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the Constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof. However, even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also. In illustration, ... an enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.<sup>[FN34]</sup>

FN34. *Id.*

The court held that Proposition 13 was neither quantitatively nor qualitatively revisory in nature, despite the fact that it accomplished "substantial changes" in the tax system.<sup>FN35</sup>

FN35. *Id.* 149 Cal.Rptr. 239, 583 P.2d at 1286-87, 1289.

In *Brosnahan v. Brown*,<sup>FN36</sup> the California Supreme Court applied this quantitative/qualitative analysis in holding that the proposition known as the "Victims' Bill of Rights" was not an illegitimate revision.<sup>FN37</sup> The court concluded that the "substantial changes" the proposal would accomplish failed to amount to a sufficiently "far reaching change[ ] in the nature of [the] basic governmental plan as to amount to a revision."<sup>FN38</sup>

FN36. 32 Cal.3d 236, 186 Cal.Rptr. 30, 651 P.2d 274 (1982).

FN37. *Id.* 186 Cal.Rptr. 30, 651 P.2d at 276, 288-89.

FN38. *Id.* 186 Cal.Rptr. 30, 651 P.2d at 288-89 (quoting *Amador Valley*, 149 Cal.Rptr. 239, 583 P.2d at 1286).

Finally, in *Legislature of the State of California v. Eu*,<sup>FN39</sup> the California Supreme Court addressed a proposed amendment designed to limit "the powers of incumbency" by providing for term limits and restrictions on legislators' retirement benefits.<sup>FN40</sup> Although the court recognized that "[t]erm and budgetary limitations may affect and alter the particular legislators and staff who participate in the legislative process," it held that "the basic and fundamental structure of the Legislature as a representative branch of government is left substantially unchanged" and therefore the proposal was not a qualitative revision of the constitution.<sup>FN41</sup>

FN39. 54 Cal.3d 492, 286 Cal.Rptr. 283, 816 P.2d 1309 (1991).

FN40. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1312.

FN41. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318.

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Less than a year before *Eu* was decided, the California Supreme Court had applied the quantitative/qualitative analysis to a challenged initiative measure and reached a different result in *Raven v. Deukmejian*.

FN42 At issue there was a proposal entitled the "Crime Victims Justice Reform Act," designed to limit the rights of criminal defendants to those guaranteed by the federal constitution.<sup>FN43</sup> To that end, the measure contained a section that provided that certain criminal law rights "shall be construed by the courts of [California] in a manner consistent with the Constitution of the United States" and that the state constitution "shall not be construed to afford greater rights" than those afforded by the federal constitution.

FN44 The *Eu* court later noted that the proposal in *Raven* (in contrast to that in *Eu*) was one that "would have fundamentally changed and subordinated the constitutional role assumed by the judiciary in the governmental process."<sup>FN45</sup> In other words, the amendment would affect a core function of one of the three branches of government, an outcome expressly forbidden by *Amador Valley*.<sup>FN46</sup>

FN45. *Eu*, 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN46. 149 Cal.Rptr. 239, 583 P.2d at 1286 ("[A]n enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.").

The California Supreme Court based its holding in *Raven* solely on the qualitative effect of the proposed amendment:

\*987 As a practical matter, ultimate protection of criminal defendants from deprivation of their constitutional rights would be left in the care of the United States Supreme Court. Moreover, the nature and extent of state constitutional guarantees would remain uncertain and undeveloped unless and until the high court had spoken and clarified *federal* constitutional law.

In effect, [the proposed amendment] would substantially alter the substance and integrity of the state Constitution as a document of independent force and effect.<sup>[FN47]</sup>

FN42. 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077 (1990).

FN43. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1079, 1080-83.

FN44. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086.

FN47. *Raven*, 276 Cal.Rptr. 326, 801 P.2d at 1087 (emphasis in original).

The court specifically stated that the

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proposed amendment did not have a quantitatively revisory effect, as it "delete[d] no existing constitutional language and it affect[ed] only one constitutional article." FN48 but concluded that qualitatively it was "so far reaching as to amount to a constitutional revision beyond the scope of the initiative process." FN49

FN48. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086-87 (emphasis omitted).

FN49. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086.

### C. *The Alaska Rule and Its Application to the Three Challenged Ballot Measures*

[5][6] The Constitution of Alaska, like that of California, provides different procedures for different methods of constitutional change.<sup>FN50</sup> In deciding whether the proposal is an amendment or revision, we must consider both the quantity and quality of the proposed constitutional changes. We agree with the reasoning of the California Supreme Court in *Livermore*, *McFadden*, and *Amador Valley* that

FN50. See discussion at page 982, *supra*.

an enactment which is so extensive in its provisions as to change directly the "substantial entirety" of the constitution by the deletion or alteration of numerous

existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.<sup>FN51</sup>

FN51. *Amador Valley*, 149 Cal.Rptr. 239, 583 P.2d at 1286.

[7][8] The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." FN52 The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole. With this in mind, we turn to an evaluation of each of the three challenged ballot measures.

FN52. Jameson, *Constitutional Conventions* at § 540.

#### 1. *Legislative Resolve No. 59*

[9] This measure proposed to amend the Alaska Constitution by adding a new section to article I, providing as follows: Rights of Prisoners. Notwithstanding any other provision of this constitution, the rights and protections, and the extent of those rights and protections, afforded by this constitution to prisoners convicted of crimes shall be limited to those rights and protections, and the extent of those rights

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and protections, afforded under the Constitution of the United States to prisoners convicted of crimes.

This proposal bears an obvious similarity to the initiative measure at issue in *Raven*.<sup>FN53</sup> Like the *Raven* court, we find the proposal to "amount to a constitutional revision beyond the scope of the [ballot] process,"<sup>FN54</sup> although our reasoning differs somewhat. The *Raven* court held that the proposal constituted a qualitatively revisory change to the constitution, but not a quantitatively revisory change.<sup>FN55</sup> We take a hybrid approach. Not only would the proposal, for the reasons stated in *Raven*, "substantially alter the substance and integrity of the state Constitution as a document of independent force and effect,"<sup>\*988 FN56</sup> but as we held in the Preliminary Opinion and Order, it also would potentially alter as many as eleven separate sections of our Constitution. Both qualitatively and quantitatively, therefore, Legislative Resolve No. 59 is an impermissible constitutional revision.

FN53. 276 Cal.Rptr. 326, 801 P.2d at 1086.

FN54. *Id.*

FN55. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1086-90.

FN56. *Id.* 276 Cal.Rptr. 326, 801 P.2d at 1087.

## 2. Legislative Resolve No. 71

[10] This measure proposed to amend the Alaska Constitution by adding a new section to article I providing as follows: 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.

Under our hybrid analysis, this proposed ballot measure is sufficiently limited in both quantity and effect of change as to be a proper subject for a constitutional amendment.<sup>FN57</sup> Few sections of the Constitution are directly affected, and nothing in the proposal will "necessarily or inevitably alter the basic governmental framework" of the Constitution.<sup>FN58</sup>

FN57. Our Preliminary Opinion and Order deleted the second sentence of Legislative Resolve No. 71 on other grounds. Appellants expressed concern that the language could be interpreted to permit the prosecution of individuals involved in marriage-like relationships without the benefit of state sanction, and that this risk might discourage religiously sanctioned marriage ceremonies. Appellees questioned the need for deletion, contending

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that the language was mere surplusage, but conceded at oral argument that this court has the power to order deletion. We explained our decision to order deletion as follows:

We do not believe that language which is surplusage should be part of the constitution. Of special concern is the possibility that the sentence in question might be construed at some future time in an unintended fashion which could seriously interfere with important rights. As decades pass, the legislative history of the resolve may fade from memory. Further, court decisions lack the permanency of constitutional language and may be overruled.

The objective of the second sentence-harmonization of other provisions of the constitution with the meaning of the first sentence-will be achieved in any event, for a specific amendment controls other more general provisions with which it might conflict. [See ] *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256, 1264 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1190 (Alaska 1983).

FN58. *Brosnahan*, 186 Cal.Rptr. 30, 651 P.2d at 289.

### 3. Legislative Resolve No. 74

[11][12] This ballot measure was designed to alter the reapportionment scheme of article VI of the Alaska Constitution, concerning House and Senate districts. The Framers of the Alaska Constitution gave the power to reapportion the legislative districts to the executive branch, to be used as a check against legislative power.<sup>FN59</sup> Legislative Resolve No. 74 removes this power from the executive and assigns it to a neutral body.<sup>FN60</sup> Reassigning this power is unquestionably a significant change in the present system of Alaskan government. It does not, however, deprive the executive branch of a "foundational power," and as a result does not constitute a revision.<sup>FN61</sup> As the quantitative effect of the proposal is minimal, the qualitative force of this narrow change would have to be greater to satisfy our hybrid test. The essential function of the executive branch-to enforce the laws of the state-remains unchanged, as does its structure. No executive power is delegated to either of the other two branches. In fact, the intent of the Framers in giving the reapportionment power to the executive was primarily to prevent the abuse or neglect of that power in the hands of the legislature, rather than to safeguard a uniquely executive function.<sup>FN62</sup> Historically, \*989 the "method [of delegating reapportionment power to the legislature itself] was a total failure" so the Framers delegated it to the executive "in order to assure that the reapportionment will be made and that there will not be neglect."<sup>FN63</sup>

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FN59. *See* 3 PACC 1839 (January 11, 1956) (“[S]tudents and writers seem generally in accord that reapportionment ... has been neglected where it has been left to legislators.”).

FN60. The power to draw the boundaries of the House and Senate districts thereby passes from the governor, with the advice of a reapportionment board of his own appointment, to a five-member Redistricting Board, two members of which are appointed by the governor and one each by the House Speaker, the Senate President, and the Chief Justice of the Supreme Court.

FN61. *Eu*, 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN62. Though the Framers assigned the reapportionment power to the executive branch, there are statements in the Proceedings of the Constitutional Convention that indicate that assigning the power to an independent board would be a rational, relatively uncontroversial alternative. *See* 3 PACC at 1859, 1863.

FN63. 3 PACC 1858 (January 11, 1956).

This proposal, unlike Legislative Resolve

No. 59, does not “fundamentally change[ ] and subordinate[ ] the constitutional role” of any branch in the governmental process. FN64 Therefore, although the proposed change is substantial, it is not so “far reaching and multifarious” as to comprise a revision. FN65

FN64. *Eu*, 286 Cal.Rptr. 283, 816 P.2d at 1318.

FN65. *Cf. Erosnahan*, 186 Cal.Rptr. 30, 651 P.2d at 288-89; *Amador Valley*, 149 Cal.Rptr. 239, 583 P.2d at 1284-89.

#### V. CONCLUSION

We REAFFIRM the Preliminary Opinion and Order.

COMPTON, Justice, dissenting in part. I have reexamined the Preliminary Opinion and Order, my partial dissent from that order, and the court's present amplification of its preliminary opinion. Nothing presented in the amplification has persuaded me now to take a different path.

First, I think it unclear just what test the court is adopting. The court cites and quotes with approval California cases that have shaped that state's development of the constitutional distinction between revisions of and amendments to its constitution. California's analysis does not focus on only one test, but rather on two: does the proposed enactment quantitatively *or*

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qualitatively revise the constitution? If a proposed enactment changes the substantial entirety of the constitution because of numerous deletions and alterations, quantitatively it may constitute a revision. On the other hand, if a proposed enactment accomplishes a far reaching change in the nature of government, qualitatively it likewise may constitute a revision even though the enactment is simple. California's analysis does not entirely preclude some degree of subjectivity in its application, but realistically it could not. The California approach seems well suited to its purpose.

This court states that it "agree[s] with the reasoning of the California Supreme Court. " FN1 Yet in regard to Legislative Resolve No. 59, it states that "[w]e take a hybrid approach." FN2 It concludes that Legislative Resolve No. 59 fails both the quantitative and qualitative tests. FN3 Applying California's analysis, the proposal is a revision. While it may be correct to say that Legislative Resolve No. 59 fails both tests, I do not understand why this makes the test "hybrid."

FN1. Op. at 987.

FN2. Op. at 987.

FN3. *Id.*

The court again refers to its "hybrid analysis" in its discussion of Legislative Resolve No. 71. FN4 It concludes that this

proposal "is sufficiently limited in both quantity and effect of change as to be a proper subject for constitutional amendment." FN5 This proposal offends neither of California's tests, and would not be a revision in that state. Again I fail to understand what is hybrid about the analysis applied by this court.

FN4. *Id.*FN5. *Id.*

The court uses the term "hybrid" again with respect to Legislative Resolve No. 74. FN6 It concludes that although reassignment of the power to reapportion the legislature is "significant," it does not constitute a revision since it does not deprive the executive branch of a "foundational power." FN7 The court reasons: "As the quantitative effect of the proposal is minimal, the qualitative force of this narrow change would have to be greater to satisfy our hybrid test." FN8 The court still has not articulated just what its "hybrid test" is, \*990 although it sounds suspiciously like a sliding comparative scale test of some sort.

FN6. Op. at 988.

FN7. *Id.*FN8. *Id.*

The California analysis, with which this

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court has stated it agrees, does not test by comparing quantitative and qualitative criteria; each stands on its own merits. A proposed enactment could satisfy neither test, either test, or both tests. That does not make the test a "hybrid," nor does it suggest some sort of sliding comparative scale. This court's failure to carefully articulate the test it is adopting is unfortunate.

This court's analysis is not constrained by contrary findings or analysis by the superior court. Although the superior court was asked to adopt California's *Raven v. Deukmejian*<sup>FN9</sup> analysis, it declined to do so. It concluded that looking to "the historical context of constitutional amendments in Alaska" was the correct analytical approach. The superior court concluded that "a lot of these amendments add[ ] to rights rather than detract [ ] from them. ... then on the flip side the same constitutional amendment could detract from [them]." A revision would not be necessary; an amendment would suffice. Thus the record and briefing are virtually barren of any presentation of the quantitative or qualitative impact of Legislative Resolve No. 74. Nonetheless, this court declares the quantitative effect to be "minimal" and the qualitative effect "narrow."<sup>FN10</sup>

FN9. 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077 (1990).

FN10. Op. at 987.

It is valuable to compare Legislative Resolve No. 74 with Legislative Resolve No. 59 and Legislative Resolve No. 71. Legislative Resolve No. 59 amends article I of the Alaska Constitution by adding section 25, which, in sixty-five words or less, limits the rights of prisoners. This court has identified eleven constitutional provisions that will be actually or potentially affected by Legislative Resolve No. 59.<sup>FN11</sup> It concludes that this proposed enactment is not a permissible constitutional amendment, foundering on both quantitative and qualitative grounds.<sup>FN12</sup> Since I agree that the proposal founders on quantitative grounds, I need not address the remainder of the conclusion. Suffice it to say, however, that its application appears relatively simple.

FN11. Op. Appendix at 995.

FN12. Op. at 987.

Legislative Resolve No. 71 amends article I of the Alaska Constitution by adding section 26, which, in forty-five words or less, defines marriage. This court concludes that this proposed enactment is a permissible constitutional amendment, not a revision, since it is limited "in both quantity and effect of change."<sup>FN13</sup> Again, I agree.

FN13. *Id.*

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Legislative Resolve No. 74 is altogether another matter. It explicitly amends article VI of the Alaska Constitution by revising sections 1, 2, 3, 4, 6, 8, 9, 10, and 11, and by repealing sections 5 and 7; article XI by revising section 3; article XIV by repealing it; and article XV by adding section 29. It implicitly amends article VI of the Alaska Constitution by adding to the powers of the Chief Justice of the Alaska Supreme Court. As noted, this is brushed aside by the court as quantitatively "minimal."<sup>FN14</sup> While some of the amendments are procedural in nature, others alter the core of the reapportionment/redistricting process as it has been known in Alaska since statehood.

FN14. Op. at 987.

This court cites carefully selected language from *Legislature of the State of California v. Eu*,<sup>FN15</sup> to support its assertion that the executive branch must be deprived of a "foundational power" before a proposed enactment constitutes a revision rather than an amendment.<sup>FN16</sup> That is not what *Eu* says:

FN15. 54 Cal.3d 492, 286 Cal.Rptr. 283, 816 P.2d 1309 (1991).

FN16. Op. at 987-988.

By contrast, Proposition 140 on its face does not affect either the structure or the foundational powers of the Legislature,

which remains free to enact whatever laws it deems appropriate. The challenged measure alters neither the content of those laws nor the process by which they are \*991 adopted. No legislative power is diminished or delegated to other persons or agencies. The relationships between the three governmental branches, and their respective powers, remain untouched.<sup>FN17</sup>

FN17. *Eu*, 286 Cal.Rptr. 283, 816 P.2d at 1318.

Citing *Raven*, *Eu* observes that "a qualitative revision includes one that involves a change in the basic plan of California government, i.e., a change in its fundamental structure or the foundational powers of its branches."<sup>FN18</sup> Later, *Eu* again observes that "[o]ur prior decisions have made it clear that to find such a revision, it must *necessarily or inevitably appear from the face* of the challenged provision that the measure will substantially alter the basic governmental framework set forth in our Constitution."<sup>FN19</sup>

FN18. *Id.* (citing *Raven*, 52 Cal.3d 336, 276 Cal.Rptr. 326, 801 P.2d 1077).

FN19. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1319 (citations omitted).

Neither *Eu* nor any other California case

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requires that the branch of government to be affected by a proposed enactment be deprived of a foundational power before the proposal constitutes a revision rather than an amendment. Rather, *Eu*'s language is much less demanding. Its qualifiers are "affect," "alter," "change," "diminish[ ]," and "delegate[ ]." <sup>FN20</sup> In *Eu*, the California Supreme Court concluded that "[t]he relationships between the three governmental branches, and their respective powers, remain untouched." <sup>FN21</sup>

FN20. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318-19 (emphasis added).

FN21. *Id.* 286 Cal.Rptr. 283, 816 P.2d at 1318 (emphasis added).

This court acknowledges that "[t]he Framers of the Alaska Constitution gave the power to reapportion the legislative districts to the executive branch, to be used as a check against legislative power," citing a statement in the Proceedings of the Alaska Constitutional Convention that "[S]tudents and writers seem generally in accord that reapportionment ... has been neglected where it has been left to legislators." <sup>FN22</sup> The court advances no reason why the executive branch should now be deprived of this check on legislative power, so debated in the Constitutional Convention, and so unique in American government. Nor does the court take issue with the statement I made in my dissent to the Preliminary Opinion

and Order that

FN22. Op. at 988 and note 59.

