

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9584 SENATE JUDICIARY

221

MR. CHENOWETH said Section 9 deletes two sections of Article VI made obsolete by United States Supreme Court decisions: Section 5, which talks about combining House districts in order to maintain Senate districts in the old fixed-boundary scheme, and Section 7 (misstated as Article VII), which talks about modification of Senate districts when necessary to accommodate population shifts.

MR. CHENOWETH stated, "We also propose to repeal Article XIV, which is a provision that sets out the initial reapportionment dating from 1959. It's not used anymore. It has no standing anymore. Article XIV is simply a device or a vehicle by which we generally restate the current apportionment, so that it can be found in the statute books. It's typically an annotation of some sort that describes the boundaries of the current apportionment, so at least we have it someplace out in the public and they can find it. Every time there's an apportionment change, every ten years, that change is made. But ... the original language of Article XIV is of no value anymore." He concluded by saying Section 10 is a boiler plate to get this before the voters in November 1998.

Number 0570

REPRESENTATIVE ERIC CROFT asked whether the major change is "constitutionalizing" single-member districts.

MR. CHENOWETH said yes, for both the House and the Senate.

REPRESENTATIVE CROFT asked, "Do you mean any change in current law when you make the switch from 'civilian' to 'resident,' that is, the law that we're forced into by the federal interpretation?"

MR. CHENOWETH replied, "Yes, we are following the requirements that have been imposed by, chiefly, recently, state supreme court decisions that have eliminated the use of 'civilian' and required that we go to a resident population base. And the state supreme court has suggested ways in which it is possible to take, for example, the military count, and try to allocate some number of estimated military that reflect a better split between resident and nonresident."

REPRESENTATIVE CROFT asked whether it conforms to current practice in that regard.

MR. CHENOWETH affirmed that.

REPRESENTATIVE CROFT referred to the term "contiguous" and said

he'd read some of those cases. Because of geography, Alaska has an interpretation somewhat different from other states. For example, Alaska has one Senate district and two House districts separated by 700 miles of ocean; those are considered "contiguous." He stated, "So, we don't mean any change in that."

MR. CHENOWETH concurred.

REPRESENTATIVE CROFT asked, then, whether the sole substantive change is locking in single-member districts. If this were current law and these changes had been made two years ago, would what they are doing now be legal?

MR. CHENOWETH said yes.

Number 0714

REPRESENTATIVE ETHAN BERKOWITZ asked for confirmation that there is no constitutional problem with the existing structure, from a federal perspective.

MR. CHENOWETH replied that what problems there might be, the state courts have generally worked their way around. They have looked at decisions of the United States Supreme Court and accommodated as best as they've been able to, pointing out that this is an article in need of revisitation and amendment, in light of decisions from the United States Supreme Court and their own practices.

REPRESENTATIVE BERKOWITZ indicated the Hickel case is the only related case he has read, although there may be others. He asked, "What, generically, are the concerns in the courts?"

MR. CHENOWETH answered, "Well, the courts have had to fill in, if you will. They have had to assume responsibility where there was no literal expression of responsibility for action taken by the Governor or by the reapportionment board as recommendations to the Governor. For example, there is no authority in law to adjust the terms of sitting Senators. The courts have filled in by saying that when there is a substantial change in a boundary, and a Senate district is increased substantially so that new faces are brought in or former constituents are let go of and put in a different district, ... there is an inherent authority to cut short by two years the Senate terms and require a Senator ... in a remade district to run again."

MR. CHENOWETH indicated there is nothing of that in the state constitution, adding, "They have simply accepted the fact that that

needs to be done, looked at the operation of that kind of a provision in other states and adapted it ... into this." He emphasized this is the one thing for which no express provision exists in the state constitution, nor is there an express provision for it in this resolution.

Number 0845

REPRESENTATIVE CON BUNDE asked why they weren't including that omitted provision here.

MR. CHENOWETH answered, "Well, I think you should. I think a complete package would be some sort of reference in here that the Governor has explicit authority to, under some kind of circumstances, cut short the terms of sitting Senators and require that they run for re-election. Now, I don't know how that's going to sit in the other body, and I certainly wasn't asked to make that change. I only throw it out on the table as the one piece of this puzzle that, as I went back and looked at this thing over the weekend, I thought perhaps we ought to put something in there so that the courts are not relying upon some assumed authority. Having rewritten Article VI, perhaps we ought to add that in and make that point clear."

Number 0919

REPRESENTATIVE BUNDE noted the lateness in the session and the expense required for a public vote on a constitutional amendment. He suggested they'd be remiss not to include as many housekeeping details as possible. He'd like to see that provision included.

REPRESENTATIVE BRIAN PORTER pointed out that the Governor can make the appointment to the districting board without confirmation by or concurrence of the legislature. He asked whether it would be a friendly amendment to add that.

Number 1001

CHAIRMAN GREEN said that was a good thought. He mentioned the "two concepts" and asked Mr. Chenoweth whether there is a way to tighten this so that nothing is left to chance. They'd been working this way at least as long as he'd been in the state, that "every decennial election, the Senators just serve two terms, and then everybody starts from scratch again; but this would codify it."

REPRESENTATIVE PORTER indicated his own suggestion about confirmation had been somewhat facetious.

CHAIRMAN GREEN clarified that he was discussing the prior issue. Although it wasn't essential to do it immediately, he wondered whether there was a way to modify it, possibly for review at a future meeting.

MR. CHENOWETH said he believed that could be accomplished. It may only be necessary to add a sentence or a fraction of one that invites the published final plan to indicate some determination on the terms of Senators then in office, or words to that effect.

CHAIRMAN GREEN said he perceived that to be the will of the committee, according to comments.

REPRESENTATIVE CROFT asked whether there would be other witnesses.

CHAIRMAN GREEN replied that no one was on teleconference, but Mr. Baldwin was signed up to testify locally.

Number 1114

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law, came forward to testify, saying Representative Croft's questions had pretty well covered what he wanted to clarify that day. The people in his area of the department generally end up advising the reapportionment board. He said, "I guess I've been through about three or four, but not that many governors. It seems like there's been more reapportionments than there have been governors because of the way these things get into litigation. And we seem to have to do them more than once per ten-year cycle."

MR. BALDWIN indicated the application of the federal voting rights act has made their job increasingly complicated over time. He explained, "It seems like we do the plan, we get through our courts, and then we have to get through the Justice Department for pre-clearance, which then seems to make us have to go through another cycle again." Mr. Baldwin is concerned, with this legislation particularly, about abandoning some current flexibility in techniques to bring forward reapportionment plans. He stated, "If you go strictly to a single-member-district approach, then you give up the ability to go to multi-member districts, if that would serve our interests and perhaps assist us in gaining pre-clearance from the Justice Department."

MR. BALDWIN said he couldn't pose a particular set of facts that would cause that to arise. "But I've been having a terrible time

doing that for every reapportionment plan we've come up with; there's always been something new that comes up to cause us a hurdle before the Justice Department," he stated. "So, I just ask the committee to consider that fact. As our population grows and it shifts, and we know it's shifting somewhat, particularly towards the Mat-Su area of the state, it's going to take a larger population for rural areas of the state; they're going to have to come in and pick up, perhaps, what we call the 'fringe areas' of the municipalities and more higher-populated areas."

MR. BALDWIN said it might be possible they'd need to go to multi-member districts to solve some particular problem. Under the current interpretation of the state constitution, they can go to single-member districts if the Governor desires that. Mr. Baldwin advised members, "Not knowing who the next Governor is going to be that's going to be writing the next plan, you might want to keep in mind leaving that option open to him or her."

MR. BALDWIN expressed concern that being required to go to single-member districts may affect rural areas more than urban areas. While he wasn't saying they'd want to do multi-member districts in rural areas, they may need to do so in urban districts in order to make things work in the rural areas. Or they could possibly be into retrogression, which he called a "nasty word in the area of voting rights." Mr. Baldwin explained, "In other words, the minorities who are represented now would lose representation. And ... mathematically, if that works out, if demographically that works out, we have to do that, that's fine. But ... if it can be done another way, the Justice Department is going to be there, and I don't know what the outcome would be, lacking the flexibility that we have now. So, ... I really hate this saying, but 'if it ain't broke, don't fix it' might well apply here."

