just about sex. Anyone who is married knows that.

Marriage is a powerful legal and social idea that protects and supports intimate family relationships by providing a unique set of rights, privileges, and benefits. Those who can marry often take these rights for granted, but for gay men and lesbians, these benefits are forever denied.

In Hawaii alone, for instance, because lesbians and gay men cannot marry, they have no right to:

- Accidental death benefit for the surviving spouse of a government employee;
- Airport relocation assistance for displaced persons;
- Appointment as guardian of a minor;
- Award of child custody in divorce proceedings;
- Beneficial owner status of corporate securities;
- Bill of Rights benefits for victims and witnesses;
- Burial of servicemember's dependents;
- Certificates of occupation;
- Consent to post-mortem examination;
- Continuation of rights under existing homestead leases;
- Control, division, acquisition, and disposition of community property;
- Criminal injuries compensation;
- Death benefit for surviving spouse for government employee;
- Disclosure of vital statistics records;
- Division of property after dissolution of marriage;
- Eligibility for housing opportunity allowance program of the Housing, Finance and Development Corporation;
- Exemption from claims of Department of Human Services for social services payments, financial assistance, or burial payments;
- Exemption from conveyance tax;
- Exemption from regulation of condominium sales to owner-occupants;
- Funeral leave for government employees;
- Homes of totally disable veterans exempt from property taxes;
- Income tax deductions, credits, rates exemption, and estimates;
- Inheritance of land patents;
- Insurance licenses, coverage, eligibility, and benefits organization of mutual benefits society;
- Lease of agricultural parks;
- Lower hunting license fees;
- Making, revoking, and objecting to anatomical gifts;
- Nonresident tuition deferential waiver;
- Notice of guardian ad litem proceedings;
- Notice of probate proceedings;
- Payment of wages to a relative of deceased employee;
- Payment of worker's compensation benefits after death;
- Permission to make arrangements for burial or cremation;
- Proof of business partnership;
- Public assistance from the Department of Human Services;
- Qualification as a facility for the elderly;
- Real property exemption from attachment or execution;
- Right of survivorship to custodial trust;
- Right to be notified of parole or escape of inmate;
- Right to change names;
- Right to enter into pre-marital agreement;
- Right to file action for nonsupport;
- Right to gasoline dealer franchise;
- Right to inherit property;
- Right to purchase leases and cash freehold agreements concerning the management and disposition of public land;
- Right to sue for tort and death by wrongful act;
- Right to support after divorce;
- Right to support from spouse;
- Rights and proceedings for involuntary hospitalization and treatment;
- Rights by way of dour or curtesy;
- Rights to notice, protection, benefits, and inheritance under the uniform probate code;
- Sole interest in property;
- Spousal privilege and confidential marriage communications;
- Status of children;
- Succession to Hawaii Homes Commission leases;
- Support payments in divorce action;
- Tax relief for natural disaster losses;
- Travel and transportation expense of government employees;
- Vacation allowance on termination of public employment by death;
- Veterans' preference to spouse in public employment;
- In vitro fertilization coverage;

  and,
- Waiver of fees for certified copies and searches of vital statistics..

April 20, 1998

Dear Representative Green,

This letter regards SJR 42 which proposes an amendment to the constitution to define marriage as a union that can be entered into only by "one man and one woman."

We urge you to support this important bill. Passage of this bill would allow the **people** of the State of Alaska to decide whether or not they want marriage defined as a union of one man and one woman. Last year, as you are well aware, legislators -- with the general support of their constituents -- passed a bill that would have given marriage just this definition. This bill was passed into law, and now one or two judges have nullified it.

From both a biblical and historical perspective, we strongly support marriage as the legal union between **one man** and **one woman**. However, regardless of our views on the subject, we see no reason why the people of Alaska shouldn't be able to vote on a possible amendment to the constitution -- if we are truly living in a democracy and not a governmental system run by one or two judges!

Again, we urge your support for SJR 42. Thank you for your time and consideration of this important matter.

Sincerely,

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

Author: kailing@mosquitonet.com at CC2MHS1
Date: 4/28/98 10:12 AM
Priority: Normal
BCC: Representative Gail Phillips at LAA_CAP
TO: Representative_Joe_Green@legis.state.ak.us at CC2MHS1
Subject:

Dear Representative Green,

We want to thank you and the House Judiciary Committee for conducting a fair, impartial hearing yesterday. It was entirely different from the Senate hearings on SJR 42, when efforts were made to limit testimony in opposition to this resolution and the attitude toward those wanting to testify was anything but accommodating.

