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**OA/ID Number:** 18043

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**Folder Title:**  
Gay Marriage

**Stack:**

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**Row:**

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USA

- Joel Wiggerton =

① Announcement 

② VANCE on when / who -  
SOMETIME in January - / ~~NO~~ DISCUSSION of WINNERS -

③ Notification

\* 300

170 rural  
120 urab  
20 WI  
~~TRACY~~

④ 5:00  5:15 

M



- Group position -

Gore  
Fierstein  
Davis  
Boxer

- \* - Not about marriage -
- Opposed to institutional religious
- It is cultural institution -
- We do not
- scapegoat gay people -

For



Equality of rights  
support / Fed funded hospitals

I oppose this initiatives

**Richard Socarides @ EOP** 01/19/99 08:43:35 AM

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Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Fight brewing on gay rights in California

This is an important piece to read. I'm almost done w/ draft talking points.

----- Forwarded by Richard Socarides/WHO/EOP on 01/19/99 08:42 AM -----



**Doug.Case @ sdsu.edu**  
01/18/99 10:55:00 PM

Record Type: Record

To: Stuart D. Rosenstein, Richard Socarides

cc:

Subject: Fight brewing on gay rights in California

Sacramento Bee, January 15, 1999

( <http://www.sacbee.com> )

Dan Walters: Fight brewing on gay rights

There are few political topics touchier than "gay rights," the broad array of specific issues that collectively define how same-sex relationships are to be treated by government policy.

Should the military services accept gays without restrictions? Should gay marriages be recognized? Should gay relationships that fall short of marriage be sanctioned with access to government or private benefits? Should gay couples be allowed to adopt children?

While politicians are buffeted by militants at the extremes of the issue, they also must deal with ever-evolving attitudes of those in the broader political middle.

Even politicians who try to walk softly along the middle path through the political minefield can trigger explosions, as the years-long controversy over President Clinton's "don't ask, don't tell" policy on gays in the military indicates.

California is on the verge of a new and fierce battle over gay rights -- specifically over whether gay marriages should be officially unrecognized. And the state's most prominent political figure, Gov. Gray Davis, is beginning to find himself caught up in it, even though he says he wants "wedge-issue" politics to disappear.

An initiative that would bar state recognition of same-sex marriages performed in other states has qualified for next year's primary ballot, sponsored by state Sen. Pete Knight, R-Palmdale, and a coalition of religious conservatives.

The opposition campaign will, in effect, begin Saturday. In a self-defined act of "ecclesiastical disobedience," Methodist ministers from throughout the nation will gather in Sacramento to bless the 15-year union of

two lesbians with 1,000 supporters expected to attend. Organizers portray the event as raising public consciousness about the gay-marriage issue.

It's a particular problem for Davis because, like Clinton, he has attempted to maintain a middle course. Last spring in the primary campaign, as Democratic rivals Al Checchi and Jane Harman were endorsing gay marriage, Davis demurred, saying "I don't think America is ready yet."

Davis' homosexual supporters were taken aback by his declaration but stuck with him through his campaign. But now, with the campaign over the Knight measure beginning to heat up, he'll be under pressure to declare himself up or down.

On Thursday, during an appearance before the Sacramento Press Club, Davis said he's not yet ready to take a position, but promised to do so before the vote. "There is plenty of time to engage a ballot measure in 2000," he said.

While Davis clearly does not want to offend gays, who are a substantial bloc within the Democratic Party, he also knows that at this moment, the Knight initiative holds the advantage in the polls, albeit not an overwhelming one. To oppose the measure, therefore, would risk public disfavor.

At the same time, the new governor must deal with two other aspects of the gay rights conundrum: whether to sign legislation, which will almost surely pass, that extends health and other benefits to "domestic partners," and whether to direct his Department of Social Services to overturn predecessor Pete Wilson's decree that gay adoptions be opposed as a matter of policy.

He's willing to do the former, he says, if the measure conforms to a recently adopted policy of the University of California. And on the latter, he says he'll leave it to Department of Social Services "professionals guided by their own best thinking." But whatever policy on gay adoptions emerges from the department, Davis will be held politically accountable for it. That's the nature of an issue this touchy.

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**BRIEFING PAPER**  
**RE: SAME SEX MARRIAGES**  
August 20, 1998

Prepared by: Julian Potter

**BACKGROUND**

- The issue of “gay marriage” became a part of the public debate largely from a court case in the state of Hawaii, *Baehr v. Miike*, which challenged the state constitutionality of denying civil marriage licenses to two people of the same-sex.
- A Circuit court Judge ruled the state must issue marriage licenses to gay and lesbian couples, the ruling was put on hold while the matter was appealed to the state Supreme Court; the high court has yet to rule on the issue.
- In response to the Hawaii court case, religious political conservative organizations pushed forward a Bill that for the first time in history thrust the Federal government into the personal realm of marriage.
- The Administration supported the Defense of Marriage Act, DOMA which became law on September 20, 1996. The law provides for the denial of Federal benefits to same-sex couples who may become legally married in the state in which they reside and would allow states to deny recognition of same-sex marriages legally performed in other states.