MR. BALDWIN said he believed the testimony earlier was that the requirement of districting only resident population is not intended to be a change from anything now in effect. He stated, "Our supreme court was not quite so direct in the way it said that contiguity can include expanses of water. And I want to make sure that in here you're not saying 'contiguous' in its plain meaning, which means right up against one another. We can't lose that flexibility, because geography just works against us in so many ways, and particularly getting things to work. So, I'm glad that you're creating a strong record for that."

MR. BALDWIN noted that it was nearly the end of session. If this resolution did not pass both houses, he asked the committee to carefully consider studying this matter in the interim, particularly with regard to single-member districts. He mentioned "knowing better what's going into the building blocks of the census, which is being put together now, whether there isn't going to be enough evidence there to perhaps lead to a decision that we don't need to abandon this flexibility that we have now."

MR. BALDWIN commented that from a Governor's perspective, single-member districts are good because a veto can be done "surgically," by district. However, from the realities of reapportionment or redistricting, it may cause real problems for the next Governor.

Number 1432

CHAIRMAN GREEN indicated they had used this method since the 1992 election. He asked whether there wasn't a significant influx and shifting of population in the 1980s. He said it seems the concerns Mr. Baldwin expressed were handled well in single-member districts. He asked, "Do you anticipate some reason why that won't continue to be handled well with single-member districts?"

MR. BALDWIN said the only thing he can successfully anticipate is that there will be litigation over the plan, one way or another. There have been a couple of supreme court cases recently on using minority voters as a criteria. While he can't foresee the affect of that, he predicts Alaska will be in a "fight over retrogression" in the next reapportionment. He explained, "When you go into these reapportionment efforts, the Justice Department generally sticks you with a benchmark as to ... how many minority-influence seats you have, how many majority seats you have. And if the way we go into it forces us into a retrogression situation, I see long and protracted litigation, with uncertain results at the end of the tunnel."

REPRESENTATIVE PORTER asked, "With the feds?"

MR. BALDWIN replied, "I think with the minorities, and the feds will be as a part of it, yes. They will be ... in the litigation as well." He said for a state like Alaska, which is closely monitored under the voting rights act, the best situation is not to have retrogression but to maintain the benchmarks, if at all possible. While it is hard to predict what will happen, he anticipates that is what Alaska will be confronted with. There might be ways to avoid it.

MR. BALDWIN stated, "Keeping the maximum powers in the hands of the Governor to do that, (indisc.) in the board to do that, would be my preferred alternative. But it's not the best." He pointed out there is much good to be said for single-member districts. Campaigns are cheaper and easier. It is easier to maintain "one person, one vote." Constituents don't need to feel that they can't tell who their representative is, and there is a more direct relationship. Mr. Baldwin stated, "There's all those good things, but when you get right down to the problems that we have with a small population, a large area of geography and much water and all those factors brought to bear, tying your hands to one method of redistricting might not be what would serve the interests of ... the state as a whole."

Number 1596

CHAIRMAN GREEN suggested that when one looked at the demographics of the districts as they were done, and the number of minorities and other factors, it looked pretty good across the state. "To then say that it might be better to go to multiple-member districts and potentially get back into the 'doughnut' district or Valdez being tied in with South Anchorage, I mean, those kinds of things seem to be much more confusing and much more potential for litigation than to go to an area where the constituency is far more aware of who their representative really is," he said.

REPRESENTATIVE JEANNETTE JAMES agreed with Mr. Baldwin's reasons why a single-member district is important. She indicated she'd prefer not to have an option, which they may use when they don't need to. She'd never yet seen a redistricting without litigation. She feels much more comfortable with a single-member district because of the "one man, one vote" issue and because the people know who represents them. She believes those are important issues.

REPRESENTATIVE JAMES indicated she understands about losing members from rural areas. However, in the next ten years there may be a surge in the rural areas, particularly if they get some of the anticipated development. She asked whether "maybe it ought to be left that the option is only a single-member district and then, should we see a problem with that coming in the future, that we then go to the voters to ask for a change." She added, "Maybe that's not wise, because maybe most of the voters are in the areas who love to have more representation than less out there; I don't necessarily think that's true." She asked Mr. Baldwin to respond to that way of looking at it.

Number 1708

MR. BALDWIN replied, "I don't think it's harder to come up with a list of ... why you'd want multi-member districts, first off. I think there's a list of reasons for that, too, and because of the other criteria in the constitution about compactness and socioeconomic interrelatedness, which are the other criteria in the constitution, it might well be able to state a case that an area, for example, Juneau, which ... has in past reapportionment plans, before the one we're in, has had multi-member districts, and probably for a good reason. It's hard to see any division line between the town and the [Mendenhall] Valley, for example, and there have been other areas in the state that are like that, that have benefitted from having multi-member districts."

MR. BALDWIN said he didn't know what the process would be for the voters to come back and change it at some point in the future. He stated, "I mean, we have a reapportionment, and we try to do a plan and have it done so it can be in place for another ten years. And to interrupt that in the middle of a cycle, which is what we've done the last couple of times because of litigation, has been very disruptive to the electoral process. Can you imagine the Division of Elections scrambling to try and get their precinct lines and regulations done for an election when you don't know what the districts are going to be? It's really pandemonium." He said he wouldn't recommend an approach like that, if he understood the question correctly.

Number 1777

REPRESENTATIVE JAMES mentioned a lawsuit "determined on a national level last year" about gerrymandering in the South. In her own district, she noted that they'd "zeroed out Nenana to meet some population, Native population, and left me with less people in my district than other districts," but within the parameters allowed. She asked whether that court decision would have precluded that from happening and whether Mr. Baldwin was familiar with it.

MR. BALDWIN replied, "Yes, I am. I don't think so. Representative Croft and I've argued about this a little bit; he doesn't quite see it my way. But I think that in Alaska we did our redistricting considering not only race; we also considered the other traditional criteria, which are compactness and socioeconomic connectedness. At the same time, we did the adjustments which were required, we thought, to meet pre-clearance requirements. It's only when you're doing it based completely on race, without any other criteria, that you fall into the realm of those U.S. Supreme Court cases involving Texas and Georgia. So, if that was your ... sole criteria, you did

it just because of race considerations, then you're going to have violated the U.S. Constitution."

Number 1874

REPRESENTATIVE PORTER indicated that if it wasn't the sponsors' desire to get this past both bodies this year, he was only being facetious regarding confirmation of the board by the legislature to the extent that he believed this was a "slam-dunk" housekeeping legislation. However, if the main feature needs looked at further, this would be the appropriate committee to perhaps look at "a much bigger element of this whole area."

REPRESENTATIVE PORTER explained, "I would think that it would be appropriate to try to get a procedure to put in place a board that would look at redistricting from a position of what is the most appropriate - under the law - district to put in place for the betterment of the voters of the state of Alaska, instead of, 'How much partisan gerrymandering can we do and get away with it?' And I'm not saying that one party does this any better or worse than the other party. I mean, we've been here long enough to know that they both do it. So, if it is that we have a desire to work on this over the interim, I would be happy to try to work on that element also."

CHAIRMAN GREEN indicated changing that would raise a concern. He asked whether Mr. Baldwin had indicated, in response to Representative Porter's mention of this earlier, that the Administration would be more concerned about the resolution if they modified the strong gubernatorial input in selection of the board.

MR. BALDWIN suggested that may have been Mr. Chenoweth. He said it wasn't brought up while he was present.

CHAIRMAN GREEN asked, "So, you don't see any problem with that?"

