

EXHIBIT 19

In The Matter Of:

Connolly v

Brewer

960410 House Judiciary Committee Hearing

April 10, 1996

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REPORTER'S TRANSCRIPTION OF RECORDED PROCEEDINGS

Arizona House Judiciary Committee Hearing

April 10, 1996

"960410 House Judiciary Committee Hearing"

PREPARED BY:

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(Original)

1 MR. KNIGHT: Recording. Testing. Heads up.
2 This is William Knight on behalf of plaintiffs in Connolly v.
3 Brewer. I am recording a -- off of a recording here at the
4 State House on Friday, March 14th, 2014. The recording is a
5 hearing before the House Judiciary Committee and was held on
6 April 10th, 1996 adopting a strike all amendment to SB 1038,
7 the language of which ultimately became ARS Sections 25-101
8 and 25-112, the subparts prohibiting same sex marriage or the
9 recognition thereof in Arizona.

10 UNIDENTIFIED SPEAKER: (Inaudible) Wednesday,
11 April 10, 1996, 9:00 a.m. (Inaudible.)

12 UNIDENTIFIED SPEAKER: (Inaudible.)

13 MR. CHAIRMAN: The Judiciary Committee is
14 called to order. The secretary will note the attendance. We
15 do have eight people here because Ms. Richardson is just
16 getting herself a cup of coffee.

17 We'll hear the bills in the order in which
18 they're shown on the agenda. The first bill we'll hear is
19 Senate Bill 1038, and the second bill is 1355. Both these
20 have strike all amendments, and you want to proceed with
21 Senate Bill 1038.

22 UNIDENTIFIED SPEAKER: (Inaudible.)

23 MR. CHAIRMAN: Pardon?

24 UNIDENTIFIED SPEAKER: (Inaudible.)

25 MR. CHAIRMAN: Yeah. If you want to go ahead

1 and (inaudible).

2 UNIDENTIFIED SPEAKER: Yeah.

3 MR. CHAIRMAN: Yeah. It's Senate Bill 1038.

4 UNIDENTIFIED SPEAKER: Mr. Chairman, I move
5 that Senate Bill 1038 (inaudible.)

6 MR. CHAIRMAN: A second?

7 UNIDENTIFIED SPEAKER: Second.

8 MR. CHAIRMAN: Okay. Now moving the strike all
9 amendment.

10 UNIDENTIFIED SPEAKER: Mr. Chairman, I move
11 that the strike all amendment Senate Bill 1038 be adopted.

12 UNIDENTIFIED SPEAKER: Second.

13 MR. CHAIRMAN: Do you want to go ahead and
14 explain the strike all amendment?

15 UNIDENTIFIED SPEAKER: Mr. Chairman, members,
16 the strike everything amendment to Senate Bill 1038 prohibits
17 marriages between persons of the same sex. The amendment also
18 provides that same sex marriages solemnized in another state
19 or country are not valid in this state and do not have the
20 same legal effect as if solemnized in this state.

21 MR. CHAIRMAN: Can you hear in the back all
22 right? Okay. Go ahead. Sorry there. (inaudible). I'm --
23 go ahead (inaudible).

24 UNIDENTIFIED SPEAKER: (Inaudible) re-explain?
25 Should I re-explain?

1 MR. CHAIRMAN: Go ahead. Go through it again.

2 UNIDENTIFIED SPEAKER: Mr. Chairman, members,
3 the strike everything amendment to Senate Bill 1038 prohibits
4 marriages between persons of the same sex.

5 Also provided in the amendment is that same sex
6 marriages solemnized in another state or country are not valid
7 in this state and do not have the same legal effect as if
8 solemnized in this state.

9 I'll be happy to answer any questions that any
10 members would have at this time.

11 MR. CHAIRMAN: Any questions? Yes,
12 Mr. Hubbard.

13 UNIDENTIFIED SPEAKER: I always enjoy talking
14 to Omar.

15 MR. HUBBARD: Mr. Chairman, I want -- the part
16 of the bill that says that things that go on in other states
17 aren't necessarily recognized by our judicial system, does
18 that apply to anything else, or is that across the board or --

19 UNIDENTIFIED SPEAKER: Mr. Chairman,
20 Mr. Hubbard, the bill specifically addresses marriages that
21 are void and prohibited by the prior section, that which --
22 that specifically outlines marriages between persons of the
23 same sex.

24 I'm not sure if I understand the question.
25 Were you asking whether it is --

1 MR. HUBBARD: So -- why don't I just remind
2 you. So this particular provision and bill only speaks to
3 this particular section of the law and nothing else?

4 UNIDENTIFIED SPEAKER: Mr. Chairman,
5 Mr. Hubbard, that's correct.

6 MR. HUBBARD: (Inaudible.)

7 MR. CHAIRMAN: Thank you, Mr. Hubbard.
8 Ms. Richardson?

9 MS. RICHARDSON: Mr. Chairman, are we going to
10 have anyone else testify? I hate to be asking Omar for legal
11 ideas, but if not, I will ask Omar.

12 MR. CHAIRMAN: There is one person that's you
13 requested to testify, Bill McDonald, who's a chairman of the
14 Arizona Human Rights Foundation.

15 MS. RICHARDSON: Mr. Chairman, is he a -- is he
16 an attorney?

17 MR. CHAIRMAN: I don't know.

18 MR. MCDONALD: No, I'm not.

19 MS. RICHARDSON: Okay. Mr. Chairman, I'll
20 start with Omar, then.

21 MR. CHAIRMAN: All right. Go ahead.

22 MS. RICHARDSON: Mr. Chairman, Omar, I have one
23 question and (inaudible) for information only. Is there not
24 someplace else in the law where same sex marriages in Arizona
25 are banned now, that portion of the bill?

1 UNIDENTIFIED SPEAKER: Mr. Chairman,
2 Ms. Richardson, I'm not aware of any other -- any other
3 statute. I would not -- I'm not sure if I'd be able to answer
4 that question however.

5 MS. RICHARDSON: Mr. Chairman, I believe they
6 are outlawed in Arizona, and I'm not sure why we're being
7 redundant. That was question number one.

8 But number two, what do we do with this law?
9 How does this affect people who have had a sex change?

10 UNIDENTIFIED SPEAKER: Mr. Chairman,
11 Ms. Richardson, I would not be able to answer. I would not
12 know how to answer that question. I would -- I think Speaker
13 (inaudible) may have the answer to that question.

14 MS. RICHARDSON: Mr. Chairman, I would like
15 those questions answered, particularly between people who have
16 had a sex change perhaps for medical reasons and what are we
17 doing with this law and how will this affect them, because we
18 do have to think of the far-reaching effects of what we're
19 doing with this law.

20 UNIDENTIFIED SPEAKER: Mr. Chairman, I'd be
21 more than happy to find out for you.

22 MS. RICHARDSON: Okay.

23 UNIDENTIFIED SPEAKER: However, at this time
24 (inaudible) answer the question.

25 MR. CHAIRMAN: Okay. Mr. McDonald.

1 MR. MCDONALD: Mr. Chairman and members of this
2 committee, my name is William McDonald. I'm a businessman
3 here in Arizona. Formerly owned the Ambassador Catalog
4 Company, and I'm also chair of the Arizona Human Rights Fund.
5 I'm here to speak concerning bill -- Senate Bill 1038.

6 I'm sure that you will hear plenty of testimony
7 this morning. In my remarks, however, I will focus your
8 attention on three points in particular. First, the bill is
9 not necessary at this time. Second, that it is -- its
10 enactment will result in needless and expensive litigation.
11 And third, that it violates the federal Constitution.

12 First, Senate Bill 1038 is not necessary as a
13 result of decisions in 1975 and 1994 by the Superior Court of
14 Maricopa County. Same gender marriage is not currently
15 permitted in Arizona. The Court ruled that a marriage between
16 two persons of the same sex was null and void. A later
17 decision was based on ARS 25-125, which defines a marriage as
18 a contract between a male person and a female person.

19 Even though the Arizona Human Rights Fund is
20 opposed to these decisions, the fact remains a same gender
21 marriage is not permitted in Arizona. Section 25-101 of the
22 proposed bill is therefore not necessary.

23 The section of the bill that prohibits the
24 recognition of out-of-state same gender marriage is also
25 unnecessary. No state currently recognizes same gender

1 marriages. The Hawaii Supreme Court has not legalized same
2 gender marriage in Hawaii. Simply explained, the burden that
3 the State of Hawaii must meet in order to justify confirming
4 continuing to discriminate against same gender couples. The
5 case is still in the courts, will likely stay there for some
6 time. (Pause.)

