



February 25, 2010

The Honorable Linda Menard
Chair, Senate State Affairs Committee
Alaska State Senate
State Capitol, Room 9
Juneau, AK 99801

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STUDENT ADVISORS

Re: Senate Bill 278
Inclusion of Domestic Partners: *AkCLU v. Alaska*

Chair Menard:

Thank you for the opportunity to submit written testimony regarding Senate Bill 278. As you know, the American Civil Liberties Union of Alaska (“ACLU”) represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions.

From a constitutional rights perspective, we would request that the Committee include in this important legislation that would benefit Alaska’s military families, those families that include same-sex domestic partners where one is serving our country in uniform. We believe this inclusion is mandated by the Alaska Supreme Court’s ruling in *Alaska Civil Liberties Union, et al. v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005) (“*AkCLU v. State*”).

Equal Treatment of Domestic Partners

In *AkCLU v. State*, the Alaska Supreme Court found that the differential treatment of same-sex domestic partners and married couples by the state in conferring of benefits was unconstitutional. This ruling was premised on the fact that same-sex domestic partners are prohibited by law from marrying in Alaska. They are thus excluded from receiving benefit made available to spouses.

The Alaska Supreme Court established that same-sex domestic partners must be treated on equal footing with married couples in the provision of

government benefits. The Court held that differential treatment violated the Equal Protection Clause of the Alaska State Constitution since individuals “in committed same-sex relationships are absolutely denied any opportunity to obtain [government] benefits, because [they] are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska.” *AkCLU v. State*, 122 P.3d at 788. Please note that, in reaching this conclusion, the Court found that treating same-sex couples differently from heterosexual married couples with respect to employment benefits was unconstitutional ***and did not survive even the most minimal level of constitutional scrutiny.*** *Id.* at 783, 786–87.

State’s Conferral of Permissive Leave

Under SB 278, teachers; employees of political sub-divisions of the state; of the executive, judicial, or legislative branch; or of public corporations, are granted 10 days’ leave without pay when the “employee’s spouse is a member of . . . [the] armed forces.”

Permissive leave is a compassionate and thoughtful benefit which the state is conferring on our Alaska families where one member is serving in the military, and recognizes their special needs while honoring their service.

By amending the Bill to read “employee’s spouse or same-sex domestic partner,” the Legislature will both bring this Bill in line with the Court’s ruling in *AkCLU v. State*, and recognize and honor **all** military families, including those headed by couples in committed same-sex partnerships.

Thank you again for the opportunity to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Meyer, Vice Chair
Senator Wielechowski, Sponsor
Senator French
Senator Kookesh
Senator Paskvan