**HAWAII AMENDMENT TO THE CONSTITUTION: BALLOT INITIATIVE**

- On Nov. 3, Hawaiian voters will be asked to approve or reject a change to the state constitution to make it read: “The Legislature shall have the power to reserve marriage to opposite-sex couples.”
- In support of the amendment are the Hawaii Family Forum, a nonprofit group “committed to the preservation and strengthening of families in Hawaii”, the National Christian Coalition, and its affiliate Hawaii Christian Coalition, which according to the groups website, are trying to raise \$1.5 million to pump into advertising and grass roots efforts..
- In opposition to the amendment is the Protect our Constitution Coalition in partnership with the Washington, DC based Human Rights Campaign which cite constitutional grounds for opposing the amendment. These groups focus the debate on the protection of the constitution. Arguing that if the amendment should pass, a dangerous precedent would be set by allowing the legislature to rule what should be decided by the Supreme Court.

- The State Campaign Spending Commission disclosed that the attorney general's office has issued an opinion that the state's law limiting contribution to \$1,000 to influence ballot questions is unconstitutional. This could result in the second most expensive campaign on the island, second only to the gubernatorial race.
- Yet, ultimately, this is a local issue which the good citizens of Hawaii must decide; and determine how they want their constitution interpreted.

**VOTER SUPPORT FOR COMPONENTS OF GAY AND LESBIAN MARRIAGES**

- According to public opinion research voters support specific components that make up some of the traditional benefits available to a married couple.

*"I would like to read you a list of proposals in the area of legal recognition of gay and lesbian relationships. For each one, please tell me if you would favor or oppose this proposal:*

***Allowing full hospital visitation rights for gays and lesbians whose partners are hospitalized.***

Favor-----83%  
 Oppose-----11%

***Providing Inheritance rights to gay spouses.***

Favor-----62%  
 Oppose-----28%

***Providing health care benefits to gay spouses.***

Favor-----51%  
 Oppose-----39%

***Providing Social Security benefits to gay spouses.***

Favor-----46%  
 Oppose-----45%

Source: Post-election survey of 1,007 voters in the general election conducted Nov. 5-8, 1996, by Greenberg Research, Inc.

**The Right Reverend  
William J. Winterrowd, Chairman**

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# **THE GOVERNOR'S COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX RELATIONSHIPS**

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Report, Findings and Recommendations

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July 8, 1998

**Submitted to  
The Hon. Roy Romer, Governor**



# REPORT, FINDINGS AND RECOMMENDATIONS

## COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX RELATIONSHIPS

July 1, 1998

### Chapter I – Introduction

Colorado Governor Roy Romer created the Commission on the Rights and Responsibilities of Same Sex Relationships on September 5, 1997 (Executive Order B00897). This action followed his vetoes of bills passed by the Colorado General Assembly in 1996 and 1997 which would have amended the State's definition of marriage to ban same-sex marriages. This issue arose in the General Assembly in part as the result of debate at the national level and in other states.

Governor Romer formed the Commission to explore whether or not the State should extend any rights, benefits, responsibilities or obligations to committed relationships between two members of the same sex. This Report refers to such relationships as "committed relationships," and to persons in a committed relationship as "committed partners."

The Governor's Executive Order charges the Commission with two major duties:

- to research and examine major legal and economic rights and benefits, as well as obligations and responsibilities, in the areas of property, inheritance, taxes, support and health care issues, which are extended to people in legal marriages but not to people in committed relationships; and
- to examine public policy reasons to extend or not to extend such rights, benefits, responsibilities or obligations to committed partners.

The Executive Order specifically directs the Commission to restrict its inquiry to same-sex relationships. The Commission found, in its hearings and deliberations, that there are a number of issues outside of these parameters that the State ought to consider if it is to design a system to protect people in relationships. Many people argued that self-determination is at the heart of these discussions, regardless of sexual orientation. In fact, there are some relationships outside of marriage – such as elderly people living together to share costs, or a parent and dependent adult child – which may warrant some level of legal recognition and support other than marriage.

In its research, the Commission found that private companies that extend health insurance benefits to employees' committed partners have dealt with these issues in several different ways. Some offer benefits only to same-sex partners and not to unmarried heterosexual partners, reasoning that heterosexuals have the option of marriage. Others offer benefits to relationships, regardless of sexual orientation. These different approaches suggest the variety of answers to important social questions of how institutions recognize intimate relationships among their employees.



Members of the Commission were Sue Anderson, Joe Barrows, Elizabeth A. Bryant, Wade Buchanan, Victor R. Dukay, Rabbi Steven E. Foster, Timothy Gill, Shirley O. Harris, Patti Klinge, State Rep. Gloria Leyba, John Meadows, State Sen. Pat Pascoe, Gina B. Weitzenkorn, and the Rt. Rev. William J. Winterrowd (chair). This composition reflected the expertise of probate and family law attorneys; members of the religious community; specialists in human resources; representatives of government, business and industry; and members of the public (including the Gay and Lesbian community).

Some critics have suggested the Commission did not adequately represent a sufficiently wide diversity of opinion. Specifically, they criticized the Commission for lacking representation by social conservatives. Both Governor Romer and the Rt. Rev. Jerry Winterrowd, chair of the Commission, made good faith efforts to appoint Commission members who would represent conservative perspectives, but the people contacted declined to serve. Commission members agreed at the outset to maintain open minds and to make special efforts to hear a wide diversity of opinion on the issues.