Those of us attending in Fairbanks did feel like the ugly stepchild for a while, but all of us were eventually able to testify. We are grateful for your patience and the respectful attitude you displayed toward all who testified--for or against.

Regardless how the vote comes out, we have the feeling that we were heard, at least by a few of the committee members, and that absent committee members will diligently review all testimony given before making up their minds on how to vote. You and your committee have done a great deal toward restoring our faith in the public process--a faith that was severely eroded during the Senate hearings on this issue.

Stephen & Nancy Kailing

Good Job, Joe - Please pass on my appreciation to your Committee. Thanks - Gail

"For where two or three are gathered together in my name, there am I in the midst of them."
--The Gospel according to St. Matthew, 18.29

A Statement in Support of Family and in Opposition to SJR 42
May 7, 1998

"Some time ago a little child came to our house about midnight. I went down and there stood this little one in tears. Upon questioning she said: "I went to my mother and she did not want me; I went to my father and he did not want me. You, do you want me?"
--Mother Teresa of Calcutta

My name is Morissa Lou Williams. I am writing to each member of the House on behalf of myself, as a woman of faith, and on behalf of the children of the State of Alaska, who will suffer the violence of an unjust society if SJR 42 continues its misguided path through the halls of the legislature. I am a student of theology and non-violence. I subscribe to Gandhian principles of non-violent resistance to injustice. I respectfully say to you that should an essentially violent doctrine such as this, which would make the highest union between two human beings a crime for many citizens of Alaska, become law, I am called by my conscience to resist its implementation.

My religious tradition is Jewish, which is to say that I know without doubt that when any group of people -- in this case, people who happen to love people of their own sex -- are set apart for persecution, then we as a society have lost the navigational brilliance of our common ideals and, in this case, our constitution. Alaska is only beginning to recover from its history of discriminating against the Native peoples of its own lands. That process is very painful and demanding for anyone whose heart is sincerely engaged in authentic change. How is it possible that anyone should choose to return us, morally, back through the very gates of oppression? Shall insanity be called sanity again?

There are many things the children of Alaska are crying for. Most desperately, they are calling on the grownups in their lives to make peace with one another, and with themselves, so that they may live inside safe, loving families, streets, neighborhoods, communities. Every one of us stands in the presence of a child asking us if he or she is wanted in our society. Mother Teresa saw, and asked us to see, that every single child relies upon every one of us to love that child just as God created him or her.

SJR 42 may not be intended to do harm, but it can only do harm. It is a misguided and confused document which is best set aside as an historical footnote. I submit to you, respectfully, that to continue the pretense that there is any value in this document is to bow before violence and invite it to do its worst among us. Can you look into the eyes of any child and say, without feeling a sickness in your own soul, "You have no right to a just and peaceful future"? Please, honor your best selves by recollecting that God is love. On the following pages I offer a faith perspective on this legislation.

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If you have ever seen film of Mother Teresa, you have seen that it was from children, who radiate the undimmed hope and love of God, that Mother Teresa found particular strength for her work. She gratefully received this hope and this love, and returned it a thousand-fold not only to the children but to the people around them. This is something every one of us is capable of doing. If children become the mirror into which each conscience gazes, then we cannot help elevating justice and compassion to be the highest priorities in decision-making matters. It is when we turn away from children and look into such transient and misleading reflections of our worth as power or wealth that compassion and justice disappear from our deliberations.

Morissa Lou Williams P.O. Box 240791 Douglas, Alaska 99824-0791

"For where two or three are gathered together in my name, there am I in the midst of them."
--The Gospel according to St. Matthew, 18.29

I believe that this measure, SJR 42 rises from a misguided belief that elevating the status, wealth and power of some citizens over others will bring about some manner of good result. It cannot do such a thing. If the few proponents of the bill could look directly into the eyes of the children whose future they are mauling in their confusion, they would soon enough see the mistake being made. I am certain that every one of you reading this letter does many charitable things for the benefit of children. I know that you are generous and that you care. But children need more than charity. They need the careful, honorable foundation of a just society: a society with a democracy and a sturdy constitution which can withstand the moral storms which sometimes obscure our common ideals . SJR 42 is such a storm.