7 In the meantime, there will not be any same
8 gender marriages in Hawaii, and there certainly will not be
9 any married couples moving to Arizona and asking for their
10 marriages to be recognized. Senate Bill 1038 therefore
11 addresses the entirely hypothetical solution -- situation, and
12 it is at the very least quite premature. There is plenty of
13 time for reasons and thorough debate of this issue.
14 (Inaudible) issues that can be adequately addressed
15 (inaudible). Issues should not be addressed at the
16 (inaudible) phase of this legislature.

17 Also, some opponents of this proposed
18 legislation have stated that they fear the Hawaii court's
19 decision would open the door to gay/lesbian Arizonans flocking
20 to Hawaii for marriages and then expecting to be recognized
21 back the State. The fear is completely unfounded. ARS
22 115-112 states clearly that parties residing in the state may
23 not be (inaudible) the laws of the state relating to marriage
24 by going to another state or country for solemnization of a
25 marriage.

1 There is case law backing up the statute as
2 well. It is currently illegal for gays and lesbians to apply
3 to any other states (inaudible) laws that prohibit same gender
4 marriage here in this state. So again, this bill is
5 unnecessary.

6 The second point I want to emphasize, the 1038
7 is surely unnecessary at this time. Its enactment will surely
8 lead to expensive litigation. Its enactment would raise the
9 marriage issue to the court in Arizona and put Arizona in the
10 small handful of regressive states that enacted such divisive
11 legislation. I believe there are only four in the United
12 States at this time.

13 It is extremely likely that the enactment of
14 1038 would result in litigation challenging the bill's
15 constitutionality. Such litigation would undoubtedly prove to
16 be both expensive and burdensome for the State at a time when
17 the State has much better ways to spend taxpayers' money, and
18 enacting legislation that is unnecessary and would result in
19 expensive litigation is quite unwise.

20 Finally, my last point is that this bill is
21 unconstitutional. I am not a lawyer, so I will not get into
22 the detail regarding the powerful legal arguments, but I will
23 highlight some of the more obvious ones. The bill's
24 prohibition of recognizing legal out-of-state marriages could
25 violate the full faith and credit clause found in Article 4,

1 Section 1 of the United States Constitution, as well as
2 infringing upon the federal Constitutional rights to
3 interstate travel.

4 In the United States, couples who are legally
5 married in one state remain legally married when they move or
6 travel to another state. The full faith and credit clause
7 requires one state to honor legal and judicial actions of
8 another state, and the Constitutional rights of interstate
9 travel prohibits one state from (inaudible) the ability of an
10 individual, or couple in this case, to move one state to the
11 other. This is one of the primary principles which made the
12 United States of America one nation and not a patchwork of 50
13 independent nations. The Constitution principles create legal
14 certainty in a country where interstate travel and relocation
15 is a fact of life.

16 This bill would undermine the certain --
17 certainly the surroundings of legal -- of couples' legal
18 arrangements once the couple crosses the Arizona state line.
19 It is a grave and serious matter, and for once they refuse to
20 officially accept the actions of another state, passage of
21 this bill will leave Arizona hanging out on the fringe of U.S.
22 law. It's a bad idea. It's an unconstitutional one.

23 In closing, I urge you to reject the strike
24 everything amendment in Senate Bill 1038. It is unnecessary.
25 It will certainly prove costly, and will ultimately prove to

1 be unconstitutional. If some other state allows same gender
2 marriages sometime in the future, the legislature will always
3 have an opportunity to revisit this issue. In the meantime,
4 Arizona should not lead the charge in discrimination against
5 gay and lesbians. Thank you.

6 MR. CHAIRMAN: Thank you. Question from
7 (inaudible)? Ms. Richardson.

8 MS. RICHARDSON: Mr. Smith, Mr. McDonald, you
9 bring up a good point. Do you feel by some of your testimony
10 that what is happening now in Arizona is we don't have a
11 problem, but by bringing attention to this problem, we're
12 possibly going to put this matter in the courts, and then the
13 matter can be decided where Arizona can have same sex
14 marriages, and the proponents of the bill will get the exact
15 opposite of what they're trying to get? Do you see this as a
16 possible scenario?

17 MR. MCDONALD: Mr. Chairman, Representative
18 Richardson, I do see this as a possible scenario. I think
19 that this whole clause is really a (inaudible) man. It's
20 putting up an issue that is a non-issue. I think to bring a
21 same gender civil marriage, that we're talking about, civil
22 marriage, we're not talking about anything to do with
23 religious marriage, to the forefront in this state is a
24 divisive tactic. I think it will wind up in courts. I think
25 it will paint Arizona as one of the states, one of the few,

1 very few states, who are pushing this issue. So I think it is
2 a very divisive issue for the State.

3 MS. RICHARDSON: Mr. Chairman --

4 MR. CHAIRMAN: Ms. Richardson.

5 MS. RICHARDSON: -- Mr. McDonald, I do agree
6 with you, and thank you for your observation. I also thank
7 you for quoting the statutes where same sex marriages are not
8 allowed in Arizona now. So again, we're doing -- we're
9 attempting to do a feel good bill (inaudible) there's nothing
10 (inaudible). Thank you.

11 MR. CHAIRMAN: Thank you, Ms. Richardson.

12 We have quite a few people. When we started
13 this, we only had one slip for speaking. Now we've got quite
14 a few, and so I'm going to ensure that we limit anybody's
15 presentation of information to five minutes, and I'd
16 appreciate it if you do keep your remarks short and cover a
17 piece of information that has not been covered previously.
18 We've got about an equal number of pro and con on this bill.

19 Mr. Jim Driscoll. For the record, please give
20 us your name and your organization.

21 MR. DRISCOLL: My name is Jim Driscoll, and I
22 work (inaudible) as a board member of Arizonans for Fairness.

23 Mr. Chairman, I'm a heterosexual male. I'm the
24 (inaudible) if you can remember. I'm a combat veteran of
25 Vietnam, decorated. I have a Ph.D. in social psychology.

1 I am here -- I joined the Board of Arizonans
2 For Fairness because of the importance I attach to this issue.
3 There is no legal reason as (inaudible) has stated and others
4 will going further than, to have this bill. So the question
5 is why are we doing something that's redundant and
6 unconstitutional. Your answer is obviously political strength
7 building.

8 Homophobia is an ugly thing. It's a source of
9 violence and murder directed against people who do not follow
10 exactly the practices or the interests that society dictates.
11 It's a major cause of teen suicide of young people who have
12 (inaudible). Homophobia encourages sexism. It encourages the
13 worst extremes of stereotypical male violence. It is
14 something that we do not need in the State of Arizona. And I
15 wanted to come here briefly today to ask you to rise above
16 this ugliness and get on with the serious problems that press
17 our state.

18 MR. CHAIRMAN: Thank you. Any questions?
19 Mr. Barry.

20 MR. BARRY: Thank you, Mr. Chairman.
21 Mr. Driscoll, thank you for coming.

22 I think that from the testimony you just gave
23 that you believe that anybody who believes that marriage by
24 definition and by custom and by all factors that you might
25 consider has always been between a man and a woman, I take it

1 that you think that if somebody believes that that's the way
2 it should be, then that you believe that that person is
3 homophobic and is in favor of murdering and assaulting
4 homosexuals? Is that what I understood you to imply by your
5 testimony?

6 MR. DRISCOLL: No, that's not what I'm
7 implying. The question I'm raising is why are we at this late
8 date in the State legislative session that is crowded with
9 serious issues bringing back a bill which has -- which is
10 redundant with respect to its application to the people of
11 Arizona and unconstitutional.

12 I'm not a lawyer. I don't want to spend a lot
13 of time on that, but I have the same question of state's
14 rights and recognizing the rights of the people in other
15 states can make decisions about how they feel is the reason
16 I'm here today.

17 MR. BARRY: Okay. Thank you, Mr. Chairman.

18 MR. CHAIRMAN: Thank you, Mr. Barry.

19 Any other questions? (Inaudible.) Mr. Newman.

20 MR. NEWMAN: Thank you Mr. Chairman.

21 Mr. Driscoll, you used the term political
22 scapegoat, and I wanted you to be able to amplify on that. I
23 think you did anyway, but I'm feeling a little bit in a box
24 about this personally. And I feel that it's -- I feel that
25 the -- I think scapegoat is a good analogy. Would you like to

1 amplify on that?

2 MR. DRISCOLL: We have a long history, and I
3 say we, I guess as a (inaudible), it's not just in the
4 United -- we have a long and undistinguished history in the
5 United States, but there is a long and undistinguished history
6 around the globe of political decision makers figuring out
7 subgroups within the society to deflect political attention
8 away from serious concerns about taxation, about education,
9 about all the things that you might deal with.