MR. BALDWIN laughed, then said, "I think that the constitution is just fine, as far as having the Governor appoint the board. That was a decision that was hotly debated in the minutes of the constitution. ... They felt that the legislature, while a[n] exceedingly wise organization, maybe was not best suited for ... making reapportionment decisions."

Number 2004

REPRESENTATIVE CROFT suggested if they knew anything after this history, it's that the legislature doesn't want to be involved in

rewriting its own boundaries. While to some extent it's up to the vagaries of who is in office every decade and there have been some games, he can't imagine the games there would be if the legislature were in charge of that.

Number 2024

REPRESENTATIVE PORTER responded that he certainly wasn't suggesting that. He was suggesting trying to establish a neutral board without gubernatorial or legislative direction on how to try to gerrymander the districts. He said, "And if there's anybody here that doesn't think that that isn't what's happened the last 10, 20, 30, 40 years, I'll talk to you after we get off the record."

Number 2050

REPRESENTATIVE BUNDE brought up questions he'd like to have addressed if this was worked on during the interim. First, do other states have both single-member and multiple-member districts in the same body? And have other states gone from having single to multiple members? He understood that most have gone from multiple to single, for many good reasons, and while he understood the plea for flexibility, "we may need a socket set here but we've got a crescent wrench; maybe we don't need to keep the crescent wrench."

MR. BALDWIN replied that he didn't know the answer but would be happy to research it.

Number 2107

CHAIRMAN GREEN asked whether there were further comments. Speaking as both sponsor and chairman, he announced that HJR 36 would be held over and worked on during the interim.

JACK CHENOWETH, Attorney
Legislative Legal and Research Services
Legislative Affairs Agency
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Juneau, Alaska 99801-2105
Telephone: (907) 465-2450
POSITION STATEMENT: Testified regarding HJR 36.

JAMES BALDWIN, Assistant Attorney General
Governmental Affairs Section
Civil Division (Juneau)
Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300
Telephone: (907) 465-3600
POSITION STATEMENT: Provided department's position and answered
questions regarding HJR 36.

SJR

37

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/12/98

FURTHER: Finance

Date of 5-Day Notice: 3/12/98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-23-98

Judiciary Committee considered

SENATE JOINT RESOLUTION NO. 37

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

and recommends:

- be replaced with _____ CS FOR SJR 37 (JUD.)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Sean Prunell</i>	✓	<i>Peace</i>	✓		
<i>Mike Miller</i>	✓				
CHAIR: <i>Adrian Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>SB/CS S/JUD</i>	<i>3/23/98</i>	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CS SJR37(JUD)
(S) Publish Date: 3/24/98

Revision Date (Note if correction) _____ Dept. Affected LT. GOV'S OFFICE
Title CONST: AM. MINORS ABORTIONS. BRU ELECTIONS
Component _____
Sponsor SENATOR LEMAN
Requester _____ Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

Estimate of any current year (FY98) cost: _____

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by RAVH G. BEUNGA Phone 465-3717
Division SENATE JUDICIARY COMMITTEE Date 3-23-98
Approved by _____ Date _____
Agency _____

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March 17, 1998

Please send the following testimony to the attention of the
Alaska State Senate Judiciary Committee, Alaska State Senate, Juneau Alaska
(Chair: Robin Taylor, VC: Drew Fierce; also Mike Miller, Sean Pamell, Johnny Ellis)

Dear Senators,

I strongly urge you to *withdraw* the constitutional amendment SJR #37 - "Constitutional Amendment Concerning Minor's Abortion." The Alaska Constitution provides protections for the privacy of all Alaskans and we value those protections! As President of the Fairbanks Coalition For Choice, representing several thousand pro-choice voters in the Fairbanks area, I urge you to oppose this bill for the following reasons;

- 1) This amendment would unfairly create two classes of teenage women - those who can opt to have babies WITHOUT ANY PARENTAL CONSENT OR GOVERNMENT INTERFERENCE, and those who want abortions and will have to jump through judicial hoops to get safe medical care.
- 2) This amendment will undermine and weaken Alaska's constitutional right to privacy, and will result in a costly & unnecessary lawsuits (at taxpayer expense).
- 3) Because over 60% of teens already involve parents in their pregnancy decisions, this bill will impact the few abortion-seeking teens in dysfunctional families whose parents are not supportive, or who may be abusive - these girls will either be forced to have babies they can't raise, be dangerously delayed in obtaining the abortions they seek, or attempt illegal abortions.
- 4) It is not possible nor wise to legislate teens' communication with parents about a subject as sensitive as sexuality and pregnancy. Even healthy families have difficulties discussing sexual behavior.
- 5) It is not possible to protect the privacy of teens facing the judicial bypass process in small rural communities, and the fear of exposure of sensitive information may drive some teens to take desperate and life-threatening action.
- 6) Teen pregnancy is already a crisis in Alaska. We need to act to prevent these pregnancies, not increase the misery of these children with punitive bills such as this.
- 7) In other states, Judges required to rule on Judicial Bypass requests routinely approve them because the teenage woman has a good reason and can demonstrate she's mature enough to make her own decision, or because the judge does not feel he/she is in a better position than the teen to make the decision.
- 8) Some Judges required to rule on Judicial Bypass requests may routinely deny them because of their own personal/religious bias against abortion, thereby forcing some young teenagers to undergo dangerous pregnancies to bear children they do not want and are unprepared to raise.
- 9) It would be more worthwhile to work to prevent unplanned pregnancies. This would reduce the number of abortions among both adult and teen women.
- 10) The prime sponsors have testified that such an amendment would NOT increase the number of teens who talk to their parents, but only interfere with (or delay) their access to safe legal abortion. This bill is a sham - a waste of time and attention that would be better spent on education and prevention.

This amendment is clearly a political attempt by religious conservatives opposed to abortion to circumvent young women's legitimate right to obtain safe legal abortions by undermining their constitutionally protected privacy rights. Our Constitution will be in place long after this wave of conservatism has passed. Please withdraw this amendment.

Sincerely,



SENATOR LOREN LEMAN

Northwest Anchorage

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Session: State Capitol, Juneau, AK 99801 (907) 465-2095
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Sponsor Statement – Senate Joint Resolution 37

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

Senate Joint Resolution 37 proposes an amendment to the state constitution that clearly permits the Legislature to require parental involvement in the abortion decisions of minors. The resolution states as follows: *Notwithstanding any other provision of this constitution, the legislature may, to the extent permitted by the Constitution of the United States, grant a parent either the right to consent or the right to be notified before a person may provide an abortion to a minor child of the parent.*

Last year the Legislature enacted over Governor Knowles' veto **Senate Bill 24**, which requires a person to obtain permission from a parent or judge before performing an abortion on a girl 16 years of age or younger. However, a state superior court judge has delayed enforcement of the law pending resolution of the *Planned Parenthood v. Alaska* lawsuit, which challenges the new law on state constitutional grounds.

National and state opinion polls consistently show 80 percent of the public supports parental consent for abortion. Laws requiring parental involvement in minors' abortion decisions are on the books in 39 states. The U.S. Supreme Court has on nine separate occasions ruled that properly constructed parental consent and notice laws are constitutional. In its most recent opinion in *Lambert v. Wicklund* (1997), the Supreme Court upheld a Montana parental involvement law very similar in structure to the Alaska statute. Clinton appointees Ruth Bader Ginsburg and Stephen Breyer joined in the unanimous decision to uphold Montana's statute.

Perhaps recognizing the futility of a federal court challenge, opponents of Alaska's parental consent law filed suit last year in state court, seeking to have the law overturned. It is not possible to predict the outcome of the case. However, there is virtual certainty on at least one matter: regardless of whether the state ultimately wins or loses, the litigation will drag on for years, delay enforcement of a law supported by most Alaskans, and cost the state hundreds of thousands of dollars. In his supplemental budget bill Governor Knowles has already requested additional money for the Department of Law to cover expenses for the parental consent lawsuit.