I believe that SJR arises from a lack of understanding. It arises from a fear that perhaps the marriage of a man to a man or a woman to a woman might threaten the marriage of a woman to a man. No such thing is true. On the contrary, any marriage undertaken in courage and love fortifies every other marriage by fortifying the very institution of marriage. Every marriage embarked upon in faith demonstrates the beauty of fidelity and a reverence for love. These are the qualities which create a society in which children are safe, protected and honored.

Though SJR 42 may not be intended to do harm, it is capable of doing only harm. The implicit intent of the measure, which is to protect the sacred institution of marriage, can in fact only be met by: (1) recognizing that the bill contradicts its own intent, and (2) dismissing the bill from further deliberations and interring the bill in the safe depths of historical archives.

SJR 42 assaults the institution of marriage even as it disdains the expressed intent of our constitution and our democracy. I write this letter as a woman of faith with a very conservative nature. The supporters of SJR 42 are commonly held to be "conservatives", but this is, I believe, an improper designation. When I think of the word "conservative" Abraham Lincoln comes to mind. This conservative gentleman had this to say to advocates of carrying the institution of slavery forward in federal territories:

> "But you say you are conservative--eminently conservative--while we are revolutionary, destructive, or something of the sort. What is conservatism? Is it not adherence to the old and tried, against the new and untried? We stick to, contend for, the identical old policy on the point in controversy which was adopted by "our fathers who framed the Government under which we live;" while you with one accord reject, and scout, and spit upon that old policy, and insist upon substituting something new. True, you disagree among yourselves as to what that substitute shall be. You are divided on new propositions and plans, but you are unanimous in rejecting and denouncing the old policy of the fathers. Some of you are for reviving the foreign slave trade; some for a Congressional Slave-Code for the Territories; some for Congress forbidding the Territories to prohibit slavery within their limits; some for maintaining slavery in the Territories through the judiciary; some for the "gur-reat principle" that "if one man would enslave another, no third man should object," fantastically called "Popular Sovereignty;' but never a man among you is in favor of federal prohibition of slavery in federal territories, according to the practice of "our fathers who framed the Government under which we live." Not one of all your various plans can show a precedent or an advocate in the century within which our Government originated. Consider, then, whether your claim of conservatism for yourselves, and your charge of destructiveness against us, are based on the most clear and stable foundations."

Address at Cooper Institute, New York, February 27, 1860.

Morissa Lou Williams P.O. Box 240791 Douglas, Alaska 99824-0791

"For where two or three are gathered together in my name, there am I in the midst of them."
--*The Gospel according to St. Matthew, 18.29*

What we encounter in SJR 42 is a chaotic result of shallow theological references and even shallower historical thought. We are a nation which honors the separation of church and state but we are also a nation whose principles are based on moral precepts arising from our religious sensibilities. Thus, when we consider a bill like this, with its frank dehumanization of American citizens, we are in the difficult position of simultaneously considering: (1) the ostensible moral origins and consequences of the law, (2) whether the law is acceptable under the mandate of our history and our constitution; and (3) whether the law will succeed in fulfilling its own intent. The third question is, I believe, answered. The law not only fails to succeed in fulfilling its own intent, it actually defeats it. The second question is also clear: the law is directly in conflict with the mandate of our history and our constitution. That has been amply demonstrated by legal experts and witnesses.

The first question is the one I wish to address now because I believe it is the fundamental question in our hearts. I believe that the measure arises from impoverished moral thinking and, again, shallow historical understanding. As scholar John Boswell writes in *Christianity, Social Tolerance and Homosexuality,*

> "Not only does there appear to have been no general prejudice against gay people among early Christians; there doesn't seem to have been any reason for Christianity to adopt a hostile attitude toward homosexual behavior...To a contemporary observer of social trends, it would probably have seemed that...Christian sexual attitudes would be focused on the quality of love, not the gender of the parties involved or the biological function of their affection."

When rituals sacred to human beings such as attending religious services, celebrating marriages, or honoring one's own family are forced to go "underground", to become invisible, it is a symptom that the principles of a society have been, for a time, obscured by misguided uses of power. But such principles do not wither. That is the beauty of principles: we carry them within ourselves. In fact, the persecution of a principle can bring about its unexpected flowering. The Czechoslovak dissident Vaclav Havel, who was to become the president of his country, took part secretly in religious services while he was in prison.