10 We were talking in the hallway outside. I was
11 talking with another person, so to speak, on another bill, and
12 she recollected how 30 years ago someone who worked to her --
13 worked with her had to go to Kansas to go to get married
14 because she couldn't legally get married in her state, and
15 when she came back into the state, she was subject to arrest
16 for cohabitation, and her crime was being Oriental.

17 So we've done this with people of color. We've
18 done this with people of different ethnicities, like the
19 history of how Irish people were treated in Massachusetts,
20 which is where I -- my family has its roots. It's a long,
21 undistinguished tradition, and at the moment a group that's --
22 along with people of color and others who are being used in
23 this way are people who fall under the category covered by
24 this bill, and I just urge you to rise above this (inaudible).

25 MR. NEWMAN: One other question, Mr. Chairman.

1 MR. CHAIRMAN: Mr. Newman.

2 MR. NEWMAN: I realize Mr. Barry took you on a
3 little bit on the issue of whether or not this would just be
4 -- these types of laws would perpetrate an atmosphere of hate.
5 But we do have another -- we have a bill associated with the
6 (inaudible) this homosexual issues that all hate type issues
7 -- as the hate crimes go that has a (inaudible) legislature
8 (inaudible) recognizing that there should be an aggravating
9 circumstance (inaudible) crimes perpetrated with hate.

10 And from your opinion being a doctor of social
11 sciences and psychology, what would the bill (inaudible)
12 legislature given its weight and authority behind the bill
13 that may be perceived by some sectors in the community as
14 homophobic, but what would that -- what would a bill like this
15 -- what kind of effect would a bill like this have?

16 MR. DRISCOLL: I think every time that the
17 legislature, a committee like this brings up this red flag and
18 wears it in front of the radio, talk show hosts and throws
19 this issue again does nothing more than fan the flames of
20 something that we as a society have to put behind us.

21 MR. CHAIRMAN: Thank you, Mr. Newman.

22 MR. NEWMAN: Thank you, Mr. Chairman. Thank
23 you, Mr. -- Dr. Driscoll.

24 MR. CHAIRMAN: Mr. Updike.

25 MR. UPDIKE: Thank you. Mr. Chairman,

1 Mr. McDonald, from what I understand from what you've just
2 said, and I'd like you to comment on that -- Mr. Driscoll.
3 Excuse me.

4 MR. DRISCOLL: I was going to take that as a
5 compliment actually, but...

6 MR. UPDIKE: If we -- if this committee passes
7 this out and the legislature eventually passes this bill, then
8 are we considered to be dealing in ugliness and that we're
9 raising the red flag and that we're homophobic in our actions?

10 MR. DRISCOLL: Well, the one thing you will --
11 it seems to me you will clearly have done is to have wasted a
12 lot of the taxpayers' time and money on a bill which is -- has
13 no legal impact on the people in Arizona. We already have
14 laws covering the subject, and as the real Mr. McDonald said
15 earlier, opening yourselves up to all kinds of Constitutional
16 challenges from groups like his and mine and others who care
17 about the human rights issues that are involved.

18 MR. CHAIRMAN: Mr. Updike.

19 MR. UPDIKE: Mr. Chairman, Mr. Driscoll, other
20 than it may be not the right time and it may be
21 unconstitutional and be a waste of money and we have other
22 more important issues to do, would you not agree with me that
23 one of the purposes of the legislature is to set policy, and
24 since many other states are involved in this same policy issue
25 that maybe we ought to take a look at this since we have the

1 exact same law as Hawaii does on prohibition issuing a
2 marriage license to the same sex couple and that this could
3 very well be brought into our courts? And that perhaps this
4 legislature should look at it and make a decision so that
5 we'll have a clear policy in this state in this area?

6 MR. DRISCOLL: Well, we already have a clear
7 policy in this area. We have laws on the book. (Inaudible.)

8 UNIDENTIFIED SPEAKER: Mr. Chairman.
9 Mr. Chairman.

10 MR. DRISCOLL: I'm sorry. My -- I think he was
11 (inaudible) and I apologize. (Inaudible). Mr. Chair, Mr. --
12 Representative Updike. (Inaudible) done with the question
13 yet.

14 MR. UPDIKE: The question was don't you think
15 that this state ought to --

16 (Speaking simultaneously.)

17 MR. UPDIKE: Mr. Driscoll, the question was
18 don't you think this state ought to establish policies like
19 the many other states?

20 (Speaking simultaneously.)

21 MR. DRISCOLL: Thank you. Mr. Chairman,
22 Representative Updike, the State already has established
23 policies in this area, as Mr. McDonald testified. We already
24 have policies. You may choose to revisit that, and you know,
25 you may want to have a debate about whether you should change

1 that policy and legalize these, but I would think that would
2 be the kind of discussion that you would take up early in the
3 session and spend a lot of time talking about the -- not
4 trying move it in the last -- in the last week of the session
5 (inaudible).

6 MR. UPDIKE: Thank you, Mr. Chairman.

7 MR. CHAIRMAN: Thank you, Mr. Driscoll.

8 MR. DRISCOLL: Thank you.

9 MR. CHAIRMAN: We'll have one more who's
10 against this. Mr. David Horowitz.

11 MR. HOROWITZ: Good morning, Mr. Chairman,
12 members of the committee. My name is David Horowitz. I am a
13 board member at the Lesbian and Guy Public Awareness Project.
14 I'm also vice president-elect of that group.

15 I have -- I'm a graduate of the University of
16 Arizona. I have degrees from that institution in both law and
17 economics, and I am a licensed attorney in this state. I'm
18 speaking with -- more than on behalf of any particular group,
19 on a very personal level today, and I'm urging this committee
20 not to support these amendments to Arizona's laws.

21 First of all, Mr. McDonald did state what we
22 would be doing is reacting in fear to something that hasn't
23 happened yet. This would put Arizona in the position of
24 announcing to other states throughout the country that we will
25 not honor laws that they may or may not pass. That puts

1 Arizona in a very dangerous position in regard to the federal
2 Constitution and in regard to our credit and our honor with
3 the other states that may or may not pass laws. That's
4 already been spoken to, and the statutes have been mentioned.

5 What I want to talk about mostly before the
6 committee today that was much more important, and I want to
7 particularly recognize the question that was raised by
8 Mr. Barry, because it does take courage to stand by
9 convictions. I know many people who hold the conviction that
10 marriage has always been between a man and a woman and ought
11 to remain that way. And there was a time in many states in
12 this country where many people held the conviction that
13 marriage ought to only be between two people of the same races
14 and ought to remain that way. And there was a time in this
15 country where many people believed that marriage ought to be
16 only between people of the same religion and ought to remain
17 that way. And there were states who -- forward-thinking
18 states who recognized that there might be a change in that
19 traditional concept of marriage.

20 And even religions have gotten to the point
21 where they've changed the kinds of marriages that are
22 recognized. Rabbis and ministers used to be prohibited from
23 solemnizing marriages between people of different faiths.
24 Even today, the Jewish religion and the Catholic religion will
25 allow, in certain circumstances, particularly once it's

1 established that children will be reared, interfaith marriages
2 that never used to be allowed. As a matter of fact, last
3 month in March, the union of (inaudible) congregation
4 permitted for the first time rabbis to solemnize same sex
5 unions.

6 To honor what this legislature may be doing if
7 it enacts this bill is going full faith, full force up against
8 major religions who are recognizing that what they want to do
9 when they encourage family values is encourage monogamous,
10 long-lasting relationships among people who love each other
11 and the creation of families.

12 Now, if we take the definition of family that
13 says the other possible recognition of family is a man and a
14 woman who intend to have children, suddenly we start to
15 invalidate marriages that would occur between elderly people
16 who meet in their later years after both being widowed and are
17 incapable of having children. We must recognize the people's
18 desire who love each other to establish those kinds of
19 relationships.

20 As I mentioned, I also have a degree in
21 economics, and besides the economic impact that litigation
22 potentially has as a result of this legislation, one of the
23 things that we worry about in Arizona with an elderly
24 population is people becoming dependent upon the State
25 (inaudible) as they get older, particularly when the family

1 structure begins to disintegrate, if they lose a spouse, that
2 kind of thing. And what we recognize is that if we encourage
3 and promote long-term, lasting relationships, even between
4 members of the same sex, it will make people self-reliant upon
5 each other as they get older rather than reliance upon the
6 State.

7 The very last thing Arizona needs right now,
8 particularly at the end of a legislative session, is to take
9 anti-civil rights action prospectively before there's any
10 reason to. And I urge this committee not to support the
11 amendments to Arizona's laws which already do what the new
12 amendments propose to do. Thank you.

