IN THE SUPREME COURT OF THE STATE OF ALASKA

Supreme Court No. S-10459

ALASKA CIVIL LIBERTIES UNION,
DAN CARTER and AL INCONTRO,
LIN DAVIS and MAUREEN LONGWORTH,
SHIRLEY DEAN and CARLA TIMPONE,
DARLA MADDEN and KAREN WOOD,
AIMEE OLEJASZ and FABIENNE PETER-CONTESSE,
KAREN STURNICK and ELIZABETH ANDREWS,
THERESA TAVEL and KAREN WALTER,
CORIN WHITTEMORE and GANI RUTHELLEN, and
ESTRA BENSUSSEN and CAROL ROSE GACKOWSKI,

Appellants,
v.
STATE OF ALASKA, and
MUNICIPALITY OF ANCHORAGE,

Appellees.

Appeal from the Superior Court of the State of Alaska,
Third Judicial District at Anchorage
The Honorable Stephanie Joannides
Case No. 3AN-99-11179 CI

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES ii

AUTHORITIES PRINCIPALLY RELIED UPON iv

ARGUMENT 1

I. In defining the independent contours of state constitutional protection, this Court routinely looks to the contours of federal constitutional protection for guidance 2

II. Disapproval of lesbian and gay relationships is never a legitimate justification for discrimination against lesbian and gay couples 3

III. Governmental action that disparately penalizes lesbian and gay relationships warrants heightened scrutiny 6

IV. Governmental action that classifies based on sexual orientation warrants heightened scrutiny 13

V. Common sense determines whether governmental action classifies based on sexual orientation 15

CONCLUSION 16

TABLE OF CASES AND AUTHORITIES

Alaska Cases:

Alaska Gay Coalition v. Sullivan, 578 P.2d 951 (Alaska 1978) 4

Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984) 9

Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970) 2

Breese v. Smith, 501 P.2d 159 (Alaska 1972) 4, 8

Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) 10

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 6

O'Connor v. Donaldson, 422 U.S. 563 (1975) 5

Principal Mut. Life Ins. Co. v. State, 780 P.2d 1023 (Alaska 1989) 4

Ravin v. State, 537 P.2d 494 (Alaska 1975) 8

State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) 6, 8

Constitutional Provisions, Statutory Provisions, and Legislative History

Alaska Const., art. I, § 25 ..... 3, 12

AS 18.80.220(c) 3, 12

AS 25.05.011(a) 3, 12

AS 25.05.013 ..... 3, 12

U.S. Supreme Court Cases:

Attorney General v. Soto-Lopez, 476 U.S. 898 (1986) 10

Bates v. City of Little Rock, 361 U.S. 516 (1960) 11

Bowen v. Gilliard, 483 U.S. 587 (1987) 11

Bowers v. Hardwick, 478 U.S. 186 (1986) 1, 13

City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985) 4

Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) 10

Lawrence v. Texas, 123 S. Ct. 2472 (2003) 1, 3, 4, 5, 7, 8, 13, 15, 16

Limon v. Kansas, 123 S. Ct. 2638 (2003) 5

Lyng v. Castillo, 477 U.S. 635 (1986) 11

Memorial Hosp. v. Maricopa County, 415 U.S. 250 (1974) 10

Michael H. v. Gerald D., 491 U.S. 110 (1989) 10

Planned Parenthood of S.E. Pa. v. Casey, 505 U.S. 833 (1992) 8

Romer v. Evans, 517 U.S. 620 (1996) 4

Shapiro v. Thompson, 394 U.S. 618 (1969) 9, 10

Speiser v. Randall, 357 U.S. 513 (1958) 10

United States Dep't of Agric. v. Moreno, 413 U.S. 528 (1973) 4

Weinberger v. Salfi, 422 U.S. 749 (1975) 10

Federal Circuit Cases:

Ben-Shalom v. Marsh, 881 F.2d, 454 (7th Cir. 1989) 14

Equality Found. of Greater Cincinnati, Inc. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997) 14

High Tech Gays v. Defense Indus. Security Clearance Office, 895 F.2d 563 (9th Cir. 1990) 14

Padula v. Webster, 822 F.2d 97 (D.C. Cir. 1987) 14

Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989) 14

AUTHORITY PRINCIPALLY RELIED UPON

Alaska Const. art. 1, § 25: Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman.

AS 18.80.220. Unlawful employment practices; exception.