The greatest spiritual leaders of any time are its children. They are its often invisible prophets. Christ said, "Take heed that ye despise not one of these little ones; for I say unto you, That in heaven their angels do always behold the face of my Father which is in heaven." (Matthew 18.10.) If we make decisions which insult children by creating an atompshere of neighbor against neigbhor, we violate the spirit not only of the Christian gospels but of virtually every religious tradition mankind has known. We put ourselves into the worst possible moral position, which is to refuse to be a neighbor to our neighbor. In *Is the Homosexual My Neighbor,* authors Scanzoni and Ramey journey the breadth and depth of Old and New Testament in considering this question. They relate the story of the man who hopes to justify himself by disowning other human beings as neighbors:

> "And behold, a certain lawyer stood up, and tempted him, saying, Master what shall I do to inherit eternal life? He said unto him, What is written in the law? how readest thou? And he answering said, Thou shall love the Lord they God with all they heart, and with all they soul, and with all thy strength, and with all thy mind; and thy neighbor as thyself. And he said unto Him, Thou has answered right: this will do, and thou shalt live. But he, willing to justify himself, said unto Jesus, And who is my neighbor?"

Morissa Lou Williams P.O. Box 240791 Douglas, Alaska 99824-0791

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--The Gospel according to St. Matthew, 18.29

Scanzoni and Ramey go on to observe, concerning our responsibility to our neighbors,

> "If the homosexual is my neighbor, the Bible commands that I shall not bear false witness against that person (Exodus 20:16)....Zech. 8:17 specifies that none of us should allow ourselves to imagine evil in our hearts against our neighbor.....The Bible has many other things to say about how we should treat our neighbor, but they are all summarized in the repeated injunction to "love your neighbor as yourself" (Lev. 19:18, RSV; Matt. 19:19, 22:30; Mark 12:31; Luke 10:27; Rom. 13:0; Gal. 5:14; James 2:8). The formula in these passages is highly significant for our topic. We can love or accept our neighbor only to the degree that we accept ourselves. True self-acceptance comes most readily through the realization that God loves and accepts us just as we are."

Etty Hillesum was a Jewish writer in Holland who kept a diary from 1941 to 1943, when she was deported to Aushwitz concentration camp and died. She would have been much in harmony with the these words. She begs us, from the pages of her diary, to consider life as a sacred responsibility to love:

"I believe in God and I believe in man and I say so without embarrassment....True peace will come only when every individual finds peace within himself: when we have all vanquished and transformed our hatred for our fellow human beings of whatever race – even into love one day, although perhaps that is asking too much. It is, however, the only solution. I am a happy person and I hold life dear indeed, in this year of Our Lord 1942, the umpteenth year of the war."

Is such transformation too much to ask? Etty's words, "the only solution" are a challenge to that other solution, the "final solution", which was Hitler's relentless process of genocide. It seems quite extraordinary that we should still be debating questions concerning the worthiness of any human being to live in peace, and yet we are.

Albert Schweitzer put it simply: "Humanitarianism consists in this principle: that a *man* is never to be sacrificed to an *end*." . We simply cannot persecute some human beings - in this case, human beings who happen to love others of their own sex - in order to placate the spiritual crisis of faith of other human beings. Like Etty, Schweitzer's faith was in a God of love, not a God of divisiveness.

Schweitzer cried out from his letters, "The essential element in Christianity as it was preached by Jesus and as it is comprehended by thought, is this, that it is only through love that we can attain to communion with God." Not through discrimination against human beings; not through judgment against varieties of love, but through love itself: "All living knowledge of God rests upon this foundation: that we experience Him in our lives as will-to love".

Can any single act more indicate a will-to-love than the dedicated love of marriage? Again, theologian, philosopher, musician and doctor Albert Schweitzer:

> "We have a rich inheritance from the past. That inheritance has been squandered. We are sinking today into a spiritual and intellectual poverty. I wrote several decades ago that modern man was renouncing inalienable rights of the individual--and that this made our race incapable of producing new ideals or of making current ones serviceable for new objects. Modern man's only experience in this field is that prevailing ideas obtain more and more authority, take on a more and more one-sided development, and live on till they have produced their last and most dangerous consequences."