SJR 37 takes the decision out of the hands of the courts, and places it in the hands of the people, where it belongs. The amendment is “non-self-executing,” meaning it does not grant any rights to parents other than what the Legislature grants through legislation. When approved by the voters, the amendment will likely bring a quick end to the *Planned Parenthood v. Alaska* lawsuit, sparing the state from further litigation expenses and enabling enforcement of the parental consent law.

SJR

42

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/2/98

FURTHER: Finance

Date of 5-Day Notice: 3/5/98
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 3-10-98

Judiciary Committee considered

SENATE JOINT RESOLUTION NO. 42

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

and recommends:

- be replaced with _____ CS FOR SENATE JOINT RES. 42 (JUD)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Dornell</i>	<input checked="" type="checkbox"/>	<i>W. J. Ellis</i>		<input checked="" type="checkbox"/>	
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Deane</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Chris T. Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

SJR
 & CS

<i>Gov's Office / Elections</i>	<i>8-6-98</i>	<i>ARTS</i>	<i>3.0</i>

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CSJR 42(JUD)
(S) Publish Date: 3-10-98

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

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by Gail Ferris Phone 465-3935
Division Division of Elections Date 3/6/98
Approved by C Lt. Governor Fran Ulmer Date 3/6/98
Agency Office of the Lieutenant Governor

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CS FOR SENATE JOINT RESOLUTION NO. 42(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A RESOLUTION

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

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new
5 section to read:

6 Section 25. Marriage. To be valid or recognized in this State, a marriage
7 may exist only between one man and one woman. No provision of this Constitution
8 may be interpreted to require the State to recognize or permit marriage between
9 individuals of the same sex. Additional requirements related to marriage may be
10 established to the extent permitted by the Constitution of the United States and the
11 Constitution of the State of Alaska.

12 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
14 State of Alaska, and the election laws of the state.

**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

¹Currently 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.

²I 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).

³Presently 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

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

⁵Danish 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).

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

⁷Law 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).

⁸Law 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).

⁹Joanne 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).

¹⁰Certain 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.

¹¹Year 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 repeatedly found that the people in America strongly oppose legalizing same-sex marriage.¹⁵

¹²In 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>).

¹³See *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 *Storr v. Holcomb*, 1996 WL 379613 (N.Y. Sup.Ct. 1996).

¹⁴See 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/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.").

¹⁵Portland 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 overwhelmingly 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).

¹⁷Hawaii H.B. 117 (1997).

¹⁸Voters 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).

¹⁹In *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 1998, 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

²⁰Civil 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).

²³262 U.S. 390, 393 (1923).

²⁴316 U.S. 535, 541 (1942).

²⁵381 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

²⁶388 U.S. 1, 12 (1967).

²⁷401 U.S. 371, 376 (1971) (invalidating requirement that indigent parties pay divorce filing fees).

²⁸434 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);

³⁰Anna 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

³²*Id.*

³³It 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."

³⁴See 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).

³⁵Jeremy 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.").

³⁶See 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 Hawaiian 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 is 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

³⁷501 P.2d 159 (Alaska 1972).

³⁸537 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

³⁹Bruce 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" De.Jure vs. De Facto Autonomy for Children* 69 ST. JOHN'S L. REV. 601, 653-656 (1995).

⁴⁰450 U.S. at 481 (Stewart, J., concurring).

⁴¹See *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

⁴²Congress 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.

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

⁴⁴Defense 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>).

⁴⁵1996 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

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).

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

⁵⁰Lynn 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.

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 than 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

⁵⁵See 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.

⁵⁶See 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.

⁵⁷116 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

⁶¹*Id.* at 1628.

⁶²*Id.* at 1625.

⁶³116 S.Ct. at 1628.

⁶⁴116 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.

⁶⁷BMW 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.

⁶⁸116 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).

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

JAY BRAUSE and GENE DUGAN,

Plaintiffs,

vs.

BUREAU OF VITAL STATISTICS,
ALASKA DEPARTMENT OF HEALTH
& SOCIAL SERVICES, and the
ALASKA COURT SYSTEM,

Defendants.

Case No. 3AN-95-6562 CI

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MEMORANDUM AND ORDER

Plaintiffs Jay Brause and Gene Dugan are men who sought and have been denied a license to marry each other by the State of Alaska. They subsequently filed a complaint against the Bureau of Vital Statistics, the Alaska Department of Health and Social Services, and the Alaska Court System. Plaintiffs' action seeks a declaration establishing that the relevant statutes prohibiting same-gender marriage violate Alaska's Constitution, and an injunction that prevents the state from applying or enforcing the statutes. The parties both move for summary judgment. The plaintiffs seek a ruling on the level of scrutiny to be applied in review of the Marriage Code; the defendants move for complete summary judgment. The parties agree that the decisions before the court are purely issues of law.

The plaintiffs' present motion for summary judgment seeks a decision that the Code's prohibition implicates the privacy and equal protection provisions of the Alaska Constitution, thus

requiring a showing of a compelling state interest to withstand plaintiffs' claim that the Code's ban on same-sex marriage is unconstitutional.

The court finds that marriage, i.e., the recognition of one's choice of a life partner, is a fundamental right. The state must therefore have a compelling interest that supports its decision to refuse to recognize the exercise of this fundamental right by those who choose same-sex partners rather than opposite-sex partners.

STATEMENT OF FACTS

On August 4, 1994, Mr. Brause and Mr. Dugan completed and filed an application for a marriage license. The Office of Vital Statistics denied the application. Presiding Judge Karl Johnstone had previously issued a policy directive stating that "a marriage license shall not be issued for the purpose of marrying two persons of the same sex" since "marriage between two persons of the same sex is not contemplated by our statutory scheme." The parties agree that the directive correctly interpreted the Marriage Code as it existed at the time and that it is consistent with recent amendment of the Code.

Except for being of the same sex, plaintiffs have met all statutory requirements for obtaining a marriage license.

DISCUSSION

The current provision of the Alaska Marriage Code, A.S. 25.05.011(a), states: "Marriage is a civil contract entered into

by one man and one woman that requires both a license and a solemnization." A.S. 25.05.013 adds:

(a) 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.

(b) A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage.

Brause and Dugan argue that the statutory ban on same-sex marriage violates the Alaska Constitution's guarantee of the right to privacy and equal protection.

The plaintiffs' motion challenges the very definition of marriage found in the Code. Though that definition contains notions with which many are familiar, for example, that marriage means the union of one man and one woman, that is not the end of the inquiry. Indeed, it is the definition of marriage itself which the court must test as a result of plaintiffs' challenge. It is not enough to say that "marriage is marriage" and accept without any scrutiny the law before the court. It is the duty of the court to do more than merely assume that marriage is only, and must only be, what most are familiar with. In some parts of our nation mere acceptance of the familiar would have left segregation in place. In light of Brause and Dugan's challenge to the constitutionality of the relevant statutes, this court cannot defer to the legislature or familiar notions when addressing this issue.

Before addressing the privacy and equal protection claims

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

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

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

established by the state on behalf of those who are married. Once married, the state provides benefits and imposes duties that are significant and valuable to society as well as to the individual members of the marriage. For a list of statutory benefits of marriage, see the appendix to plaintiffs' reply brief identified as "Revised Exhibit 4." Further evidence of the importance of marriage and the issuance of marriage licenses is found in A.S. 25.05.331 which makes it a misdemeanor to willfully and wrongfully refuse to issue a license.

Once the role of the state in creating and acknowledging marriages is recognized, the next step is to determine whether the state is infringing constitutionally protected rights in the way it exercises its power over marriage. The court must now test the legal definition of marriage to determine whether the definition itself, a definition that excludes persons of the same sex who want to marry, is constitutional. As further discussed below, the same principle that requires the state to have a compelling purpose before it can dictate choices related to personal appearance, requires the state to have a compelling purpose before it can define marriage to exclude partners of the same sex.