To ensure the Commission received input from all interested communities, the Commission held statewide public hearings and met with a focus group of representatives from conservative and religious organizations. The Commission considered the information from these meetings and the diversity of opinions it heard as it discussed these issues and drafted this Report.

The Commission met regularly from October 1997 through May 1998. Michael Hughes from CDR Associates worked with the Commission chair and the process advisory committee in designing work session agendas and facilitating the meetings. Lawrence Pacheco, from the Governor's Office, and Robert Franken, an independent contractor, provided staff support.

Commission members formed subcommittees which included both Commission members and individuals not appointed to the Commission. One subcommittee, which included several attorneys in private practice and law professors from the University of Denver College of Law, conducted legal research. Another subcommittee selected sites and organized the logistics for statewide public hearings. A third subcommittee researched existing definitions of committed relationships. A fourth subcommittee drafted a statement of principles for the Commission to use as it conducted its investigations. A fifth subcommittee wrote the initial drafts of this Report and submitted it to the full Commission for its review, modification and final approval.

Students from the Student Research Center at the University of Denver College of Law (an independent student organization) provided additional research of the Colorado statutes for the Commission. The product of their research is included as an appendix to this Report.

The Commission recognizes that the issues surrounding committed relationships are complex and that strong and sincere opinions on these issues are held by all sides. The Commission members carefully considered these issues and opinions. While the members recognize this Report will not resolve all the issues raised, they intend for this Report to help stimulate thoughtful and informed debate among Coloradans. No difficult issue can be addressed effectively without an open and informed public debate.

During the course of its work, the Commission identified legal categories of benefits and responsibilities afforded to persons who are married, but not to committed partners. These areas include: probate and inheritance law; medical and health-related rights; health insurance; children; retirement and pension benefits; workers compensation benefits; wrongful death benefits; income, gift and estate tax benefits; and several miscellaneous benefits. A detailed discussion of these benefits and responsibilities is included in Chapter III.

The Commission also studied the definition and formation of a "committed relationship" and discussed what criteria a same-sex couple should meet in order to be in a committed relationship. The Commission suggests a definition of "committed relationship" in Chapter IV and outlines the legal framework for the creation and dissolution of committed relationships.

On March 4, 1998, the Commission held five public hearings in Denver, Edwards, Grand Junction, Greeley, and Pueblo to provide citizens the opportunity to share their insights and experiences with the Commission. Approximately 450 people attended these hearings. The unedited transcript of the testimony of the more than 100 individuals who spoke is available by contacting the Governor's Office. It can also be reviewed on the Internet through the Governor's Office homepage at: [http://www.state.co.us/gov\\_dir/governor\\_office.html](http://www.state.co.us/gov_dir/governor_office.html)

On March 19, 1998, a number of Commission members also met in Colorado Springs with representatives of several conservative organizations and religious groups. In addition, the Commission invited experts, including a representative from the Colorado Division of Insurance and a tax law professor from the University of Denver College of Law, to provide information on issues such as health care insurance and tax liability.

Finally, to provide a context for the Commission's Report and recommendations, it is important to understand the State's role in recognizing and legalizing the formation of intimate relationships. At this time, the State recognizes and formalizes only heterosexual relationships, either through issuing marriage licenses or by recognizing common-law marriage. Both types of marriage are legal in Colorado.

The State confers numerous rights and responsibilities to married persons, including inheritance, adoption, and parental rights and responsibilities. These rights and responsibilities provide legal and economic protections to the couple or family in question and protect individuals in the marital relationship, including children. Other rights and responsibilities – such as the right of married persons to file joint or separate income tax returns, to inherit from their spouses tax-free, or to receive spousal social security benefits after one partner dies – are conferred by the federal government. Presently, neither the State nor the federal government confers any comparable rights or responsibilities to committed partners.

The State's role in regulating intimate relationships can be viewed as a service of the government to its citizens. By providing certain protections to citizens in marriages and offering people ways to protect themselves and their relationships, the government places a value on preserving heterosexual relationships – specifically, marriage. The principal question addressed by the Commission is whether the State should similarly recognize committed relationships, and if so,

the whether the State should provide protections, rights, benefits, responsibilities and obligations to committed partners.

The Commission acknowledges the importance of communities of faith in formalizing intimate relationships. Marriage, as a civil institution, constitutes a legal contract between two people and between those two people and the State. Marriage, as a religious institution, is defined through religious tradition and doctrine in ways that may or may not coincide with existing legal definitions. While religious faith clearly can affect how people view intimate relationships, it is important to understand that the Commission focused solely on the State's role in recognizing committed relationships.

Members of the Commission often expressed concern with matters relating to the ability of committed partners to avail themselves of the rights and responsibilities set forth in the Commission's Recommendations. "What good is it," they reasoned, "to have a law that assures committed partners the ability to claim benefits guaranteed by the State if doing so costs you your job?" Neither the U.S. Constitution nor federal or Colorado statutes prohibits discrimination based on sexual orientation. For instance, unless prohibited by local ordinance, it is legal in Colorado to fire someone just for being gay. Laws preventing discrimination in housing and zoning do not protect lesbians and gay men from being evicted based solely on their sexual orientation. Hate crimes against gays and lesbians occur frequently and often are unreported or are not adequately investigated by law enforcement officials. The Commission did not review or discuss these matters in detail because to do so was beyond the scope of its mission.