(a) Except as provided in (c) of this section, it is unlawful for

(1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

(c) Notwithstanding the prohibition against employment discrimination on the basis of marital status or parenthood under (a) of this section,

(1) an employer may, without violating this chapter, provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees;

(2) a labor organization may, without violating this chapter, negotiate greater health and retirement benefits for employees of an employer who have a spouse or dependent children than are provided to other employees of the employer.

AS 25.05.011. Civil contract.

(a) Marriage is a civil contract entered into by one man and one woman that requires both a license and solemnization. The man and the woman must each be at least one of the following:

(1) 18 years of age or older and otherwise capable;
(2) qualified for a license under AS 25.05.171; or
(3) a member of the armed forces of the United States while on active duty.

AS 25.05.013. Same-sex marriages.

(a) A marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state.

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

ARGUMENT

On June 26, 2003, the United States Supreme Court issued its landmark decision in *Lawrence v. Texas*,[1] fundamentally altering the legal landscape where lesbian and gay relationships are concerned. Emphasizing that lesbian and gay people "are entitled to respect for their private lives,"[2] the Supreme Court in *Lawrence* held that "[p]ersons in a homosexual relationship may seek autonomy for [purposes of intimate and personal choices, including those concerning family relationships], just as heterosexual persons do."[3] Accordingly, it struck down a law criminalizing lesbian and gay relationships as a violation of the constitutional right to privacy and autonomy guaranteed by the federal constitution. In doing so, the Supreme Court overruled *Bowers v. Hardwick*,[4] in which it had held otherwise. It acknowledged that "*Bowers* was not correct when it was decided, and it is not correct today,"[5] and that *Bowers* had "demean[ed] the lives of homosexual persons."[6]

Lawrence informs the analysis in this case by bolstering the conclusion that governmental action that disparately penalizes lesbian and gay relationships – such as the absolute denial of partner benefits to lesbian and gay employees and

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[1] 123 S. Ct. 2472 (2003).
[2] *Id.* at 2484.
[3] *Id.* at 2482.
[4] 478 U.S. 186 (1986).
[5] *Lawrence*, 123 S. Ct. at 2484.
[6] *Id.* at 2482.

retirees in this case – must be subjected to heightened scrutiny as a matter of state constitutional law.

I. In defining the independent contours of state constitutional protection, this Court routinely looks to the contours of federal constitutional protection for guidance.

Lawrence addresses only the level of protection that the United States Constitution guarantees; nonetheless, it informs the level of protection that the Alaska Constitution guarantees. Although the Alaska Constitution reflects values unique to Alaskans, this Court looks to the United States Constitution for guidance in identifying those values. In defining the independent contours of state constitutional protection, this Court routinely begins its analysis with an assessment of the contours of federal constitutional protection. It does so to ensure that the rights guaranteed to Alaskans by the state constitution are at least as expansive as – if not more expansive than – analogous rights guaranteed to all Americans by the federal constitution. Indeed, this Court has obligated itself to "impose the minimum constitutional standards imposed upon [it] by the United States Supreme Court's interpretation of the Fourteenth Amendment [to the United States Constitution]."[7] It has even stated that it is "under a duty," under certain circumstances, to impose constitutional standards above and

[7] *Baker v. City of Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970).

beyond those imposed upon it by the Supreme Court.[8] In doing so, this Court has manifested its longstanding view that the Alaska Constitution is an extraordinary document.

In the wake of *Lawrence*, courts addressing federal constitutional claims must now subject governmental action that disparately penalizes lesbian and gay relationships to a much more exacting standard. Where this Court addresses state constitutional claims, it should do the same. Indeed, it must do the same if it is to conform to its own expansive interpretation of the Alaska Constitution. Accordingly, *Lawrence* informs the determination of the minimum level of protection that the Alaska Constitution guarantees.

II. Disapproval of lesbian and gay relationships is never a legitimate justification for discrimination against lesbian and gay couples.

Time and again, the State and the Municipality have demonstrated their disapproval of lesbian and gay relationships.[9] Such disapproval is at the heart of the absolute denial of partner benefits to lesbian and gay employees and retirees in this case. Disapproval of lesbian and gay relationships, however, is never a legitimate justification for discrimination against lesbian and gay couples. This Court has held

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[8] *Id.* at 402; *see also Lawrence*, 123 S. Ct. at 2482 ("[T]imes can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom").