A. Right to Privacy

Alaska amended its Constitution in 1972 to explicitly guarantee the right to privacy. Article I, Section 22 reads in part: "The right of the people to privacy is recognized and shall not be infringed." Brause and Dugan contend that, insofar as the

above cited statutes prevent same-sex marriage, they violate Alaska's guarantee of the right to privacy.

Brause and Dugan cite two primary cases for their argument that a prohibition of same-sex marriage implicates an Alaskan's constitutional right to privacy. In Breese v. Smith, 501 P.2d 159 (Alaska 1972), the Alaska Supreme Court invalidated a high school hair length limitation and stated that the core of the concept of liberty is the right to control one's personal appearance or, more broadly, the right to be let alone. 501 P.2d at 166-67. Because the hair length requirement implicated such an important right, the Supreme Court required the school to show a compelling interest for its existence. When the school was unable to do so, the limitation was struck down.

Secondly, Brause and Dugan cite Ravin v. State, 537 P.2d 494 (Alaska 1974). The court in Ravin recognized a fundamental right to privacy in one's home and declared unconstitutional a state statute that prohibited marijuana possession by an adult for personal use in the home.

The plaintiffs' contention that their privacy is violated by a refusal of the State of Alaska to recognize and allow their marriage may not instinctively conform to common connotations of privacy, since, after all, they seek public recognition of a same-sex marriage. Privacy is commonly understood to mean seclusion, secrecy, or being left to one's personal affairs. These connotations of privacy may seem to make plaintiffs' claim of violation of privacy self-defeating, as the making public of a

relationship is not what one thinks of as the right to be let alone. Here Brause and Dugan claim a right to state recognition of their relationship. What they seek is clearly a public act and important for its public nature as much as for the other legal consequences which attend it.

Griswold v. Connecticut, 381 U.S. 479 (1965), demonstrates how government regulation can intrude improperly into the personal zone of intimacy protected by privacy. There the Supreme Court found that the state's prohibition of the distribution of information regarding contraceptives interfered with the right of marital partners to make intimate personal decisions about conceiving children and practicing birth control. The Court struck down the law for being an impermissible encroachment on the right to privacy. However, in Alaska, the history of the cases interpreting the right to privacy demonstrate that very public conduct may also be protected by the right to privacy, and that the right to privacy reaches beyond simple protection from government intrusion into one's intimate affairs.

Breese is an example of how government regulation improperly encroached on the exercise of the right to privacy and the public ramifications of that right. The Court held that hair length requirements of a public school interfered with the fundamental right of the student to determine his own personal appearance. According to the Court, the government could not interfere with the fundamental right to determine one's personal appearance - a right protected by privacy - without demonstrating a compelling state

interest. Though how one looks is a very public fact, the decision about one's personal appearance is personal, and therefore protected by the right to privacy.

At stake here is whether same-sex marriage can be denied by the state without violating fundamental rights, including the fundamental right to privacy. It is undisputed that marriage between persons of opposite gender is a fundamental right. See, e.g., Griswold; Loving v. Virginia, 388 U.S. 1 (1967). The question presented by this case is whether the personal decision by those who choose a mate of the same gender will be recognized as the same fundamental right. Clearly, the right to choose one's life partner is quintessentially the kind of decision which our culture recognizes as personal and important. Though the choice of a partner is not left to the individual in some cultures, in ours it is no one else's to make. Indeed, the marriage license and the marriage ceremony themselves make clear that this must be a choice freely made by the individual. Certainly the choice of a life partner is as important and personal as the choices involved in determining one's personal appearance.

When the Supreme Court of Hawaii in Baehr v. Lewin, 852 P.2d 44 (Hawaii 1993), addressed same-sex marriage, it noted that:

[W]e do not believe that a right to same sex marriage is so rooted in the traditions and collective conscience of our people that failure to recognize it would violate the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions . . .

852 P.2d at 57.

The Hawaii court could reach such a conclusion because of the question it chose to ask. It is self-evident that same-sex marriage is not "accepted" or "rooted in the traditions and collective conscience" of the people. Were this not the case, Brause and Dugan and the plaintiffs in Baehr would not have had to file complaints seeking precisely this right. The relevant question is not whether same-sex marriage is so rooted in our traditions that it is a fundamental right, but whether the freedom to choose one's own life partner is so rooted in our traditions.

Here the court finds that the choice of a life partner is personal, intimate, and subject to the protection of the right to privacy. Failure of the state to provide public recognition of that private choice, whether it is the choice of a life partner of the opposite sex or of the same sex, is analogous to the unwillingness of the school in Breese to allow the presence of a student who made a personal choice to wear long hair.

Government intrusion into the choice of a life partner encroaches on the intimate personal decisions of the individual. This the Constitution does not allow unless the state can show a compelling interest "necessitating the abridgment of the . . . constitutionally protected right." Breese at 501 P.2d at 170.

B. Equal Protection

Brause and Dugan also assert that the relevant statutes deny them their rights as Alaskans to equal protection under the laws. Article I, Section 1 of the Alaska Constitution provides:

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

Article I, Section 3 goes on to prohibit the denial of civil rights on the basis of certain classifications:

Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or national origin.

Whether a law violates the equal protection guarantees of the Alaska Constitution is determined by using the "sliding scale" test explained in State Dep't of Revenue v. Cosio, 858 P.2d 621, 629 (Alaska 1993):

[W]e apply a sliding scale under which the applicable standard of review for a given case is to be determined by the importance of the individual right asserted and by the degree of suspicion with which we view the resultant classification scheme. As the right asserted becomes more fundamental or the classification scheme employed becomes more constitutionally suspect, the challenged law is subjected to more rigorous scrutiny at a more elevated position on our sliding scale.

[Citations omitted].

Brause and Dugan argue that the statutes prohibiting same-sex marriage should be at the highest end of the sliding scale, and therefore require the most rigorous scrutiny, because they implicate the fundamental right to marry and because the classification scheme is based on sex.

1. The Fundamental Right to Choose One's Life Partner

There is no dispute that the right to marry is recognized as fundamental. Today the court has recognized that the personal choice of a life partner is fundamental and that such a choice may include persons of the same sex. When the United States Supreme Court first characterized the right to marry as fundamental in Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942), it linked the right to marry to the right to procreate, being faced, as it was, with a case involving the sterilization of prisoners. Similarly, in Zablocki v. Redhail, 434 U.S. 374 (1977), the court was faced with a law that required a marriage applicant to prove he was up to date on his child support for children of his previous marriage before he could obtain a marriage license. The court focused on the decision to marry and have children as deserving of at least the protection allowed a woman in deciding whether to seek an abortion or to raise a child in illegitimacy:

Surely, a decision to marry and raise a child in a traditional family setting must receive equivalent protection.

434 U.S. at 385.

The court thus recognizes that procreation has been an important part of the U.S. Supreme Court's decisions that have found the right to marry fundamental. However, just as the "decision to marry and raise a child in a traditional family setting" is constitutionally protected as a fundamental right, so too should the decision to choose one's life partner and have a recognized nontraditional family be constitutionally protected.

It is the decision itself that is fundamental, whether the decision results in a traditional choice or the nontraditional choice Brause and Dugan seek to have recognized. The same constitution protects both.

Thus, today's decision finds a person's choice of life partner to be a fundamental right. The consequence of this decision is that any limitations on this right are subject to the strict scrutiny standard established by the Alaska Supreme Court.

2. Classification Based on Sex

The court, having found the decision to choose one's life partner to be a fundamental right, has concluded that the strict scrutiny test applicable to fundamental rights applies to its review of the State's prohibition of same-sex marriages.

Were the right to choose one's life partner not fundamental, the court would need to determine whether the Code raised classification issues. Were this issue not moot, the court would find that the specific prohibition of same-sex marriage does implicate the Constitution's prohibition of classifications based on sex or gender, and the state would then be required to meet the intermediate level of scrutiny generally applied to such classifications. That this is a sex-based classification can readily be demonstrated: if twins, one male and one female, both wished to marry a woman and otherwise met all of the Code's requirements, only gender prevents the twin sister from marrying under the present law. Sex-based classification can hardly be more obvious.