Morissa Lou Williams P.O. Box 240791 Douglas, Alaska 99824-0791

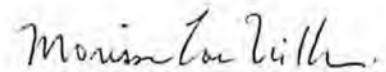
"For where two or three are gathered together in my name, there am I in the midst of them."
--The Gospel according to St. Matthew, 18.29

We can avert such consequences, simply and gracefully, by choosing to protect the inalienable rights of our brothers and sisters. Rather than degrading family life in Alaska by making marriage a crime for many of its citizens, I would advocate embracing the following actions, on an individual basis, which would transform entirely the lives of Alaskan children and strengthen Alaskan families in every respect:

◆ Remove alcohol voluntarily from the family home so that intellectually, emotionally, spiritually and in all ways we are able to make choices that honor the needs of children.
◆ Create marriages of tenderness, fidelity and respect.
◆ Be patient with children and spend time with them so they can learn to trust and mature into people who can sustain committed relationships.
◆ Endow the education of children to ensure they are not excluded from the decision-making process of democracy, and to ensure the democracy itself does not falter.
◆ Read deeply and widely so your own life grows richer.
◆ Share your spiritual beliefs humbly and offer their presence joyfully as gifts.

These are not actions which can reasonably be made law; but, chosen individually as matters of conscience, they would foster an atmosphere of law-abiding peace we cannot even imagine in our current state. Children in Alaska are not suffering because a man loves a man or a woman loves a woman. Children in Alaska are suffering because so very many Alaskans have displaced love with alcohol, power, money or violence. Every single thing we do to protect the dignity of family life will bless our children and their futures, and every single thing we do to injure family life - and SJR 42 is an example of such injury - will injure these children, who are already in the midst of so much violence and loneliness. If we judge this bill on its actual intentions, which are to respond to theological/social mandates concerning marriage, we see it fails on all levels. I call on you to oppose this bill and support the children of Alaska.

Thank you for your kindness in considering this letter.



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Morissa Lou Williams P.O. Box 240791 Douglas, Alaska 99824-0791

CHARLES M. NORTHRIP
2810 FRITZ COVE ROAD
JUNEAU, ALASKA 99801

(907) 789-3554

4/20/98

To: Rep. Joe Green

Hi Joe,

I understand House Judiciary is the first referral for SJR 42. As I'm sure you know, I have a deep personal interest in the subject. Pam + I will be out of town until April 30. I hope I'll have an opportunity to testify on the proposed resolution. Please let me know if and when you'll schedule hearings. I'd also like to come see you and discuss SJR 42 with you.

Thanks,

Charlie Northrip

April 21, 1998

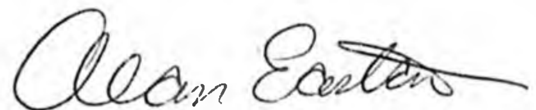
State Representative Joseph Green
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Green:

I urge you to oppose SJR42. This bill would put before the voters a proposal to amend the Alaska state constitution to forbid same-sex marriages.

I feel that same-sex couples should be given the same opportunities under the law as opposite sex couples. Imagine if you were forbidden to marry the person you loved !!! Please do not make it more difficult for same-sex couples to achieve legal recognition.

Sincerely,



Alan Easton
2317 Seven Pines Dr.#7
St. Louis, Missouri 63146

wow

P.01

TRANSACTION REPORT

APR-28-98 TUE 09:02 AM

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
APR-28	09:01 AM	19074654316	**'**"	0	SEND	BUSY	460	

TOTAL : 0S PAGES: 0

tried 3 times!

TELECOPY COVER SHEET
Anchorage Legislative Information Office
Office - (907) 561-7007 Fax - (907) 562-4376

TO: Chair (H) Judiciary

ATTN: Chair Green FAX: 465-4316 PHONE:

FROM: Anch LIO PHONE:

INSTRUCTIONS: Written (T) on SJR 42

SENT: Date 4/29 Time

DISPOSAL OF ORIGINAL: Discard Hold for Pickup

NUMBER OF PAGES: (counting cover sheet)

TRANSMITTED BY: Jean

KEVIN

04/27/98 13:34:37 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCDAW IN JUN. .U ANC