[9] *See, e.g.*, Alaska Const., art. I, § 25; AS 18.80.220(c), AS 25.05.011(a), AS 25.05.013; *Alaska Gay Coalition v. Sullivan*, 578 P.2d 951 (Alaska 1978).

that discrimination for its own sake is "a discrimination which lacks any legitimate state purpose."[10] It has further held that "[t]he state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals."[11]

Lawrence only reinforces these holdings. The majority in *Lawrence* reaffirmed *Romer v. Evans*[12] – in particular, its holding that governmental action "born of animosity toward the class of persons affected" has no legitimate justification.[13] In her concurring opinion, Justice O'Connor reaffirmed not only *Romer* but also *United States Dep't of Agric. v. Moreno*,[14] and *City of Cleburne v. Cleburne Living Ctr., Inc.*,[15] – thirty years of United States Supreme Court case law holding that "a bare . . . desire to harm a politically unpopular group" is not even a legitimate interest.[16] Echoing such case law, the majority held that disapproval of lesbian and gay relationships is not even a "legitimate" interest:[17] "[T]he fact that the governing majority in a State has

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[10] *Principal Mut. Life Ins. Co. v. State*, 780 P.2d 1023, 1025 (Alaska 1989).
[11] *Breese v. Smith*, 501 P.2d 159, 169 (Alaska 1972).
[12] 517 U.S. 620 (1996).
[13] *Lawrence*, 123 S. Ct. at 2482 (quotation omitted).
[14] 413 U.S. 528 (1973).
[15] 473 U.S. 432 (1985).
[16] *Lawrence*, 123 S. Ct. at 2485 (O'Connor, J., concurring) (quotation omitted).
[17] *Id.* at 2484; *see also id.* at 2486 (O'Connor, J., concurring).

traditionally viewed [lesbian and gay relationships] as immoral is not a sufficient reason for upholding a law prohibiting [them]."[18]

The fact that *Lawrence* is a due process case does not render this holding inapposite to this case. Indeed, the majority emphasized that, although *Lawrence* interprets the due process clause, it necessarily implicates the equal protection clause: "Equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are linked in important respects, and a decision on the latter point advances both interests."[19] Indeed, *Lawrence* expressly seeks to redress the "stigma" and the "discrimination both in the public and in the private sphere" that gay and lesbian people face.[20] Further confirming the sweep of its decision, the Supreme Court contemporaneously vacated the judgment of a Kansas state appellate court in a companion case that presented an equal protection claim but not a due process claim, and remanded the case to the Kansas state appellate court for reconsideration in light of *Lawrence*.[21]

Thus, *Lawrence* confirms that, as a matter of state constitutional law, disapproval of lesbian and gay relationships – such as that underlying the absolute

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[18] *Id.* at 2483 (quotation omitted); *see also, e.g.*, *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975) ("Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty").
[19] *Lawrence*, 123 S. Ct. at 2483.
[20] *Id.* at 2482.
[21] *Limon v. Kansas*, 123 S. Ct. 2638 (2003).

denial of partner benefits to lesbian and gay employees and retirees in this case – is never a legitimate justification for discrimination against lesbian and gay couples.

III. Governmental action that disparately penalizes lesbian and gay relationships warrants heightened scrutiny.

Unlike federal equal protection analysis, state equal protection analysis requires an assessment of the level of scrutiny warranted by a classification even if the classification would not survive any level of scrutiny.[22] Thus, even though the absolute denial of partner benefits to lesbian and gay employees and retirees in this case cannot survive even the lowest level of scrutiny,[23] this Court must nonetheless determine whether such governmental action warrants heightened scrutiny. As Appellants have explained in their previously submitted briefs, the absolute denial of partner benefits to lesbian and gay employees and retirees in this case warrants heightened scrutiny for three reasons: (1) such governmental action classifies based on sexual orientation,[24] (2) such governmental action classifies based on sex,[25] and (3) such governmental action disparately burdens fundamental rights and important interests, including the state constitutional right to intimate association, which is derivative of the state constitutional right to privacy and autonomy.[26]

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[22] *State v. Ostrosky*, 667 P.2d 1184, 1192-93 (Alaska 1983); *cf. Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 (1985).
[23] Appellants' Br. at 33-48; Appellants' Reply Br. at 3-20.
[24] Appellants' Br. at 9-23; Appellants' Reply Br. at 3-15.
[25] Appellants' Br. at 23-28; Appellants' Reply Br. at 15-17.
[26] Appellants' Br. at 28-33; Appellants' Reply Br. at 17-20.