[t]he chief executive's constitutional powers, including the power over reapportionment, were among the most debated, if not the most debated, issues at Alaska's Constitutional Convention... [N]ot only will the "amendment" divest the chief executive of much of the constitutional power that office has held since statehood, and invest the legislature with a constitutional power heretofore unknown to it, but also it will bring the judiciary into the reapportionment process in a manner which is potentially highly political. <sup>FN23</sup>

FN23. Op. Appendix at 997.

This court recognized the uniqueness of Alaska's constitutional reapportionment scheme over thirty years ago in *Wade v. Nolan*: <sup>FN24</sup>

FN24. 414 P.2d 689 (Alaska 1966).

Before attempting to discuss [whether the acts of the Governor and his advisory Reapportionment Board in reapportioning the Senate were authorized by the Alaska Constitution] it is well to explain the origin of a unique feature of the reapportionment provisions of the Alaska Constitution. Whereas, traditionally, reapportionment

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had been made the responsibility of state legislatures, the Alaska Constitutional Convention purposely avoided placing any authority or responsibility for reapportionment in the legislature. The Convention was aware of the notorious and frequent failure or downright refusal of state legislatures to comply with their constitutional or statutory duty to reapportion. The Alaska Convention's reason for placing reapportionment responsibility in the Governor was well stated by its Chairman of the Committee on Suffrage, Elections and Apportionment, John S. Hellenthal...

\*\*\*\*  
\*992 A reading of the Convention minutes in relation to the reapportionment provisions makes it abundantly clear that it was the specific intent of the Convention to grant no authority to and to place no responsibility in the legislature with respect to reapportionment. In a clear and clean-cut departure from tradition, all of the authority and responsibility for reapportionment granted or assigned was placed in the Governor, assisted by a Reapportionment Board, including the authority to make minor changes in Senate Districts.<sup>[FN25]</sup>

FN25. *Id.* at 694-95.

The court quotes Hellenthal at length, including his reference to other variations of a plan.<sup>FN26</sup> Hellenthal concludes with the statement that "the best thought

seemed to indicate that the people would be best helped if [reapportionment] were an executive function.... But it is the inaction of the legislature, as testified to by the universal history of the 48 states, that we're trying to overcome." FN27 There is virtually no textual support for this court's assertion that some Framers believed "assigning the power to an independent board would be a rational, relatively uncontroversial alternative." FN28

FN26. *Id.*

FN27. 3 Proceedings of the Alaska Constitutional Convention (PACC) 1859 (January 11, 1956).

FN28. *Op.* at 988, note 62.

In my dissent from the court's Preliminary Opinion and Order, I remarked that [t]he proposed constitutional "revision" regarding prisoners affects a narrow class of persons comparatively few in number. Yet because it implicates numerous state constitutional provisions, and divests prisoners of state constitutional protections, we conclude that it is a constitutional "revision" that cannot be brought before the voters as a constitutional "amendment" initiated by legislative action.<sup>1</sup> On the other hand, we conclude that the proposed change regarding reapportionment, which fundamentally redistributes among all three branches of government constitutional power previously held by the

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chief executive alone, impacts all voters within the state, and restructures the manner by which the voters are grouped together to elect their legislators, is a mere constitutional "amendment" undeserving of the politically impartial deliberation inherent in the constitutional convention process. The irony is remarkable.<sup>[FN29]</sup>

FN29. Op. Appendix at 997.

FN<sup>1</sup> In concluding that Legislative Resolve No. 74 is an "amendment" and not a "revision," the court observes that "[w]hile the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous sections of the constitution." Except for the "does not substantially affect" phrase, which relates to the numerous constitutional provisions that will be affected, what could be more easily expressed and understood than that the rights of prisoners under the Alaska Constitution shall be limited to those afforded by the Constitution of the United States?

Juxtaposing these two proposed enactments today produces no less irony than it did eleven months ago when the Preliminary Opinion and Order were

entered. The landscape so carefully crafted by the Alaska Constitutional Convention's Committee on Suffrage, Elections and Apportionment has been fundamentally and dramatically "affected," "altered," and "changed." The executive branch's power has been "diminished" by being "delegated" to a board of significantly different composition than that which heretofore was constituted. Legislative Resolve No. 74 does not leave the relationships between the three respective branches of government, and their respective powers, "untouched." The contrary is plainly evident. Legislative Resolve No. 74 is just as plainly a constitutional revision. The substance of Legislative Resolve No. 74 should have to undergo the deliberative scrutiny to which the issue was subjected in anticipation of statehood. To proclaim that this is a "narrow" enactment, as does this court, is to reduce reapportionment to the trivial. Years of reapportionment litigation, and hundreds of pages of Alaska Supreme Court orders and opinions, demonstrate just how important the issue is, and how wrong this court is to hold otherwise.

#### \*993 APPENDIX

##### DISCUSSION

1. Challenged in this case are three ballot propositions to amend the Alaska Constitution which by legislative resolve are to be placed before the voters in the

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November 1998 general election. The superior court granted summary judgment in favor of the State defendants and the Legislative Council and entered final judgment on September 8, 1998. Because of the immediate need to decide what the general election ballot shall contain we granted expedited consideration. For the reasons set forth below we conclude that (1) Legislative Resolve No. 59 (relating to prisoners' rights) may not appear on the ballot, (2) Legislative Resolve No. 71 (limiting marriage) may appear on the ballot, but the second sentence of the proposed amendment should be deleted, and (3) Legislative Resolve No. 74 (relating to reapportionment) may appear on the ballot.

2. The Alaska Constitution recognizes two types of constitutional change. The constitution may be *amended* or it may be *revised*.

a. *Amendment*. There are two methods of amendment. The method relevant here is by legislative proposition which is passed by two-thirds of the members of each legislative house and adopted by a majority of the voters. Alaska Const. art. XIII, § 1. A constitutional convention may also propose amendments. These become effective if they are ratified by the voters. Alaska Const. art. XIII, § 4.

b. *Revision*. There is one method of revision. The constitution may be revised only by a constitutional convention ratified by the voters. Alaska Const. art. XIII, § 4

3. All three ballot propositions are challenged on the ground that they are inappropriate as amendments under article XIII, section 1 of the Alaska Constitution. Appellants argue that the changes the propositions seek to accomplish can only be effected, if at all, by the constitutional process of revision.

4. Case law is evidently unanimous in support of the view that there is a distinction of substance between the concepts of amendment and revision and that some proposed constitutional changes can only be accomplished by revision. *McFadden v. Jordan*, [32 Cal.2d 330] 196 P.2d 787 (Cal.1948); *Rivera-Cruz v. Gray*, 104 So.2d 501 (Fla.1958). The proceedings of the Alaska Constitutional Convention indicate that the framers of our constitution were in accord with this view. 2 Proceedings of the Alaska Constitutional Convention 1247, 1251, 1275 (January 5, 1956).

[13] 5. The line between changes which are permissible as amendments and those which must necessarily be revisions cannot be drawn with precision. In general, changes which are "few and simple and independent" can be considered amendments, whereas "sweeping change" requires the revision process. *See State v. Manley*, 441 So.2d 864, 879 (Ala.1983) (Torbert, C.J., concurring); *Jackman v. Bodine* [43 N.J. 453] 205 A.2d 713, 725 (N.J.1964), both quoting sections from

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Judge John A. Jameson, *A Treatise on Constitutional Conventions* (4th ed. 1887). *McFadden* is instructive on the distinction between amendment and revision. We quote it at some length because it was decided by a distinguished court only a few years before the Alaska Constitution was written. Quoting from an earlier case, the *McFadden* court discussed revisions made by a convention in which "the entire sovereignty of the people is represented...." *McFadden*, 196 P.2d at 789.

The character and extent of a constitution that may be framed by that body is freed from any limitations other than those contained in the constitution of the United States.... The very term ["]constitution" implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicated the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term "amendment" implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed.

\*994 *Id.* (quoting *Livermore v. Waite*, [102 Cal. 113] 36 P. 424, 425 (Cal.1894)). The court held that the measure in question was so "far reaching and multifarious" that it was revisory rather than amendatory in nature. *Id.* at 788. The court listed numerous sections of the constitution

which the measure in question would affect. *Id.* at 794-96. This review demonstrated

the wide and diverse range of subject matters proposed to be voted upon, and the revisional effect which it would necessarily have on our basic plan of government. The proposal is offered as a single amendment but it obviously is multifarious. It does not give the people an opportunity to express approval or disapproval severally as to each major change suggested....

*Id.* at 796-97. In *Adams v. Gunter*, 238 So.2d 824 (Fla.1970), the court opined that amendment as distinct from revision authority "includes only the power to amend any section in such a manner that such amendment if approved would be complete within itself, relate to one subject and not substantially affect any other section or article of the Constitution or require further amendments to the Constitution to accomplish its purpose." *Id.* at 831.

[14] 6. The above authorities are quoted merely to suggest factors that should be considered in determining whether a proposed constitutional change is amendatory or revisory. In making such a determination, respect for the legislature and the electoral process requires that courts should decline to order a measure removed from the ballot except in clear cases. See *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 296 (Alaska 1984).

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7. *Legislative Resolve No. 59*. This measure proposes to amend the Alaska Constitution by adding a new section to article I providing as follows:

Rights of Prisoners. Notwithstanding any other provision of this constitution, the rights and protections, and the extent of those rights and protections, afforded by this constitution to prisoners convicted of crimes shall be limited to those rights and protections, and the extent of those rights and protections, afforded under the Constitution of the United States to prisoners convicted of crimes.

1998 Legislative Resolve No. 59 (HCS CSSJR 3). All provisions of the Alaska Constitution granting prisoners' rights not granted under the federal constitution are superseded or amended by this measure. Numerous provisions of the Alaska Constitution are either actually or potentially affected. Changed or potentially changed would be such constitutional guarantees as the right of all persons to equal rights, art. I, § 1; freedom of religion, art. I, § 4; freedom of speech, art. I, § 5; the right to petition government, art. I, § 6; the right to due process of law, art. I, § 7; protections from double jeopardy and self-incrimination, art. I, § 9; the right to counsel, art. I, § 11; protection from excessive bail, excessive fines and cruel and unusual punishment, art. I, § 12; the rights which flow from the principle of reformation, art. I, § 12; the privilege of habeas corpus, art. I, § 13; protection

from unreasonable searches and seizures, art. I, § 14; and the right to privacy, art. I, § 22.

8. Legislative Resolve No. 59 is similar in character to the ballot measure involved in *Raven v. Deukmejian*, [52 Cal.3d 336, 276 Cal.Rptr. 326] 801 P.2d 1077 (Cal.1990). The measure in that case provided in part that the California Constitution "shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States...." *Id.* [276 Cal.Rptr. 326, 801 P.2d] at 1086. The California Supreme Court concluded that this measure "would be so far reaching as to amount to a constitutional revision...." *Id.* We reach the same conclusion in this case. Legislative Resolve No. 59 would eliminate the independent force and effect of so many provisions of the Alaska Constitution with respect to the rights of prisoners that it is beyond the limits of the amendatory process of article XIII, section 1.

9. *Legislative Resolve No. 71*. This measure would amend article I of the Alaska Constitution by adding a new section to read:

**\*995 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.

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1998 Legislative Resolve No. 71 (HCS CSSJR 42). The appellees contend that the meaning of this measure is that only marriages between one man and one woman may be given official status and recognition. Appellants contend that it has broader implications. They argue that the first sentence necessarily amends the Alaska Constitution in three respects: changing the equal rights clause, art. I, § 1; the civil rights clause, art. I, § 3; and the privacy section, art. I, § 22. They contend that the second sentence divests the judiciary of the power to interpret the constitution. Further, they argue that the second sentence "permits the criminalization of homosexual relationships ..." and may modify the free exercise of religion clause of article I, section 4 "because some religions ... perform same sex marriages today."

10. In our view the first sentence of the resolve is not so broad in scope that it is impermissible as an amendment. It potentially affects the meaning of the equal rights clause contained in article I, section 1. Article I, section 3 is not affected, for it does not specify sexual preference as a suspect classification. Further, it is unclear whether the right to privacy is affected, for the first sentence is concerned with recognition of marriage as an official relationship, not with private relationships. Moreover, the content of the sentence is simple to express and understand. It relates to only one subject and does not substantially affect numerous other sections of the constitution.

[15][16] 11. More problematical are two aspects of the second sentence of the measure. The appellants argue that the second sentence may be interpreted to permit the prosecution of individuals because they are involved in marriage-like relationships which are not officially sanctioned, and may tend to inhibit, because of this risk, religiously sanctioned marriage ceremonies. The appellees counter that the second sentence is superfluous. They argue that it is intended to say no more than that other provisions of the Alaska Constitution must be harmonized with the first sentence. Appellees suggest that this court could make it clear that the proposed amendment is not intended to interfere with or criminalize private or religiously recognized same-sex partnerships by issuing an interpretation to that effect in this case. At oral argument the appellees acknowledged that this court has the power to order the deletion of the second sentence, but questioned the need for this action since the sentence is merely surplusage. We believe that there is such a need. We do not believe that language which is surplusage should be part of the constitution. Of special concern is the possibility that the sentence in question might be construed at some future time in an unintended fashion which could seriously interfere with important rights. As decades pass, the legislative history of the resolve may fade from memory. Further, court decisions lack the permanency of constitutional language and may be overruled. The objective of the

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second sentence-harmonization of other provisions of the constitution with the meaning of the first sentence-will be achieved in any event, for a specific amendment controls other more general provisions with which it might conflict. *Johns v. Commercial Fisheries Entry Comm'n.* 758 P.2d 1256, 1264 (Alaska 1988); *State v. Ostrosky*, 667 P.2d 1184, 1190 (Alaska 1983). Impelled by these considerations we believe that deletion of the second sentence is appropriate.

12. *Legislative Resolve No. 74*. This measure would amend article VI of the Alaska Constitution concerning the apportionment of House and Senate districts. Currently reapportionment is a function performed by the Governor. Under the proposed amendment the function would be performed by a board consisting of five members, two appointed by the Governor, one appointed by the presiding officer of the Senate, one by the presiding officer of the House of Representatives, and one by the Chief Justice of the Supreme Court. 1998 Legislative Resolve No. 74 (SCS CSHJR \*996 44). It is our view that this resolve reflects an appropriate exercise of the amendatory power. While the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous other sections of the constitution.

[17] 13. The appellants also argue that the three ballot propositions should be

considered in the aggregate to be beyond the constitutional amendatory process. We reject this argument, for the measures lack substantial relationship to each other and are proposed for separate and independent approval. *Cf. Rivera-Cruz v. Gray*, 104 So.2d 501 (Fla.1958) (discussing "daisy chain" argument).

14. In addition to the point that the measures are beyond the amendatory process, the parties raise two other process-related issues which are appropriate for decision prior to the election. These are whether the propositions violate a constitutional one-subject requirement and whether the Lieutenant Governor's summary is fair and impartial. The Legislative Council also objects to the summary as not fair and impartial. We have examined these claims and find them to be without merit. However, the final sentence of the summary regarding marriage must be deleted in conformity with our decision regarding that measure.

15. Appellants' remaining claims are inappropriate for a pre-election challenge.

#### ORDER

1. Legislative Resolve No. 59 shall not be placed on the ballot.
2. The second sentence of the amendment proposed by Legislative Resolve No. 71 shall not be placed on the ballot. To

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conform with this change the last sentence of the Lieutenant Governor's summary shall be deleted.

3. Legislative Resolve No. 74 shall be placed on the ballot.

4. An opinion will follow.

Entered at the direction of the court.

COMPTON, Justice, dissenting, in part. The court concludes that the words "amend" and "revise," as used in article XIII of the Alaska Constitution, indeed have a different meaning. I agree. It also concludes that the proposed changes to the constitution relating to prisoners and the definition of marriage are, in whole or in part, "revisions" to the constitution and hence cannot be placed on the ballot by legislative action; only a constitutional convention can act to place these issues before the voters. I also agree. However, the court concludes that the proposed change relating to the manner by which reapportionment is accomplished is merely an "amendment." By any measure this seems unsupportable; it is particularly so in light of the court's conclusions with respect to constitutional "revisions" regarding prisoners and the definition of marriage. Therefore, I dissent from the court's conclusion regarding this issue.

The Alaska Constitution provides for a chief executive with strong powers, one of which is the power to shape the composition of the reapportionment board.

Effectively, this is the power to shape the composition of the legislature itself. Indeed, Alaska's is probably the only state constitution that grants its chief executive such broad power over reapportionment. The chief executive's constitutional powers, including the power over reapportionment, were among the most debated, if not the most debated, issues at Alaska's Constitutional Convention. To now permit this issue to be brought before the voters through legislative action as a constitutional "amendment" ignores the importance which the Constitutional Convention gave to this issue, and the pervasive effect the transfer of so much constitutional power from the chief executive to the legislature will have on the manner by which voters are grouped together to elect legislators. Moreover, not only will the "amendment" divest the chief executive of much of the constitutional power that office has held since statehood, and invest the legislature with a constitutional power heretofore unknown to it, but \*997 also it will bring the judiciary into the reapportionment process in a manner which is potentially highly political. The fact that the very persons whose interests are the most directly affected by this "amendment" are the persons who have brought the issue to the voters by the least restrictive, least impartial, and most politically sensitive process, should not be ignored.

The proposed constitutional "revision" regarding prisoners affects a narrow class of persons comparatively few in number.

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Yet because it implicates numerous state constitutional provisions, and divests prisoners of state constitutional protections, we conclude that it is a constitutional "revision" that cannot be brought before the voters as a constitutional "amendment" initiated by legislative action.<sup>FN1</sup> On the other hand, we conclude that the proposed change regarding reapportionment, which fundamentally redistributes among all three branches of government constitutional power previously held by the chief executive alone, impacts all voters within the state, and restructures the manner by which the voters are grouped together to elect their legislators, is a mere constitutional "amendment" undeserving of the politically impartial deliberation inherent in the constitutional convention process. The irony is remarkable.

than that the rights of prisoners under the Alaska Constitution shall be limited to those afforded by the Constitution of the United States?

