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## I. INTERESTS OF AMICUS CURIAE

### Marriage Law Project

Amicus Curiae Marriage Law Project has been involved since 1994 in the effort to reaffirm marriage as the union of one man and one woman. Amicus has drafted briefs in related cases in Hawaii and Vermont, and assisted the Alaska Legislature in the *Brause* and *Bess* cases. Recently, Amicus and local counsel published “The Alaska Marriage Amendment: The People’s Choice on the Last Frontier,” 16 *Alaska L. Rev.* 213 (1999), a narrative and analysis of Alaska’s Marriage Amendment. This brief draws on amicus’ extensive knowledge of these issues and Amicus believes that it will be useful to the Court.

### North Star Civil Rights Defense Association, Inc.

The North Star Civil Rights Defense Association, Inc. (“North Star”) is organized as an Alaska non-profit corporation and operates as a public interest law firm under the provision of IRS Revenue Procedure 92-59. The organization was formed to defend the civil and religious rights and liberties provided to Alaskan citizens, as guaranteed in the Constitutions of the United States and Alaska, and to promote traditional family relationships and values.

North Star supports and promotes the protection of traditional marriage and the religious liberties of those who believe in traditional marriage and, therefore, opposes any form of judicially mandated recognition of homosexual partnering in lieu of or as an alternative to traditional marriage.

## II. SUMMARY OF ARGUMENT

Appellants' claim that same-sex couples are entitled to equal marital benefits is based on two premises. The first premise is that marital benefits can be separated from marital status. The second premise is that, notwithstanding the passage of the Marriage Amendment in 1998, the Alaska Constitution requires that marital benefits be given to unmarried couples. Neither of these arguments is tenable. Alaska law not only treats marital status and benefits as inseparable, it specifically withholds marital benefits from unmarried couples. The Alaska Constitution constitutionalizes marriage and specifically disallows same-sex "marriage." Analogies to States without Marriage Amendments, such as Oregon and Vermont, are therefore misguided. The appellants' claim for benefits is really a policy argument that should be made to the Legislature.

## III. ARGUMENT

This case is "deja vu all over again." A previous lawsuit and subsequent trial court ruling suggested that the denial of a marriage license to a same-sex couple might possibly be a state constitutional violation. Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). This possibility was put to rest, however, when the Alaska Legislature passed a proposed constitutional amendment, and on November 3, 1998, the people of Alaska overwhelmingly ratified the following amendment to the Alaska Constitution: "To be valid or recognized in this state, a marriage may exist only between one man and one

woman.” Alaska Const., art. I, § 25 (hereafter “the Marriage Amendment”).<sup>1</sup> Based in part upon the Marriage Amendment, Brause was dismissed in September 1999.

Now that the question of a marriage license has been resolved, appellants are back again. Having challenged the Marriage Amendment before its passage and lost,<sup>2</sup> they now concede that the Alaska Constitution does not require same-sex “marriage.” Complaint at 3. Instead, they now claim that the Alaska Constitution requires the legal equivalent of marriage for same-sex couples. Because marital status and benefits are inseparable under Alaska law, and because appellants have been denied marital benefits based only upon their constitutionally defined unmarried status, their case fails.

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<sup>1</sup> In response to the trial court’s ruling in Brause, the Alaska Legislature approved the following constitutional amendment to be approved or rejected by voters on November 3, 1998: 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. 1998 Alaska Senate Joint Resolution 42. After the Alaska Supreme Court removed the second sentence of the proposed amendment, (Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999), reproducing Preliminary Opinion and Order) the amendment was placed before the People and was ratified by a 68-32 percent margin. See Liz Ruskin, Limit on Marriage Passes in Landslide, Anchorage Daily News, November 4, 1998, § A, p. 1.

<sup>2</sup> Before the popular vote, a group of appellants including the Alaska Civil Liberties Union challenged the constitutionality of the proposed amendment in two actions. Bess v. Ulmer, No. 3AN-98-7776 Civil (Alaska Super. Ct. 1998); Dodd v. Ulmer, No. 3AN-98-8114 Civil (Alaska Super. Ct. 1998). The Alaska Supreme Court consolidated the cases and allowed the amendment to proceed to a vote, with one change. Bess v. Ulmer, Preliminary Opinion and Order (Supreme Court Nos. S-08811, S-08812 and S-08821 consolidated)(Alaska, Sept. 22, 1998); aff’d, Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999) (reproducing Preliminary Opinion and Order).