First and foremost, *Lawrence* reinforces Appellants' third reason for applying heightened scrutiny. *Lawrence* holds that lesbian and gay people may form "intimate," "personal," and "enduring" relationships and "still retain their dignity as free people" because "[t]he liberty protected by the Constitution allows homosexual persons the right to make this choice."[27] This holding is both consistent with and broader than the well-established notion that "individual decisions . . . concerning the intimacies of [a] physical relationship, even when not intended to produce offspring" – "including intimate choices by unmarried as well as married persons" – "are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment:"[28]

> [O]ur laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. In explaining the respect the Constitution demands for the autonomy of the person in making these choices, [the Supreme Court] stated as follows:
>
> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

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[27] *Lawrence*, 123 S. Ct. at 2478.

[28] *Id.* at 2483 (quotation omitted); *see also, id.* at 2477.

> Persons in homosexual relationships may seek autonomy for these purposes, just as heterosexual persons do.[29]

Simply stated, Appellants "are entitled to respect for their private lives;" the State and the Municipality "cannot demean their existence or control their destiny."[30]

The fact that federal privacy and autonomy jurisprudence recognizes that "[f]reedom extends beyond spatial bounds,"[31] that "[l]iberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct"[32] and that such liberty extends to lesbian and gay relationships can only support state privacy and autonomy jurisprudence. In acknowledgement of the fact that "[t]he United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles,"[33] this Court has already recognized that "[a]t the core of [the concept of liberty] is the notion of total personal immunity from governmental control"[34] and, indeed, that "the exercise of intimate personal choices" is a fundamental right.[35]

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[29] *Id.* at 2481-82 (quoting and citing *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 851 (1992)).
[30] *Id.* at 2484.
[31] *Id.* at 2475.
[32] *Id.*
[33] *Ravin v. State*, 537 P.2d 494, 509 (Alaska 1975).
[34] *Breese*, 501 P.2d at 168.
[35] *Ostrosky*, 667 P.2d at 1192.

In determining the degree of suspicion with which to view governmental action that disparately penalizes the manner in which a fundamental right is exercised, state equal protection jurisprudence does not look to the analysis of federal equal protection jurisprudence. Rather, it looks to "the degree to which the challenged law can be said to penalize exercise of the right. This in turn depends upon the objective degree to which the challenged legislation tends to deter [exercise of the right]."[36] Significantly, "[t]here is no requirement to demonstrate actual deterrence of [exercise of the right] in federal or state law. The relevant criteria are the fact and severity of the restriction."[37] As Appellants have explained in their previously submitted briefs, the absolute denial of partner benefits to lesbian and gay employees and retirees in this case warrants heightened scrutiny under this analysis.[38]

Even if the analysis of federal equal protection jurisprudence were to apply, however, heightened scrutiny would still be warranted. Under federal equal protection jurisprudence, the government may not disparately penalize the manner in which a fundamental right is exercised, absent a justification that meets a much more exacting standard. For example, in *Shapiro v. Thompson*,[39] the Supreme Court struck down Connecticut's one-year residency requirement for eligibility for public

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[36] *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984) (citation omitted).
[37] *Id.* at 271 n.11 (citation omitted).
[38] Appellants' Reply Br. at 17-20.
[39] 394 U.S. 618 (1969).

assistance, holding that the requirement unconstitutionally penalized the exercise of the constitutional right to interstate travel: "[A]ny classification which serves to penalize the exercise of [a fundamental right], unless shown to be necessary to promote a compelling governmental interest, is unconstitutional."[40] In *Speiser v. Randall*,[41] the Court struck down a California law that entitled veterans to property tax exemptions if they took a loyalty oath: "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech."[42] In *Cleveland Bd. of Educ. v. LaFleur*,[43] the Court struck down a school board policy requiring pregnant teachers to take maternity leave without pay starting five months before the expected date of birth: "By acting to penalize the pregnant teacher for deciding to bear a child, overly restrictive maternity leave regulations can constitute a heavy burden on the exercise of . . . protected freedoms."[44]

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[40] *Shapiro*, 394 U.S. at 634; *see also, e.g.*, *Attorney General v. Soto-Lopez*, 476 U.S. 898 (1986) (striking down one-year residency requirement for eligibility for veterans preference for civil service jobs because it penalized the right to interstate travel); *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974) (striking down on-year residency requirement for eligibility for indigent care because it penalized the right to interstate travel).

[41] 357 U.S. 513 (1958).

[42] *Speiser*, 357 U.S. at 518.

[43] 414 U.S. 632 (1974).