13 MR. CHAIRMAN: Thank you. Any questions?
14 Ms. Richardson.

15 MS. RICHARDSON: Mr. Chairman, Mr. Horowitz,
16 again, you bring up good points, and it's brought to mind
17 other times when marriages -- and we keep talking about
18 marriage between two people, but it brings up other times when
19 marriages were between more than two people. And our society
20 keeps changing, and in Arizona we can't now have marriage
21 between more than two people. But there were times when we
22 could, and I don't believe there was a big call and rally
23 about the immorality about those times when polygamy was alive
24 and well for creation (inaudible).

25 This isn't a statement, but I'll make it a

1 statement, too. I'll ask the same questions that I asked the
2 last gentleman. We don't have a problem -- and this is my
3 main issue with having this bill right now at this last week
4 of this session -- everything is on the books, and some
5 statutes have been brought to me. So everything that we're
6 saying in this bill, we already have it. It's almost like
7 having to change the bill to make sure we don't cross the
8 street at a red light every two years just to make sure that
9 it's in place.

10 And in your opinion, by bringing attention to
11 this issue, are we going to possibly put this in the courts
12 and the courts can rule however they're going to rule, and
13 perhaps Arizona will become the state where we would allow
14 same sex marriages, as they have been doing in some other
15 states. Is this in the realm of possibility, in your opinion,
16 as an attorney?

17 MR. HOROWITZ: Mr. Chairman.

18 MR. CHAIRMAN: Mr. Horowitz.

19 MR. HOROWITZ: Yes. Mr. Chairman,
20 Ms. Richardson, Representative Richardson, I believe that any
21 time there is -- in the courts, what you need in order to be
22 able to have access to the courts, if you believe the law
23 should be changed, is standing to challenge the law. That's a
24 -- basically the doctrine that you have to have something to
25 argue against. If the Arizona legislature makes that kind of

1 a change to Arizona's law, it all of -- it automatically
2 creates something to argue against and opens up the state to
3 lawsuits.

4 The -- and there -- I have the fervent hope
5 that someday as a gay man I will be able to marry the person
6 that I choose to in this state and continue to live in this
7 state. That's not true right now. It doesn't look to be
8 coming true anytime in the near future, perhaps even before I
9 am one of the elderly population that I spoke of earlier. The
10 State has nothing to worry about me going out and getting
11 married to another man today or in the near future. I promise
12 that there would be litigation, and there will be extensive
13 litigation in the state and federal courts if this legislation
14 gets passed.

15 MR. CHAIRMAN: Ms. Richardson.

16 MS. RICHARDSON: Mr. Chairman, just a comment.

17 Again, I feel what we're doing here is
18 something that's redundant but does not have to be done, and
19 again, we're putting Arizona at risk for more lawsuits. If
20 we'd left this issue alone, we won't have this greatest risk
21 of having the lawsuits that will sure to be come.

22 And also, Mr. Chairman, I'll make a short
23 statement. I'm going to make it probably five times before
24 this committee is over today with the next bill coming up,
25 too. How many times do we have to vote on the same bill in

1 one session? The bill (inaudible) states rights (inaudible)
2 mandate on the floor and allow us to have session when we're
3 not addressing education, we're not addressing capital needs,
4 we're not addressing what's going to help children to not have
5 abuse, but we're addressing an issue which has died, which is
6 redundant, and I take personal exception to that. And that's
7 just a statement, Mr. Chairman.

8 MR. CHAIRMAN: Thank you, Ms. Richardson.
9 Mr. Newman.

10 MR. NEWMAN: Mr. Chairman, thank you.

11 Mr. Chairman, Mr. Horowitz, I -- my question
12 (inaudible) something that we (inaudible) I haven't had a
13 chance to look at it yet. (Inaudible) this has been debated
14 kind of in private quarters of the legislature. We really
15 hadn't had a real debate on the issue. Maybe that will happen
16 today, maybe that won't. But I'm going to try to elevate to
17 debate, I guess, right now with this question. I just
18 received something from Mr. (inaudible) a very good editorial
19 that was in this morning's Daily Star, also, about this issue.

20 I don't know -- I'm not going to have it
21 distributed to the committee, because it does have some
22 personal remarks about a member of the committee, and I don't
23 think that that's appropriate, but I do think that some of the
24 things in the editorial are appropriate, and I want to bring
25 them up right now (inaudible) something in this letter that we

1 just received from Representative Smith's office (inaudible)
2 from Mesa, Arizona.

3 Some people are saying that this is really not
4 about homosexuality, that it's really about just the issue of
5 marriage, but I just wanted to quote from this letter from
6 Mr. Kerber (phonetic). It says, if legitimized, same sex
7 marriage will be a divisive issue that parallels legalized
8 abortion. It will set the stage for presentation between a
9 clearly protected civil right, freedom of religion, and a
10 behavior that has been considered destructive by most
11 societies and religions for most of human history. Where
12 homosexual behavior has been destigmatized, it has been cited
13 as a contributing factor to the collapse of great societies.

14 Now, there is some mention about whether or not
15 this bill and this debate centered on homophobia or not, and I
16 think that it's clear from this letter that, you know, it's
17 getting down to the heart of what we're talking about. I'd
18 like you to comment on that passage I just read from this
19 letter, and then I'll have one more statement or comment and
20 question.

21 MR. HOROWITZ: I don't -- Mr. Chairman,
22 Mr. Newman --

23 MR. CHAIRMAN: Mr. Horowitz.

24 MR. HOROWITZ: -- I must say that I don't think
25 this is about homophobia, that I don't think the proponents of

1 this bill who want this passed quickly and at the end of the
2 legislative session aren't interested in making sure that
3 homosexuals are denied our civil rights as we see them, and I
4 can't say that, because do I personally believe that this is
5 very much about homophobia.

6 We are -- we have a longstanding set of
7 circumstances in which we are afraid of change. And what we
8 will do is anything that we can in our power to prospectively
9 prevent it. That's why (inaudible) documents are written.
10 That's why constitutions are written to guarantee that what we
11 hold dear or most dear gets to live throughout the ages, and
12 those documents are very carefully crafted to be able to do
13 that. At the same time, what we as a society recognize is
14 that there's often a need to change. Even the major religions
15 have recognized that over the millennia, our attitudes and our
16 beliefs may, in fact, change.

17 The issue of freedom of religion is such an
18 interesting one, because the arguments that homosexuality is
19 anti-religion fail to recognize the fact that increasing
20 numbers of religions are recognizing and embracing their
21 homosexual congregants. It surprises me -- it surprised me
22 more than anything to read all of the paperwork last month on
23 the union of Hebrew congregations (inaudible) of rabbis being
24 able to solemnize same sex unions. The Jewish religion, the
25 Old Testament religion, if you will, is typically the very

1 last to be willing to say, we are going to embrace change. We
2 rely on traditions. Just celebrated the Passover holiday,
3 that is right with tradition, and at the same time, recognize
4 that it is better for the religion rather than to turn people
5 away, to accept people.

6 MR. CHAIRMAN: Excuse me. Mr. Horowitz, I
7 would appreciate you trying to keep your answers --

8 MR. HOROWITZ: Sure.

9 MR. CHAIRMAN: -- very short.

10 MR. HOROWITZ: The notion that behavior or that
11 homosexual behavior is destructive to society, there's no
12 behavior that is more long lasting or equivalent to
13 heterosexual intimate behavior than homosexual intimate
14 behavior. It's been here through the millennia, and society
15 has not crumbled as a result.

16 MR. CHAIRMAN: Thank you. Mr. Newman?

17 MR. NEWMAN: Mr. Chairman, thank you.
18 Mr. Chairman. Thank you Mr. Horowitz. I just -- I'm not
19 going to distribute the editorial, as I said before, but --
20 but (inaudible) I can limit it to the members of this
21 committee. I think it's (inaudible) I'm not talking about the
22 personal parts about the representatives or any of the
23 representatives here, but about the debate, because what it
24 says is that basically it takes the cover off (inaudible) to
25 have it now at the end of the session, and I think that that's

1 true. And, you know, that's all I'll say right now.

2 MR. CHAIRMAN: Thank you. Thank you, Mr,
3 Horowitz.

4 MR. HOROWITZ: Thank you, Mr. Chairman.

5 MR. CHAIRMAN: We have the last person speaking
6 against this bill is Reverend Summerland (phonetic). And
7 again, we'll -- I hope you keep your comments to five minutes,
8 please.

9 REVEREND SUMMERLAND: Thank you. Mr. Chairman,
10 members of the committee, I have just 10 reasons why Senate
11 Bill 1038 should be opposed and voted down.