**A. MARITAL STATUS AND BENEFITS ARE  
INSEPARABLE UNDER ALASKA LAW.**

For their argument to succeed, appellants must separate marital status from marital benefits. Yet it is clear that by the public policy which is embodied in Alaska law, the term “marriage” encompasses both status and benefits. This can be seen both in recent statutes and in the litigation that resulted in the Marriage Amendment.

Statutory law has recently affirmed the inseparability of status and benefits in two specific respects. First, it is not “marital status discrimination” to provide benefits to an employee’s spouse that are not provided to the unmarried partners of other employees. This question arose when a University of Alaska employee claimed that under the Alaska Human Rights Act, A.S. 18.80.220, granting health care coverage only to married spouses of University employees constituted “marital status discrimination.” In 1995, a Superior Court judge decided in favor of the plaintiffs. Tumeo v. University of Alaska, 1995 WL 238359 (Alaska Super. Ct. 1995). The Legislature responded swiftly and clearly by amending the Human Rights Act to state explicitly that employers have the right to treat the spouses of employees differently than unmarried partners of employees. A.S. 18.80.220. See also University of Alaska v. Tumeo, 933 P.2d 1147 (Alaska 1997) (dismissing the case based on the change in statute).

Second, same-sex couples are due neither marriage licenses nor marital benefits under Alaska law. In 1996 the Legislature passed a statute which reaffirmed that “Marriage is a civil contract entered into between one man and one woman that requires both a license and

solemnization.” A.S. 25.05.011(a).<sup>3</sup> At the same time, it enacted the following provision:

A marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state. A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage.

A.S. 25.05.013. These provisions treat status and benefits as inseparable, and explicitly reject any attempt to treat them otherwise. The public policy of the State is extremely clear.

The Brause litigation that resulted in the passage of the Marriage Amendment also treated marital status and marital benefits as inseparable. In Brause the plaintiffs specifically sought benefits *based on* marital status. The trial court’s ruling, accordingly, treated status and benefits as inseparable. Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). “Once married,” the court noted, “the state provides benefits and imposes duties that are significant and valuable to society as well as to the individual members of the marriage. Id. at \*2. Put another way, the court’s ruling treated benefits and duties as entirely consequent upon marital status. The Marriage Amendment approved by the Legislature and the People presupposed this context. After the passage of the Marriage Amendment, all

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<sup>3</sup> Before 1974, Alaska’s marriage statute specified that marriage could be entered into by “a male who is 21 years of age or older with a female who is 18 years of age or older.” Act of Apr. 13, 1963, ch. 58, §1, art. I; 1963 Alaska Sess. Laws 54 (enacting A.S. 25.05.011). Though this statute was amended to equalize the age requirement and to use the gender-neutral term “person” there was no indication that this was intended to allow persons of the same-sex to marry. See 1995 Alaska Op. Att’y Gen. 663-95-0451 (Mar. 31, 1995), at 1995 WL 341035.

claims in the Brause case were dismissed.

For the above reasons, appellants' attempt to separate marital status and benefits fails. Existing statutes, the Brause litigation, and the Marriage Amendment all assume that marital status and benefits are inseparably linked from a constitutional standpoint. At no point before, during or after Brause have they been separated. The only appropriate means by which appellants may separate marriage status from marriage benefits is through the democratic process of convincing a majority of our legislative representatives to pass an appropriate statutory benefits scheme.

**B. THE ALASKA CONSTITUTION, WHICH EXPLICITLY RECOGNIZES THE UNIQUE INSTITUTION OF MARRIAGE, CANNOT BE REASONABLY INTERPRETED TO REQUIRE MARITAL BENEFITS FOR UNMARRIED PERSONS.**

Despite the fact that marital status and benefits are inseparable under Alaska law, appellants argue that limiting marital benefits to married people constitutes unconstitutional "discrimination" under Art. I, Sec. 1, 3 and 22 of the Alaska Constitution. This claim has no basis. First, the Marriage Amendment explicitly recognizes the existence of marital status, which is linked to marital benefits. Second, no other constitutional provisions require the granting of benefits, if the rest of the Constitution is interpreted in a consistent manner. Finally, to find for the appellants the court would have to hold that the government's distinction between marital and non-marital status is itself unconstitutional, in direct contradiction to the Marriage Amendment.