[44] *LaFleur*, 414 U.S. at 640; *see also Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (plurality) (recharacterizing irrebutable presumption cases as heightened scrutiny equal protection cases); *Weinberger v. Salfi*, 422 U.S. 749 (1975) (same).

Such cases demonstrate that the application of heightened scrutiny is not contingent on a showing of actual deterrence of the exercise of a fundamental right.[45] Connecticut's welfare assistance policy did not bar any prospective residents from entering the state; but it penalized those who entered the state by denying them equal governmental benefits. California's property tax exemption policy did not require any veteran to take a loyalty oath; but it penalized those who declined to take a loyalty oath by imposing on them an unequal tax burden. Cleveland's mandatory maternity leave policy did not prevent teachers from having children; but it forced those who had children to leave their jobs.

Moreover, such cases are distinguishable from cases in which the penalty on the exercise of a fundamental right was merely incidental. For example, in *Bowen v. Gilliard*,[46] and *Lyng v. Castillo*,[47] the Supreme Court rejected claims that eligibility policies for government benefits penalized the constitutional interest in family relationships. The Court did so because the totality of the circumstances demonstrated that the policies did not reflect any motivation to penalize the constitutional interest. Although the policies conditioned eligibility on the incomes of family members who shared a home, they did not do so with an eye toward penalizing a person for having a

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[45] *See also Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960) ("Freedoms . . . are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interference") (citations omitted).
[46] 483 U.S. 587 (1987).
[47] 477 U.S. 635 (1986).

marriage, having children, or otherwise forming a family. Rather, they did so merely to recognize the economies of scale that follow when those who are most likely to live together do in fact live together.

Unlike cases such as *Bowen* and *Lyng*, this is a case in which, time and again, the government has sought to ensure that couples who enter into intimate heterosexual relationships have the opportunity to enjoy certain governmental benefits but that couples who enter into intimate lesbian and gay relationships do not.[48] Thus, it is not merely incidental that the denial of governmental benefits to unmarried couples necessarily includes the denial of governmental benefits to each and every couple who enters into an intimate lesbian or gay relationship. To the contrary, it is entirely purposeful. It is yet another manifestation of the government's intention to penalize couples who enter into intimate lesbian and gay relationships but not couples who enter into intimate heterosexual relationships. The totality of the circumstances more than adequately demonstrates that the absolute denial of partner benefits to lesbian and gay employees and retirees in this case reflects a motivation to penalize the exercise of the state constitutional right to intimate association by lesbian and gay couples but not heterosexual couples.

For these reasons, *Lawrence* reinforces the conclusion that, as a matter of state constitutional law, heightened scrutiny is warranted in this case.

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[48] *See, e.g.*, Alaska Const. art. I, § 25; AS §§ 18.80.220(c), 25.05.011(a), 25.05.013.

IV. Governmental action that classifies based on sexual orientation warrants heightened scrutiny.

Lawrence also reinforces Appellants' first reason for applying heightened scrutiny – classifications based on sexual orientation merit heightened scrutiny. This is so because Lawrence overrules *Bowers*. Indeed, *Lawrence* painstakingly discredits each and every aspect of *Bowers* – from its erroneous characterization of the liberty interest at issue to its superficial analysis of history and tradition, from its incongruity with privacy and autonomy jurisprudence to its inconsistency with domestic and international trends.[49] This is significant because most courts that have concluded that classifications based on sexual orientation do not merit heightened scrutiny have predicated their conclusions in large part on *Bowers*.

[49] *Lawrence*, 123 S Ct., *passim*.

Indeed, this is true of most of the cases on which the State and the Municipality rely.[50] Thus, Appellants' argument that classifications based on sexual orientation merit heightened scrutiny is stronger than ever.

If nothing else, Justice O'Connor in her concurring opinion correctly noted that, "[w]hen a law exhibits such a desire to harm a politically unpopular group, [the Supreme Court has] applied a more searching form of rational basis review to strike down such laws under the Equal Protection Clause," and that "[the Supreme Court has] been most likely to apply rational basis review to hold a law unconstitutional under the Equal Protection Clause where, as here, the challenged