CONCLUSION

Having found that the Marriage Code implicates constitutional provisions, the court grants the plaintiffs' motion for summary judgment. The state's motion for summary judgment is denied.

The parties are directed to set necessary further hearings to determine whether a compelling state interest can be shown for the ban on same-sex marriage found in the Alaska Marriage Code.

IT IS SO ORDERED.

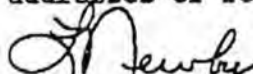
DATED at Anchorage, Alaska this 27th day of February, 1998.



PETER A. MICHALSKI
Superior Court Judge

I certify that on:

2-27-98
a copy of the above was mailed to each of the following at their addresses of record.


Secretary/Clerk

R. Wagstaff
E. Leloy
AG - Coquaine

AMENDMENT

OFFERED IN THE SENATE

TO: CS for SJR 42 [work draft 0-LS1655\E]

Page 1, lines 6-11:

Delete all material and insert:

Section 25. Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this Constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex. Additional requirements related to marriage may be established to the extent permitted by the Constitution of the United States and the Constitution of the State of Alaska.

CS FOR SENATE JOINT RESOLUTION NO. 42()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

A RESOLUTION

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

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new
5 section to read:

6 Section 25. Marriage. Marriage is a unique social institution based on the
7 union of one man and one woman. To be valid or recognized in this State, a marriage
8 contract may be entered into only by one man and one woman. No provision of this
9 Constitution may be interpreted to require the State to recognize marriage between
10 individuals of the same sex. Additional requirements relating to marriage may be
11 enacted by law to the extent permitted by the Constitution of the United States.

12 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
14 State of Alaska, and the election laws of the state.

Alaska State Legislature

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



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

Senate Committee on Health, Education and Social Services **Sponsor Statement – Senate Joint Resolution 42**

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

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

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

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

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman, Vice-Chair Senate HESS Committee (465-3841)
Last Update: March 9, 1998

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SJR42

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by Gail Fenwick *Gail Fenwick* Phone 465-3935
 Division Division of Elections Date 3/6/98
 Approved by C Lt. Governor Fran Ulmer *Fran Ulmer* Date 3/6/98
 Agency Office of the Lieutenant Governor

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N A S W

ALASKA CHAPTER

National Association of Social Workers

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STUDENT REPRESENTATIVE
Demetria Cave
Fairbanks

STUDENT REPRESENTATIVE
Lynda Meyer
Anchorage

March 9, 1998

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, LCSW
President, NASW Alaska Chapter

RECEIVED

MAR 9 1998

Ans'd.....



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.

SJR

29

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor
Senate Majority Leader

Sponsor Statement

SENATE JOINT RESOLUTION NO. 29

SJR 29 would put before the voters of Alaska a constitutional amendment requiring a 2/3 vote of the Legislature before any new State tax could be imposed.

Judging from the number of tax proposals submitted to the 20th Alaska State Legislature, the day is approaching when new State taxes will be given serious consideration. This amendment, if adopted by the voters, would guarantee that any new tax is supported by more than just a simple majority of any Legislature.

By imposing the 2/3 majority requirement, SJR 29 would offer the citizens of Alaska the assurance that any new State tax enacted by the Legislature has broad-based support.

District A:

r • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SJR29 | _____

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Supermajority for tax levies BRU Elective Operations
 Component Elections
 Sponsor Senator Taylor
 Requester Senate Judiciary Committee Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by Gail Fenuma *Gail Fenuma* Phone 465-3935
 Division Division of Elections Date 2/12/98
 Approved by C Lt. Governor Fran Ulmer *Fran Ulmer* Date 2/12/98
 Agency Office of the Lieutenant Governor

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SJR29

Revision Date		Dept. Affected	Office of the Governor
Title	Const. Amdt.: Supermajority for Tax Levies	BRU	Elective Operations
Sponsor	Senator Taylor	Component	General and Primary Elections
Requester	Senate Judiciary	Component Serial No.	#22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time	0				
Part-time	0				
Temporary	0				

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

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

Prepared by	Gail Fenumial <i>Gail Fenumial</i>	Phone	465-3935
Division	Division of Elections	Date	4/28/97
Approved by Co	Lt. Governor Fran Ulmer <i>Fran Ulmer</i>	Date	4/28/97
Agency	Office of the Lieutenant Governor		

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HB

6

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 19
Bill Version: CSHB 6(JUD)
(H) Publish Date: 2/21/97

Revision Date: _____
Title: Relating to the disclosure of information
relating to certain minors
Sponsor: Representative Kelly
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: Family & Youth Services
Component: Probation Services
COMPONENT SERIAL NO. 2134
See also (SN#): 252,253,254,255,258,259,264

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	482.6	489.8	497.2	504.6	512.2	519.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	482.6	489.8	497.2	504.6	512.2	519.9

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF	482.6	489.8	497.2	504.6	512.2	519.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	482.6	489.8	497.2	504.6	512.2	519.9

POSITIONS:

	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	9					
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section

Prepared by: L. Diane Worley, Director
Division: Division of Family & Youth Svcs
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/10/97

Date: 2/12/97

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ANALYSIS (cont.):

Change in positions:

New position Youth Superintendent III Range 21	\$73.8
NEW Chief Probation Officer Range 23	\$83.9
New (3) Administrative Clerk II Range 8	\$112.0
New (3) Administrative Assistant I Range 13	\$138.6
New Juvenile Probation Officer V Range 21	\$74.3
Total*	\$482.6

* FY 99 through FY 03 figures include a 1.5% per year COLA.

FISCAL NOTE

No. 18
 Bill Version: CSHB 6(JUD)
 (H) Publish Date: 2/21/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to the disclosure of information
relating to certain minors
 Sponsor: Representative Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: Southeastern Region
 COMPONENT SERIAL NO. 258
 See also (SN#): 252,253,254,255,259,264,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	(8.8)	(8.3)	(8.8)	(8.8)	(8.8)	(8.8)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	(44.2)	(44.2)	(44.2)	(44.2)	(44.2)	(44.2)
1003 GF Match						
1004 GF	35.4	35.4	35.4	35.4	35.4	35.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)	(8.8)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section

Prepared by: L. Diane Worley, Director
 Division: Family & Youth Services
 Approved by Commissioner: Karen Pedrow, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-3191
 Date: 02/10/97
 Date: 2/12/97

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ANALYSIS (cont.):

Loss of Federal Funds:	(\$44.2)
Change in positins:	
PCN 06-3482 Regional Administrator, Range 23 is deleted	(82.6)
New PCN Social Worker V, Range 21 is added	\$73.8
Total	(\$8.8)

FISCAL NOTE

No. 17
 Bill Version: CSHB 6(JUD)
 (H) Publish Date: 2/21/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to the disclosure of information
relating to certain minors
 Sponsor: Representative Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: Southcentral Region
 COMPONENT SERIAL NO. 254
 See also (SN#): 252,253,255,258,259,264,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts	(157.5)	(157.5)	(157.5)	(157.5)	(157.5)	(157.5)
1003 GF Match						
1004 GF	139.1	139.1	139.1	139.1	139.1	139.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)	(18.4)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section

Prepared by: L. Diane Worley, Director
 Division: Family & Youth Services
 Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-3191
 Date: 02/10/97
 Date: 2/12/97

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ANALYSIS (cont.):

Loss of Federal Funds:	(\$157.5)
Change in positions:	
PCN 06-3482 Regional Administrator, Range 23 is deleted	(\$92.2)
New PCN Social Worker V, Range 21	\$73.8
Total	(\$18.4)

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 16
Bill Version: CSHB 6(JUD)
(H) Publish Date: 2/21/97

Revision Date: _____
Title: Relating to the disclosure of information
relating to certain minors
Sponsor: Representative Kelly
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Northern Region
COMPONENT SERIAL NO. 255
See also (SN#): 252,253,254,258,259,264,2134.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts	(113.8)	(113.8)	(113.8)	(113.8)	(113.8)	(113.8)
1003 GF Match						
1004 GF	(98.4)	(98.4)	(98.4)	(98.4)	(98.4)	(98.4)
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)	(212.2)