12 UNIDENTIFIED SPEAKER: Can he introduce
13 himself, Mr. Chairman?

14 MR. CHAIRMAN: Give us your name and your
15 organization, please.

16 REVEREND SUMMERLAND: My name is (inaudible)
17 Summerland. I represent the Episcopal Diocese of Arizona.

18 The first reason is that this bill is
19 unconstitutional. (Inaudible) spoken more eloquently to that
20 than I can. In terms of equal protection as well as in terms
21 of the full faith and credit Constitutional clause.

22 The second reason, though, is that it also is
23 unconstitutional in that it attempts to impose the religious
24 ideals of a few on the many. It is not legislature's job to
25 teach morality. That's my job. We need to keep a firm

1 barrier between church and state to enable all of the churches
2 to practice their religion the way they choose to.

3 Third, it represents a governmental intrusion
4 into the most private area of human relationships: The
5 bedroom.

6 Fourth, it is anti-family. It restricts the
7 definition of marriage and denies the strength of the marriage
8 institution to those people who wish to humanize their love
9 and -- by channeling their lust into long-term relationships.

10 It is bad for business. Recent studies show
11 that by allowing gay men or lesbians to form families,
12 businesses would save money in insurance costs and other
13 benefits. Because it is bad for business, it is bad for the
14 State, because the State will no longer be able to compete
15 with states that are more progressive and choose to invite
16 full protection for all of their citizens.

17 Seventh, it encourages promiscuity by denying
18 and discouraging lifelong monogamous relationships.

19 And eighth, it is indeed homophobic. It is the
20 moral equivalent of racism, and it will encourage and
21 perpetuate the violence which gay men and lesbians face.

22 Ninth, it is futile. Clearly unconstitutional
23 on several points, this law will only involve the State in a
24 costly legal battle to defend an indefensible position.

25 Tenth, it does nothing to address the real

1 problems facing the majority of Arizonans. So much
2 legislative time and so much newspaper ink has been spilled
3 without talking about the real issues facing our families
4 today: Divorce, drugs, domestic violence, school funding.
5 These are the important issues. These are where we can set
6 policy. These are the places we need legislative leadership.
7 Thank you.

8 MR. CHAIRMAN: (Inaudible), any questions?

9 REVEREND SUMMERLAND: Thank you. (Inaudible.)

10 MR. CHAIRMAN: Thank you. Appreciate it,
11 Reverend Summerland.

12 We now have Mark Wilson, a pastor. Is he
13 here? Yeah, these people are for the bill. Give us your name
14 and organization, Mr. Wilson.

15 PASTOR WINSLOW: My name is Mark Winslow.

16 MR. CHAIRMAN: Winslow. I'm sorry.

17 PASTOR WINSLOW: And I am a Christian pastor,
18 and I'm representing no one in particular this morning.

19 Mr. Chairman and the members of this committee,
20 we are here because of this probable back door court decided
21 legislation for same sex marriage that we're anticipating will
22 become law in Hawaii soon. My understanding is that there are
23 20 states of the union currently that are in this legislative
24 process, either in hearings or in legislative debate that we
25 are currently in right now.

1 I would like to say that what we are dealing
2 with here is the historical redefinition of marriage as
3 defined by 5,000 years of the Judeo-Christian ethic. What we
4 are dealing with here is a possible rejection of that ethic,
5 which is the best ethic that mankind, humanity and nations so
6 far have found.

7 I come to this issue also with a pastoral
8 heart. I have worked for 10 years in eastern Pennsylvania
9 with homosexual men in a Christian ministry there. So I
10 reject the term that simply because of the stance I take that
11 I am homophobic.

12 I would suggest to you, as this letter has also
13 suggested, that the history of civilization does indicate that
14 open cultural and government sanction allow or endorsed by the
15 homosexual practice is correlated very clearly with the
16 collapse of morality, character and ultimately the rule of
17 law. I know saying that is not a popular thing, but I believe
18 that history bears that truth out.

19 My -- the polls that I've heard, and you
20 probably have better information than I have, is that 70
21 percent of the people of the United States, I think that would
22 include religious people, are currently opposed to same sex
23 marriage. It is simply not true that Christian denominations
24 are moving in mass to accept homosexual practice or same sex
25 marriages. It is a minority of groups that are doing that.

1 Many of the mainline Protestant denominations are taking a
2 clear look again and reaffirming the historical ethic that
3 we've had in this area.

4 So I would like to conclude by saying that
5 recognizing homosexual marriage in Arizona is the last thing
6 that Arizona should be doing as a state. If it's serious and
7 wants to help the citizens of this state to revalue and
8 rebuild healthy, normal marriages, which I think we all know
9 is a crying need of this country and this state in this time.

10 And so I would respectfully urge the committee to
11 send this bill to the legislature for (inaudible) debate. It
12 is an important public policy issue, and it demands nothing
13 less than the full public debate of the legislature. Thank
14 you.

15 MR. CHAIRMAN: Thank you. Mr. Ortega.

16 MR. ORTEGA: Good afternoon Mr. Chairman. Good
17 morning, Mr. Wilson.

18 PASTOR WINSLOW: Winslow.

19 MR. ORTEGA: Winslow?

20 PASTOR WINSLOW: Yes.

21 PASTOR WINSLOW: Mr. Winslow (inaudible).

22 MR. CHAIRMAN: Mr. Winslow, he has a question.

23 PASTOR WINSLOW: Okay.

24 MR. ORTEGA: Good morning, Mr. Winslow. I'm
25 over here.

1 PASTOR WINSLOW: Yes.

2 MR. ORTEGA: Okay. You cited or you made
3 reference to the societies that have been brought down because
4 of the way they treated homosexual relationships. Can you
5 cite a specific time in our history, citing the nation, citing
6 a specific example of what you mean by that?

7 PASTOR WINSLOW: I can point you to the rise
8 and fall of probably Greek and Roman civilizations would be
9 the best examples that most scholars would give. I'm not
10 prepared to cite chapter and verse.

11 MR. ORTEGA: (Inaudible.)

12 PASTOR WINSLOW: But I would say Gibbon's Rise
13 and Fall of the Roman Empire would be a good place to begin
14 looking. (Inaudible.)

15 MR. ORTEGA: And Mr. Chairman, Mr. Winslow, I
16 thank you, because (inaudible) I was in college I should have
17 read more of my theory books, but I did not realize that we
18 historically have given that reason for the fall of the Roman
19 empire. So thank you for (inaudible).

20 PASTOR WINSLOW: I would not -- excuse me. I
21 did not give that reason for the fall of the Roman empire.
22 What I stated is that the public endorsement on a widespread
23 practice, homosexual practice correlates with the fall of
24 those empires. Correlation and causation are two different
25 things.

1 MR. CHAIRMAN: Ms. Richardson.

2 MS. RICHARDSON: Mr. Chairman, to that point,
3 the fall of the Roman empire, and I have read a little bit
4 about this, has been suggested that it's due to the collapse
5 of family life. It was not suggested that it was due to any
6 homosexual relationships. The fall of the Greek empire was
7 probably not touted as from the breakdown of the family.

8 I also have the same -- Mr. Chairman, Pastor, I
9 also have the same question, and I'm looking for facts of
10 where do you feel the homosexual marriages have been allowed,
11 since you made the statement, and have caused a collapse in
12 any society? And I can't accept the Roman empire since I have
13 done a little reading on that, or the Greek empire, but like
14 something a little more substantiated since your testimony is
15 going to be part of the record. (Inaudible.)

16 PASTOR WINSLOW: As I say, I'm not prepared to
17 quote chapter and verse as a historian on the rise and fall of
18 the Roman empire. However, I would suggest to you as many
19 historians have suggested that the breakdown of the family in
20 the Roman empire or in any culture did correlate with the rise
21 of the open practice and endorsement of homosexual practice.

22 We have two basically competing definitions of
23 what is truth and what is marriage. And that's the question
24 that, once again, is being raised by our culture. Significant
25 -- significantly in a time of culture decay.

1 MR. CHAIRMAN: Ms. Richardson.

2 MS. RICHARDSON: Mr. Chairman, Pastor, I will
3 belabor the point. I believe that the collapse of the family
4 has not a lot to do with any rise that may have been seen in
5 homosexuality which according to historians could have
6 happened (pause) because men were away at war for years at a
7 time. And that's only a theory again. And I'll get off that
8 subject for a moment.

9 Mr. Chairman, if you'll --

10 MR. CHAIRMAN: Ms. Richardson.

11 MS. RICHARDSON: -- humor me. I have another
12 question on a statistic that you seem to have given, and I'd
13 like it correlated. Seventy percent of the people do not
14 approve of same sex marriages. Could you tell me where you
15 got that information from so we could validate that?