RE TCN: 80777 SCHEDULED FOR:04/27/98 13:00 TO 15:00
SPONSOR: HOUSE JUDICIARY PURPOSE: PUBLIC HEARING

MESSAGE TEXT: YOU MAY FAX ANY WRITTEN TESTIMONY TO:
465-4316

Alaska State Legislature

Please enter into the record my testimony to the Joint House Committee
committee name

committee on SJR-42 ____, dated 4-27-98 .
bill/subject

Please vote No on SJR-42

Signed: Susan Moeller
Testifier

____
Representing (Optional)

1014 W 16 Av #4 Anch AK 99501
Address

275-1182
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the Joint House Committee
committee name

committee on SJR-42, dated 4/27/98.
bill/subject

I urge you to vote no on SJR-42 which is a bill that would cause much hate to surface in our state.

This is an issue that shold be settled in the courts, not battled out by the people on TV and the media.

Signed: [signature]
Testifier

myself Deborah L Vandorfl
Representing (Optional)

1014 W 16th #4 Anch AK 9959
Address

278-1182
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on SSJR 42 bill/subject, dated 27 April 1998.

The rhetoric from the "majority" leadership is confusing!

- You claim to represent a party in favor of reduced government interference in the daily lives of citizens, yet you are trying to pass new laws which impose new government restrictions on individual freedom

- You complain that your stereotyped view of gay people is that they are promiscious and don't respect "family values," yet when two men or women want to codify their relationship and guarantee the same spousal protections most of you enjoy, you try to create more obstacles to people with different lives from your own.

- It appears you "dost protesteth too much" on these issues. If someone else's mere existence is threatening to you, I believe you need to examine your own motives, and rhetoric, and not interfere with individuals' choices.

Signed: TIMOTHY TATTAN
Testifier

Self
Representing (Optional)

POB 200632, Anchorage
Address

2??-7988
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
committee name

committee on STR 42, dated April 27, 1997.
bill/subject

Dear Committee Members

I would like to ask you to consider voting against STR 42

for the following reasons:

- I feel each Alaska citizen should have available to them the rights + privileges of marriage regardless of their sexual preference
- From the States perspective marriage is a legal contract, st Moral judgement about a person's personal choices about partnerships should not be a consideration.
- It is considered discrimination not to allow the marriage rights for all.
- 10-15% of Alaskans are hard working, tax paying citizens who also happen to be gay or lesbian - They do not deserve to be discriminated against or excluded.

Signed: [signature] Robyn M. Heary
Testifier

Representing (Optional)

PO Box 143205 Anch. AK 99514 — 7240 Durenda Circle
Address

522-3953
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on SJR-42, dated 4-27-98.
bill/subject

I am against SJR-42 and would appreciate if you would vote no on this issue. This isn't a moral issue but a legal one, and an individual should not have their rights limited because of who they choose as a life partner.

The constitution should not be amended to limit anyone's civil rights.

I want to be able to make legal choices regarding my partner, that other married couples get to make.

Signed: Kim Everett
Testifier

Representing (Optional)

1850 Logan St Anchorage, AK 99508
Address

258-9027
Phone No.

I would like to testify in favor of SJR 42. The dictionary defines marriage as between one man and one woman. The Federal government defines marriage as between one man and one woman. An attempt to redefine marriage in any way other than between one man and one woman flies in the face of everything we know to be right. The laws of a land must flow from our knowledge of what is right. We can see how ridiculous it is to redefine marriage one the basis of sexual behavior by considering that some people participate in in sexual activity with small children. Do we want to allow marriage to occur between a man and his son or daughter? Some people participate in sexual activity with animals. Do we as a people want to allow a man to marry a dog, a sheep, or a chicken? I think not! Let's stick with marriage between one man and one woman.

Bob Wheeler
278-3912
1211 Redwood Ct.
Anch. AK 99508

SJR 42

I AM OPPOSED TO RECOGNIZING SAME SEX MARRIAGES AND AM IN FAVOR OF SJR 42. THIS IS TOO IMPORTANT AN ISSUE TO BE DECIDED BY ONE JUDGE. THE PEOPLE OF THIS STATE SHOULD DECIDE. ~~The issue~~

Michael [illegible]
4/27/98

3000 WILEY POST AVE.
ANCHORAGE, AK 99517

4-27-98

I strongly support SJR 42. SJR 42 does *not* discriminate against homosexuals. Homosexuals are free to live however they choose – the state does not prohibit homosexual behavior or relationships.