Alaska, 1999.  
 Bess v. Ulmer  
 985 P.2d 979

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FN1. In concluding that Legislative Resolve No. 74 is an "amendment" and not a "revision," the court observes that "[w]hile the change is an important one, it is simple to express and understand. It is complete within itself, relates to only one subject, and does not substantially affect numerous sections of the constitution." Except for the "does not substantially affect" phrase, which relates to the numerous constitutional provisions that will be affected, what could be more easily expressed and understood

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AK CONST Art. 13, § 1

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Const. Art. 13, § 1

C

ALASKA STATUTES

Constitution

Article XIII. Amendment and Revision

**Section 1 Amendments.**

Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

**HISTORICAL NOTES**

**Effect of amendment.** -- The amendment, effective October 10, 1970 (6th Legislature's SJR 2(1970)), substituted "lieutenant governor" for "secretary of state" in the second and last sentences.

The amendment effective October 12, 1974 (8th Legislature's HJR 20(1973)) substituted "general" for "statewide" near the end of the second sentence.

**NOTES TO DECISIONS**

**The United States Congress has no power to amend a state's constitution.** *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

**This article provides two methods of amending the constitution:** (1) by a constitutional convention, followed by a ratification of the proposed amendment by the people, and (2) by a proposal that has obtained a two-thirds vote of each house of the legislature, and is adopted by the people by a majority vote at a statewide election. *Starr v. Hagglund*, 374 P.2d 316 (Alaska 1962).

The constitution of the State of Alaska provides only two means for its amendment. This section authorizes such amendments by a two-thirds vote of each house of the legislature thereafter approved by a majority vote at the next statewide election. Alaska Const., art. XIII, §

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4 provides for amendments by a constitutional convention subject to ratification by the people. *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

**The Alaska Constitution may not be amended by popular vote alone**, without prior action by either the legislature or a constitutional convention. *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

**Adoption of proposition in Statehood Act did not amend constitution.** -- Although included in Alaska Statehood Act, § 8(b), 48 U.S.C. Prec. § 21, was the provision that in the event that three propositions to be submitted to the voters were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i), since there was no state legislature in existence at the time of passage of the Statehood Act, the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution, and no constitutional convention was called to act on the matter. *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

**Proper subject for amendment.** -- A legislative resolve to amend the recognition of marriage in the state was sufficiently limited in both quantity and effect of change as to be a proper subject for a constitutional amendment, since few sections of the state Constitution were affected, and nothing in the proposal would necessarily or inevitably alter the basic government framework of the Constitution. *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999).

A ballot measure designed to alter the reapportionment scheme of the state Constitution, although a significant change in the system of state government, did not deprive the executive branch of its foundational power to enforce the laws of the state, and thus the proposal did not constitute a revision. *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999).

**Quoted** in *Wade v. Nolan*, 414 P.2d 689 (Alaska 1966).

Const. Art. 13, § 1, AK CONST Art. 13, § 1

Current through all 2006 Legislation, Annotations current through Opinions  
Decided as of July 1, 2006.

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Const. Art. 13, § 1

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517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
 (Cite as: 517 U.S. 620, 116 S.Ct. 1620)

▷

Romer v. Evans  
 U.S.Colo., 1996.

Supreme Court of the United States  
 Roy **ROMER**, Governor of Colorado, et  
 al., Petitioners,

v.

Richard G. **EVANS** et al.  
 No. 94-1039.

Argued Oct. 10, 1995.  
 Decided May 20, 1996.

Homosexual persons, municipalities, and others brought action against governor, state attorney general, and state, challenging validity of amendment to Colorado Constitution that prohibited all legislative, executive, or judicial action designed to protect homosexual persons from discrimination. The District Court, City and County of Denver, H. Jeffrey Bayless, J., 1993 WL 518586, entered permanent injunction enjoining enforcement of amendment, and defendants appealed. The Colorado Supreme Court affirmed, 882 P.2d 1335, and certiorari was granted. The Supreme Court, Justice Kennedy, held that amendment violated equal protection clause.

Affirmed.

Justice Scalia dissented and filed opinion in which Chief Justice Rehnquist and Justice Thomas joined.

West Headnotes

[1] **Civil Rights 78** ⇌ 1005

78 Civil Rights

78I Rights Protected and  
 Discrimination Prohibited in General  
 78k1002 Constitutional and  
 Statutory Provisions

78k1005 k. Power to Enact and  
 Validity. Most Cited Cases  
 (Formerly 78k105(2))

**Civil Rights 78** ⇌ 1012

78 Civil Rights

78I Rights Protected and  
 Discrimination Prohibited in General  
 78k1007 Bases of Discrimination  
 and Classes Protected

78k1012 k. Sexual Orientation or  
 Identity. Most Cited Cases  
 (Formerly 78k105(2))

**Constitutional Law 92** ⇌ 224(2)

92 Constitutional Law

92XI Equal Protection of Laws  
 92k224 Sex Discrimination  
 92k224(2) k. Particular  
 Discriminatory Practices. Most Cited Cases  
 Equal protection clause was violated by

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517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
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amendment to Colorado Constitution that prohibited all legislative, executive, or judicial action at any level of state or local government designed to protect homosexual persons from discrimination; amendment had peculiar property of imposing a broad and undifferentiated disability on a single named group, and amendment lacked a rational relationship to legitimate state interests. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 30b.

#### [2] Constitutional Law 92 ⇌ 234.6

##### 92 Constitutional Law

###### 92XI Equal Protection of Laws

###### 92k234.5 Regulation of Use of Public Facilities or Services

###### 92k234.6 k. In General. Most Cited Cases

Fourteenth Amendment does not give Congress a general power to prohibit discrimination in public accommodations. U.S.C.A. Const.Amend. 14.

#### [3] Constitutional Law 92 ⇌ 211(2)

##### 92 Constitutional Law

###### 92XI Equal Protection of Laws

###### 92k211 Nature and Scope of Prohibitions in General

92k211(2) k. Legislative Classification in General. Most Cited Cases  
Fourteenth Amendment's promise that no person shall be denied equal protection of the laws must coexist with practical necessity that most legislation classifies for

one purpose or another, with resulting disadvantage to various groups or persons. U.S.C.A. Const.Amend. 14.

#### [4] Constitutional Law 92 ⇌ 213.1(2)

##### 92 Constitutional Law

###### 92XI Equal Protection of Laws

###### 92k213.1 Bases for Discrimination Affected in General

92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases

If a law neither burdens a fundamental right nor targets a suspect class, Supreme Court will uphold the legislative classification so long as it bears a rational relation to some legitimate end. U.S.C.A. Const.Amend. 14.

#### [5] Constitutional Law 92 ⇌ 213.1(2)

##### 92 Constitutional Law

###### 92XI Equal Protection of Laws

###### 92k213.1 Bases for Discrimination Affected in General

92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases

In the ordinary case, a law will be sustained under equal protection clause if it can be said to advance a legitimate government interest, even if law seems unwise or works to disadvantage of a particular group, or if rationale for it seems tenuous. U.S.C.A. Const.Amend. 14.

#### [6] Constitutional Law 92 ⇌ 211(1)

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517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
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92 Constitutional Law

92XI Equal Protection of Laws

92k211 Nature and Scope of Prohibitions in General

92k211(1) k. In General; Discrimination. Most Cited Cases  
Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to equal protection clause. U.S.C.A. Const.Amend. 14.

[7] Constitutional Law 92 ⇌209

92 Constitutional Law

92XI Equal Protection of Laws

92k209 k. Constitutional Guaranties in General. Most Cited Cases

Central both to the idea of rule of law and to Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. U.S.C.A. Const.Amend. 14.

[8] Constitutional Law 92 ⇌211(1)

92 Constitutional Law

92XI Equal Protection of Laws

92k211 Nature and Scope of Prohibitions in General

92k211(1) k. In General; Discrimination. Most Cited Cases  
Equal protection of the laws is not achieved through indiscriminate imposition of inequalities. U.S.C.A. Const.Amend. 14.

[9] Constitutional Law 92 ⇌211(2)

92 Constitutional Law

92XI Equal Protection of Laws

92k211 Nature and Scope of Prohibitions in General

92k211(2) k. Legislative Classification in General. Most Cited Cases  
A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from government is itself a denial of equal protection of the laws in the most literal sense. U.S.C.A. Const.Amend. 14.

[10] Constitutional Law 92 ⇌209

92 Constitutional Law

92XI Equal Protection of Laws

92k209 k. Constitutional Guaranties in General. Most Cited Cases

The guaranty of equal protection of the laws is a pledge of the protection of equal laws. U.S.C.A. Const.Amend. 14.

[11] Constitutional Law 92 ⇌213.1(2)

92 Constitutional Law

92XI Equal Protection of Laws

92k213.1 Bases for Discrimination Affected in General

92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases  
If constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare desire to harm a politically unpopular

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(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

group cannot constitute a legitimate governmental interest. U.S.C.A. Const.Amend. 14.

337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

[12] Constitutional Law 92 ⇔ 213.1(2)

92 Constitutional Law

92XI Equal Protection of Laws

92k213.1 Bases for Discrimination Affected in General

92k213.1(2) k. Rational or Reasonable Basis; Relation to Object or Compelling Interest. Most Cited Cases  
To be valid under equal protection clause, a law must bear a rational relationship to a legitimate governmental purpose. U.S.C.A. Const.Amend. 14.

\*620 After various Colorado municipalities passed ordinances banning discrimination \*\*1622 based on sexual orientation in housing, employment, education, public accommodations, health and welfare services, and other transactions and activities, Colorado voters adopted by statewide referendum " Amendment 2" to the State Constitution, which precludes all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their " homosexual, lesbian or bisexual orientation, conduct, practices or relationships." Respondents, who include aggrieved homosexuals and municipalities, commenced this litigation in state court against petitioner state parties to declare Amendment 2 invalid and enjoin its enforcement. The trial court's grant of a preliminary injunction was sustained by the Colorado Supreme Court, which held that Amendment 2 was subject to strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. On remand, the trial court found that the amendment failed to satisfy strict scrutiny. It enjoined Amendment 2's enforcement, and the State Supreme Court affirmed.

[13] Constitutional Law 92 ⇔ 211(2)

92 Constitutional Law

92XI Equal Protection of Laws

92k211 Nature and Scope of Prohibitions in General

92k211(2) k. Legislative Classification in General. Most Cited Cases  
Class legislation is obnoxious to prohibitions of Fourteenth Amendment. U.S.C.A. Const.Amend. 14.  
West CodenotesHeld Unconstitutional C.R.S.A. Const. Art. 2, § 30b.Syllabus <sup>FN\*</sup>

FN\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321.

*Held:* Amendment 2 violates the Equal

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517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
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Protection Clause. Pp. 1624-1629.

(a) The State's principal argument that Amendment 2 puts gays and lesbians in the same position as all other persons by denying them special rights is rejected as implausible. The extent of the change in legal status effected by this law is evident from the authoritative construction of Colorado's Supreme Court which establishes that the amendment's immediate effect is to repeal all existing statutes, regulations, ordinances, and policies of state and local entities barring discrimination based on sexual orientation, and that its ultimate effect is to prohibit any governmental entity from adopting similar, or more protective, measures in the future absent state constitutional amendment-and from a review of the terms, structure, and operation of the ordinances that would be repealed and prohibited by Amendment 2. Even if, as the State contends, homosexuals can find protection in laws and policies of general application, Amendment 2 goes well beyond merely depriving them of special rights. It imposes a broad disability upon those persons alone, forbidding them, but no others, to seek specific legal protection from injuries caused by discrimination in a wide range of public and private transactions. Pp. 1624-1627.

(b) In order to reconcile the Fourteenth Amendment's promise that no person shall be denied equal protection with the practical reality that most legislation

classifies for one purpose or another, the Court has stated that it will uphold a law that neither burdens a fundamental right nor targets a suspect class so long as the legislative classification bears a rational relation to some independent and legitimate legislative end. See, e.g., *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642-2643, 125 L.Ed.2d 257 (1993). Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment is at once too narrow and too broad, identifying persons by a single trait and then denying them the possibility of protection across the board. This disqualification of a class of persons from the right to obtain specific protection from the law is unprecedented and is itself a denial of equal protection in the most literal sense. Second, the sheer breadth of Amendment 2, which makes a general announcement that gays and lesbians shall not have any particular protections from the law, is so far removed from the reasons offered for it, i.e., respect for other citizens' freedom of association, particularly landlords or employers who have personal or religious objections to homosexuality, and the State's interest in conserving resources to fight discrimination against other groups, that the amendment cannot be explained by reference to those reasons; the amendment raises the inevitable inference that it is born of animosity toward the class that it affects. Amendment 2 cannot be said to be directed to an identifiable legitimate purpose or discrete objective. It is a status-

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based classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. Pp. 1627-1629.

Equal Protection Clause enforces this principle and today requires us to hold invalid a provision of Colorado's Constitution.

882 P.2d 1335 (Colo.1994), affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and THOMAS, J., joined. *post*, p. 1629.

Timothy M. Tymkovich, Denver, CO, for petitioners.

Jean E. Dubofsky, Boulder, CO, Suzanne B. Goldberg, New York City, Matthew Coles, San Francisco, CA, for respondents. For U.S. Supreme Court briefs, see: 1996 WL 310026 (Pet.Brief) 1995 WL 417786 (Resp.Brief) 1996 WL 370335 (Resp.Brief) 1995 WL 466395 (Reply.Brief)

\*623 Justice KENNEDY delivered the opinion of the Court.

One century ago, the first Justice Harlan admonished this Court that the Constitution "neither knows nor tolerates classes among citizens." *Plessy v. Ferguson*, 163 U.S. 537, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256 (1896) (dissenting opinion). Unheeded then, those words now are understood to state a commitment to the law's neutrality where the rights of persons are at stake. The

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The enactment challenged in this case is an amendment to the Constitution of the State of Colorado, adopted in a 1992 statewide referendum. The parties and the state courts refer to it as "Amendment 2," its designation when submitted to the voters.

The impetus for the amendment and the contentious campaign that preceded its adoption came in large part from ordinances that had been passed in various Colorado municipalities. For example, the cities of Aspen and Boulder and the city and County of Denver each had \*624 enacted ordinances which banned discrimination in many transactions and activities, including housing, employment, education, public accommodations, and health and welfare services. Denver Rev. Municipal Code, Art. IV, §§ 28-91 to 28-116 (1991); Aspen Municipal Code § 13-98 (1977); Boulder Rev.Code §§ 12-1-1 to 12-1-11 (1987). What gave rise to the statewide controversy was the protection the ordinances afforded to persons discriminated against by reason of their sexual orientation. See Boulder Rev.Code § 12-1-1 (defining "sexual orientation" as "the choice of sexual partners, i.e., bisexual, homosexual or heterosexual"); Denver Rev. Municipal

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Code, Art. IV, § 28-92 (defining "sexual orientation" as "[t]he status of an individual as to his or her heterosexuality, homosexuality or bisexuality"). Amendment 2 repeals these ordinances to the extent they prohibit discrimination on the basis of "homosexual, lesbian or bisexual orientation, conduct, practices or relationships." Colo. Const., Art. II, § 30b

Yet Amendment 2, in explicit terms, does more than repeal or rescind these provisions. It prohibits all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians. The amendment reads:

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

\*\*1624 \*625 Soon after Amendment 2

was adopted, this litigation to declare its invalidity and enjoin its enforcement was commenced in the District Court for the City and County of Denver. Among the plaintiffs (respondents here) were homosexual persons, some of them government employees. They alleged that enforcement of Amendment 2 would subject them to immediate and substantial risk of discrimination on the basis of their sexual orientation. Other plaintiffs (also respondents here) included the three municipalities whose ordinances we have cited and certain other governmental entities which had acted earlier to protect homosexuals from discrimination but would be prevented by Amendment 2 from continuing to do so. Although Governor Romer had been on record opposing the adoption of Amendment 2, he was named in his official capacity as a defendant, together with the Colorado Attorney General and the State of Colorado.

The trial court granted a preliminary injunction to stay enforcement of Amendment 2, and an appeal was taken to the Supreme Court of Colorado. Sustaining the interim injunction and remanding the case for further proceedings, the State Supreme Court held that Amendment 2 was subject to strict scrutiny under the Fourteenth Amendment because it infringed the fundamental right of gays and lesbians to participate in the political process. *Evans v. Romer*, 854 P.2d 1270 (Colo.1993) (*Evans I*). To reach this conclusion, the state court relied on our

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voting rights cases, e.g., *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966); *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), and on our precedents involving discriminatory restructuring of governmental decisionmaking, see, e.g., *Hunter v. Erickson*, 393 U.S. 385, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969); *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 101 S.Ct. 3187, 73 L.Ed.2d 896 (1982); *Gordon v. Lance*, 403 U.S. 1, 91 S.Ct. 1889, 29 L.Ed.2d 273 (1971). On remand, the State advanced various arguments in an effort to show that \*626 Amendment 2 was narrowly tailored to serve compelling interests, but the trial court found none sufficient. It enjoined enforcement of Amendment 2, and the Supreme Court of Colorado, in a second opinion, affirmed the ruling, 882 P.2d 1335 (1994) (*Evans II*). We granted certiorari, 513 U.S. 1146, 115 S.Ct. 1092, 130 L.Ed.2d 1061 (1995), and now affirm the judgment, but on a rationale different from that adopted by the State Supreme Court.