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[50] *See, e.g.*, *Equality Found. of Greater Cincinnati, Inc. v. City of Cincinnati*, 128 F.3d 289, 292-93 (6th Cir. 1997) ("[The court] resolved that, under [Bowers] and its progeny, homosexuals did not constitute either a 'suspect class' or a 'quasi-suspect class' because the conduct which defined them as homosexuals was constitutionally proscribable.") (footnote and citation omitted); *High Tech Gays v. Defense Indus. Security Clearance Office*, 895 F.2d 563 (9th Cir. 1990) ("[I]f there is no fundamental right to engage in homosexual sodomy under the Due Process Clause of the Fifth Amendment, it would be incongruous to expand the reach of equal protection to find a fundamental right of homosexual conduct under the equal protection component of the Due Process Clause of the Fifth Amendment.") (citations omitted); *Ben-Shalom v. Marsh*, 881 F.2d, 454, 464 (7th Cir. 1989) ("If homosexual conduct may constitutionally be criminalized, then homosexuals do not constitute a suspect or quasi-suspect class entitled to greater than rational basis scrutiny for equal protection purposes.") (footnote omitted); *Woodward v. United States*, 871 F.2d 1068, 1076 (Fed. Cir. 1989) ("After [*Bowers*] it cannot logically be asserted that discrimination against homosexuals is constitutionally infirm."); *Padula v. Webster*, 822 F.2d 97, 103 (D.C. Cir. 1987) ("[The Supreme Court's] reasoning in [*Bowers*] . . . forecloses appellant's efforts to gain suspect class status for practicing homosexuals. It would be quite anomalous, on its face, to declare status defined by conduct that states may constitutionally criminalize as deserving of strict scrutiny under the equal protection clause.").

legislation inhibits personal relationships."[51] Given that state constitutional law looks to federal constitutional law for guidance, it follows that the absolute denial of partner benefits to lesbian and gay employees and retirees in this case warrants at least some level of heightened scrutiny on the sliding scale because such governmental action not only penalizes lesbian and gay relationships but also is the product of animus directed against lesbian and gay people.

In these ways, *Lawrence* further reinforces the conclusion that, as a matter of state constitutional law, heightened scrutiny is warranted in this case.

V. Common sense determines whether governmental action classifies based on sexual orientation.

Governmental action that discriminates against unmarried couples – such as the denial of partner benefits to unmarried employees and retirees in this case – necessarily discriminates against lesbian and gay couples where, as in Alaska, lesbian and gay couples cannot marry. The State and the Municipality strain to obfuscate this straightforward proposition. This Court should reject such defiance of common sense, just as the Supreme Court in *Lawrence* did so.

The terms of the law in *Lawrence* did not criminalize sexual intimacies between gay or lesbian persons; rather, they criminalized sexual intimacies between persons of the same sex.[52] In defense of the law, Texas argued that, because the terms

[51] *Lawrence*, 123 S. Ct. at 2485 (O'Connor, J., concurring).
[52] *Id.* at 2476.

of the law criminalized sexual intimacies between persons of the same sex, whether gay or lesbian or heterosexual, the law did not classify based on sexual orientation.[53] In her concurring opinion, Justice O'Connor explicitly rejected such sophistry.[54] Noting that the law implicated "sexual practices common to a homosexual lifestyle"[55] and demonstrating an exclusive concern for the criminalization of sexual intimacies between "homosexual" persons,[56] the majority implicitly agreed.

This Court similarly need not labor to find that the governmental action in this case discriminates against lesbian and gay couples. Just as common sense tells us that a law that criminalizes sexual intimacies between persons of the same sex (including heterosexual persons) necessarily criminalizes sexual intimacies between lesbian and gay persons, it tells us that governmental action that discriminates against unmarried couples (including heterosexual couples) necessarily discriminates against lesbian and gay couples.

CONCLUSION

For the foregoing reasons, as well as those set forth in their brief-in-chief and reply brief, Appellants respectfully request that this Court reverse the ruling of the trial court.

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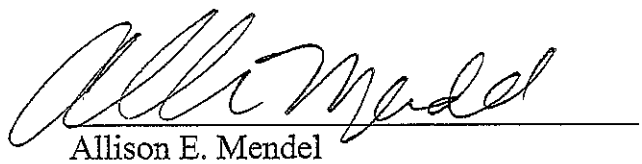
[53] *Id.* at 2486 (O'Connor, J., concurring).
[54] *Id.* at 2486-87 (O'Connor, J., concurring).
[55] *Id.* at 2484.
[56] *Id. passim.*

Dated this 12th day of August, 2003.

Respectfully submitted,



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DATED this 12th day of August, 2003.

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The undersigned hereby certifies that, on this 12th day of August, 2003, true and correct copies of Appellants' Supplement Brief were:

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