First, the Alaska Constitution explicitly recognizes the existence of “marriage” as a unique male-female community. Alaska Const., art. I, § 25. Moreover, the Constitution states that “To be valid or recognized in this state, a marriage may exist *only* between one man and one woman.” (emphasis added) *Id.* This means, at the very least, that as far as Alaska is concerned, two men, two women, or more than two persons of any sexual combination cannot be a marriage.

If “marriage” creates a legal status which is the basis for certain benefits, and same-sex couples cannot qualify for this status, then they cannot successfully claim that they are *constitutionally* entitled to benefits based on this status, either. The only avenue available for the unmarried appellants in their quest for marital benefits, is legislation properly enacted by the Legislature. The Marriage Amendment does not foreclose legislation to give marital benefits to unmarried couples, it simply forecloses the claim that constitutionally the government cannot distinguish between married and unmarried couples.

Second, if the Alaska Constitution is interpreted in a consistent manner, there is no basis for requiring that marital benefits be extended to same-sex couples. To do so would violate the Supreme Court’s own statement of how the Marriage Amendment relates to the Constitution. In addition, it would be unwarranted under existing law in the areas of equal protection and privacy.

In the marriage amendment litigation prior to the 1998 general election, the Alaska Supreme Court specifically rejected the claim that the Marriage Amendment would

contradict the rest of the Constitution. Indeed, the Court struck the originally proposed second sentence, which was more general, on the grounds that it was “mere surplusage.” Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999) (reproducing Preliminary Opinion and Order).<sup>4</sup> The Court noted that there was no need for the second sentence to produce “harmonization of other provisions of the constitution with the meaning of the first sentence” because that harmonization would be automatic on ratification of the amendment. Id. That harmonization would be governed by the general principle that “a specific amendment controls other more general provisions with which it might conflict.” Id.

To hold that other provisions of the Alaska Constitution require the extension of marital benefits to unmarried persons would require the court to override the specific meaning of the term “marital” in Art. I, sec. 25 by the use of more general concepts such as “equality” or “privacy.” This would violate the Supreme Court’s own statements about the meaning of the Amendment, by pitting them against one another, instead of treating them as texts to be read in tandem.<sup>5</sup>

Moreover, there is no basis in existing equal protection or privacy law to make such

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<sup>4</sup> The originally proposed second sentence read, “No provision of this constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex.” 1998 Alaska Senate Joint Resolution 42.

<sup>5</sup> Moreover, the Alaska Supreme Court itself stated “[The Marriage Amendment] potentially affects the meaning of the equal rights clause contained in article I, section 1.” Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999). This does not mean that the Marriage Amendment “lessens” the meaning of equality, rather that it clarifies how equality relates to marriage.

a move. Even without the Marriage Amendment, the distinction between married couples and unmarried persons is not prohibited under Article I, sec. 1, 3 and 22 of the Alaska Constitution.

Claims of “sexual orientation” or “sex” discrimination are without merit. The Supreme Court noted in Bess that “Article I, section 3 is not affected [by the proposed Marriage Amendment], for it does not specify sexual preference as a suspect classification.” Bess, 985 P.2d at 997, 995 (Alaska 1999). Moreover, the policy challenged by the appellants does not discriminate on the basis of either “sexual orientation” or “sex.” Instead, it distinguishes between married couples and unmarried *individuals*. The connection between marital status and marital benefits is based upon the fact that marriage is a legal category based on a unique sexual community. In the words United States Supreme Court Justice Ruth Bader Ginsburg, we are dealing with “a community composed of both [sexes],” because “the two sexes are not fungible.” See United States v. Virginia, 518 U.S. 515, 533 (1996).<sup>6</sup> In marriage, neither sex is disadvantaged; rather, both are equally and mandatorily included - marriage requires both a man and a woman. Marriage does not separate the sexes, but unites them in a relationship of equality.<sup>7</sup> Therefore basing the grant of marital benefits and

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<sup>6</sup> Justice Ginsburg contrasted this with the Virginia Military Institute, which she viewed as based on prejudicial notions about the sexes. See United States v. Virginia, 518 U.S. 515, 533 (1996).

<sup>7</sup> Professor Lynn D. Wardle notes that existing marriage statutes, which require one person of each sex for marital benefits, convey a critical message about the equal contribution of both sexes to an important social institution. A Critical Analysis of Constitutional Claims for Same-Sex Marriage, 1996 BYU L. REV. 1, 87 (1996).

privileges upon marital status is not “discrimination.”<sup>8</sup> To the contrary, it is a reasonable public policy.