## II

[1] The State's principal argument in defense of Amendment 2 is that it puts

gays and lesbians in the same position as all other persons. So, the State says, the measure does no more than deny homosexuals special rights. This reading of the amendment's language is implausible. We rely not upon our own interpretation of the amendment but upon the authoritative construction of Colorado's Supreme Court. The state court, deeming it unnecessary to determine the full extent of the amendment's reach, found it invalid even on a modest reading of its implications. The critical discussion of the amendment, set out in *Evans I*, is as follows:

"The immediate objective of Amendment 2 is, at a minimum, to repeal existing statutes, regulations, ordinances, and policies of state and local entities that barred discrimination based on sexual orientation. See Aspen, Colo., Mun.Code § 13-98 (1977) (prohibiting discrimination in employment, housing and public accommodations on the basis of sexual orientation); Boulder, Colo., Rev.Code §§ 12-1-2 to -4 (1987) (same); Denver, Colo., Rev. Mun.Code art. IV, §§ 28-91 to -116 (1991) (same); Executive Order No. D0035 (December 10, 1990) (prohibiting employment discrimination for 'all state employees, classified and exempt' on the basis of sexual orientation); Colorado Insurance Code, § 10-3-1104, 4A C.R.S. (1992 Supp.) (forbidding health insurance providers from determining insurability and premiums based on an applicant's, a beneficiary's, or an insured's \*627 sexual orientation); and various provisions\*\*1625

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prohibiting discrimination based on sexual orientation at state colleges.<sup>26</sup>

FN<sup>26</sup>--Metropolitan State College of Denver prohibits college sponsored social clubs from discriminating in membership on the basis of sexual orientation and Colorado State University has an antidiscrimination policy which encompasses sexual orientation.

"The 'ultimate effect' of Amendment 2 is to prohibit any governmental entity from adopting similar, or more protective statutes, regulations, ordinances, or policies in the future unless the state constitution is first amended to permit such measures." 854 P.2d, at 1284-1285, and n. 26.

Sweeping and comprehensive is the change in legal status effected by this law. So much is evident from the ordinances the Colorado Supreme Court declared would be void by operation of Amendment 2. Homosexuals, by state decree, are put in a solitary class with respect to transactions and relations in both the private and governmental spheres. The amendment withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbids reinstatement of these laws and policies.

[2] The change Amendment 2 works in the legal status of gays and lesbians in the private sphere is far reaching, both on its own terms and when considered in light of the structure and operation of modern anti-discrimination laws. That structure is well illustrated by contemporary statutes and ordinances prohibiting discrimination by providers of public accommodations. "At common law, innkeepers, smiths, and others who 'made profession of a public employment,' were prohibited from refusing, without good reason, to serve a customer." *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 571, 115 S.Ct. 2338, 2346, 132 L.Ed.2d 487 (1995). The duty was a general one and did not specify protection for particular groups. The common-law rules, however, proved \*628 insufficient in many instances, and it was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations. *Civil Rights Cases*, 109 U.S. 3, 25, 3 S.Ct. 18, 31-32, 27 L.Ed. 835 (1883). In consequence, most States have chosen to counter discrimination by enacting detailed statutory schemes. See, e.g., S.D. Codified Laws §§ 20-13-10, 20-13-22, 20-13-23 (1995); Iowa Code §§ 216.6-216.8 (1994); Okla. Stat., Tit. 25, §§ 1502, 1402 (1987); 43 Pa. Cons.Stat. §§ 953, 955 (Supp.1995); N.J. Stat. Ann. §§ 10:5-3, 10:5-4 (West Supp.1995); N.H. Rev. Stat. Ann. §§ 354-A:7, 354-A:10, 354-A:17 (1995); Minn.Stat. § 363.03 (1991) and

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Supp.1995).

Colorado's state and municipal laws typify this emerging tradition of statutory protection and follow a consistent pattern.

The laws first enumerate the persons or entities subject to a duty not to discriminate. The list goes well beyond the entities covered by the common law.

The Boulder ordinance, for example, has a comprehensive definition of entities deemed places of "public accommodation."

They include "any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges, or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind." Boulder Rev.Code § 12-1-1(j) (1987). The Denver ordinance is of similar breadth, applying, for example, to hotels, restaurants, hospitals, dental clinics, theaters, banks, common carriers, travel and insurance agencies, and "shops and stores dealing with goods or services of any kind." Denver Rev. Municipal Code, Art. IV, § 28-92 (1991).

These statutes and ordinances also depart from the common law by enumerating the groups or persons within their ambit of protection. Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply. In following this approach, Colorado's state and local governments have \*629 not

limited antidiscrimination laws to groups that have so far been given the protection of heightened equal protection scrutiny under our cases. See, e.g., *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 135, 114 S.Ct. 1419, 1425, 128 L.Ed.2d 89 (1994) (sex); *Lalli v. Lalli*, 439 U.S. 259, 265, 99 S.Ct. 518, 523, 58 L.Ed.2d 503 (1978) (illegitimacy); \*\*1626 *McLaughlin v. Florida*, 379 U.S. 184, 191-192, 85 S.Ct. 283, 288-289, 13 L.Ed.2d 222 (1964) (race); *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948) (ancestry). Rather, they set forth an extensive catalog of traits which cannot be the basis for discrimination, including age, military status, marital status, pregnancy, parenthood, custody of a minor child, political affiliation, physical or mental disability of an individual or of his or her associates---and, in recent times, sexual orientation. Aspen Municipal Code § 13-98(a)(1) (1977); Boulder Rev.Code §§ 12-1-1 to 12-1-4 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-92 to 28-119 (1991); Colo.Rev.Stat. §§ 24-34-401 to 24-34-707 (1988 and Supp.1995).

Amendment 2 bars homosexuals from securing protection against the injuries that these public-accommodations laws address. That in itself is a severe consequence, but there is more. Amendment 2, in addition, nullifies specific legal protections for this targeted class in all transactions in housing, sale of real estate, insurance, health and welfare

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services, private education, and employment. See, e.g., Aspen Municipal Code §§ 13-98(b), (c) (1977); Boulder Rev.Code §§ 12-1-2, 12-1-3 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-93 to 28-95, 28-97 (1991).

Not confined to the private sphere, Amendment 2 also operates to repeal and forbid all laws or policies providing specific protection for gays or lesbians from discrimination by every level of Colorado government. The State Supreme Court cited two examples of protections in the governmental sphere that are now rescinded and may not be reintroduced. The first is Colorado Executive Order D0035 (1990), which forbids employment discrimination against "all state employees, classified and exempt on the basis of sexual orientation." 854 P.2d, at 1284. Also repealed, and now forbidden, are \*630 "various provisions prohibiting discrimination based on sexual orientation at state colleges." *Id.*, at 1284, 1285. The repeal of these measures and the prohibition against their future reenactment demonstrate that Amendment 2 has the same force and effect in Colorado's governmental sector as it does elsewhere and that it applies to policies as well as ordinary legislation.

Amendment 2's reach may not be limited to specific laws passed for the benefit of gays and lesbians. It is a fair, if not necessary, inference from the broad language of the amendment that it deprives

gays and lesbians even of the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings. See, e.g., Colo.Rev.Stat. § 24-4-106(7) (1988) (agency action subject to judicial review under arbitrary and capricious standard); § 18-8-405 (making it a criminal offense for a public servant knowingly, arbitrarily, or capriciously to refrain from performing a duty imposed on him by law); § 10-3-1104(1)(f) (prohibiting "unfair discrimination" in insurance); 4 Colo.Code of Regulations 801-1, Policy 11-1 (1983) (prohibiting discrimination in state employment on grounds of specified traits or "other non-merit factor"). At some point in the systematic administration of these laws, an official must determine whether homosexuality is an arbitrary and, thus, forbidden basis for decision. Yet a decision to that effect would itself amount to a policy prohibiting discrimination on the basis of homosexuality, and so would appear to be no more valid under Amendment 2 than the specific prohibitions against discrimination the state court held inval...

If this consequence follows from Amendment 2, as its broad language suggests, it would compound the constitutional difficulties the law creates. The state court did not decide whether the amendment has this effect, however, and neither need we. In the course of rejecting the argument that Amendment 2 is intended to conserve resources to fight

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discrimination against suspect classes, the Colorado Supreme\*631 Court made the limited observation that the amendment is not intended to affect many anti-discrimination laws protecting nonsuspect classes, *Romer II*, 882 P.2d, at 1346, n. 9. In our view that does not resolve the issue. In any event, even if, as we doubt, homosexuals could find some safe harbor in laws of general application, we cannot accept the view that Amendment 2's prohibition on specific legal protections does no more than deprive homosexuals\*\*1627 of special rights. To the contrary, the amendment imposes a special disability upon those persons alone. Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. They can obtain specific protection against discrimination only by enlisting the citizenry of Colorado to amend the State Constitution or perhaps, on the State's view, by trying to pass helpful laws of general applicability. This is so no matter how local or discrete the harm, no matter how public and widespread the injury. We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

### III

[3][4] The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 271-272, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870 (1979); *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561-562, 64 L.Ed. 989 (1920). We have attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end. See, e.g., *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S.Ct. 2637, 2642, 125 L.Ed.2d 257 (1993).

\*632 Amendment 2 fails, indeed defies, even this conventional inquiry. First, the amendment has the peculiar property of imposing a broad and undifferentiated disability on a single named group, an exceptional and, as we shall explain, invalid form of legislation. Second, its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.

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[5] Taking the first point, even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between classification and objective gives substance to the Equal Protection Clause; it provides guidance and discipline for the legislature, which is entitled to know what sorts of laws it can pass; and it marks the limits of our own authority. In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous. See *New Orleans v. Duquesne*, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976) (tourism benefits justified classification favoring pushcart vendors of certain longevity); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955) (assumed health concerns justified law favoring optometrists over opticians); *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533 (1949) (potential traffic hazards justified exemption of vehicles advertising the owner's products from general advertising ban); *Kotch v. Board of River Port Pilot Comm'rs for Port of New Orleans*, 330 U.S. 552, 67 S.Ct. 910, 91 L.Ed. 1093 (1947) (licensing scheme that disfavored persons unrelated to current river boat pilots justified by possible efficiency and safety benefits of a closely knit pilotage system). The laws

challenged in the cases just cited were narrow enough in scope and grounded in a sufficient factual context for us to \*633 ascertain some relation between the classification and the purpose it served. By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law. See *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 181, 101 S.Ct. 453, 462, 66 L.Ed.2d 368 (1980) (STEVENS, J., concurring) ("If the adverse impact on the disfavored class is an \*\*1628 apparent aim of the legislature, its impartiality would be suspect").

[6] Amendment 2 confounds this normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. The absence of precedent for Amendment 2 is itself instructive: "[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37-38, 48 S.Ct. 423, 425, 72 L.Ed. 770 (1928).

[7][8][9][10] It is not within our constitutional tradition to enact laws of this

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sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." " *Sweatt v. Painter*, 339 U.S. 629, 635, 70 S.Ct. 848, 850-851, 94 L.Ed. 1114 (1950) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 22, 68 S.Ct. 836, 846, 92 L.Ed. 1161 (1948)). Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense. "The guaranty of 'equal protection of the laws' \*634 is a pledge of the protection of equal laws." " *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220 (1886)).

*Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890), not cited by the parties but relied upon by the dissent, is not evidence that Amendment 2 is within our constitutional tradition, and any reliance upon it as authority for sustaining the amendment is misplaced. In *Davis*, the Court approved an Idaho territorial

statute denying Mormons, polygamists, and advocates of polygamy the right to vote and to hold office because, as the Court construed the statute, it "simply excludes from the privilege of voting, or of holding any office of honor, trust or profit, those who have been convicted of certain offences, and those who advocate a practical resistance to the laws of the Territory and justify and approve the commission of crimes forbidden by it." *Id.*, at 347, 10 S.Ct., at 302. To the extent *Davis* held that persons advocating a certain practice may be denied the right to vote, it is no longer good law. *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (*per curiam*). To the extent it held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling could not stand without surviving strict scrutiny, a most doubtful outcome. *Dunn v. Blumstein*, 405 U.S. 330, 337, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274 (1972); cf. *United States v. Brown*, 381 U.S. 437, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965); *United States v. Robel*, 339 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967). To the extent *Davis* held that a convicted felon may be denied the right to vote, its holding is not implicated by our decision and is unexceptionable. See *Richardson v. Ramirez*, 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974).

[11][12] A second and related point is that laws of the kind now before us raise the

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inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." \*635 *Department of Agriculture v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 2826, 37 L.Ed.2d 782 (1973). Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any \*\*1629 particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it. We conclude that, in addition to the far-reaching deficiencies of Amendment 2 that we have noted, the principles it offends, in another sense, are conventional and venerable: a law must bear a rational relationship to a legitimate governmental purpose. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 462, 108 S.Ct. 2481, 2489-2490, 101 L.Ed.2d 399 (1988), and Amendment 2 does not.

[13] The primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in

particular the liberties of landlords or employers who have personal or religious objections to homosexuality. Colorado also cites its interest in conserving resources to fight discrimination against other groups. The breadth of the amendment is so far removed from these particular justifications that we find it impossible to credit them. We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective. It is a status-based enactment divorced from any factual context from which we could discern a relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. "[C]lass legislation ... [is] obnoxious to the prohibitions of the Fourteenth Amendment. ..." *Civil Rights Cases*, 109 U.S., at 24, 3 S.Ct., at 30.

We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws. Amendment 2 violates the Equal Protection Clause. \*636 and the judgment of the Supreme Court of Colorado is affirmed.

*It is so ordered.*

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join,

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dissenting.

The Court has mistaken a Kulturkampf for a fit of spite. The constitutional amendment before us here is not the manifestation of a "bare ... desire to harm" homosexuals, *ante*, at 1628, but is rather a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores through use of the laws. That objective, and the means chosen to achieve it, are not only unimpeachable under any constitutional doctrine hitherto pronounced (hence the opinion's heavy reliance upon principles of righteousness rather than judicial holdings); they have been specifically approved by the Congress of the United States and by this Court.

In holding that homosexuality cannot be singled out for disfavorable treatment, the Court contradicts a decision, unchallenged here, pronounced only 10 years ago, see *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), and places the prestige of this institution behind the proposition that opposition to homosexuality is as reprehensible as racial or religious bias. Whether it is or not is *precisely* the cultural debate that gave rise to the Colorado constitutional amendment (and to the preferential laws against which the amendment was directed). Since the Constitution of the United States says nothing about this subject, it is left to be resolved by normal democratic means, including the democratic adoption of

provisions in state constitutions. This Court has no business imposing upon all Americans the resolution favored by the elite class from which the Members of this institution are selected, pronouncing that "animosity" toward homosexuality, *ante*, at 1628, is evil. I vigorously dissent.

\*637 I

Let me first discuss Part II of the Court's opinion, its longest section, which is devoted to rejecting the State's arguments that Amendment 2 "puts gays and lesbians in the same position as all other persons," and "does no more than deny homosexuals special rights." *ante*, at 1624. The Court concludes that this reading of Amendment 2's language is "implausible" under the "authoritative\*\*1630 construction" given Amendment 2 by the Supreme Court of Colorado. *Ibid*.

In reaching this conclusion, the Court considers it unnecessary to decide the validity of the State's argument that Amendment 2 does not deprive homosexuals of the "protection [afforded by] general laws and policies that prohibit arbitrary discrimination in governmental and private settings." *Ante*, at 1626. I agree that we need not resolve that dispute, because the Supreme Court of Colorado has resolved it for us. In the case below, 882 P.2d 1335 (1994), the Colorado court stated:

"[I]t is significant to note that Colorado

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law currently proscribes discrimination against persons who are not suspect classes, including discrimination based on age, § 24-34-402(1)(a), 10A C.R.S. (1994 Supp.); marital or family status, § 24-34-502(1)(a), 10A C.R.S. (1994 Supp.); veterans' status, § 28-3-506, 11B C.R.S. (1989); and for any legal, off-duty conduct such as smoking tobacco, § 24-34-402.5, 10A C. R.S. (1994 Supp.). *Of course Amendment 2 is not intended to have any effect on this legislation, but seeks only to prevent the adoption of antidiscrimination laws intended to protect gays, lesbians, and bisexuals.*" *Id.*, at 1346, n. 9 (emphasis added).

The Court utterly fails to distinguish this portion of the Colorado court's opinion. Colorado Rev. Stat. § 24-34-402.5 (Supp.1995), which this passage authoritatively declares *not* to be affected by Amendment 2, was respondents' primary \*638 example of a generally applicable law whose protections would be unavailable to homosexuals under Amendment 2. See Brief for Respondents Evans et al. 11-12. The clear import of the Colorado court's conclusion that it is not affected is that "general laws and policies that prohibit arbitrary discrimination" would continue to prohibit discrimination on the basis of homosexual conduct as well. This analysis, which is fully in accord with (indeed, follows inescapably from) the text of the constitutional provision, lays to rest such horrors, raised in the course of oral

argument, as the prospect that assaults upon homosexuals could not be prosecuted. The amendment prohibits *special treatment* of homosexuals, and nothing more. It would not affect, for example, a requirement of state law that pensions be paid to all retiring state employees with a certain length of service; homosexual employees, as well as others, would be entitled to that benefit. But it would prevent the State or any municipality from making death-benefit payments to the "life partner" of a homosexual when it does not make such payments to the long-time roommate of a nonhomosexual employee. Or again, it does not affect the requirement of the State's general insurance laws that customers be afforded coverage without discrimination unrelated to anticipated risk. Thus, homosexuals could not be denied coverage, or charged a greater premium, with respect to auto collision insurance; but neither the State nor any municipality could require that distinctive health insurance risks associated with homosexuality (if there are any) be ignored.

Despite all of its hand wringing about the potential effect of Amendment 2 on general antidiscrimination laws, the Court's opinion ultimately does not dispute all this, but assumes it to be true. See *ante*, at 1626. The only denial of equal treatment it contends homosexuals have suffered is this: They may not obtain *preferential* treatment without amending the State Constitution. That is to say, the principle

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underlying the Court's opinion is that one who is accorded\*639 equal treatment under the laws, but cannot as readily as others obtain *preferential* treatment under the laws, has been denied equal protection of the laws. If merely stating this alleged "equal protection" violation does not suffice to refute it, our constitutional jurisprudence has achieved terminal silliness.

The central thesis of the Court's reasoning is that any group is denied equal protection when, to obtain advantage (or, presumably, to avoid disadvantage), it must have recourse to a more general and hence more difficult level of political decisionmaking than others. The world has never heard of such a principle, which is why the Court's opinion is so long on emotive utterance and so short on relevant legal citation. And it seems to me most unlikely that any multilevel democracy can function under such a principle. For *whenever* a disadvantage is imposed, or conferral \*\*1631 of a benefit is prohibited, at one of the higher levels of democratic decisionmaking (*i.e.*, by the state legislature rather than local government, or by the people at large in the state constitution rather than the legislature), the affected group has (under this theory) been denied equal protection. To take the simplest of examples, consider a state law prohibiting the award of municipal contracts to relatives of mayors or city councilmen. Once such a law is passed, the group composed of such relatives must, in order to get the benefit of city contracts,

persuade the state legislature-unlike all other citizens, who need only persuade the municipality. It is ridiculous to consider this a denial of equal protection, which is why the Court's theory is unheard of.