Also outside of the scope of its charter, but frequently addressed by those presenting information to the Commission, was whether other types of relationships ought to be extended rights, responsibilities, obligations and benefits. Commissioners expressed a belief that both these areas ought to be given further attention.

For the convenience of its readers, the Commission has divided this Report into four chapters, including this introductory Chapter I. They are as follows:

- Chapter II first explores the chief public policy issues the Commission identified in favor of and in opposition to extending rights and responsibilities to committed partners. Chapter II then sets forth the Commission's Findings and Recommendations based on its review of these public policy issues.
- Chapter III analyzes the specific rights and responsibilities afforded to married persons under Colorado law as well as the legal options available to committed partners in the same areas.
- Chapter IV sets forth the Commission's recommendations regarding how to implement the Commission's findings and recommendations in Chapter II, given the various legal rights and responsibilities discussed in Chapter III.

## Chapter II -- Public Policy Issues

In his Executive Order, Governor Romer asked the Commission to "examine the public policy reasons to extend or not to extend" to same-sex couples rights, responsibilities and benefits similar to those extended to married heterosexual couples. The Commission began its inquiry with this task. This Chapter outlines the issues the Commission identified and makes several conclusions based on its deliberations.

Section One outlines the most significant public policy reasons in favor of extending rights and benefits, as well as obligations and responsibilities, to committed partners.

Section Two outlines the most significant public policy reasons in opposition to extending these rights and responsibilities to committed partners.

Section Three discusses the strength of arguments for and against the State extending rights and responsibilities to committed partners. Based on this discussion, the Commission makes three recommendations.

### **Section One: Arguments asserted in favor of extending rights, responsibilities, benefits and obligations to persons in committed relationships.**

The arguments presented below attempt to summarize the views of those who favor having the State extend rights and responsibilities to persons in committed relationships similar to the rights and responsibilities the State extends to married persons. The arguments summarized in this section should not necessarily be construed to represent the individual views of any members of the Commission.

- 1. Supporters asserted that committed relationships exist in our society, and that, in the interest and tradition of fairness and equality, they should be recognized and afforded equal treatment under the law.**

*"Marriage is an institution among heterosexuals accepted as correct only because of its history, not because of any inherent correctness. The reason for the existence of government is for the protection of all its people, and to provide benefits for the common good, so that those who support government in terms of taxation, in terms of holding down a job, in terms of caring for their community, deserve the same rights and privileges and protection as all other members of [society]"*

Pamela Linden  
Greeley Public Hearing, March 4, 1998

*"This is America. . . . It just looks to me like the issue is should the State legislate . . . what they believe God's word is, or should they just go ahead and recognize a segment of the society that already exists."*

Donald Rice  
Grand Junction Public Hearing, March 4, 1998

A number of people testified that many committed relationships already exist between people of the same sex, that these partnerships are mutual and caring, and that society should recognize them. Supporters for extending rights and responsibilities to committed partners frequently argued that people in these relationships are members of society, yet they are not allowed to benefit at the same level as married persons. According to this argument, any basic understanding of justice and human dignity dictates that this should change.

Supporters asserted that the nature of committed relationships is changing. Although such relationships have existed throughout history, it is only in the past few decades that they have become more visible and accepted by society. Committed partners asserted that their relationships resemble traditional marriages. They said they are increasingly able to acknowledge openly their relationships. Committed partners claimed that their relationships are valid and deserve to be acknowledged and protected by the State for the same reason marriages are: so that they can enjoy the stability and peace-of-mind that should accompany committed relationships.

Supporters also claimed that self-determination is at stake. Several people who testified at the public hearings said that society should ensure that committed partners have the equal right to self-determination in decisions about their health if incapacitated, and how their property and benefits should be allotted in the event of the death of one of the partners. They said their ability to plan their lives is hindered by lack of legal recognition of their relationships.

Similarly, a number of parents testified that the legal benefits received by their heterosexual children who are married are significant when compared to the lack of such legal benefits available to their homosexual children in committed relationships. Committed partners argued that their commitment and love should afford them the same basic rights and responsibilities that married couples have.

**2. Supporters asserted that committed relationships provide important benefits to society.**

*"One of the first things many people worry about when coming to terms with their homosexuality is: Who will take care of me when I'm ailing or old? Society needs to care about this, too, as the AIDS crisis has made horribly clear. If that crisis has shown anything, it is that homosexuals can and will take care of each other, sometimes with breathtaking devotion – and that no institution can begin to match the care of a devoted*

*partner. Legally speaking, marriage creates kin. Surely society's interest in kin-creation is strongest of all for people who are unlikely to be supported by children in old age and who may well be rejected by their own parents in youth."*

Jonathan Rauch  
*The New Republic*, May 6, 1996

*"I'm representing no organization, I come as an individual. [W]hile I have no one in my family who is gay, and to my knowledge, none of my friends, I do believe the State has a compelling interest in long-term, stable relationships for the health of our society as well as for the health of individuals and family members involved. I would like to see [the] State support -- or legally confirm relationships [between] people of the same sex who wish to enter into long-term, stable relationships. I would like to see this marriage be parallel in all ways to heterosexual marriage."*

Doree Pitkin  
Greeley Public Hearing, March 4, 1998.