POSITIONS:

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	-2					
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section

Prepared by: L. Diane Worley, Director
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/10/97
Date: 2/12/97

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ANALYSIS (cont.):

Loss of Federal Funds:	(\$113.8)
Change in positions:	
Delete Regional Administrator PCN 06-3218	(\$99.9)
Delete Social Worker V in Bethel PCN 06-3201	(\$91.1)
Delete Social Worker V in Nome PCN 06-3089	(\$98.3)
New PCN Social Worker V in Fairbanks	\$77.1
Total	(\$212.2)

FISCAL NOTE

No. 15
 Bill Version: CSHB 6(JUD)
 (H) Publish Date: 2/21/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to the disclosure of information
relating to certain minors
 Sponsor: Representative Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): 252.253.255.258.264.2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	120.6	122.4	124.2	126.1	128.0	129.9
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	120.6	122.4	124.2	126.1	128.0	129.9

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts	(80.0)	(80.0)	(80.0)	(80.0)	(80.0)	(80.0)
1003 GF Match						
1004 GF	200.6	202.4	204.2	206.1	208.0	209.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	120.6	122.4	124.2	126.1	128.0	129.9

POSITIONS:

FULL-TIME	2					
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section

Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services Date: 02/10/97
 Approved by Commissioner: Karen Perrine, Commissioner Date: 2/12/97
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

Loss of Federal Funds:	(480.0)
Change in positions:	
New PCN Administrative Clerk II Range 8	\$37.3
New PCN CPS (FS) Admin Officer Range 23	\$83.3
Total	\$120.6

FISCAL NOTE

NO. 14
 Bill Version: CSHB 6(JUD)
 (H) Publish Date: 2/21/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: Relating to the disclosure of information
relating to certain minors
 Sponsor: Representative Kelly
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: Residential Child Care
 COMPONENT SERIAL NO. 253
 See also (SN#): 252.254.255.258.259.264.2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts	(284.1)	(284.1)	(284.1)	(284.1)	(284.1)	(284.1)
1003 GF Match						
1004 GF	284.1	284.1	284.1	284.1	284.1	284.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

In addition to the ability to disclose information, the division will be able to improve the consistency, coordination, and quality of services provided to communities and offenders by more clearly focusing the leadership provided to the youth corrections section.
 Loss of Federal Funds: (\$284.1)

Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services Date: 02/10/97
 Approved by Commissioner: Karen Perdue, Commissioner Date: 2/12/97
 Agency: Department of Health & Social Services

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 13
Bill Version: CSHB 6(JUD)
(H) Publish Date: 2/21/97

Revision Date: _____
Title: Relating to the disclosure of information
relating to certain minors
Sponsor: Representative Kelly
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Foster Care
COMPONENT SERIAL NO. 252
See also (SN#): 253,254,255,258,259,264,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

	(18.6)	(18.6)	(18.6)	(18.6)	(18.6)	(18.6)
1002 Federal Receipts						
1003 GF Match						
1004 GF	18.6	18.6	18.6	18.6	18.6	18.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

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Loss of Federal Funds: (\$18.6)

Prepared by: L. Diane Worley, Director
Division: Family & Youth Services

Phone: 465-3191
Date: 02/10/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 2/12/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO. 12
Bill Version: CSHB 6(JUD)
(H) Publish Date: 2/21/97

Revision Date: _____
Title: Relating to the disclosure of information
relating to certain minors
Sponsor: Representative Kelly
Requestor: House (HES)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: McLaughlin Youth Center
COMPONENT SERIAL NO. 264
See also (SN#): 252,253,254,255,258,259,2134

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES			(24.1)	(24.1)	(24.1)	(24.1)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	(24.1)	(24.1)	(24.1)	(24.1)

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF			(24.1)	(24.1)	(24.1)	(24.1)
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	(24.1)	(24.1)	(24.1)	(24.1)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The Division of Family and Youth Services currently receives approximately \$7.5 M in federal funds as reimbursement for foster care and administrative services provided to Children in Need of Aid (CINA) and Delinquents. Federal law prohibits disclosure of information regarding DFYS clients except in certain circumstances. In order to disclose information on juvenile offenders as described in this bill and still minimize the loss of federal funds, the division must revise the organizational and financial structure of the agency to clearly separate costs and services associated with juvenile offenders from those associated with CINA's and must discontinue claiming federal reimbursement for those costs and services. This restructuring will preserve the majority of federal receipts but will still result in some reductions which must be replaced by general funds. This fiscal note reflects the costs associated with that restructuring and the reduction in federal claims.

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Prepared by: L. Diane Worley, Director Phone: 465-3191
Division: Family & Youth Services Date: 02/10/97
Approved by Commissioner: Karen Perdue, Commissioner Date: 2/12/97
Agency: Department of Health & Social Services

ANALYSIS (cont.):

Change in position:

Superintendent II PCN 06-3483 R 21 will be down graded to a R 20.

(\$93.5)

\$69.4

Total savings due to downgrade

(24.1)

HB 6
2/21/97

Submitted with Fiscal Notes
Numbers 12-19

The table below summarizes the fiscal notes for DFYS components which will be impacted if HB 6 passes. The loss of federal IVE revenue will be caused by the disclosure of information from DFYS juvenile delinquency records because DFYS will not be able to claim those particular funds once information from those records is no longer confidential. The restructuring costs are related to the need to administratively separate the youth corrections programs from the child protection programs, including the associated costs, to prevent the additional loss of funds currently claimed for child protection clients.

Total Costs due to Loss of IVE Revenue and Restructuring						
	IVE Revenue	PCN#	Position	Cost of	Total Cost	Total Cost
	Loss			Restructure	of Restructure	
Southeast		06-3482 new	Delete Regional Admin. SW V	(\$82,600.00) \$73,800.00		
	\$44,200				(\$8,800.00)	\$35,400
Southcentral		06-3482 new	Delete Regional Admin. SW V	(\$92,200.00) \$73,800.00		
	\$157,500				(\$18,400.00)	\$139,100
Northern		06-3218 06-3201 06-3089 new	Delete Reg. Admin. Delete SW V/Bethel Delete SW V/Nome SW V / Fairbanks	(\$99,900.00) (\$91,100.00) (\$98,300.00) \$77,100.00		
	\$113,800				(\$212,200.00)	(\$98,400)
Central Office		new new	Admin Clerk II CPS Admin Officer	\$37,300.00 \$83,300.00		
	\$80,000				\$120,600.00	\$200,600
Probation Serv.		new new new new new	Youth Supt.II Chief Prob. Officer 3 Admin Clerk II 3 Admin. Assts. Juvenile Prob. Off V	\$73,800.00 \$83,900.00 \$112,000.00 \$138,600.00 \$74,300.00		
					\$482,600.00	\$482,600
McLaughlin YC		06-3483	downgrade Supt. II	(\$21,100.00)	(\$24,100)	(\$24,100)
Foster Care	\$18,600					\$18,600
Residential Care	\$284,100					\$284,100
Total	\$698,200				\$339,700	\$1,037,900

Fiscal notes are developed on each bill as if that were the only bill to become law. There has been no attempt to duplicate costs across these bills but to accurately represent the cost associated by each bill on its own merits.

The fiscal notes for HG 6 reflect the costs for both the loss of funds and the restructuring because, standing alone, passage of this bill will result in both occurrences.

The fiscal note for HCR 4 currently reflects 0 fiscal impact because the original bill only addressed the separation of records. Since DFYS already maintains separate records for child protection cases and delinquency cases, the bill would have no impact since it does not mandate the disclosure of information. If the proposed CS is adopted, the department will submit a fiscal note reflecting only the cost of restructuring the Division of Family & Youth Services.