What is being asked of the people of Alaska is to *approve* of the homosexual lifestyle and allow it to be promoted. This is a change as to how we currently live.

I cannot give my approval to the homosexual lifestyle. It is imperative that this issue come before the voters of the state of Alaska. I urge you to vote for SJR 42 + give the people of Alaska a chance to have *our* vote heard.

Tamara Wheeler
1211 Redwood Ct.
Anchorage AK 99508

LEGISLATIVE INFORMATION OFFICE
119 N. CUSHMAN, SUITE 101
FAIRBANKS, AK 99701
452-4448

Kevin FYI

DATE: 4/28/98

Please accept the enclosed original(s) of written testimony for the

House Judiciary (SJR 42) teleconference scheduled on

4/27/98. A copy of this testimony was

transmitted to your committee via fax.

Thank you,

Fran / Flex LIO

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Judiciary Comm.
Committee Name

Committee on SJR 42 Dated 4-27-98
Bill / Subject

I am heterosexual & ~~a local~~ active member of a local church. I oppose SJR 42 on several grounds. I oppose this bill because it legalizes discrimination and it does so in our constitution. Our constitution should be a document which upholds equal rights and the privacy of all Alaskan citizens. Our constitution as it is now written does this. I know many of you ~~[illegible]~~ agree that our constitution should be a document of rights and not one of prohibitions and preferences for some. ~~[illegible]~~, I urge you to vote against this punative bill.

SIGNED: Jana Peirce
Testifier

Jana L. Peirce
~~Representing~~ signature

820 Rifle Rd, Fairbanks, AK 99712
Address / Phone Number
907-488-8692

ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE House Judiciary
COMMITTEE NAME

COMMITTEE ON SJR 42 DATED 27 APR 98
BILL/SUBJECT

Please vote No. on SJR42.

Thank-you.

SIGNED Merardine Smith
TESTIFIER

REPRESENTING (OPTIONAL)

PO Box 35223 FWA 99703
ADDRESS/PHONE NUMBER

Good Afternoon,

I am Lisa Slayton. I am a well respected educator in the Fairbanks school system, a community volunteer, a spiritual person who believes in God. I am the girl next door, I am a Lesbian.

This is my second time to testify AGAINST SJR 42. My voice was not heard in the Senate. I pray that that is not the case in the House.

There are so many legitimate arguments against this discriminatory amendment that I find it hard to Prioritize them in order to speak on them in just three minutes, so I have decided to give a personal account of what it was like growing up lesbian in a fearful, hateful, homophobic atmosphere...an atmosphere that unfortunately continues to exist for most of our gay and lesbian youth due to anti-gay measures such as SJR 42.

I am 35 years old. I have been a lesbian for 35 years. I did not CHOOSE a lifestyle when I was born. I did not choose to be made to feel alone and afraid in high school for far more serious reasons than the usual teenage angst. I did not choose to be kicked out of my home when my family finally did find out about my sexual orientation. I did not CHOOSE to be physical attacked by my mother and sister and then sent to a psychiatrist for being "abnormal". And now, as an adult, I do not CHOOSE to be constantly afraid of losing my job, I do not CHOOSE to constantly have to defend my right to exist as my true self in this world, and I do not CHOOSE to find myself in a position where a majority of people may possibly have the right to decide who I can legally marry and build my life with.

Gays and Lesbians to not CHOOSE to be feared, hated, treated with disrespect, denied civil rights. We are not asking for special rights, we are asking for the SAME rights as everyone else because we ARE everyone else. We are people. We are your teachers, doctors, postal clerks, social workers, police, lawyers, the check out clerk at Fred's...and make no mistake, we are YOUR uncles, aunts, cousins, sisters, brothers, children and grandchildren. I promise you that you have gays and lesbians in your OWN families. When you vote on this amendment, take into consideration just WHO you are affecting. Please keep in mind that voting "NO" on SJR 42 hurts no one. Voting "YES" hurts many. Do not continue this cycle of fear and hate...Please oppose SJR 42. Thank you.