16 PASTOR WINSLOW: I don't remember, and I didn't
17 come -- as I said, you probably have more various statistics
18 on that, but I would urge you to look at the statistics in the
19 public, and I think you'll find that the public is
20 overwhelmingly or at least probably about at least two-thirds
21 majority is opposed to same sex marriages.

22 MS. RICHARDSON: Mr. Chairman, Pastor, I --

23 PASTOR WINSLOW: If I can be corrected on that,
24 I will be.

25 MS. RICHARDSON: Mr. Chairman, Pastor, I'm not

1 going to dispute it one way or the other, but I would like to
2 see -- there's no information on any of the paperwork, and
3 believe me we get lots of it, that indicate that this is a
4 factual information. So if you have something that's factual
5 on that, I would be more than happy to see it.

6 PASTOR WINSLOW: I don't have anything factual,
7 but what I'm suggesting is -- well, look at the poll figures
8 yourselves when they come to you. You probably get those
9 figures more completely than I do.

10 MR. CHAIRMAN: Ms. Richardson.

11 PASTOR WINSLOW: No, I don't have that.

12 MS. RICHARDSON: Mr. Chairman, Pastor, then I
13 would suggest that we not take this testimony as factual.
14 There doesn't seem to be any fact backing it up, certainly not
15 in any information.

16 And one more question.

17 PASTOR WINSLOW: Sure.

18 MS. RICHARDSON: You talked about
19 Judeo-Christian --

20 PASTOR WINSLOW: Ethics. Ethics.

21 MS. RICHARDSON: -- ethics. I think we all
22 pride ourselves on being ethical and moral, unless none of us
23 would be concerned with this issue. Do you feel it's a
24 Judeo-Christian ethic for polygamy to be available?

25 PASTOR WINSLOW: Well, I think that if you'll

1 look back into American history, you'll find that the people
2 that opposed polygamy were largely out of the Hebrew and
3 Christian religions who were brought those laws to -- who
4 brought the pressure, citizens and legislature -- legislators
5 to define marriage as one man and one woman, monogamous.

6 MR. CHAIRMAN: Ms. Richardson.

7 MS. RICHARDSON: Mr. Chairman, Pastor, but
8 however, the people that did practice polygamy, and I'm not --
9 I'm not condoning it or being against it, were probably very
10 upstanding people who believed in the Judeo-Christian ethic, I
11 am assuming, and that's probably factual.

12 PASTOR WINSLOW: Well, I think that my
13 understanding is that Hebrew and Christian people as well as
14 others who understood that monogamy was the will of God, as
15 revealed in the scriptures, who wanted that to become national
16 law, which it has. So would I defend the practice of polygamy
17 here? Of course not.

18 MS. RICHARDSON: Mr. Chairman.

19 MR. CHAIRMAN: Ms. Richardson.

20 MS. RICHARDSON: Pastor Winslow, I think you're
21 making my point very well. Also, we're talking about
22 Judeo-Christian ethics. I think you realize that marriages
23 between Caucasians, Negros, Hindus, Mongolians, Malays were
24 all out -- were all outlawed until 1962 probably. Are we
25 doing the same thing? Are we repeating history by putting our

1 ethics in -- before 1962 --

2 PASTOR WINSLOW: I don't believe so, because if
3 you look, as a (inaudible) theologian, as I look at the
4 scriptures, I see nothing in the scriptures that would
5 prohibit a black woman from marrying a white man or a Native
6 American -- I see nothing there that would prohibit that
7 situation. However, I do see very clear testimony prohibiting
8 same sex marriage.

9 MS. RICHARDSON: Mr. Chairman, I'm going to
10 stop this line of questioning, because I don't believe our
11 statutes are written following scripture. And I may believe
12 in the same scripture you do, but I don't believe I have a
13 right to impose my feeling on the people in the State of
14 Arizona. I think we have a clear line of the separation of
15 church and state. We write statute for the laws of everyone
16 in the state. We don't write them according to scripture.
17 And, Mr. Chairman, I will stop on that point.

18 MR. CHAIRMAN: Thank you.

19 MS. RICHARDSON: Because I see we have a
20 difference.

21 MR. CHAIRMAN: The next person is Dave
22 Farnsworth. Is he here? (Inaudible.)

23 MR. FARNSWORTH: Mr. Chairman, members, thank
24 you for the opportunity.

25 My name is Dave Farnsworth. I am a

1 representative from District 4, and I have just some very
2 quick points.

3 Number one, we have been elected by people to
4 make the laws for the State of Arizona. That's our
5 responsibility, and if we do not want that responsibility,
6 then obviously we should not be here.

7 Point number two, we do have a law on the
8 books, and I would just refer you to 25-125 of the Arizona
9 state statutes. I'll read just a portion. A valid marriage
10 is contracted by a male person and a female person with a
11 proper marriage license, so on and so forth.

12 Now, there's been testimony today that we don't
13 -- we already have this on the books, so what we're doing here
14 is not relevant, and I would say that is not correct. It's
15 very relevant because we have a responsibility not only to
16 make new laws to address the challenges that face our state,
17 but also to address laws that are already on the books.

18 Because of the court decision in Hawaii that
19 will, I understand, be re-addressed in July, we have to make a
20 decision whether we are going to reaffirm this law that's on
21 the books or whether we're going to allow this judge in Hawaii
22 to set policy for Arizona. This is not something that we can
23 avoid. This is our responsibility, and there is urgency to
24 clarify it. If we pass this bill today it will -- or during
25 this session, it will become effective I, believe sometime, in

1 July, and the judge is expected to rule in July, so there is
2 an urgency. We need to get this on the books. It is not
3 something new. It is a clarification.

4 Now, we also have the right as a legislature to
5 look at it, and if there are people in this body that want to
6 legalize same sex marriage, they can initiate that by simply
7 striking this part of the law. I don't believe that this
8 legislature would pass that. I believe we've set that --
9 we've made that determination in the past, and all we're doing
10 here today is clarifying in statute so that someone from
11 outside of Arizona will not overturn what we have done in the
12 past.

13 And just two more clarifications. This bill
14 did not die in State's Rights Committee. It never received a
15 hearing, and therefore it could not die.

16 And on the floor it did not have an honest vote
17 in my opinion. We had an action, as you're all aware, on the
18 floor of a very tricky maneuver so that people could vote on a
19 related but different issue, and we never had a chance to vote
20 on my amendment which I proposed, which is what we're
21 addressing today. That vote was never taken, but it was a
22 substitute amendment that we voted on. We tried to separate
23 the two so that we could vote on each one individually, and
24 that was not allowed.

25 And that's all I have. I think this is a very

1 important issue that we're addressing, very appropriate to the
2 reason the people have sent us here. Thank you very much.

3 MR. ORTEGA: Thank you, Mr. Chairman. Good
4 morning, David. Welcome to the judiciary.

5 MR. FARNSWORTH: Good morning. Thank you.

6 MR. ORTEGA: Mr. Chairman, Mr. Farnsworth, I
7 have a couple of questions (inaudible) ask about the
8 importance of the issue and why it needs to be debated. My
9 first question is why didn't you introduce this bill in
10 January?

11 MR. FARNSWORTH: Mr. Chairman, Representative
12 Ortega, that's an excellent question. The answer is because I
13 was not aware of the problem, and as you well know, as we go
14 through the session, things come to our attention that we
15 didn't realize the urgency of, and this came to my attention,
16 quite frankly, last week.

17 MR. ORTEGA: Mr. Chairman --

18 MR. CHAIRMAN: Mr. Ortega.

19 MR. ORTEGA: -- Mr. Farnsworth, the second part
20 of the question deals with why don't we wait until we get a
21 ruling from the State of Hawaii.

22 MR. CHAIRMAN: Mr. Farnsworth.

23 MR. FARNSWORTH: Mr. Chairman, Mr. Ortega, I
24 appreciate you asking that, because as I mentioned before, I
25 believe there is a definite urgency here, and I'll quote from

1 the Washington Times. It says, if Hawaii legalizes same sex
2 marriages, legal experts say that other states would be
3 required to recognize them in the absence of laws specifically
4 banning such unions. And at least 19 states are probably
5 considering proposals.

6 In other words, as I understand it, if we do
7 not get this on the books now, then that judge can overturn
8 our laws, but it is our hope that by reaffirming our statute,
9 then he will not be able to do that.