People in committed relationships claimed that their relationships provide tangible benefits to society. They explained that committed relationships foster economic and social stability. They said such relationships should be encouraged, rewarded and protected in the same manner as marriages are for the benefits they provide to society.

Those supporting this argument indicated their belief that people in committed relationships, whether they are homosexual or heterosexual, are more economically stable, have higher job productivity, and are less likely to become dependent on public assistance. They asserted that people in committed relationships assist and support each other in times of economic hardship or medical illness.

Individuals presenting testimony to the Commission indicated that they felt being a committed partner led to a sense of higher productivity and greater fulfillment in their personal lives. Some further asserted that such stability encourages monogamy and lessens the cost of public health services.

Many who gave testimony argued that providing legal protections to committed partners would create a more stable family system to protect the health, safety and welfare of their children. They pointed out that current law prohibits one partner in a committed relationship from adopting the children of the other partner, jeopardizing the couple's ability to determine how the children will be protected and cared for in the event of the death of the parent. Some also noted that a committed partner who is not the parent is unlikely to be able to obtain employee health benefits for the children of the other partner.

Supporters argued that people are more productive and constructive citizens when they belong to and enjoy the support of a community. The building block of community is family, and the core of family is a committed relationship between two adults. These people reasoned that, because

homosexuals are highly unlikely to form committed relationships with members of the opposite sex, society has a strong interest in encouraging them to form committed same-sex relationships. They asserted that, if society values love and commitment between two individuals, and sees the clear social benefits of committed relationships, then providing mechanisms to protect such relationships is in society's interest, regardless of whether they are homosexual or heterosexual.

3. **Supporters asserted that existing legal mechanisms available to persons in committed relationships do not offer reasonable access to the rights and benefits available to married couples and do not provide adequate protection.**

*"Couples like Phil and me don't have automatic access to these benefits. We have to research. We have to pay lawyers. We have to pay clerks. We have to cobble together an inefficient and sometimes inadequate legal structure to mimic the comprehensive and polished system that's available to married people."*

Robert Janowski, M.D.  
Denver Public Hearing, March 4, 1998

*"I sat in a Senate committee hearing and listened to Colorado representatives say there are legal documents those people can get to make up for the lack of relationship. But powers of attorney are not necessarily enough. Selecting and drafting the correct versions of documents requires the services of an attorney, can cost quite a bit of money, and are no guarantee that they will be honored in a time of crisis."*

M.J. Lowe  
Denver Public Hearing, March 4, 1998.

*"This past year I made a career decision to return to school full time . . . . When I cut back my work hours . . . , I lost my health insurance benefits. My partner is . . . employed by a large corporation which provides medical and dental insurance as a benefit to its employees, their spouses and dependents . . . . Because I do not fit the definition of her spouse, her employer does not have to extend benefits to me, her life partner . . . . I estimate that during the time it will take me to finish my degree and return to the workforce, it will cost me over \$5,000 in HMO [and] dental premiums under the more costly individual plan [I will have to obtain]."*

Madeline Zanetti  
Denver Public Hearing, March 4, 1998

Advocates supporting State involvement in committed relationships addressed the inability to access benefits equal to those available to married couples and their families. They indicated that no legal document between committed partners can secure employer health insurance benefits for one's partner or children.

A number of individuals who addressed the Commission said that although some of the rights and benefits in question may be obtained by committed partners through wills, powers of

attorney and other legal paperwork, there are many problems with these mechanisms. They noted that they often are costly and difficult to prepare, and they cannot create the same level of protection, no matter how thoroughly prepared. They said the burden of having to draft a cumbersome set of legal documents is inequitable because the documents cannot fully protect one's partner and dependents. Further, these documents may be challenged in a legal system that does not recognize the validity of committed relationships. Advocates provided a variety of anecdotal evidence and statistics to support this argument.

According to people in committed relationships, it is costly to construct the myriad of legal arrangements required to establish even the most basic rights because the assistance of an attorney is required. Committed partners must maintain and possibly defend those arrangements, requiring even more legal service. A 1995 state commission in Hawaii estimated the average cost to a couple for such services in that state to be \$6,800 – a cost that is not incurred by married couples. Some experts suggested this estimate is low, especially to address complex financial relationships. Those in committed relationships warned against do-it-yourself strategies in making legal arrangements because they are complicated and vulnerable to legal challenge.

Supporters also argued that once they have completed arrangements to ensure that they have rights in emergencies or the event of death, committed partners often face an uphill battle in exercising those rights amidst the confusion associated with such scenarios. They noted that legal documentation often is not available in emergencies, leaving a committed partner powerless if a critical decision must be made. One individual recounted that when he was in a work-related accident, his boss was allowed in the emergency room but his partner of many years was not.