The Court might reply that the example I have given is *not* a denial of equal protection only because the same "rational basis" (avoidance of corruption) which renders constitutional the *substantive discrimination* against relatives (*i.e.*, the fact that they alone cannot obtain city contracts) also automatically suffices to sustain what might be called the *electoral-procedural discrimination* against them (*i.e.*, \*640 the fact that they must go to the state level to get this changed). This is of course a perfectly reasonable response, and would explain why "electoral-procedural discrimination" has not hitherto been heard of: A law that is valid in its substance is automatically valid in its level of enactment. But the Court cannot afford to make this argument, for as I shall discuss next, there is no doubt of a rational basis for the substance of the prohibition at issue here. The Court's entire novel theory rests upon the proposition that there is something *special*-something that cannot be justified by normal "rational basis" analysis-in making a disadvantaged group (or a nonpreferred group) resort to a higher decisionmaking level. That proposition finds no support in law or logic.

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## II

I turn next to whether there was a legitimate rational basis for the substance of the constitutional amendment—for the prohibition of special protection for homosexuals.<sup>FNI</sup> It is unsurprising that the Court avoids discussion of this question, since the answer is so obviously yes. The case most relevant to the issue before us today is not even mentioned in the Court's opinion: In *Bowers v. Hardwick*, 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), we held that the Constitution does not prohibit what virtually all States had done from the founding of the Republic until very recent years—making homosexual conduct a crime. That holding is unassailable, except by those who \*641 think that the Constitution changes to suit current fashions. But in any event it is a given in the present case: Respondents' briefs did not urge overruling *Bowers*, and at oral argument respondents' counsel expressly disavowed any intent to seek such overruling. Tr. of Oral Arg. 53. If it is constitutionally permissible for a State to make homosexual conduct criminal, surely it is constitutionally permissible for a State to enact other laws merely *disfavoring* homosexual conduct. (As the Court of Appeals for the District of Columbia Circuit has aptly put it: "If the Court [in *Bowers*] was unwilling to object to state laws that criminalize the behavior that defines the class, it is hardly open ... to conclude that state sponsored discrimination against the class is

invidious. After all, there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal." *Padula v. Webster*, 822 F.2d 97, 103 (1987).) And *a fortiori* it is constitutionally permissible for a State to adopt a provision *not even* disfavoring homosexual conduct, but merely prohibiting \*\*1632 all levels of state government from bestowing *special protections* upon homosexual conduct. Respondents (who, unlike the Court, cannot afford the luxury of ignoring inconvenient precedent) counter *Bowers* with the argument that a greater-includes-the-lesser rationale cannot justify Amendment 2's application to individuals who do not engage in homosexual acts, but are merely of homosexual "orientation." Some Courts of Appeals have concluded that, with respect to laws of this sort at least, that is a distinction without a difference. See *Equality Foundation of Greater Cincinnati, Inc. v. Cincinnati*, 54 F.3d 261, 267 (C.A.6 1995) ("[F]or purposes of these proceedings, it is virtually impossible to distinguish or separate individuals of a particular *orientation* which predisposes them toward a particular sexual conduct from those who actually *engage* in that particular type of sexual conduct"); *Steffan v. Perry*, 41 F.3d 677, 689-690 (C.A.D.C.1994). The Supreme Court of Colorado itself appears to be of this view. See \*642882 P.2d, at 1349-1350 ("Amendment 2 targets this class of persons based on four characteristics: sexual

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orientation; conduct; practices, and relationships. Each characteristic provides a potentially different way of identifying that class of persons who are gay, lesbian, or bisexual. These four characteristics are not truly severable from one another because each provides nothing more than a different way of identifying *the same class of persons*”) (emphasis added).

FNI. The Court evidently agrees that “rational basis”—the normal test for compliance with the Equal Protection Clause—is the governing standard. The trial court rejected respondents’ argument that homosexuals constitute a “suspect” or “quasi-suspect” class, and respondents elected not to appeal that ruling to the Supreme Court of Colorado. See 882 P.2d 1335, 1341, n. 5 (1994). And the Court implicitly rejects the Supreme Court of Colorado’s holding, *Evans v. Romer*, 854 P.2d 1270, 1282 (1993), that Amendment 2 infringes upon a “fundamental right” of “independently identifiable class[es]” to “participate equally in the political process.” See *ante*, at 1624.

But assuming that, in Amendment 2, a person of homosexual “orientation” is someone who does not engage in homosexual conduct but merely has a tendency or desire to do so, *Bowers* still

suffices to establish a rational basis for the provision. If it is rational to criminalize the conduct, surely it is rational to deny special favor and protection to those with a self-avowed tendency or desire to engage in the conduct. Indeed, where criminal sanctions are not involved, homosexual “orientation” is an acceptable stand-in for homosexual conduct. A State “does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.” *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). Just as a policy barring the hiring of methadone users as transit employees does not violate equal protection simply because *some* methadone users pose no threat to passenger safety, see *New York City Transit Authority v. Beazer*, 440 U.S. 568, 99 S.Ct. 1355, 59 L.Ed.2d 587 (1979), and just as a mandatory retirement age of 50 for police officers does not violate equal protection even though it prematurely ends the careers of many policemen over 50 who still have the capacity to do the job, see *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) (*per curiam*), Amendment 2 is not constitutionally invalid simply because it could have been drawn more precisely so as to withdraw special antidiscrimination protections only from those of homosexual “orientation” who actually engage in homosexual conduct. As Justice KENNEDY wrote, when he was on the Court of Appeals, in a case involving discharge of homosexuals

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from the Navy: "Nearly any \*643 statute which classifies people may be irrational as applied in particular cases. Discharge of the particular plaintiffs before us would be rational, under minimal scrutiny, not because their particular cases present the dangers which justify Navy policy, but instead because the general policy of discharging all homosexuals is rational." *Beller v. Middendorf*, 632 F.2d 788, 808-809, n. 20 (C.A.9 1980) (citation omitted). See also *Ben-Shalom v. Marsh*, 881 F.2d 454, 464 (C.A.7 1989), cert. denied, 494 U.S. 1004, 110 S.Ct. 1296, 108 L.Ed.2d 473 (1990).

Moreover, even if the provision regarding homosexual "orientation" were invalid, respondents' challenge to Amendment 2-which is a facial challenge-must fail. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."

*United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100, 95 L.Ed.2d 697 (1987). It would not be enough for respondents to establish (if they could) that Amendment 2 is unconstitutional as applied to those of homosexual "orientation"; since, under *Bowers*, Amendment 2 is unquestionably constitutional as applied \*\*1633 to those who engage in homosexual conduct, the facial challenge cannot succeed. Some individuals of homosexual "orientation" who do not engage in homosexual acts might

successfully bring an as-applied challenge to Amendment 2, but so far as the record indicates, none of the respondents is such a person. See App. 4-5 (complaint describing each of the individual respondents as either "a gay man" or "a lesbian").<sup>FN2</sup>

FN2. The Supreme Court of Colorado stated: "We hold that the portions of Amendment 2 that would remain if only the provision concerning sexual orientation were stricken are not autonomous and thus, not severable." 882 P.2d, at 1349. That statement was premised, however, on the proposition that "[the] four characteristics [described in the Amendment-sexual orientation, conduct, practices, and relationships] are not truly severable from one another because each provides nothing more than a different way of identifying the same class of persons." *Id.*, at 1349-1350 (emphasis added). As I have discussed above, if that premise is true-if the entire class affected by the Amendment takes part in homosexual conduct, practices, and relationships-*Bowers* alone suffices to answer all constitutional objections. Separate consideration of persons of homosexual "orientation" is necessary only if one believes (as

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the Supreme Court of Colorado did not) that that is a distinct class.

**\*644 III**

The foregoing suffices to establish what the Court's failure to cite any case remotely in point would lead one to suspect: No principle set forth in the Constitution, nor even any imagined by this Court in the past 200 years, prohibits what Colorado has done here. But the case for Colorado is much stronger than that. What it has done is not only unprohibited, but eminently reasonable, with close, congressionally approved precedent in earlier constitutional practice.

First, as to its eminent reasonableness. The Court's opinion contains grim, disapproving hints that Coloradans have been guilty of "animus" or "animosity" toward homosexuality, as though that has been established as un-American. Of course it is our moral heritage that one should not hate any human being or class of human beings. But I had thought that one could consider certain conduct reprehensible—murder, for example, or polygamy, or cruelty to animals—and could exhibit even "animus" toward such conduct. Surely that is the only sort of "animus" at issue here: moral disapproval of homosexual conduct, the same sort of moral disapproval that produced the centuries-old criminal laws that we held constitutional in *Bowers*. The Colorado amendment does not, to speak entirely

precisely, prohibit giving favored status to people who are *homosexuals*; they can be favored for many reasons—for example, because they are senior citizens or members of racial minorities. But it prohibits giving them favored status *because of their homosexual conduct*—that is, it prohibits favored status *for homosexuality*.

But though Coloradans are, as I say, *entitled* to be hostile toward homosexual conduct, the fact is that the degree of hostility reflected by Amendment 2 is the smallest conceivable.\*645 The Court's portrayal of Coloradans as a society tallen victim to pointless, hate-filled "gay-bashing" is so false as to be comical. Colorado not only is one of the 25 States that have repealed their antisodomy laws, but was among the first to do so. See 1971 Colo. Sess. Laws, ch. 121, § 1. But the society that eliminates criminal punishment for homosexual acts does not necessarily abandon the view that homosexuality is morally wrong and socially harmful; often, abolition simply reflects the view that enforcement of such criminal laws involves unseemly intrusion into the intimate lives of citizens. Cf. Brief for Lambda Legal Defense and Education Fund, Inc., et al. as *Amici Curiae* in *Bowers v. Hardwick*, O.T. 1985, No. 85-140, p. 25, n. 21 (antisodomy statutes are "unenforceable by any but the most offensive snooping and wasteful allocation of law enforcement resources"); Kadish, *The Crisis of Overcriminalization*, 374 *The*

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Annals of the American Academy of Political and Social Science 157, 161 (1967) ("To obtain evidence [in sodomy cases], police are obliged to resort to behavior which tends to degrade and demean both themselves personally and law enforcement as an institution").

There is a problem, however, which arises when criminal sanction of homosexuality is eliminated but moral and social disapprobation of homosexuality is meant to be retained. \*\*1634 The Court cannot be unaware of that problem: it is evident in many cities of the country, and occasionally bubbles to the surface of the news, in heated political disputes over such matters as the introduction into local schools of books teaching that homosexuality is an optional and fully acceptable "alternative life style." The problem (a problem, that is, for those who wish to retain social disapprobation of homosexuality) is that, because those who engage in homosexual conduct tend to reside in disproportionate numbers in certain communities, see Record, Exh. MMM, have high disposable income, see *ibid.*: App. 254 (affidavit of Prof. James Hunter), and, of course, care about homosexual-rights issues much \*646 more ardently than the public at large, they possess political power much greater than their numbers, both locally and statewide. Quite understandably, they devote this political power to achieving not merely a grudging social toleration, but full social acceptance, of homosexuality. See, e.g.,

Jacobs, *The Rhetorical Construction of Rights: The Case of the Gay Rights Movement, 1969-1991*, 72 Neb. L.Rev. 723, 724 (1993) ("[T]he task of gay rights proponents is to move the center of public discourse along a continuum from the rhetoric of disapprobation, to rhetoric of tolerance, and finally to affirmation").

By the time Coloradans were asked to vote on Amendment 2, their exposure to homosexuals' quest for social endorsement was not limited to newspaper accounts of happenings in places such as New York, Los Angeles, San Francisco, and Key West. Three Colorado cities-Aspen, Boulder, and Denver-had enacted ordinances that listed "sexual orientation" as an impermissible ground for discrimination, equating the moral disapproval of homosexual conduct with racial and religious bigotry. See Aspen Municipal Code § 13-98 (1977); Boulder Rev. Municipal Code §§ 12-1-1 to 12-1-11 (1987); Denver Rev. Municipal Code, Art. IV, §§ 28-91 to 28-116 (1991). The phenomenon had even appeared statewide: The Governor of Colorado had signed an executive order pronouncing that "in the State of Colorado we recognize the diversity in our pluralistic society and strive to bring an end to discrimination in any form," and directing state agency-heads to "ensure non-discrimination" in hiring and promotion based on, among other things, "sexual orientation." Executive Order No. D0035 (Dec. 10, 1990). I do not mean to be critical of

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these legislative successes: homosexuals are as entitled to use the legal system for reinforcement of their moral sentiments as is the rest of society. But they are subject to being countered by lawful, democratic countermeasures as well.

\*617 That is where Amendment 2 came in. It sought to counter both the geographic concentration and the disproportionate political power of homosexuals by (1) resolving the controversy at the statewide level, and (2) making the election a single-issue contest for both sides. It put directly, to all the citizens of the State, the question: Should homosexuality be given special protection? They answered no. The Court today asserts that this most democratic of procedures is unconstitutional. Lacking any cases to establish that facially absurd proposition, it simply asserts that it *must* be unconstitutional, because it has never happened before.

"[Amendment 2] identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. The absence of precedent for Amendment 2 is itself instructive....

"It is not within our constitutional tradition to enact laws of this sort. Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on

impartial terms to all who seek its assistance." *Ante.* at 1627-1628.

As I have noted above, this is proved false every time a state law prohibiting or disfavoring certain conduct is passed, because such a law prevents the adversely affected group-whether drug addicts, or smokers, or gun owners, or motorcyclists-from changing the policy thus established in "each of [the] parts" of the State. What the Court says is even demonstrably false at the constitutional level. The Eighteenth Amendment to the \*\*1635 Federal Constitution, for example, deprived those who drank alcohol not only of the power to alter the policy of prohibition *locally* or through *state legislation*, but even of the power to alter it through *state constitutional amendment* or *federal legislation*. The \*648 Establishment Clause of the First Amendment prevents theocrats from having their way by converting their fellow citizens at the local, state, or federal statutory level: as does the Republican Form of Government Clause prevent monarchists.

But there is a much closer analogy, one that involves precisely the effort by the majority of citizens to preserve its view of sexual morality statewide, against the efforts of a geographically concentrated and politically powerful minority to undermine it. The Constitutions of the States of Arizona, Idaho, New Mexico, Oklahoma, and Utah *to this day* contain

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provisions stating that polygamy is "forever prohibited." See Ariz. Const., Art. XX, par. 2; Idaho Const., Art. I, § 4; N.M. Const., Art. XXI, § 1; Okla. Const., Art. I, § 2; Utah Const., Art. III, § 1. Polygamists, and those who have a polygamous "orientation," have been "singled out" by these provisions for much more severe treatment than merely denial of favored status: and that treatment can only be changed by achieving amendment of the state constitutions. The Court's disposition today suggests that these provisions are unconstitutional, and that polygamy must be permitted in these States on a state-legislated, or perhaps even local-option, basis-unless, of course, polygamists for some reason have fewer constitutional rights than homosexuals.

The United States Congress, by the way, *required* the inclusion of these antipolygamy provisions in the Constitutions of Arizona, New Mexico, Oklahoma, and Utah, as a condition of their admission to statehood. See Arizona Enabling Act, 36 Stat. 569; New Mexico Enabling Act, 36 Stat. 558; Oklahoma Enabling Act, 34 Stat. 269; Utah Enabling Act, 28 Stat. 108. (For Arizona, New Mexico, and Utah, moreover, the Enabling Acts required that the antipolygamy provisions be "irrevocable without the consent of the United States and the people of said State"-so that not only were "each of [the] parts" of these States not "open on impartial terms" to polygamists, but even the States as a whole were not; \*649

polygamists would have to persuade the whole country to their way of thinking.) Idaho adopted the constitutional provision on its own, but the 51st Congress, which admitted Idaho into the Union, found its Constitution to be "republican in form *and* ... *in conformity with the Constitution of the United States.*" Act of Admission of Idaho, 26 Stat. 215 (emphasis added). Thus, this "singling out" of the sexual practices of a single group for statewide, democratic vote-so utterly alien to our constitutional system, the Court would have us believe-has not only happened, but has received the explicit approval of the United States Congress.

I cannot say that this Court has explicitly approved any of these state constitutional provisions; but it has approved a territorial statutory provision that went even further, depriving polygamists of the ability even to achieve a constitutional amendment, by depriving them of the power to vote. In *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637 (1890), Justice Field wrote for a unanimous Court:

"In our judgment, § 501 of the Revised Statutes of Idaho Territory, which provides that 'no person ... who is a bigamist or polygamist or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization or association which teaches,

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
(Cite as: 517 U.S. 620, 116 S.Ct. 1620)

advises, counsels, or encourages its members or devotees or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law ... is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this Territory," *is not open to any constitutional or legal objection.*" *Id.*, at 346-347, 10 S.Ct., at 302 (emphasis added).