10 MR. CHAIRMAN: Mr. Ortega.

11 MR. ORTEGA: Thank you, Mr. Smith. Thank you,
12 Mr. Farnsworth. Thank you, Mr. Chairman.

13 MR. CHAIRMAN: Mr. Hubbard.

14 MR. HUBBARD: Mr. Chairman, Mr. Farnsworth, as
15 we often say around here, you know, what is the problem that
16 we're trying to fix. Through that vein (inaudible) I've
17 already answered, but in that vein, could you cite us just
18 one, just one example in the State of Arizona where two people
19 of the same sex have attempted to get married, just one?

20 MR. FARNSWORTH: Mr. Chairman, Mr. Hubbard, I
21 don't know of any.

22 MR. HUBBARD: Okay.

23 MR. FARNSWORTH: It's been clearly stated that
24 that's illegal, and if someone did that, I suppose they would
25 be jeopardizing their freedom.

1 MR. ORTEGA: All right. Mr. Chairman,
2 Mr. Hubbard, Farnsworth, I would agree that there -- there
3 has --

4 MR. KNIGHT: This is William Knight again. It
5 appears that the tape cuts out for a period of time, and then
6 it continues on the reverse side. So some of the floor
7 discussion was never recorded. I will resume now on the other
8 side of the tape where the discussion continues.

9 MR. HUBBARD: -- that two people have attempt
10 -- even attempted this, just because Arizona's statutes are
11 pretty clear as you've just stated, they're very clear about a
12 man and a woman.

13 Now, I -- I'm assuming that the reason that
14 we're having this at such a late date is as stated, and that
15 is because of change that might be, might, might be happening
16 in Hawaii. And so we want to make sure that something that
17 might happen in Hawaii, that we are, you know, quote, unquote,
18 protected here in the State of Arizona.

19 You know, California passes a lot of kooky
20 laws, and we don't immediately introduce stuff, because stuff
21 that California does to protect ourselves. Why do you feel
22 the need to pick this one out to protect the State of Arizona
23 on?

24 MR. CHAIRMAN: Mr. Farnsworth?

25 MR. FARNSWORTH: Mr. Chairman, Mr. Hubbard, I

1 believe that there are many things that we have to address,
2 and as we become aware of them, we need to address them as
3 soon as possible. There's been a couple situations that we're
4 all aware of with the schools, the lawsuit that was brought
5 against the legislature and also on -- concerning utilities.
6 And when we discuss these things, we always talk about, well,
7 if we had done the job properly in the beginning, then the
8 judge wouldn't have ruled against us. And this is exactly
9 what we're trying to do.

10 A judge in Hawaii -- and I don't think this is
11 something that people think might happen. This is something
12 that is happening. This is not a figment of my imagination or
13 anyone else's. This is something that's happening and final
14 ruling, I understand, is imminent this summer, and there's 19
15 other states that recognize the same challenge. And I am
16 saying this is the responsible thing for us to do to address
17 it to the very best of our ability.

18 MR. CHAIRMAN: Thank you. Okay. Thank you.
19 We're going to -- we've had testimony from over an hour now.
20 So what I will do is read the slips we got up here and whether
21 they're for or against the bill. The people that are for the
22 bill are Mike Evans from Arizona Common Cause. He's the
23 executive director.

24 (Speaking simultaneously.)

25 MR. CHAIRMAN: Sorry about that. Sorry about

1 that. Sorry about that.

2 UNIDENTIFIED SPEAKER: He's that gift giving
3 guy, not Santa Claus.

4 MR. CHAIRMAN: Okay. We got (inaudible), who's
5 a (inaudible) for Arizona policy who's for the bill.

6 We have Monsenior Rile (phonetic) who supports
7 the bill.

8 Speak only if necessary.

9 We have Debra Brimhall (phonetic), who is from
10 the Eagle Forum. She's a Navajo County director of ARA.

11 And we have a couple more people who are
12 opposed to the bill.

13 We have Marvin Levine, Miriam Levine, who is
14 opposed to the bill.

15 And we have Bunny Ticroeno (phonetic), who's
16 opposed to the bill.

17 So that (inaudible). Is there any further
18 discussion?

19 UNIDENTIFIED SPEAKER: Mr. Chairman, I've kind
20 of held my tongue on asking questions because I wanted to be
21 able to use some time and I didn't want to use too much, and
22 I'd like to address a couple of issues.

23 For those people who say that this is
24 redundant, that -- they miss the point of the bill altogether.
25 And for those people who say that it's prohibited by the full

1 faith and credit clause, I disagree.

2 On the issue of redundancy, we now have by
3 definition marriage in this state defined as a man and a
4 woman. And by implication, that means that any other kind of
5 union is not sanctioned. The -- there's a separate question
6 of whether or not you have to recognize a union that is
7 solemnized in a different state under the full faith and
8 credit clause.

9 For example, in Arizona we do not recognize
10 common law marriage. If you live in this state for 10 years
11 as man and wife without a certificate of marriage, you are
12 still not married in this state. But if you do that in
13 California where they do recognize marriages and you stay
14 there for 10 years -- common law marriages, and you stay there
15 for 10 years as man and wife and you come to Arizona, that
16 marriage is recognized in Arizona, because it was authorized
17 in California.

18 And the concern is that we have set the policy
19 here in this state that we will not recognize marriages that
20 are not between a man and a woman, but that law might be
21 effectively overruled by a judge in Hawaii who rules that such
22 marriages are legal in Hawaii.

23 And to the point that the -- that you cannot go
24 to Hawaii if you -- to get around the law in Arizona, I'm not
25 sure how long you have to be a resident in Hawaii to get

1 married in Hawaii, but in Nevada you don't have to have any
2 residency requirement, and I suspect that it's a very brief
3 period of time in Hawaii. So effectively, people could get
4 around the policy of this state by doing that.

5 And regardless of whether that's true, some
6 things we hold in our society so fundamental in terms of what
7 marriage is that I for one do not believe that the Supreme
8 Court of the United States or any other court is going to rule
9 that we are required -- that this is a Constitutional issue
10 and that we are required to recognize same sex marriages in
11 this state.

12 I recognize that this will have to be through
13 the courts, and I think it's good that we get a ruling on this
14 now and not wait, because if we wait, you're going to have a
15 situation -- we only meet in this legislature for general
16 purposes once a year, and a lot can happen in a year, and I
17 think it behooves us to express the policy of this state now.
18 I, for one, have seen what the Hawaii court has said, and I
19 believe that they are, in fact, going to rule that in Hawaii,
20 same sex marriages will be the rule.

21 So for those people who say that's redundant, we are
22 not simply reiterating what the law is in Arizona. We are
23 reiterating that this is a fundamental issue with us in that
24 we will not recognize such a rule when people come to this
25 state from another state. And I don't think that you (pause)

1 can just automatically say that anything they do in another
2 state, we have to accept it and if the full faith and credit
3 clause goes that far. It does not go that far.

4 And the difference between what -- the kinds of laws
5 they pass in California and what we do when we don't follow
6 kooky laws in California is that they're talking about things
7 that they're doing in their state, and they're not the types
8 of laws that we have to give full faith and credit to. I
9 mean, we just don't have to.

10 And for those people who argue that we're doing
11 something against -- that many religions are now accepting or
12 reaching out to gays and homosexuals, my religion is doing
13 that and -- because they are human beings and they deserve our
14 support and our acceptance. But I don't think that that means
15 that my religion is going to sanction same sex marriages.

16 And it's noted -- it's kind of noteworthy that the
17 reverend that was arguing or whoever it was that was argued
18 that we should -- that we might be going against some
19 religions by passing this law, aside from the fact that it's
20 already the law, I do note that this state put my
21 great-great-grandfather in prison at Yuma Territorial Prison
22 for practicing polygamy. And they didn't hesitate to make
23 that decision then.

24 And so, you know, we all have our opinions about
25 what's right and wrong, and I thought it was interesting that

1 Mrs. Richardson was asking the Reverend Winslow, I think it
2 was, she was asking what his view was and how he could justify
3 it in his religion and -- from the Bible, and then when he did
4 that, she objected to him trying to impose his religion on the
5 body.

6 I mean, we all have a set of values that we bring to
7 this process, and I for one vote based on my values and what I
8 think the values, the majority values of my district are. And
9 so I just think that when people say that this is redundant,
10 they're missing the point. These marriages are not sanctioned
11 in Arizona, but they have a potential of proliferating in
12 Arizona if we don't address the separate issue of accepting
13 marriages that are created somewhere else and brought to this
14 state. Thank you.

15 MR. CHAIRMAN: (Inaudible.)

16 MS. RICHARDSON: Mr. Chairman, to the point, I
17 would like to clear up, I don't believe I asked the pastor
18 what his opinion was. I asked him where he got his factual
19 knowledge of the 70 percent of people being opposed and where
20 he got his factual knowledge that it was homosexuals directly
21 that caused the breakdown of the family, that caused the
22 breakdown of the Roman empire. I do not believe I asked him
23 his opinion, sir, and that's for clarification.