Lisa Slayton
457-2787
Fairbanks, AK

Re SJR 42

Mary Bishop, 1555 Guss Grind, Fbx Ak 99709

thurs Fri & Sat

I just attended the state Republican Convention here in Fairbanks. I was elected as an alternate delegate from District 29 and I attended virtually every event.

Friday Morning breakfast debate -- a table of eight Lathrop High School students is introduced. Three of these students ask questions of the gubernatorial candidates. One question relates to the same-sex marriage resolution.

Our Republican candidates answered so negatively, with such rancor and malice -- I was ready to crawl under the table. And while this rancor was being spouted from the podium, I glanced at a table to one side of me. Some men were raising out of their seats, pushing their fists to the ceiling, figuratively, if not literally, shouting "Go for it, yeah man, get'em." One thing is for certain, the Republican Party lost virtually every student at that table who wasn't from an extremely "religous right" philosophy. Of course, all this made the front page of the local paper, too. It was news-worthy. And probably was the talk of Lathrop High School the next day. We (i.e., we Republicans) are just lucky the photographer didn't get a picture of those men raising their fists. Shades of the Ku Klux Klan. We Republicans will lose the young adults a youth of today -- over this issue if this rhetoric continues.

Surely each of you have homosexual members of your family or extended family. Remember them. They are our sons and daughters, our brothers and sisters, our nephews, neices, aunts and uncles. Sometimes they are our mothers and fathers. They are friends and neighbors, employees and employers. They are even sometimes our fellow Republicans-- (though this rancorous rhetoric is really making it difficult for that to continue.)

And lest you Democrats feel too righteous -- I have also witnessed a rather dispicable display of political power by the "D's" when it was to their advantage to be gay unfriendly.

We are in the limelight now of a great national conversation. I am delighted that this conversation is happening. But the conversation must not be filled with the malice and rancor I saw on the podium last Friday morning -- nor with the garbage in one of the recent public hearings on SJR 42 where homosexuals were equated with

child molesters, dogs, goats, and where it was recommended that homosexuals be stoned to death.

Republicans -- remember what you used to type -- "Now is the time for all good men to come to the aid of their party". Don't lose the youth of today. Gays are no longer in the closet; our youth know gays aren't all beasts and molestors.

sincerest form of flattery   like Richard Collins

Remember, imitation is the greatest form of compliment. Gays who want to marry ~~are~~ are complimenting our cultural and social values. They wish to demonstrate to others that a committed, monogomous lifestyle is "the way to go". Please support them in this endeavor. Vote no -

I will submit this as written testimony

Thank you

Hello. My name is Susan Galereave and I am here today to testify against SJR-42. I am opposed to this Constitutional amendment because it singles out a minority group as not being worthy of the benefits to which the majority is entitled. I believe that, if passed, and when challenged by the courts, SJR-42 will be found to be unconstitutional, just as was the DOMA legislation of 2 years ago. It violates the right to privacy and our equal protection under the law that applies to all citizens.

I am a member of that minority. I consider myself married to my partner who is a woman. We are living out the essence of what marriage is, even though the law does not recognize that. We are committed to cherish and support each other for the rest of our lives. We support each other financially and emotionally which enables us to be productive, contributing citizens of this town and state.

Whether or not you are comfortable with my lesbian union, it is what makes sense for me. I was raised to be a heterosexual and used to be married to a man. While my former husband and I were friends and felt loving towards each other, it was not an emotionally satisfying union for me. It was a union that looked good in the eyes of society, and in the eyes of my parents, but ultimately did not support my yearning for a companion with whom I could establish a nurturing, loving home. I have that and will not give it up for anything.

The institution of marriage up until now has been defined by society and by the law as between a man and a woman. It is time for that to change. It is time for the laws and peoples' attitudes to honor and reflect the reality that has existed since people came to be. Homosexuality has always been the true expression of a minority and always will be.

This legislation proposes to write discrimination into our constitution. It reminds me of the time when African Americans were considered 3/5 of a human being. Can't we skip that step? Haven't we learned from the Civil Rights movement? Discrimination is harmful to everyone. Broaden your view. See what is true for a large number of Alaskans. Human beings are rich and complex, not limited to what we have been able to imagine and tolerate up until now.

I urge you to vote NO on SJR-42. Let's maintain what we know is right: the conscience of the people as expressed in the Constitution.

Respectfully submitted by Susan Galereave,
P.O. Box 212, Ester, Alaska, 99725