To the extent, if any, that this opinion permits the imposition of adverse consequences upon mere abstract advocacy of polygamy,\*650 it has, of course, been overruled by later cases. See \*\*1636 *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (*per curiam*). But the proposition that polygamy can be criminalized, and those engaging in that crime deprived of the vote, remains good law. See *Richardson v. Ramirez*, 418 U.S. 24, 53, 94 S.Ct. 2655, 2670, 41 L.Ed.2d 551 (1974). *Beason* rejected the argument that "such discrimination is a denial of the equal protection of the laws." Brief for Appellant in *Davis v. Beason*, O.T. 1889, No. 1261, p. 41. Among the Justices joining in that rejection were the two whose views in other cases the Court today treats as equal protection lodestars—Justice Harlan, who was to proclaim in *Plessy v. Ferguson*, 163 U.S. 57, 559, 16 S.Ct. 1138, 1146, 41 L.Ed. 256 (1896) (dissenting opinion), that the Constitution "neither knows nor tolerates classes among citizens," quoted *ante*, at 1623, and Justice

Bradley, who had earlier declared that "class legislation ... [is] obnoxious to the prohibitions of the Fourteenth Amendment." *Civil Rights Cases*, 109 U.S. 3, 24, 3 S.Ct. 18, 30, 27 L.Ed. 835 (1883), quoted *ante*, at 1629.<sup>FN3</sup>

FN3. The Court labors mightily to get around *Beason*, see *ante*, at 1628, but cannot escape the central fact that this Court found the statute at issue—which went much further than Amendment 2, denying polygamists not merely special treatment but the right to vote—"not open to any constitutional or legal objection," rejecting the appellant's argument (much like the argument of respondents today) that the statute impermissibly "single[d] him out." Brief for Appellant in *Davis v. Beason*, O.T. 1889, No. 1261, p. 41. The Court adopts my conclusions that (a) insofar as *Beason* permits the imposition of adverse consequences based upon mere advocacy, it has been overruled by subsequent cases, and (b) insofar as *Beason* holds that convicted felons may be denied the right to vote, it remains good law. To these conclusions, it adds something new: the claim that "[t]o the extent [*Beason*] held that the groups designated in the statute may be deprived of the right to vote because of their status, its ruling

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could not stand without surviving strict scrutiny, a most doubtful outcome." *Ante*, at 1628. But if that is so, it is only because we have declared the right to vote to be a "fundamental political right," see, e.g., *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999-1000, 31 L.Ed.2d 274 (1972), deprivation of which triggers strict scrutiny. Amendment 2, of course, does not deny the fundamental right to vote, and the Court rejects the Colorado court's view that there exists a fundamental right to participate in the political process. Strict scrutiny is thus not in play here. See *ante*, at 1627. Finally, the Court's suggestion that § 501 of the Revised Statutes of Idaho, and Amendment 2, deny rights on account of "status" (rather than conduct) opens up a broader debate involving the significance of *Bowers* to this case, a debate which the Court is otherwise unwilling to join. see *supra*, at 1631-1633.

\*651 This Court cited *Beason* with approval as recently as 1993, in an opinion authored by the same Justice who writes for the Court today. That opinion said: "[A]dverse impact will not always lead to a finding of impermissible targeting. For example, a social harm may have been a legitimate concern of government for reasons quite apart from discrimination.... See, e.g., ... *Davis v. Beason*, 133 U.S. 333

[10 S.Ct. 299, 33 L.Ed. 637] (1890)." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 535, 113 S.Ct. 2217, 2228, 124 L.Ed.2d 472 (1993). It remains to be explained how § 501 of the Idaho Revised Statutes was not an "impermissible targeting" of polygamists, but (the much more mild) Amendment 2 is an "impermissible targeting" of homosexuals. Has the Court concluded that the perceived social harm of polygamy is a "legitimate concern of government," and the perceived social harm of homosexuality is not?

#### IV

I strongly suspect that the answer to the last question is yes, which leads me to the last point I wish to make: The Court today, announcing that Amendment 2 "defies ... conventional [constitutional] inquiry," *ante*, at 1627, and "confounds [the] normal process of judicial review," *ante*, at 1628, employs a constitutional theory heretofore unknown to frustrate Colorado's reasonable effort to preserve traditional American moral values. The Court's stern disapproval of "animosity" towards homosexuality might be compared with what an earlier Court (including the revered Justices Harlan and Bradley) said in *Murphy v. Ramsey*, 114 U.S. 15, 5 S.Ct. 747, 29 L.Ed. 47 (1885), rejecting a constitutional challenge to a United States statute that denied the franchise in federal territories to those who engaged in

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polygamous cohabitation:

"[C]ertainly no legislation can be supposed more wholesome and necessary in the \*\*1637 founding of a free, self-governing \*652 commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." *Id.*, at 45, 5 S.Ct., at 764.

I would not myself indulge in such official praise for heterosexual monogamy, because I think it no business of the courts (as opposed to the political branches) to take sides in this culture war.

But the Court today has done so, not only by inventing a novel and extravagant constitutional doctrine to take the victory away from traditional forces, but even by verbally disparaging as bigotry adherence to traditional attitudes. To suggest, for example, that this constitutional amendment springs from nothing more than " 'a bare ... desire to harm a politically unpopular group,' " *ante*, at 1628, quoting *Department of Agriculture v. Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821, 2826, 37 L.Ed.2d 782 (1973), is nothing short of insulting. (It is also nothing short of preposterous to call "

politically unpopular" a group which enjoys enormous influence in American media and politics, and which, as the trial court here noted, though composing no more than 4% of the population had the support of 46% of the voters on Amendment 2, see App. to Pet. for Cert. C-18.)

When the Court takes sides in the culture wars, it tends to be with the knights rather than the villeins-and more specifically with the Templars, reflecting the views and values of the lawyer class from which the Court's Members are drawn. How that class feels about homosexuality will be evident to anyone who wishes to interview job applicants at virtually any of the Nation's law schools. The interviewer may refuse to offer a job because the applicant is a Republican; because he is an adulterer; because he went to the wrong \*653 prep school or belongs to the wrong country club; because he eats snails; because he is a womanizer; because she wears real-animal fur; or even because he hates the Chicago Cubs. But if the interviewer should wish not to be an associate or partner of an applicant because he disapproves of the applicant's homosexuality, *then* he will have violated the pledge which the Association of American Law Schools requires all its member schools to exact from job interviewers: "assurance of the employer's willingness" to hire homosexuals. Bylaws of the Association of American Law Schools, Inc. § 6-4(b); Executive

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517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730  
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Committee Regulations of the Association of American Law Schools § 6.19, in 1995 Handbook, Association of American Law Schools. This law-school view of what "prejudices" must be stamped out may be contrasted with the more plebeian attitudes that apparently still prevail in the United States Congress, which has been unresponsive to repeated attempts to extend to homosexuals the protections of federal civil rights laws, see, e.g., Employment Non-Discrimination Act of 1994, S. 2238, 103d Cong., 2d Sess. (1994); Civil Rights Amendments of 1975, H.R. 5452, 94th Cong., 1st Sess. (1975), and which took the pains to exclude them specifically from the Americans with Disabilities Act of 1990, see 42 U.S.C. § 12211(a) (1988 ed., Supp. V).

\* \* \*

Today's opinion has no foundation in American constitutional law, and barely pretends to. The people of Colorado have adopted an entirely reasonable provision which does not even disfavor homosexuals in any substantive sense, but merely denies them preferential treatment. Amendment 2 is designed to prevent piecemeal deterioration of the sexual morality favored by a majority of Coloradans, and is not only an appropriate means to that legitimate end, but a means that Americans have employed before. Striking it down is an act, not of judicial judgment, but of political will. I dissent.

U.S.Colo.,1996.

Romer v. Evans

517 U.S. 620, 116 S.Ct. 1620, 70 Fair Empl.Prac.Cas. (BNA) 1180, 68 Empl. Prac. Dec. P 44,013, 134 L.Ed.2d 855, 64 USLW 4353, 109 Ed. Law Rep. 539, 96 Cal. Daily Op. Serv. 3509, 96 Daily Journal D.A.R. 5730

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Rep Groenberq:

I called Pat Shier,  
Newly Director of Div.  
of Retirement & Benefits

There are a total of  
~~70~~ people enrolled for  
same-sex benefits

53 are retirees

17 are current employees

29,732 total retirees/members

0.18%

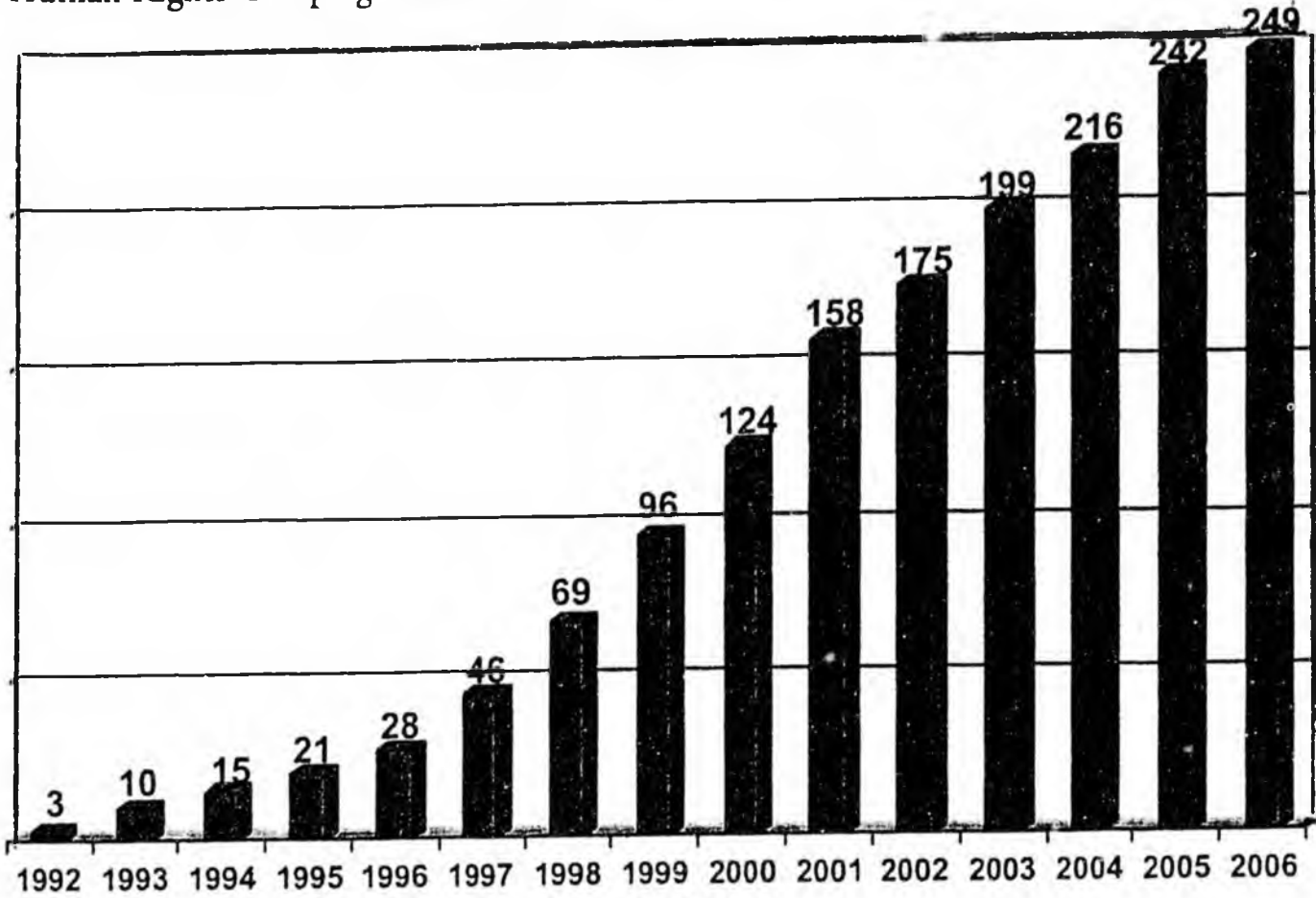
We do not track claim  
costs per retiree - so  
aren't able to quantify  
"how much" - Bitney

## The Business of Domestic Partner and Same-Sex Benefits

- In 1990 fewer than half a dozen US employers offered domestic partner/same-sex benefits; they are now rapidly becoming the norm.
- In 1992 only 3 of the Fortune 500 companies offered domestic partner/same-sex benefits; today over half (266) provide them, including 78 of the top 100.
- According to a 2005 study conducted by the national human resources firm Hewitt Associates, the main reason given for providing such benefits is a desire to attract and retain employees.
- Not only do most Fortune 500 companies now provide domestic partner/same-sex benefits, but so do over 8,000 other private employers in the United States.
- In addition to thousands of private sector employers, 13 state governments, over 140 local governments (including 7 of the 10 largest cities) and almost 300 colleges and universities (including 7 of the 10 largest universities) now provide such benefits.

Those who look to the private sector for guidance on how to run government should follow the practices established by America's largest and most successful companies. Why would Alaska want to forever ban an employment practice that every day is becoming more and more essential to attracting and retaining the most qualified workforce possible?

Figure 1: Domestic Partner Health Benefits — Fortune 500, By Year  
Human Rights Campaign Foundation



March 2006



## **Dr. Jeffrey Satinover Testifies Before Massachusetts Senate Committee Studying Gay Marriage**

On April 28, 2003, psychiatrist Dr. Jeffrey Satinover testified before the Massachusetts Senate Judicial Committee on various issues surrounding the subject homosexuality and the future of the family in America. Dr. Satinover is a member of NARTH's Scientific Advisory Committee.

Massachusetts is now debating the legalization of homosexual marriages. If such marriages are legalized in that state, a legal challenge of traditional marriage is expected in the remaining 49 states.

Dr. Satinover, author of *Homosexuality and the Politics of Truth*, urged the senators to carefully consider their actions. He observed:

"As you all know most keenly, the question before you is not merely one of academic dispute; rather, upon the outcome of your deliberations will depend the foundational social structure, hence direction of the Commonwealth in future, and in significant measure, that of our Nation as well."

He continued:

"It is therefore most urgent that these deliberations be based not only on compassion, and justice, but on the factual truth as well. Indeed, unless resting upon truth, neither justice nor compassion can long endure against shifts in sentiment."

Dr. Satinover discussed the following claims of homosexual activists, and offered a rebuttal to each of them. The claims he challenged were--

1. That homosexuality has been repeatedly demonstrated to be--and is in fact--an innate, genetically-determined condition.
2. That homosexuality is an immutable state.
3. That the only disadvantages of homosexuality are those caused by social disapproval and discrimination.
4. That a society composed of same-sex couples raising children in family-like units will differ in no undesirable ways from a society composed of traditional family units.

Dr. Satinover's testimony is reprinted below.

*Jeffrey Satinover, MD is a Board-Certified Psychiatrist. He holds degrees from MIT (S.B., Humanities and Science), Harvard (Ed.M., Clinical Psychology and Public Practice), the University of Texas (M.D.) and Yale (M.S., Physics.) He completed his residency in Psychiatry at Yale with a year as Fellow of The Yale Child Study Center. He holds a Diploma in Analytical Psychology from the C. G. Jung Institute of Zurich. Dr. Satinover has practiced psychotherapy and/or psychiatry since 1974. He is the author of numerous articles in peer-reviewed journals of psychology and of neuroscience, chapters and books, among them Homosexuality and the Politics of Truth.*

April 28, 2003

Honorable Members, Citizens of Massachusetts:

The debate over homosexuality is one of the most contentious and divisive in which our society has ever engaged. On the face of it, one might wonder that so intensely personal and private a matter could achieve such public weight, but wonder aside, it has: In this legislation now under consideration by the State of Massachusetts, all the varying points of that debate come into sharp opposition.

As you all know, most keenly, the question before you is not merely one of academic dispute; rather, upon the outcome of your deliberations will depend the foundational social structure, hence direction of the Commonwealth in future, and in significant measure, that of our Nation as well.

It is therefore most urgent that these deliberations be based not only on compassion, and justice, but on the factual truth as well. Indeed, unless resting upon truth, neither justice nor compassion can long endure against shifts in sentiment.

That as a society we strive no longer to condone - rather to condemn --cruelty toward people attracted to members of their own sex is an absolute requirement of both justice and humanity. But we would be short-sighted indeed were we to advance this, as any other, just cause based on fictions: Not only will the inevitable uncovering of those fictions, however delayed, provide an excuse for bigotry to reclaim its unearned place, it will engender beliefs, attitudes and policies that, by flying in the face of reality, will lead to an increase, rather than a decrease in the happiness all are entitled to pursue. Nature (and if you prefer, "Nature's God") cannot be fooled.

A number of claims have become central to the argument that the definition and privileged status of marriage ought be expanded to include couples of the same sex. These claims are:

- **That homosexuality has been repeatedly demonstrated to be, and is in fact, an innate, genetically-determined condition.**
- **That homosexuality is an immutable state of an individual.**
- **That the only disadvantages of homosexuality are those caused by social disapproval and discrimination.**
- **That a society composed of same-sex couples raising children in family-like units will differ from a society composed of traditional family units in no undesirable ways.**

None of these claims are even remotely true, however widely believed they may have become; the evidence of the kind that "everyone knows" simply does not exist; even a cursory examination of the actual sources behind these claims will reveal a very strong preponderance of evidence to precisely the contrary; the claims are simply fiction. I have below assembled a selection of statements from prominent researchers. A far wider and more comprehensive bibliography of scientific references is provided as an attachment. Most of the statements below have been selected according to three basic principles:

- (1) They are the general conclusions of prominent scientists whose research is well-respected.
- (2) The scientists cited have specifically identified themselves as "gay" or "lesbian" and/or as more generally sympathetic to "gay activist" political positions.

(3) Their research is precisely that widely cited and believed as providing evidence *directly contrary to what they themselves found and acknowledge*. (It is to the credit of a number of them that they have publicly acknowledged that their own evidence contradicts what they had believed and had hoped to confirm.)

#### CLAIMS vs. THE EVIDENCE

**Claim 1. That homosexuality has been repeatedly demonstrated to be, and is in fact, an innate, genetically-determined condition.**

- Dean Hamer of the National Institutes of Health performed and published the research most widely cited as pointing to a "gay gene." Dr. Hamer testified in the Colorado Proposition 2 court case that he was "99.5% certain that homosexuality is genetic." He later came to the following conclusions:

"The pedigree failed to produce what we originally hoped to find: simple Mendelian inheritance. In fact, we never found a single family in which homosexuality was distributed in the obvious pattern that Mendel observed..."

- Hamer's study was duplicated by Rice et al with research that was more robust. In this replication the genetic markers found by Hamer turned out to be of no statistical significance:

"It is unclear why our results are so discrepant from Hamer's original study. Because our study was larger than that of Hamer's et al, we certainly had adequate power to detect a genetic effect as large as reported in that study. Nonetheless, our data do not support the presence of a gene of large effect influencing sexual orientation..."

- Simon LeVay, a neuroanatomist at The Salk Institute in San Diego, founded the Institute for Gay and Lesbian Education in San Francisco after researching and publishing the study of hypothalamic structures in men most widely-cited as confirming innate brain differences between homosexuals and heterosexuals, as he himself initially argued. He later acknowledged:

"It's important to stress what I didn't find. I did not prove that homosexuality is genetic, or find a genetic cause for being gay. I didn't show that gay men are born that way, the most common mistake people make in interpreting my work. Nor did I locate a gay center in the brain."