Likewise, there is no reason to think that “privacy” would require extending marital benefits to unmarried couples, because marital benefits are public benefits based on a public relationship (which at this time in Alaska is even constitutionally recognized). As the Alaska Supreme Court stated in Bess, “...it is unclear whether the right to privacy is affected, [by the marriage amendment] for the first sentence is concerned with the recognition of marriage as an official relationship, not with private relationships.” Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999) (reproducing Preliminary Opinion and Order). In other words, Art. I, sec. 22 has little or nothing to do with this case at hand.

The Alaska Supreme Court’s classic decision on the right to privacy in Ravin v. State, 537 P.2d 494 (Alaska 1975) shows the fallacy of appellants’ argument. In Ravin, the defendant was charged with illegal possession of marijuana which he had in his own home for his personal use. In its decision, the court found that the Alaska Constitution’s privacy

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<sup>8</sup> Defining the “class” involved is part of the problem. A policy which links marital status and marital benefits equally “discriminates” against every unmarried individual, regardless of his or her “sex” or “sexual orientation.” It equally “injures” opposite-sex and same-sex couples. The appellants might reply by noting that opposite-sex couples can marry, whereas same-sex couples cannot. But this only proves that appellants’ real problem is not with benefits granted, but instead with the institution of marriage and the marriage amendment itself. They raised the question of marriage earlier, and got their answer in the Marriage Amendment.

provision was aimed at protecting the inviolability of the home. Id. at 503-504.<sup>9</sup> Here, in contrast, appellants are seeking public benefits from the state and its municipalities. In addition, Ravin involved an activity which the court found to have little impact on society, while the recognition of a new quasi-marital status entitled to all marital benefits has the potential for a significant impact on public life.<sup>10</sup>

Third, to find for the appellants the court would have to hold that the distinction between marital and non-marital is itself unconstitutional, in contradiction with the Marriage Amendment. If granting marital benefits only to those with marital status is unconstitutional, this can only be because the very concept of “marriage,” which links status and benefits, is itself discrimination. Whether in the name of equality or privacy, this claim attacks marriage as an unfair category per se.

Whatever else may be said for this argument, it contradicts the Alaska Marriage Amendment. The Marriage Amendment stands not only for the existence of a status, in blissful abstraction, but also for the legitimacy of that status as a basis for the granting of rights, duties, and yes, benefits. Therefore the use of marital status as the basis for the

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<sup>9</sup> Since Ravin the Alaska Supreme Court has further clarified the concept of what is “private,” as opposed to “public,” and what kinds of private behavior warrant state interest. The possession of marijuana in public places for sale is not “private.” Belgarde v. State, 543 P.2d 206 (Alaska 1975). While the state has no interest in regulating some private behaviors, others, such as the possession of cocaine or the sexual abuse of children, warrant a greater state interest, State v. Erickson, 574 P.2d 1 (Alaska 1978); Anderson v. State, 562 P.2d 351 (Alaska 1977), even in the home.

<sup>10</sup> The public importance of marriage is underscored by the Marriage Amendment itself.

extension of marital benefits, in addition to being consistent with Article I, section 25, does not conflict with other guarantees.

### C. ALASKA IS NOT VERMONT OR OREGON

Appellants place great reliance on two decisions from other jurisdictions: Baker v. Vermont, 744 A.2d 864 (Vt. 1999) and Tanner v. Oregon Health Sciences University, 971 P.2d 435 (Or. Ct. App. 1998). Both decisions purport to establish a right for same-sex couples to receive some or all of the benefits of marriage, if not the actual status, similar to the appellants' claim in this case.

However, appellants' reliance on these cases is misplaced. Both cases were decided relying on unique State constitutional provisions that are not relevant in this context, either because the Alaska Constitution does not include comparable provisions, or because it does, but the Alaska Constitution has been interpreted to mandate a different result than that reached in these cases.

In Baker v. Vermont, the Vermont Supreme Court based its decision on the "Common Benefits Clause" of the Vermont Constitution. VT. CONST. Chap. I, art. 7. This provision states:

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

In Baker, the Vermont Supreme Court focused on marital benefits rather than marital status by claiming to rely on the specific language about “benefits” in the section quoted above. The Court also noted that Vermont law already allows same-sex couples to jointly adopt children, and includes “sexual orientation” as a protected class in its anti-discrimination law. Baker v. Vermont, 744 A.2d at 884-885.