Individuals who have attempted to construct such legal arrangements reported a variety of problems with the enforcement and judicial validation of the documents. They indicated that, since the State does not recognize committed partnerships, such arrangements are vulnerable in court. For example, when a committed partner dies, his or her will can be challenged by the deceased's biological family. In such cases, the courts may decide in favor of the biological family over the legally documented wishes of the deceased.

Some said the streamlined system of granting rights and responsibilities between spouses is effective in many ways that a committed relationship's legal arrangements cannot be. Many married adults do not have wills, but most know that their spouses will be protected by the law. This and other important elements of marriages are not available to committed relationships.

Finally, some legal experts pointed out that the number of rights which can be secured through legal documents such as wills and powers of attorney are limited compared to those conferred to persons in a marriage. For example, while a power of attorney may assure one committed partner the ability to make health care decisions for the other partner, it does not entitle that person to take time away from work to care for an ill or disabled partner. Similarly, although a will can facilitate inheritance from one's committed partner, it cannot assure that the surviving partner will continue to have parenting rights.



4. Supporters asserted that the Fourteenth Amendment of the United States Constitution guarantees equal protection.

*"[W]e must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end, but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws."*

U.S. Supreme Court Justice Anthony Kennedy  
Romer v. Evans, May 1996.

*"I'm here from PFLAG of Summit County. First of all, it would seem to me all of these questions would be moot, if we could just change the marriage definition. [The] question [should] be if there is something that a normal married couple can have, . . . a same sex couple should have it as well. Now, if it's something you're granting to my wife and myself, then there's no reason that my daughter and her partner can't have the same benefit."*

Keith Bond  
Edwards Public Hearing, March 4, 1998

Some proponents of extending rights to committed partners argued that the Fourteenth Amendment to the United States Constitution protects the equality of same-sex relationships. They reasoned that if individuals should be protected from gender discrimination, then denying benefits to those in a partnership with someone of the same gender constitutes discrimination.

They argued that society has enshrined its commitment to fairness, equality, justice and human dignity in the Constitution. Denying to people in committed same-sex relationships the rights that are provided to people in marriages violates these constitutional virtues. They claimed that the State should not favor some couples over others in granting partnership protections. Rather, they stated, if the State provides benefits to heterosexual couples who form committed relationships through marriage, it should provide the same benefits to same-sex couples who form committed relationships.

Citing the Amendment 2 decision and other cases, supporters of this argument asserted that the courts are more frequently concluding that the equal protection guarantees contained in state and federal constitutions prohibit discriminatory classifications on the basis of sexual orientation. They concluded that distinctions in law favoring persons in opposite-sex marriages over persons in same-sex committed relationships violate these constitutional provisions.

**5. Supporters asserted that religious doctrine requires society to strive to ensure that all members of society are treated the same.**

*"Will you seek and serve Christ in all persons, loving your neighbor as yourself?"*

*"Will you strive for justice and peace among all people, and respect the dignity of every human being?"*

The Book of Common Prayer  
According to the use of The Episcopal Church, 1979

*"[Y]ou need to open your hearts. Where there is love, there is God. It's quite plain and simple."*

Micah Norton  
Grand Junction Public Hearing, March 4, 1998

Several members of the clergy and people of faith from the Judeo-Christian tradition testified to the primary notion of justice in Jewish and Christian scriptures and heritage. They said this understanding of justice is built upon the divine command to respect the dignity of all human beings, and that followers of Christian and Jewish faiths are commanded to create a genuine community among themselves and with their neighbors.

These people further argued that the sacred writings repeatedly give examples of how difficult it is to achieve genuine community. The notion of Judeo-Christian justice is always a source of conflict within the community, they said, and yet there is a passionate desire reflected in the prophets of all ages to settle for nothing less than love and charity with one's neighbor.

According to this line of argument, sacred Judeo-Christian writings hold their followers to a higher standard of justice which asserts that, since a divine hand formed every human being, each person should be treated with respect and prejudice should be avoided. They say this standard of justice is in stark contrast to civil standards throughout history. For example, American democracy and contemporary culture would claim that justice is served as long as one's constitutional rights are not violated. In the Judeo-Christian tradition, however, proponents said the standard of justice requires followers to pursue the best interest of other persons and to recognize the divine bias toward the poor, the widow, and the outcast.

Some Christians who testified said Jesus tells them they must love their neighbor. They said that when the disciple asked, "And who is my neighbor?" Jesus told the parable of the man who was robbed and left dying in a ditch. Therefore, they said, to love your neighbor means to go all out for the stranger and the outcast – perhaps the one you least like in the community – to see that that individual is treated with all the respect that you hope to receive yourself.

Similarly, some Jews who addressed these issues said that, for centuries, Jews have provided moral leadership in recognizing our differences and diversities. They said that Jewish sacred

texts affirm that all persons are created Betzelem Elonim, "in the Image of God," and therefore are entitled to live lives free of apathy, insensitivity, or hatred. Judaism also affirms the ideal, Zedek Zedek Tirdof, "Justice, Justice, shalt you pursue."

In that regard, these people pointed out that many Jewish organizations have urged that all Gay and Lesbian people be offered equality under the law and be allowed to live without discrimination of any kind.