Furthermore:

"Since I looked at adult brains, we don't know if the differences I found were there at birth, or if they appeared later."

Also pertinent to the present debate is his observation that:

"...people who think that gays and lesbians are born that way are also more likely to support gay rights."

- Dr. Mark Breedlove at the University of California at Berkeley, referring to his own research: "[My] findings give us proof for what we theoretically know to be the case - that sexual experience can alter the structure of the brain, just as genes can alter it. [I]t is possible that differences in sexual behavior cause (rather than are caused) by differences in the brain."
- Prominent research teams Byne & Parsons, and Friedman & Downey, both concluded that there was no evidence to support a biologic theory, but rather that homosexuality could be best explained by an alternative model where "temperamental and personality traits interact with the familial and social milieu as the individual's sexuality emerges."
- Richard Pillard, is the coauthor of the two major twin studies on homosexuality most often cited as providing family evidence for homosexuality being inherited. He noted to an interviewer that he, his brother, and his sister are all homosexual and that one of his daughters from a now-failed marriage is bisexual. He speculated that his father was also homosexual. The interviewer, Chandler Burr, comments re Pillard: "Many of the scientists

who have been studying homosexuality are gay, as am I." The interview is part of a book Burr wrote that purports to demonstrate that virtually all reputable scientists consider homosexuality genetic.

This is certainly what Pillard both wanted and expected to confirm by his research: "These studies were designed to detect heritable variation, and if it was present, to counter the prevalent belief that sexual orientation is largely the product of family interactions and the social environment"

But that is not what he found. Rather, he concluded:

"Although male and female homosexuality appear to be at least somewhat heritable, environment must also be of considerable importance in their origins."

### **Claim 2. That homosexuality is an immutable state of an individual.**

The 1973 decision to delete homosexuality from the diagnostic manual of the American Psychiatric Association has had a chilling effect on scientific objectivity with respect to homosexuality and on both public and professional attitudes concerning its permanence as an individual characteristic. The decision tended to confirm the sentiment that, since homosexuality has been voted out as a formal "disorder," it need not, cannot and should not be "treated", regardless of the principle that in a free society individuals should be free to pursue happiness each according to his own lights, consonant with the well-being of others.

But the American Psychiatric Association, like most other professional-practitioner associations, is *not* a scientific organization. It is a professional guild and as such, amenable to political influence in ways that science per se must not allow itself to be. Thus, the decision to de-list homosexuality was not made based on scientific evidence as is widely claimed. As Simon LeVay (cited above) acknowledges, "Gay activism was clearly the force that propelled the American Psychiatric Association to declassify homosexuality."

But of far greater import is the fact that whether it is deemed a "disorder" or not, it is undesirable to many, and susceptible to change. The evidence for this fact should not be obscured by the false assumption that homosexuality is either innate and unchangeable, or a "lifestyle choice" and changeable at will. It is neither: It is most often a deeply-embedded condition that develops over many years, beginning long before the development of moral and self-awareness, and is genuinely experienced by the individual as though it was never absent in one form or another. It is, in other words, similar to most human characteristics, and shares with them the typical possibilities for, and difficulties in, achieving sustained change.

- A review of the research over many years demonstrates a consistent 30- 52% success rate in the treatment of unwanted homosexual attraction. Masters and Johnson reported a 65% success rate after a five-year follow-up. Other professionals report success rates ranging from 30% to 70%.
- Dr. Lisa Diamond, a professor at the University of Utah, concludes that, "Sexual identity is far from fixed in women who aren't exclusively heterosexual."
- Dr. Robert Spitzer, the prominent psychiatrist and researcher at Columbia University has been the chief architect of the American Psychiatric Association's diagnostic manual and he was the chief decision-maker in the 1973 removal of homosexuality from the diagnostic manual. He considers himself a gay-affirmative psychiatrist, and a long time supporter of gay rights. He has long been convinced that homosexuality is neither a disorder nor changeable. Because of the increasingly heated debate over the latter point within the professional community, Spitzer decided to conduct his own study of the matter. He concluded:

"I'm convinced from the people I have interviewed, that for many of them, they have made substantial changes toward becoming heterosexual...I think that's news...I came to this study skeptical. I now claim that these changes can be sustained."

When he presented his results to the Gay and Lesbian committees of the APA, anticipating a scientific debate, he was shocked to be met with intense pressure to withhold his findings for political reasons. Dr. Spitzer has subsequently received considerable "hate mail" and complaints

from his colleagues because of his research. Douglas C. Haldeman, Ph.D., an independent practitioner in Seattle, WA, is a prominent gay-affirmative theorist. He comments, "From the perspective of gay theorists and activists. . . the question of conversion therapy's efficacy, or lack thereof, is irrelevant. It has been seen as a social phenomenon, one that is driven by anti-gay prejudice in society..."

- Regarding change and the right to treatment, lesbian activist Camille Paglia states the following, in terms considerably sharper than most of us feel comfortable with:

"Is the gay identity so fragile that it cannot bear the thought that some people may not wish to be gay? Sexuality is highly fluid, and reversals are theoretically possible. However, habit is refractory, once the sensory pathways have been blazed and deepened by repetition - a phenomenon obvious in the struggle with obesity, smoking, alcoholism or drug addiction...helping gays to learn how to function heterosexually, if they wish, is a perfectly worthy aim."

Furthermore, just as locking onto a "choice versus genetic" dichotomy obscures reality, so, too, does locking onto "unchangeable versus therapeutic change." For it is also the case, well-documented but unobserved and unremarked upon, that the *majority of "homosexuals" become "heterosexual" spontaneously, without therapy.*

By way of introduction to the scientific evidence for this, it's worth citing Paglia again:

- "We should be honest enough to consider whether homosexuality may not indeed be a pausing at the prepubescent stage where children anxiously band together by gender..."

The scientific evidence is as follows:

The most comprehensive, most recent and most accurate study of sexuality, the National Health and Social Life Survey (NHSL), was completed in 1994 by a large research team from the University of Chicago and funded by almost every large government agency and NGO with an interest in the AIDS epidemic. They studied every aspect of sexuality, but among their findings is the following, which I'm going to quote for you directly:

- "7.1 [to as much as 9.1] percent of the men [we studied, more than 1,500] had at least one same-gender partner since puberty, ... [But] almost 4 percent of the men [we studied] had sex with another male before turning eighteen but not after. These men. . . constitute 42 percent of the total number of men who report ever having a same gender experience."

Let me put this in context: Roughly ten out of every 100 men have had sex with another man at some time - the origin of the 10% gay myth. Most of these will have identified themselves as gay before turning eighteen and will have acted on it. But by age 18, a full half of them no longer identify themselves as gay and will never again have a male sexual partner. And this is not a population of people selected because they went into therapy; it's just the general population. Furthermore, by age twenty-five, the percentage of gay identified men drops to 2.8%. This means that without any intervention whatsoever, three out of four boys who think they're gay at age 16 aren't by 25.

**Claim 3. The only disadvantages of homosexuality are those caused by social disapproval and discrimination.**

To mistakenly support three out of four gay identified men in their identification with homosexuality is not a benign mistake. Bailey (of the twin study) recently examined the question as to whether homosexuality is associated with a higher level of psychopathology. He concluded:

- "Homosexuality represents a deviation from normal development and is associated with other such deviations that may lead to mental illness.. [ or, another possibility]... that increased psychopathology among homosexual people is a consequence of lifestyle differences associated with sexual orientation."

He specifically cited "behavioral risk factors associated with male homosexuality such as receptive anal sex and promiscuity." He noted that it would be a shame if "sociopolitical concerns prevented researchers from conscientious consideration of any reasonable hypothesis."

The specific concern in supporting young men in a gay identification is that innumerable studies from major centers around the US and elsewhere note that a twenty-year-old man who identified

himself as gay carries 30% (or greater) risk of being HIV positive or dead of AIDS by age 30. A recent Canadian study published concluded that in urban centers gay male identification is associated with a life expectancy comparable to that in Canada in the 1870's.

**Claim 4. A society composed of same-sex couples raising children in family-like units will differ from a society composed of traditional family units in no undesirable ways.**

There has recently been an attempt to demonstrate that raising children in a same-sex household has no ill effect. These studies are few in number, none have ever looked at those areas where difficulties would be expected and one of the most repeatedly cited researchers was excoriated by the court for her testimony when she refused to turn over her research notes to the court even at the urging of the ACLU attorneys for whom she was testifying.

What is known, from decades of research on family structure, studying literally thousands of children, is that every departure from the traditional, stable, mother-father family has severe detrimental effects upon children; and these effects persist not only into adulthood but into the next generation as well.

In short, the central problem with mother-mother or father-father families is that they deliberately institute, and intend to keep in place indefinitely, a family structure known to be deficient in being obligatorily and permanently either fatherless or motherless.

**unilateral** (yoo-nə-lat-ər-əl), *adj.* One-sided; relating to only one of two or more persons or things <unilateral mistake>.

**unilateral act.** See ACT (2).

**unilateral advance pricing agreement.** See ADVANCE PRICING AGREEMENT.

**unilateral contract.** See CONTRACT.

**unilateral mistake.** See MISTAKE.

**unimproved land.** 1. Land that has never been developed. 2. Land that was once developed but has now been cleared of all buildings and structures.

**unincorporated association.** See ASSOCIATION (3).

**unindicted coconspirator.** See COCONSPIRATOR.

**unindicted conspirator.** See *unindicted coconspirator* under COCONSPIRATOR.

**uninstructed delegate.** See DELEGATE.

**uninsured-motorist coverage.** Insurance that pays for the insured's injuries and losses negligently caused by a driver who has no liability insurance. Cf. UNDERINSURED-MOTORIST COVERAGE. [Cases: Insurance §2772. C.J.S. Insurance §§ 1647, 1650, 1653.]

**unintelligible vote.** See VOTE (1).

**unintentional act.** See ACT (2).

**uninterrupted-adverse-use principle.** See CONTINUOUS-ADVERSE-USE PRINCIPLE.

**unio** (yoo-nee-oh). *Eccles. law.* A consolidation of two churches into one.

**union, n.** An organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions. • Unions generally represent skilled workers in trades and crafts. — Also termed *labor union*; *labor organization*; *organization*. See TRADE COUNCIL. [Cases: Labor Relations §81. C.J.S. Labor Relations §§ 43-45.] — **unionize, vb.** — **unionist, n.**

**closed union.** A union with restrictive membership requirements, such as high dues and long apprenticeship periods. Cf. *closed shop* under SHOP.

**company union.** 1. A union whose membership is limited to the employees of a single company. 2. A union under company domination.

**craft union.** A union composed of workers in the same trade or craft, such as carpentry or plumbing, regardless of the industry in which they work. — Also termed *horizontal union*.

**federal labor union.** A local union directly chartered by the AFL-CIO.

**horizontal union.** See *craft union*.

**independent union.** A union that is not affiliated with a national or international union.

**industrial union.** A union composed of workers in the same industry, such as shipbuilding or automobile manufacturing, regardless of their particular trade or craft. — Also termed *vertical union*.

**international union.** A parent union with affiliates in other countries.

**local union.** A union that serves as the local bargaining unit for a national or international union.

**multicraft union.** A union composed of workers in different industries.

**national union.** A parent union with locals in various parts of the United States.

**open union.** A union with minimal membership requirements. Cf. *open shop* under SHOP.

**trade union.** A union composed of workers in the same or of several allied trades; a craft union.

**vertical union.** See *industrial union*.

**union certification.** A determination by the National Labor Relations Board or a state agency that a particular union qualifies as the bargaining representative for a segment of a company's workers. — **union certification.** A union's right to be recognized as the bargaining unit — because it has the support of a majority of the workers in the unit. — Also termed *certification of bargaining agent*; *certification of union*.

**union contract.** See COLLECTIVE-BARGAINING AGREEMENT.

**union givebacks.** See CONCESSION BARGAINING.

**Union Jack.** The common name of the national flag of the United Kingdom, combining the national flags of England, Scotland, and Ireland. • The Union Jack was originally a small union flag flown from the jack-staff at the bow of a vessel. It is different from the Royal Standard, which bears the royal arms, and the Queen's personal flag.

**union-loss clause.** See MORTGAGE-LOSS CLAUSE.

**union mortgage clause.** See *standard mortgage clause* under MORTGAGE CLAUSE.

**union rate.** See RATE.

**union-security clause.** A provision in a union contract intended to protect the union against employment of nonunion employees, and competing unions. [Cases: Labor Relations §251. C.J.S. Labor Relations §§ 230-231, 233, 235-238.]

**union shop.** See SHOP.

**union steward.** See STEWARD (2).

**unique chattel.** See CHATTEL.

**unissued stock.** See STOCK.

**unit.** The number of shares, often 100, that a company's stock is normally traded in.

**unital** (yoo-nə-təl), *adj.* Of or relating to legal relations that exist between only two persons. Cf. MULTIPARTY.

"The relations of the *cestui que trust* with the trustee, *personam* or 'unital,' and the same is true of a beneficiary and the promisor." William R. Anson, *Principles of the Law of Contract* 326 n.1 (Arthur L. Corbin, ed. 1919).

**unitary business** (yoo-nə-ter-ee). *Tax.* A business that has subsidiaries in other states or countries and calculates its state income tax by determining what portion of a subsidiary's income is attributable to activities within the state, and paying taxes on that percentage. [Cases: Taxation §1005. C.J.S. Taxation § 1719.]

**unitary state.** See STATE.

**unitary tax.** See TAX.

**unitas actus** (yoo-ni-tas ak-tus).

Unity of action; must not be in conflict.

**unitas juris** (yoo-ni-tas ju-ris).

Unity of right.

**unit cost.** See COST.

**unit depreciation rate.** See DEPRECIATION RATE.

**unite, vb.** 1. To combine.

2. To act in concert.

**United Kingdom.**

England, Scotland, and Wales, but not the Isle of Man. — Abbr. U.K.

**United Nations.** A

international organization established in 1945 to promote peace and security between nations.

• The United Nations is a permanent international problem-solving organization, and human rights.

[Cases: International Law §§ 59-65.]

**United Nations Child.**

An international organization for the protection of children's civil, political, and economic rights.

• The United Nations General Assembly. Only a few nations have not ratified it.

**United Nations Educational Organization.** The

United Nations Educational, Scientific, and Cultural Organization. Charged with promoting international scientific, and cultural cooperation.

• Its Copyright Law. Universal Copyright Convention.

**United Nations Environment Program.** An international organization created in 1972 to coordinate and promote environmental protection and employment opportunities in all nations. — Abbr. UNEP.

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**United States Air Force.** The United States armed forces branch consisting of the United States Air Force (standing army) and the Air National Guard. The Air Force is under the command of the Air Force. — Abbr. USAF.

**United States Arbitration Act.** — Abbr. USAA.

**Jane Pierson**

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**From:** Karen Karlen [alaskakarlen@alaska.net]  
**Sent:** Monday, April 16, 2007 7:36 PM  
**To:** Jane Pierson  
**Subject:** HJR9

**To the House Judiciary Committee,**

**I am asking that the House Judiciary Committee move HJR9 out of committee to a floor vote.**

**Thank you.**

**Karen Karlen  
1108 Tyrol Street  
Fairbanks AK 99712**

**Jane Pierson**

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**From:** Ruth E Poage [poagies@yahoo.com]  
**Sent:** Tuesday, April 17, 2007 12:01 AM  
**To:** Jane Pierson  
**Subject:** HJR9

Please move HJR9 through to a full floor vote.

The people of Alaska have sent a strong message to the Legislature, the Governor, and most importantly – the Supreme Court. Alaskans don't want homosexual relationships treated as if they were the same as marriage between a man and a woman.

In 1998, a majority of Alaskans said "YES" to protecting marriage in our constitution. Now, almost ten years later, Alaskans have said "YES" again – this time to making the marriage amendment stronger, in response to efforts by un-elected judges who want to weaken it. How many times do Alaskans need to speak on this issue before judges, legislators, and the Governor start to listen?

Legislators voted to place this advisory question on the ballot. Now, we will watch those same legislators carefully to see how they respond. Will they honor the will of the public, and place the constitutional amendment on the 2008 ballot? As far as we're concerned, any legislator who said "YES" to the advisory vote, and votes "NO" on the constitutional amendment is snubbing his nose at the voters. People with that kind of arrogance usually have brief careers in politics.

Again we ask to please move HJR9 through to a full floor vote.

Thank you

Larry & Ruth E Poage  
P. O. Box 2138  
Soldotna, AK 99669  
907-262-7540

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Ahhh...imagining that irresistible "new car" smell?  
Check out new cars at Yahoo! Autos.

## Jane Pierson

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**From:** dalethomas [dalethomas@myway.com]  
**Sent:** Monday, April 16, 2007 8:10 PM  
**To:** Jane Pierson  
**Subject:** HJR9

Dear Jane,

Please move HJR9 out of committee for a full floor vote. I would eventually like to vote on the constitutional amendment. Thank you.

Dale Judge

Anchorage

phone: 227-5053

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No banners. No pop-ups. No kidding.  
Make My Way your home on the Web - <http://www.myway.com>

**Jane Pierson**

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**From:** Pamela Voigt [pamela.caringhands@gmail.com;]

**Sent:** Tuesday, April 17, 2007 9:06 AM

**To:** Jane Pierson

**Subject:** Floor vote

To whom it may concern:

I am writing this email in hopes that our House Judiciary Committee will move HJR9 out of committee and on to the floor for a vote. It is my sincere hope that history will show that our great state of Alaska had the courage and fortitude to stand for what is right and good. The same strength that our forefathers displayed when they made some hard unpopular decisions in the founding of this great nation. This great nation will only stay great will if we stand strong against the onslaught of thinking such as this whole gay rights movement. Please, please show the rest of our country that our state is going to stand for morality and keeping our families pure.