In Tanner v. Oregon Health Sciences University, the Oregon Court of Appeals relied on Article I, section 20 of the Oregon Constitution: “No law shall be passed granting to any citizen or class of citizens privileges of immunities, which, upon the same terms, shall not equally belong to all citizens.” The test Oregon courts apply to establish a violation of section 20 involves finding:

(1) that another group has been granted a ‘privilege’ or ‘immunity’ which their group has not been granted, (2) that [the challenged law] discriminates against a ‘true class’ on the basis of characteristics which they have apart from that statute, and (3) that the distinction between the classes is either impermissibly based on persons’ immutable characteristics, which reflect ‘invidious’ social or political premises, or has no rational foundation in light of the state’s purpose. Jungen v. State, 764 P.2d 938 (Or. Ct. App. 1988)(citations omitted).

Establishing that a certain group is a “true class” is much simpler than establishing a “suspect class” under the Federal constitution or the law of other jurisdictions. In fact, in one Oregon case, newspaper vendors and carriers were held to constitute a “true class.” Northwest Advancement, Inc. v. State, 722 P.2d 934 (Or. Ct. App. 1988). In Tanner, the court of appeals held that same-sex couples could constitute a suspect class. Tanner v. Oregon Health

Sciences University, 971 P.2d at 447.<sup>11</sup>

These cases are thus dependent on constitutional provisions and cases that are dramatically different than those of Alaska. This is so in at least three ways: the texts, the contexts, and the other States' lack of anything comparable to a Marriage Amendment.

First of all, the Alaska Constitution does not blur the distinction between married and unmarried. In contrast, both the "Common Benefits" clause in Vermont and the "Privileges and Immunities" clause in Oregon have been used to blur precisely this distinction. The Alaska Constitution speaks of "equal rights, opportunities and protections," Alaska Const., art. I, § 1, but the Court does not treat "sexual orientation" as a suspect classification.<sup>12</sup>

Second, Alaska law is broadly more traditional in its approach to marriage and sexuality. In contrast, Baker (explicitly) and Tanner (implicitly) rely on the prior existence of statutes and case law favorable to recognition of same-sex couples and of homosexuals

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<sup>11</sup> The Oregon Supreme Court has never reviewed the issues which were presented in Tanner and it has never approved of the ruling in Tanner.

<sup>12</sup> In the Alaska Supreme Court's Preliminary Opinion and Order in Bess v. Ulmer (Supreme Court Nos. S-08811, S-08812 and S-08821 consolidated)(Alaska Sept. 22, 1998), the court noted that Article 1, section 3 of the Alaska Constitution "does not specify sexual preference as a suspect classification." Bess v. Ulmer, Preliminary Order p. 6.

Moreover, no Federal Circuit Court has accepted "sexual orientation" as a suspect classification. See Equality Foundation v. City of Cincinnati, 54 F.3d 261, 266 (6th Cir. 1995) aff'd on remand 128 F.3d 289 (6th Cir. 1997) cert denied 199 S.Ct. 365 (1998); High Tech Gays v. Defense Indus. Sec. Clearance Office, 895 F.2d 563 (9th Cir. 1990); Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989); Rich v. Sec'y of the Army, 735 F.2d 1220 (10th Cir. 1984); see Lynne Marie Kohm, The Homosexual "Union": Should Gay and Lesbian Partnerships Be Granted the Same Status as Marriage? 22 *Journal Contemporary Law* 51, 64 (1996).

as a discrete class. “Sexual orientation” is not a protected class under the Alaska Statutes or the Anchorage Municipal Code. Alaska law makes no specific provision for joint adoption by same-sex couples. As mentioned above, the Alaska Legislature stated in 1996, in a manner which neither Oregon nor Vermont has enacted:

A marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state. A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage.

A.S. 25.05.013.<sup>13</sup>

Third, neither Vermont nor Oregon has a Marriage Amendment like Alaska does. As discussed above, the Alaska Supreme Court held that the Amendment is consistent with other constitutional rights granted by the Alaska Constitution. Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999) (reproducing Preliminary Opinion and Order). Therefore the Alaska Constitution must be interpreted in a way that respects marriage, and does not override the concept of marriage on the basis of concepts of equality or privacy (or “common benefits”). There are no similar provisions in Oregon or Vermont.