## **Section Two: Arguments asserted in opposition to extending rights, responsibilities, benefits and obligations to persons in committed relationships.**

The arguments presented below attempt to summarize the views of those who oppose having the State extend rights and responsibilities to persons in committed relationships similar to those it extends to married persons. The arguments summarized in this section should not necessarily be construed to represent the individual views of any members of the Commission.

- 1. Opponents asserted that the State should do nothing to legitimize committed relationships because homosexuality is unnatural and against the will of God.**

*"[T]his issue is about behavior. It's about right and wrong, moral and immoral, proper and improper, natural and unnatural."*

Gary Coats, Grand Junction  
Commission Public Hearing, March 4, 1998

*"To legitimate homosexual relationships by affording any sort of legal sanction to them leads to consequences that I, for one, would not tolerate . . . . Every law to some degree legislates morality. Designing specific legal recourse for homosexual relationships is, in my view, equivalent to the state affirming the morality, the rightness of homosexual relationships."*

Charles Fisher  
Greeley Public Hearing, March 4, 1998.

The most commonly expressed objection to extending rights or benefits to committed partners was the belief that homosexuality is morally wrong. Of all the arguments opposing extending rights to persons in committed relationships, these clearly were the most deeply, firmly, and sincerely felt. This argument also serves as a foundation for several other arguments set forth in this section.

The intensity of this argument varied considerably – from strong condemnations of "gay lifestyles" to less extreme statements about "hating the sin but loving the sinner." In all cases these arguments were based on strong religious faith, and specifically on the belief that God has clearly stated that homosexuality is a sin.

According to this argument, the Bible is unambiguous on the issue of homosexuality – especially in the book of Leviticus. These persons said that if we take scripture at face value, then homosexuality clearly is against the will of God. Similarly, a number of people referred to homosexuality as “unnatural.” They claimed that God’s will is expressed in the natural world around us, and homosexual activity is alien to that world.

Some who made this argument stated that in a pluralistic society they were willing to accept, and to some extent accommodate, homosexuality. However, all strongly opposed extending rights and benefits to persons in committed relationships because it could be interpreted as an endorsement or validation of homosexuality. They were concerned that conferring rights to committed relationships may encourage homosexuality on a societal level.

According to several members of the clergy who spoke, there simply can be no compromise in the church’s mission of “calling society to God’s ideal.” They said treating committed relationships as a valid expression of human love would go against this mission. Nor, they said, can the issue be dismissed simply by separating the roles of the church and of the state. These people view legislation as an expression of morality, and law as an expression of right and wrong. Therefore, they reasoned, the State should neither legitimize nor support committed relationships because homosexuality is wrong.

**2. Opponents asserted that families based on unions between a man and a woman provide benefits to society which same-sex unions cannot provide.**

*“[G]overnmental bodies provide marital benefits because they derive benefits from the traditional family union that really comprises the foundation of culture. The traditional family is the best environment to prepare for old age, to prevent welfare costs, to prevent violence, to raise children and to preserve our culture. And these are tremendous benefits to the state. And they are things that the state cannot do. And that’s why the marital benefits are extended to traditional husband and wife family units.”*

*“But there is no benefit to the state from a homosexual union. It is strictly a matter of personal satisfaction. And that’s why . . . the state does not give marital benefits to homosexual marriages or unions, whether they are monogamous or not.”*

Will Perkins, Chair, Colorado for Family Values  
Public Hearings, Grand Junction, March 4, 1998

A second argument that was presented in opposition to extending rights and benefits to committed relationships was that marriages provide benefits to society that committed relationships do not. They noted the benefits range from procreation and child rearing to providing economic security and serving as a stabilizing force in society.

Several of those who opposed extending benefits to committed partners tied this argument – especially with regard to procreation and child rearing – to a religious faith and a belief that

homosexuality is morally wrong. However, they stressed that their argument was addressing marriage primarily as a social or legal institution rather than a religious institution. They noted that societies throughout history have extended benefits to heterosexual unions because of the benefits societies derive from those unions. They said the traditional family unit also provides its members with some level of education, economic security, and safety.

Unlike the moral or faith-based arguments discussed previously, this argument does not necessarily hold that homosexuality is immoral or wrong. It holds instead that heterosexual marriage serves a unique, privileged and essential role in our cultural life. The exclusive nature of the rights extended to persons who are married does not constitute discrimination against any other type of relationship. Rather, they reasoned, exclusive recognition of marriage constitutes discrimination in favor of heterosexual relationships that serve as the indispensable foundation of our culture.

**3. Opponents asserted that granting rights to persons in committed relationships would either undermine the role of marriage or contribute to the moral decay of society.**

*"[O]nce you take a behavior that is unnatural and is actually perversion and start calling it an alternative lifestyle, you have opened Pandora's Box . . . . Once it's unnatural, there is nothing to stop how far it will go."*

Gary Coats

Grand Junction Public Hearing, March 4, 1998

A third argument against extending rights and benefits to committed relationships predicts further and significant problems based on the first two arguments above. Two basic positions supporting this argument were asserted. The first followed from the assertion that homosexuality is wrong or immoral. The second followed from the assertion that, regardless of how each of us views homosexuality, marriage provides society unique and essential benefits that should not be extended beyond the bounds of a union between one man and one woman. Both of these positions are set forth below.