24 MR. CHAIRMAN: Thank you.

25 The issue before you is a strike all amendment.

1 It's the Senate Bill 1038. It has been moved (inaudible).
2 All in favor of the strike all amendment signify by saying
3 aye.

4 UNIDENTIFIED SPEAKERS: Aye.

5 MR. CHAIRMAN: Those opposed, nay?

6 UNIDENTIFIED SPEAKERS: Nay.

7 MR. CHAIRMAN: The ayes appear to have it, do
8 have it, and so ordered. You want to move the bill,
9 Mr. Mortenson, as amended?

10 UNIDENTIFIED SPEAKER: Mr. Chairman, I move
11 that Senate Bill 1038 as received --

12 MR. CHAIRMAN: As amended?

13 UNIDENTIFIED SPEAKER: -- as amended receive a
14 do pass recommendation.

15 MR. CHAIRMAN: Someone second it?

16 UNIDENTIFIED SPEAKER: Second.

17 MR. CHAIRMAN: So moved and seconded, Senate
18 Bill 1038 as amended receive a do pass recommendation.

19 MR. ORTEGA: (Inaudible) question?

20 MR. CHAIRMAN: Certainly, Mr. Ortega.

21 MR. ORTEGA: Did we ever move -- did Mark ever
22 move the amendment?

23 UNIDENTIFIED SPEAKER: In the interest of time,
24 I'm withdrawing that amendment, Mr. Chairman, Mr. Ortega.

25 MR. CHAIRMAN: Okay. Then moved and seconded,

1 Senate Bill 1038 as amended receive the do pass
2 recommendation.

3 The secretary will call the roll.

4 SECRETARY: (Inaudible.)

5 UNIDENTIFIED SPEAKER: Mr. Chairman, just
6 briefly, I'd like to explain my vote.

7 I think as I look at this issue, my best guess
8 would be that this is ultimately going to be decided by the
9 U.S. Supreme Court. I think that there is a question that
10 will be on the table once Hawaii does pass this law, and there
11 will be legal challenges, because already states have passed
12 similar law to one we're going to hopefully pass today. So
13 there will be suits brought, and it will go all the way to the
14 Supreme Court, I believe, for the decision on whether or not
15 the full faith and credit clause applies to this issue or not.
16 And therefore, I think there is an urgency to why we're doing
17 this today. It's not just somebody's idea at the last minute.
18 It is brought on by the Hawaii issue.

19 And I think the other aspect is they believe
20 there's a fairness issue because our law does not clearly
21 state that couples that move here, gay couples that move here
22 from other states would not be recognized, and I think that
23 lack of clarity could create a little bit of a fairness issue
24 if someone were to move here thinking that, well, Hawaii
25 recognized it so -- and it's unclear, and they moved here from

1 Hawaii, and then we didn't address this now, we addressed it
2 later, and they were already living here, I think that would
3 really create a fairness issue that, well, we didn't know it
4 was against the law when we moved here and -- so I think it is
5 important that we do this today, that we do set the policy for
6 Arizona at this time before it really becomes a question. And
7 it may really be an unfair situation for a gay couple that
8 would move here. So I think it's important that we do this
9 today, that we at least address, however the vote goes, that
10 we clarify what the policy is for Arizona, and with that I
11 vote aye.

12 SECRETARY: (Inaudible.)

13 UNIDENTIFIED SPEAKER: Aye.

14 SECRETARY: Daniels.

15 UNIDENTIFIED SPEAKER: Aye.

16 SECRETARY: (Inaudible.)

17 UNIDENTIFIED SPEAKER: Mr. Chairman, I'd like
18 to explain my vote.

19 MR. CHAIRMAN: Certainly.

20 UNIDENTIFIED SPEAKER: Mr. Chairman, I think
21 we're legislating by fear, fear that Hawaii's going to pass a
22 law around same sex marriages. Something that's in the
23 future. It's not certain. We've dealt with this issue on the
24 floor in a straightforward manner. We use procedural matters
25 that are -- according to Mason's law is nothing dishonest

1 about the issue that was brought to the floor about defining
2 family values.

3 I didn't hear any testimony this morning for
4 the redress we're trying to make here to look at a problem
5 (inaudible). We have basically a group of people that are
6 being looked at and out of that group we're expressing a fear
7 in this legislation, and I think it's unfounded. It's
8 unnecessary. I believe that we will be involved in
9 litigation. I think it's going to be costly and burdensome to
10 the State and I vote no. Thank you.

11 SECRETARY: Hubbard.

12 UNIDENTIFIED SPEAKER: Aye.

13 SECRETARY: (Inaudible.)

14 UNIDENTIFIED SPEAKER: Aye.

15 SECRETARY: (Inaudible.)

16 UNIDENTIFIED SPEAKER: Aye.

17 SECRETARY: (Inaudible.)

18 UNIDENTIFIED SPEAKER: Yes.

19 SECRETARY: Ms. Richardson. Okay.

20 MS. RICHARDSON: Brief explanation (inaudible)

21 Mr. Chairman.

22 I feel there's an elephant in this house, and I
23 feel the elephant is the fact we refuse, actually refuse to
24 address capital needs. We refuse to address what needs to be
25 addressed for education. We refuse to address proper

1 standards for children in abuse situations. We refuse to
2 address our property tax problems, and I could go on and on.
3 We absolutely refuse to address things that will affect people
4 of the State of Arizona.

5 But over and over again, we are addressing for
6 political posturing reasons, and that is my opinion, that this
7 is definitely a political posturing bill, we will address this
8 type of issue, which is already on the books, which is not
9 necessary, which is based in fear, and it's going to make
10 somebody somewhere feel good that they've done something in
11 this -- in this body, in this state. And Mr. Chairman, with
12 that I emphatically vote no.

13 MR. CHAIRMAN: Thank you, Ms. Richardson.

14 SECRETARY: (Inaudible.)

15 UNIDENTIFIED SPEAKER: Mr. Chairman, brief
16 remarks.

17 MR. CHAIRMAN: (Inaudible.)

18 UNIDENTIFIED SPEAKER: I think this house did
19 (inaudible). It was the Senate that turned them down, and so
20 we finally got our 50,000,000 on the education issue. Seems
21 insufficient, I feel, but we did look at it (inaudible) it's
22 not the House's problem. We did go for it.

23 I think I have more than anybody else
24 (inaudible) issue -- this issue because of the district where
25 I live. I'll read one part of the statute in the next chapter

1 or the next article.

2 All property acquired by either husband or wife
3 during the marriage except that which is acquired by gift,
4 (inaudible) is the community property of the husband and wife.
5 Then we have case law from since the beginning of this state
6 on that community property issue.

7 I think that by not reaffirming our stand, we
8 would have much, much more problems and litigation otherwise
9 if we don't pass this bill out. Therefore I vote aye.

10 SECRETARY: (Inaudible.)

11 UNIDENTIFIED SPEAKER: Aye.

12 SECRETARY: (Inaudible.)

13 UNIDENTIFIED SPEAKER: Aye.

14 SECRETARY: Mr. Ortega.

15 MR. ORTEGA: Mr. Chairman, if I may briefly
16 explain my vote.

17 MR. CHAIRMAN: Certainly.

18 MR. ORTEGA: Mr. Chairman, members, we're sent
19 up here to make decisions to avoid controversial, hard
20 questions. It's really not to represent (inaudible) district.

21 (Inaudible) importance to what (inaudible) is
22 do I do what the district wants me to do, or do I do what I
23 believe is right? And this age long question has always been
24 exactly that. Do you do what your district wants you to do,
25 or do you believe the district sent you there to work for

1 them? This particular case (inaudible) most of the people in
2 my district probably would want me to vote yes. That would be
3 the political thing to do, but that wouldn't be the right
4 thing to do. I vote no.

5 SECRETARY: Mr. Smith?

6 MR. SMITH: I think I'm voting what I think is
7 the right decision to make, and I vote yes.

8 MR. CHAIRMAN: By a vote of 10 ayes, three nays
9 and one absence, Senate Bill 1038 as amended has received a do
10 pass recommendation.

11 The next bill on the calendar is Senate Bill
12 1355.

13 MR. KNIGHT: And that concluded the Arizona
14 House of Representatives Judiciary --

15 (End of recording.)

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1 STATE OF ARIZONA)
)
 2 COUNTY OF MARICOPA) ss.

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 4 BE IT KNOWN that the foregoing proceedings were reported
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11 I FURTHER CERTIFY that I am in no way related to any of
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14 DATED at Phoenix, Arizona, this 31st day of March 2014.

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