For these three reasons, the Vermont Baker and Oregon Tanner opinions are poor analogies for Alaska constitutional law. The differences are much greater than the

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<sup>13</sup> This was among the statutes challenged in Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). The opinion in that case casting doubt on the constitutionality of the statute was effectively reversed when the Marriage Amendment passed.

similarities.

**D. THE APPELLANTS ARE REALLY MAKING A POLICY ARGUMENT ABOUT BENEFITS THAT BELONGS IN THE LEGISLATURE.**

When faced in 1998 with the possibility that marriage might be altered by a court decision, the Legislature and the People of Alaska responded strongly with the Alaska Marriage Amendment. The People thought they had settled this issue. Now appellants have adopted a new approach which argues that not only can status and benefits be separated, but that constitutionally they *must* be separated. For this startling and dubious set of claims they invoke the authority of the Alaska Constitution.

This lawsuit is a transparent attempt to accomplish, by another means, the same goal rejected by the Marriage Amendment: to gain legal recognition for same-sex “marriage.” This contradicts the decision made on November 3, 1998 by a large majority of Alaskans.

Appellants’ alleged distinction between status and benefits breaks down because they are seeking not just one benefit, but the whole package of marriage benefits, *as if they were married*. Implicit in their claim is an understanding that government cannot parcel out status-based benefits without some indication that those seeking the benefits have attained the status at issue. Since the Alaska Constitution does not support their claim for marital status, they are proposing another form of status to replace marriage. But a mere change in label cannot

disguise what they seek.<sup>14</sup> The plaintiffs have described alleged inequities they wish to have redressed. But these are not constitutional violations; they are policy decisions that the plaintiffs happen to disagree with. The plaintiffs have not explained why their difference of opinion about how public benefits ought to be apportioned should not be taken up with the Legislature rather than by this court. It could be that, given recent experiences, they prefer to avoid the legislative process. But the fact that they dislike the results of that process is not reason for the court to help them go around it. Also, appellants give this Court absolutely no guidance, nor logically could they, for how the judicial granting of benefits might be determined under their amorphous and ill-defined request. Kevin G. Clarkson, *Marital benefits require marriage*, Anchorage Daily News, April 26, 2001, at B6.

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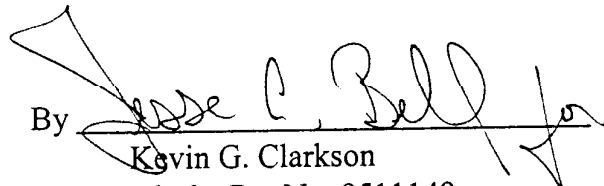
<sup>14</sup> The aim of appellants to achieve same-sex “marriage” under another name is clear from their complaint. The appellants’ claimed harms focus on inability to gain spousal health coverage and similar employment benefits. Complaint at 6-19. The complaint, notes, however, that the couples have been able to approximate many of the financial aspects of married life through joint finances, joint mortgages, provisions in wills, etc. Id. The relief appellants seek, however, is not confined to employment benefits, but includes a prayer for “a permanent injunction requiring the State to provide employment rights and privileges to the Plaintiff couples on terms identical to those that would apply if the Plaintiff couples were legally married, for so long as the Plaintiff couples remain domestic partners.” Id. at 21 (emphasis added). Two aspects of this request indicate that what the appellants are seeking is status rather than benefits. First, the appellants are seeking to be treated “identically” to married spouses. The claim is clear, appellants want to be treated as if they were married. Second, the appellants identify themselves as “domestic partners.” This indicates that they are seeking identical treatment to gain recognition of a status they believe they deserve. This is really the same thing the Brause plaintiffs unsuccessfully sought; the only difference is the label the appellants are asking the court to use to extend the recognition.

#### IV. CONCLUSION

For the reasons noted above, the court should reject plaintiffs' claims and dismiss the case.

DATED this 5<sup>th</sup> day of August, 2002.

BRENA, BELL & CLARKSON, P.C.  
Attorneys for Amici Curiae

By   
Kevin G. Clarkson  
Alaska Bar No. 8511149

DAVID ORGON COOLIDGE\*  
WILLIAM C. DUNCAN  
Attorneys for Amicus Curiae  
Marriage Law Project  
Columbus School of Law  
The Catholic University of America  
3600 John MacCormack Street, N.E.  
Washington, D.C. 20064  
(202) 319-6215

\*We regretfully inform the Court that David O. Coolidge passed away on March 10, 2002, but we have determined to leave his name in the brief because of his earlier participation.