HB 3 carries a 0 fiscal note because the information to be disclosed does not come from DFYS records.

FISCAL NOTE

No. 3

Bill Version: CSHB 6 (HES)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: (H) Publish Date: 1/31/97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Release of information about minors. BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Kelly
 Requestor: H.HESS COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 269-5412
 Division: Alaska State Troopers Date: January 15, 1997
 Approved by Commissioner: *Dee Smith* Date: 1/22/97
 Agency: Ronald L. Otte, Department of Public

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FISCAL NOTE

No. 2
 Bill Version: CSHB 6 (HES)
 (H) Publish Date: 1/31/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the disclosure of information
relating to certain minors." BRU: Criminal Division/Civil Division
 Component: Criminal Division/General Legal Services
 Sponsor: Representative Kelly
 Requester: House HESS Committee COMPONENT SERIAL NO. 2086/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Article 2 of AS 47.12, relating to information and records concerning delinquent minors. The bill would require public disclosure of information pertaining to a juvenile offender if the offense is a felony, or a misdemeanor and the minor has previously been arrested or adjudicated a delinquent based on the minor's previous commission of an offense that was, at the time of its commission, punishable as a felony or as a misdemeanor. The bill would also permit disclosure of the arrest record of a minor to school officials, and to a teacher employed in a school; and, information about the arrest of a minor or an investigation of a case involving a minor to a victim and the victim's insurance company. The bill would permit a parent or legal guardian of a minor subject to AS 47.12 to disclose to the public confidential and privileged information about the minor.

Passage of this legislation would have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho for*
 Agency: Department of Law

Phone: 465-5370
 Date: 1/24/97
 Date: 1/24/97

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FISCAL NOTE

No. 1
 Bill Version: CSHB 6 (HES)
 (H) Publish Date: 1/31/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act amending laws relating to the disclosure of information relating to certain minors"

Department Affected: Administration

Sponsor: Representative Kelly
 Requestor: (H) HES

BRU: Public Defender Agency
 Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The old rehabilitative system of juvenile justice was designed to treat minors and protect them from the stigma of youthful indiscretion by having confidential proceedings and records. This bill eliminates any confidentiality and requires courts after adjudication, law enforcement after arrest, and the Department of Health and Social Services if the matter is adjusted informally to provide the name of the minor, the name of the parents or guardian, the offense and the disposition to the public, if the offense is a felony or a misdemeanor with a previous arrest, adjustment or adjudication. A victim or victim's insurance company is entitled to the same information no matter what the offense. It also allows parents to disclose previously confidential records and proceedings to the public and permits teachers to get arrest records for any minors in school. There is no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Acting Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 1/21/97

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SENATE COMMITTEE REPORT

DATE: 4/21/97

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/28/97

Judiciary Committee considered

HOUSE BILL NO. 6

"An Act amending laws relating to the disclosure of information relating to certain minors."

and recommends:

- be replaced with S CS CSHBG (FIN)am (JUD)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Mull</i>	<input checked="" type="checkbox"/>	<i>J. Ellis</i>	<input checked="" type="checkbox"/>		
<i>Jim Deacon</i>	<input checked="" type="checkbox"/>				
<i>Jan Powell</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Adrian Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>All Previous Fiscal Notes Apply # 1-19</i>			
<i>1, 2, 3, 12, 13, 14</i>			
<i>15, 16, 17, 18, 19</i>			

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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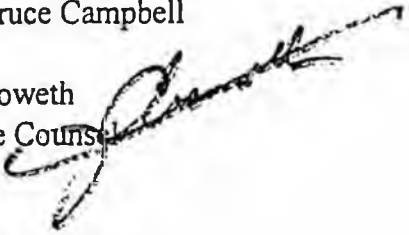
MEMORANDUM

April 22, 1997

SUBJECT: Amendment to CSHB 6 (Fin) am (Work Order No. OLS-0063Ca.1)

TO: Representative Pete Kelly
ATTN: Bruce Campbell

FROM: Jack Chenoweth
Legislative Counsel



This serves to confirm advice orally given.

1. The breadth of the phrase "An Act relating to minors . . ." in the title of the House-passed bill is sufficient to admit this new material allowing the public to attend certain hearings on petitions seeking delinquency adjudications. There is no need for the Senate to expand the bill title in order to allow this addition.
2. A court rule change is necessary to accommodate this new material. The language of the proposed court rule change is set out in the amendment.
3. Under Rule 41(b) of the Uniform Rules, "[a]n amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change." The proper way to admit new material that necessitates a bill title change is by introduction and passage of a concurrent resolution suspending the appropriate rules (including Rule 41(b)). A rule suspension requires a two-thirds vote in each house. Rule 54. However, this office has always advised the legislature to treat matter necessitating addition of reference to a court rule change in the bill title as a technical change. As a technical change, the amendment and the corresponding additional reference to the court rule change may be made by the second house without the necessity of a suspension of the rules.

*

While there may be objection to admitting this material under the existing bill title with the addition of the court rule change and court rule provision in the bill title, this amendment fits within the Uniform Rules. The rules would not have to be suspended.

JBC:pl
97-114.plm

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 6(FIN) am

1 Page 1, line 2, following "minors":

2 Insert "; and amending Rule 3(c), Alaska Delinquency Rules"

3 Page 1, following line 3:

4 Insert a new bill section to read:

5 "* Section 1. AS 47.12.110 is amended by adding a new subsection to read:

6 (d) Notwithstanding (a) of this section, a court hearing on a petition seeking
7 the adjudication of a minor as a delinquent shall be open to the public, except as
8 prohibited or limited by order of the court, if

9 (1) the department files with the court a petition asking the court to
10 open the hearing to the public, and the petition seeking adjudication of the minor as
11 a delinquent is based on

12 (A) the minor's alleged commission of an offense, and the
13 minor has knowingly failed to comply with all the terms and conditions
14 required of the minor by the department or imposed on the minor in a court
15 order entered under AS 47.12.040(a)(2) or 47.12.120;

16 (B) the minor's alleged commission of

17 (i) a crime against a person that is punishable as a
18 felony;

19 (ii) a crime in which the minor employed a deadly
20 weapon, as that term is defined in AS 11.81.900(b), in committing the
21 crime;

22 (iii) arson under AS 11.46.400 - 11.46.410;

23 (iv) burglary under AS 11.46.300;

24 (v) distribution of child pornography under

1 AS 11.61.125;

2 (vi) promoting prostitution in the first degree under
3 AS 11.66.110; or

4 (vii) misconduct involving a controlled substance under
5 AS 11.71 involving the delivery of a controlled substance or the
6 possession of a controlled substance with intent to deliver, other than
7 an offense under AS 11.71.040 or 11.71.050; or

8 (C) the minor's alleged commission of a felony and the minor
9 was 16 years of age or older at the time of commission of the offense when
10 the minor has previously been convicted or adjudicated a delinquent minor
11 based on the minor's commission of an offense that is a felony; or

12 (2) the minor agrees to a public hearing on the petition seeking
13 adjudication of the minor as a delinquent."

14 Page 1, line 4:

15 Delete "*Section 1."

16 Insert "*Sec. 2."

17 Renumber the following bill sections accordingly.

18 Page 5, following line 16:

19 Insert a new bill section to read:

20 "* Sec. 6. Rule 3(c), Alaska Delinquency Rules, is amended to read:

21 (c) Admission to Hearings [GENERAL PUBLIC EXCLUDED]. The provisions
22 of AS 47.12.110(d) apply to govern admission of the public to adjudication hearings.
23 Disposition hearings, temporary detention hearings, hearings in the nature of an
24 arraignment on a petition, and other proceedings before the court [HEARINGS] are not
25 open to the public unless requested by the juvenile. However, the court may, after due
26 consideration for the welfare of the juvenile and the interests of the public, admit specific
27 individuals to a hearing or proceeding, and shall admit victims of the juvenile's offense to
28 hearings or proceedings as required by AS 47.12 [AS 47.10.070(b)]."