Pam Voigt

1935 Bridgewater

Fairbanks.AK 99709

## Jane Pierson

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**From:** Darcy Fullford [darcyfullford@hotmail.com]  
**Sent:** Tuesday, April 17, 2007 7:58 AM  
**To:** Jane Pierson  
**Subject:** HJR9

Dear Ms Pierson,

I urge you to represent the majority of those who voted on the issue of benefits going to same sex partners. Even out of the poor turn out, the majority of people who voted made their wishes clear. We have given you the right and power to speak for us. We urge you to move HJR9 out of committee to a floor vote. Thank you, Darcy Fullford

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**Jane Pierson**

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**From:** James and Shaharriet Houchins [jnshouch@gci.net]  
**Sent:** Wednesday, April 18, 2007 12:35 AM  
**To:** Jane Pierson  
**Subject:** Today's Testimony for the House Judiciary Committee WRITTEN( HOUGHINS)  
**Attachments:** header.htm; image001.gif

**Good Afternoon House Judiciary Committee, We are James and Shaharriet Houchins**

**As Alaska Parents of the Year 2004 we addressed the legislature in Juneau on Alask**

**We are the parents of 9 children and by our example and their exposure to the examples of couples who feel as strongly as we do we have fought hard to be the moral compass and example of what marriage is truly about. We want you, our elected officials to help us cement this example by 100% protection of the only marriage that can really be, a man and a woman.**

**We invest in our marriage daily and always want to exemplify what God wanted when he raised the level of marriage at the wedding at Cana. A husband and wife procreate with God and the world continues. It is imperative we uphold this most sacred union. We must stand up for the family. The family unit is the most precious unit we have. Our children need to see us as committed married parents that weather storms and celebrate triumphs so they can see what they will grow up to parallel. Our nations future depends on the future and we are raising that future now. When our 4 year old ask us to kiss and revels with pure innocent joy when we do we know she is understanding our positions in her life and in God's world. I'm a nurse by trade but I am a domestic engineer daily. I'm in charge of nurturing futures. Every mother shows her daughter how to be the bride, the wife and the mother of the family and every father shows his son how to be the groom, the husband and the father of the family. Together we show our children when we sit as a family at Mass and other public events how to be a family ~ Mom, Dad, and children.**

**As we present our WWME Weekend to couples they see how deep our commitment is to preserve marriage between one man and one woman.**

**As a mother they saw me united with their Dad even when he was serving our country during Desert Storm/ Shield and his active duty career. They understood our bond of marriage and their place in the family unit as they sacrificed their time with their Dad while he served our country.**

**They see our marriage commitment as we work together at their school Holy Rosary Academy, Dad as Secretary of the HRA Board of Directors and I as VP of the**

Parents Organization. They see it at our Church St. Elizabeth Ann Seton when their Dad serves on the Pastoral Council, KOC and together we reverence Aduration and work at Vacation Bible School.

James: Good afternoon, this is James testifying in support of HJR9

As my wife stated we are Alaska Parents of the Year 2004. This is an honor I wear with pride. When we addressed the legislature I wanted to impress our faith and desire for a healthy marital union one between a man and a wife. As Alaska Worldwide Marriage Encounter Presenting team and as Sacramental married Catholics we uphold 100% Gods moral law that the bond of marriage is ONLY between a man and a woman. We strongly believe marriage is only between man and woman.

*Leviticus 18:22*

You shall not lie with a male as one lies with a female; it is an abomination.

I served my country for 20 years in the military. One of the principles I held dear was the sanctity of a healthy family man/woman and children if God saw fit to grant them.

We want you, our elected officials to truly hear us and be our voice. Don't bow to pressure to compromise what needs to be said for the good of the family.

We as a state cannot allow this unholy union to become commonplace. I believe as a people God created us in His image. This country was founded on traditional values. When I pray to god I pray for everyone regardless of race, creed, color, religion, and even those who choose a different sexual orientation. However, in good conscious I cannot support a male/ male or female/female union. If we allow the homosexual union to be given the same dignity as a union between a man and a woman society will be irreparably damaged. Our children are born into a world that is confusing enough as it is. Please lets not complicate even more.

PLEASE listen to the voters and let's bring it to the people in 2008.

Thank You, James and Shaharriet Houchins  
Alaska Parents of the Year 2004  
Worldwide Marriage Encounter Presenting Team  
13710 Venus Way  
Anchorage, Alaska 99515  
644-8677  
jnshouch@gci.net

**Jane Pierson**

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**From:** robert.l.paul@us.army.mil  
**Sent:** Tuesday, April 17, 2007 12:35 PM  
**To:** Jane Pierson  
**Subject:** Take HJR9 out of the Committee and put to a floor vote!

Dear and Sir's and House Judiciary Committee,

HJR9 needs to be pulled out of the committee and put to a full floor vote. With the vote on this issue in 1998 and most recently, will the courts finally listen to the Alaskan citizen? Same sex marriage is an unnatural relationship and unhealthy for our society and our children. The Alaskan citizen has shown their disapproval of them to have the same financial benefits as Male and Female marriages. As an American soldier I believe we all have constitutional rights, but when it comes to sexual preference rights (such as homosexuals, bestiality, child molestation) I believe we are going too far by giving them financial benefits and encouraging such immorality and life styles. Will the words "purity" or "morals" exist in Alaska's vocabulary 10 years from now? We are getting pretty twisted!

Sgt Robert Paul (3 time Iraqi freedom vet) father of 6 children.

4/17/2007

**Jane Pierson**

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**From:** Archibald Campbell [archibald@accchurch.org]  
**Sent:** Tuesday, April 17, 2007 12:11 PM  
**To:** Jane Pierson  
**Subject:** Re: House Bill HJR9 : Move it to the floor.

Dear Mr. Chairman and members of the House Judiciary Committee,

I am writing on behalf of my family and fellow citizens who voted to protect marriage during the recent election. It is concerning to me that Alaskans have now voted twice to protect marriage - but are the courts listening ? Now that a majority of Alaskans have voted to protect marriage, it would be a cynical betrayal of public trust to spend more than \$1 million of public money on a statewide advisory vote, only to ignore the results.

I urge you to move HJR9 out of committee to the floor for a full vote.

Thank you sincerely,

Archibald C. Campbell  
13310 Brant Way  
Anchorage AK, 99515

907-344-4024

## Jane Pierson

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**From:** Jon and Ruth Ewig [ewig4him\_7@hotmail.com]  
**Sent:** Tuesday, April 17, 2007 11:54 AM  
**To:** Jane Pierson  
**Subject:** Fully support HJR 9

Please include my testimony in the bill packet.

I am working and will not be able to participate in the teleconference at 1 pm. I am writing on my lunch break and fully support the Marriage Amendment with the understanding that benefits provided to married couples by the definition of marriage of one man and one woman should not expand to any other group. Marriage is a unique and stable union and deserves special treatment, reights, benefits, obligations, qualities. Marriage needs to be treated as such with no loopholes for homosexual partners.

Sincerely,

Ruth Ewig  
2325-30th Avenue  
Fairbanks, Alaska 99701

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The average US Credit Score is 675. The cost to see yours: \$0 by Experian.  
<http://www.freecreditreport.com/pm/default.aspx?sc=660600&bcd=EMAILFOOTERAVERAGE>

**Jane Pierson**

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**From:** Kristina Johannes [amdy@alaska.net]  
**Sent:** Sunday, April 15, 2007 3:49 PM  
**To:** Jane Pierson  
**Subject:** In support of HJR 9

I would like to urge the committee to pass HJR 9, the marriage amendment. This clarification is necessary in order for our constitution to be understood and interpreted correctly by the courts. Same sex unions are not marriage, the state should not be required to provide marriage benefits to these unions. This needs to be cleared up as soon as possible. A large majority of Alaskans support this amendment as witnessed by the recent advisory vote.

Thank you,  
Kristina Johannes  
Anchorage

FROM:

Shelley S. Hughes  
P.O. Box 1496  
Palmer, Alaska 99645-1496  
907.746.3459

TO:

Honorable Bob Lynn and Members of House State Affairs Committee  
House of Representatives - Alaska State Legislature  
Juneau, Alaska 99801

March 25, 2007

Re: HJR 9 Constitutional Amendment: Benefits & Marriage

Dear Chairman Lynn and Members of the House State Affairs Committee:

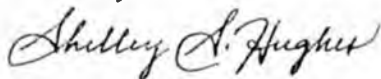
With the current opposing interpretations of the existing marriage amendment in Alaska's Constitution, HJR 9 would provide a fair and reasonable opportunity for clarification.

Although I value all the people of this great state as individuals, their backgrounds and differences, the definition of marriage is timeless and a core foundation of our way of life and what we hope for following generations; it should not be left open to redefinition: it is the union between one man and one woman only. I agree that the rights, benefits, obligations, qualities or effects of marriage should only be extended or assigned to this same union.

Allowing the voters to decide whether or not to further amend the Constitution on this matter will resolve the questions at hand regarding same sex benefits for public employees—as well as other potential questions in the future.

I appreciate Representative Coghill's and the co-sponsors' efforts to settle this matter and respectfully ask the Members of the House State Affairs Committee to move this resolution out of committee.

Sincerely,



Shelley S. Hughes

Today is the day for our legislative to do what most Alaskan want them to do with this bill HJR9.

Otherwise we wasted a lot of money.

Please do the right thing.

Paul Merrifield

1556 Dogwood Street

Fairbanks, Alaska 99709

907-451-0657

leconte@gei.net

Testimony by Victoria Dance

April 17, 2007

PO Box 210741, Auke Bay, AK 99821

(907) 789-005

I believe justice and equality are serious issues. That's why I'm here

Though I don't feel I should have to come down to this honored body to argue for justice and equality. This great state of Alaska has other more important things to accomplish...today. So I'm not asking you to fight for justice or equality. I'm just asking you... not destroy it in our constitution.

We ALL know how it feels to have a very difficult problem to solve without a solution at hand.

- The violence on campuses IS such a problem (and let's not be foolish in thinking it can't happen here. There is a need to figure out emergency plans in case it does),
- The effects of Global warming on Alaska is such a problem,
- All energy issues vital to Alaska's future are such problems.

In deciding who gets benefits, whether someone in a long-term relationship is married, is not such a problem; whether someone who works & contributes to the state's GNP has a same-gender partner is not such a problem. The Supreme Court did not see it as a problem. Almost half of the Alaskan who voted against the benefits ban on April 3rd did not see it as a problem.

The effort spent on making equal pay for equal work a problem or writing a constitutional amendment for this imagined problem is time and money taken away from solving truly difficult issues.

We all know how more satisfying it can feel to distract ourselves by making issues out of something we can see a solution for. Denying benefits to targeted groups is comparatively an easy distraction with an easy solution. But it's not the highest purpose for public servants to devote their time to.

Even the ethics of some of state legislators are more of a problem to solve than looking for a punishment for people who are not ill serving the public of Alaska,

Indeed, some of the people whom HJR9 would punish are contributing not only at their workplace but also in the community. For example, as a group, gay and lesbians are well known for the amount of volunteer work they give to any community they live in, let alone often going above and beyond for their employers and increasing economic value in that way.

Perhaps this is why the advisory vote failed to show a mandate for denying benefits to a targeted group of Alaskan workers and taxpayers. Those who have actually worked beside individuals in a group targeted for prejudice are more likely to give them the respect they are often due.

The advisory vote should be giving the supporters of HJR9 important feedback that their bill would not give them popular support or respect for writing and pushing for this bill.

I urge you all to let this bill die here..today.

- To not allow the constitution to be further sullied by bills engendered from prejudice,
- To turn away from this distraction,
- To stop the willful waste of legislative time and taxpayers money,

I urge you all to turn your great hearts and minds to attend to real problems and find solutions that will truly benefit Alaskans,..not rob some.

**Emily Stancliff**

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**From:** Glenn Gray [glenn@glennggray.net]  
**Sent:** Monday, April 16, 2007 10:20 PM  
**To:** Rep. Jay Ramras  
**Subject:** HJR 9

Dear Representative Ramras:

Please do not pass HJR 9 out of committee. The recent vote clearly showed there is no mandate to for a constitutional amendment to discriminate against a small minority.

Thank you for considering this request.

Glenn Gray  
P.O. Box 33646  
Juneau, Alaska 99803  
Phone: (907) 789-7822 Fax: (907) 523-1005

**Emily Stancliff**

---

**From:** Joyce Bamberger [danjoyce@gci.net]  
**Sent:** Tuesday, April 17, 2007 8:20 AM  
**To:** Rep. Jay Ramras  
**Subject:** HJR 9

I strongly oppose any change to the Alaska Constitution without far more input than what has occurred to date. Our constitution is a model of fairness among state constitutions. It would be a travesty to undo the thoughtful work of the 1959 convention on a whim to satisfy a minority view. Please do not underestimate the unforeseen long term consequences of changes based on politics rather than law and ethics. I urge you to leave our model constitution as is. Thank you.

Joyce Bamberger  
1036 West 22nd Street  
Anchorage, Alaska 99503  
(907) 277-7354

**Emily Stancliff**

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**From:** Cady Lister [cadylist@gmail.com]

**Sent:** Tuesday, April 17, 2007 8:17 AM

**To:** Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Jay Ramras; Rep. Bob Lynn; Rep. Ralph Samuels;  
Rep. Max Gruenberg; Rep. Lindsey Holmes

**Subject:** HJR 9 .... what?

Hello Representatives - Some of you I have written before, some of you I worked for in high school. I have lived in Alaska all of my life, grew up in a log cabin with no running water and until I was 10 no electricity or telephone. I spent the majority of my summers in the village of Tanana with family friends and have ties in many communities throughout the state, Fairbanks, Anchorage, Juneau, Nenana, Sitka, Bethel, Scammon Bay, etc. .... I am the kind of Alaskan and the kind of voter who believes in equal pay for equal work. This proposed amendment to our Constitution is both mean spirited and ill conceived. Additionally, it will never stick. The times...they are changin, the majority of fortune 500 companies in America offer domestic partner benefits, as do the major employers in our state including all of the oil companies, the university, and Providence healthcare (for crying out loud!). When young people from all around the state came to Fairbanks for the conference of young Alaskans one of the statements they made was that the ban on same sex marriage should be removed from the constitution, **they** are the future. I hope you will think about what sort of state you want to live in, who you want to alienate, whose children you think deserve healthcare, and how you personally want to be remembered. And then I hope you will vote to kill this hateful piece of legislation. Sincerely, Cady Lister

**Emily Stancliff**

---

**From:** Ben Millstein/KODIAK ISLAND BREWING CO [bmills@ak.net]  
**Sent:** Tuesday, April 17, 2007 9:06 AM  
**To:** Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Ralph Samuels; Rep. Max Gruenberg; Rep. Lindsey Holmes  
**Subject:** HJR 9

Greetings Representatives--

Please do not allow state sanctioned discrimination. It is as simple as that. I am not gay, but America stands for freedom, and as Americans we need to protect peoples' rights to live as seems fit for them. That's who we claim to be.

Thank You,

Ben Millstein  
Kodiak

**Emily Stancliff**

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**From:** Stephanie [lafleurdesign@alaska.com]  
**Sent:** Tuesday, April 17, 2007 12:23 PM  
**To:** Rep. Jay Ramras  
**Subject:** Benefits

Dear Representative Ramras,

I urge you to defeat the efforts to place a constitutional amendment barring equal protection and benefits to all employees. I am so incised by the very discussion that this is difficult to articulate. There are a host of reasons why MOST every major successful business has recognized other forms of 'families' and extended the same employee benefits package to all employees. DO NOT let Alaska go backwards in time. Please defeat this measure and uphold the Superior Courts decision. Alaskans will not support discrimination in our constitution.

Thank you for your consideration-for the good of everyone.  
Stephanie LaFleur and same-sex partner of 16 years, Jean Wall

## Emily Stancliff

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**From:** Kate Boesser [kateboesser@mail.com]  
**Sent:** Tuesday, April 17, 2007 11:48 AM  
**To:** Rep. Jay Ramras  
**Subject:** VOTE NO to Constitutional Amendment HJR9

VOTE NO to HJR 9, Constitutional Amendment to take away benefits from some partners of public employees. It is bad public policy at odds with the trends in business and government across the country. Health care is in crisis and we should be doing everything we can to ADD people to the rolls, not bar them. \*Please vote no.

\*Sincerely,

Mary Kate Boesser, Alaskan since 1959

and

David F. Koschmann, Alaskan since 1953

**Emily Stancliff**

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**From:** HFLEISCH@aol.com  
**Sent:** Tuesday, April 17, 2007 12:59 PM  
**To:** Rep. Jay Ramras  
**Subject:** Same sex

Hello Rep. Ramras-My wife and I encourage you and the committee to not challenge the Alaska Supreme Court decision regarding same sex partners getting the same benefits from the State. I work with the big Oil companies, which you may know, provide more subsistence to Alaska than others pursuits. Those companies provide equal benefits to all employees, straight or gay-so take a page out of their advanced book and do the same.

Hugh & Lanie Fleischer  
1401 W. 11th Ave.  
Anchorage, AK 99501  
(907) 274-2453  
hfleisch@aol.com

---

See what's free at [AOL.com](http://AOL.com).

**Emily Stancliff**

---

**From:** richard or mary bishop [rmbishop@ptialaska.net]  
**Sent:** Tuesday, April 17, 2007 1:09 PM  
**To:** Rep. Jay Ramras  
**Subject:** FW: HJR9

My computer says this was not transmitted on the first attempt. Dick Bishop

-----Original Message-----

**From:** richard or mary bishop [mailto:rmbishop@ptialaska.net]  
**Sent:** Tuesday, April 17, 2007 1:00 PM  
**To:** 'Rep\_Jay\_Ramras@legis.state.ak.us'  
**Subject:** HJR9

Dear Representative Ramras, Chair, and House Judiciary Committee members:

I am opposed to passage of HJR 9. I urge the House Judiciary Committee not to approve the measure.

HJR 9 conflicts with Alaska's Constitutional provision of equal protection under the law.

The issue reminds me of when the State had a rural subsistence priority law. The Alaska Supreme Court ruled that the rural priority violated common use of and equal access to renewable resources, unacceptably discriminating among Alaskans on the basis of ZIP CODE.

At the time, Supreme Court Justice Moore, in his concurring remarks said: "This is an equal protection case, and an easy one at that."

HJR 9 is "an equal protection case, and an easy one at that".

Rights and privileges assured under Alaska's Constitutional provision of equal protection under the law should not be eroded in areas of equal pay for equal work and other areas of public policy any more than in the area of common use and equal access to natural resources.

Thank you for considering my opinion.

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