- a. According to the first position asserted, if homosexuality is wrong or immoral (the argument discussed in item #1 of this section), then providing any endorsement or validation of committed relationships could contribute to the moral decline of society. Some people argued that society would be hard pressed to draw the line after extending rights to persons in committed relationships, suggesting, for instance, that society would next be asked to extend benefits to relationships involving more than two people or to people from the same immediate family.

Several members of the clergy presented this position in a different, more theological form. While recognizing that many committed relationships can be long-term and mutually caring and loving, these clergy argued that it is the long-term, societal impacts that are of greatest concern. They said when a society goes against natural law or the revealed law of God, society degenerates – regardless of the inherent value of any one

relationship. They stated the short-term gain is not worth the long-term loss brought about by the increasing moral confusion of society. One drew an analogy to what he called the "moral relativism" of the 1960s, suggesting it lead us down a path that has resulted in historically high rates of divorce and teen pregnancy.

As one of these clergy stated, society must keep a moral compass and follow that compass even when in doubt. "Rejecting the moral wisdom of the ages, even if we don't understand it," he said, leads inevitably to the moral decay of society.

- b. According to the second position asserted, if marriage provides society unique and essential benefits (the argument discussed in item #2 of this section), then anything perceived to undermine or diminish the value of marriage also threatens society as a whole. According to those who presented this argument, the American family is under serious strain, and the resulting breakdown of many families is contributing to a great many social ills, from crime and drug abuse to poverty and declining health and educational standards.

This position is similar to that which often is made concerning single parents. While the opponents said they want to make all parents successful and want to ensure all children have a fair chance in life, they warned that the State should do nothing to send the signal that having children out of wedlock is ideal or that raising children in a one-parent household is equal to raising them in a two-parent household.

They asserted that, by providing single parents or committed relationships with the same or similar rights and benefits as persons in a marriage, society would send the message that these relationships are of equal value to society. They believe, from a societal point of view, sending such a message would be destructive. They said such a message would ultimately dilute the value of the benefits of marriage and further contribute to the breakdown of the American family and all the social ills that has brought.

Again, as with the opponents' argument in #2 above, it is important to note that this argument did not necessarily suggest that committed relationships are bad and should be opposed. It simply argues that the family somehow is threatened, and that the survival of our culture depends in part on rallying around the traditional family unit. In such an environment, opponents asserted, it would be foolish for society to share more broadly the benefits it extends to persons in marriages and families, if by doing so it sends the wrong signal or dilutes the value of those benefits.

4. **Opponents asserted that, through the results of the Amendment 2 election in 1992 as well as a number of opinion polls since then, Coloradans clearly oppose the extension of any rights to gay people or to persons in same-sex committed relationships.**

*"What concerns me is on November the 3rd, 1992, 811,479 people of Colorado voted in favor of Amendment 2. The majority let [their] minds be known, and polls indicate that the number of people who oppose special rights for homosexuals have grown."*

Tom Pedigo, American Family Association  
Pueblo Public Hearing, March 4, 1998

Some people questioned the work of the Commission in the face of what they believed to be clear evidence that the people of Colorado do not support the idea of extending rights to persons in committed relationships.

They said we live in a democracy, and the will of the people should rule. They noted that the people have voted – not on this specific issue, but certainly on a similar issue. They pointed out the fact that the State Legislature has twice passed a bill to outlaw same-sex marriage. They stated that a number of polls suggest that the people of Colorado oppose extending rights and benefits to committed partners.

In the face of evidence that Coloradans oppose extending benefits, these people asked by what authority the Governor or the Commission felt they could make any recommendations to the contrary. They argued that the people have spoken on these issues, and that any recommendation to the contrary would be inappropriate.

**5. Opponents asserted that most – if not all – of the "rights" that have been identified can already be achieved by committed partners through existing legal mechanisms, such as wills and powers of attorney. Therefore, there is no need to change the laws of the State.**

Some of those who commented in opposition to extending rights to persons in committed relationships suggested there are few if any rights or benefits that persons in a marriage have which others cannot access through existing legal avenues. These include, for instance, wills, powers of attorney which authorize one partner to make emergency medical decisions for the other, or guardianship designations which entitle one committed partner to exercise parental rights over the other's children.

Opponents argued that, in the face of compelling evidence that the American family is under great strain, we should not confuse the issue by extending "marital" benefits to persons in committed relationships when they can currently access these benefits through other means.

### **Section Three: Discussion, Findings, and Recommendations**

The Commission thoroughly reviewed and carefully considered all of the arguments outlined in the previous sections of this Chapter. This section discusses the Commission's analysis of the various arguments and makes a number of findings and three recommendations concerning the

public policy reasons for and against extending rights, responsibilities, benefits and obligations to persons in committed relationships.

### **1. Separate Secular and Religious Concerns.**

The Commission notes that many of the most passionate arguments it heard on all sides were based on religious faith. Whether it was the argument that homosexuality is a sin in the eyes of God or the argument that God commands us to love and not to judge one another, these beliefs are sincerely and firmly held. The Commission also notes that these issues are being debated actively in many religious congregations and denominations throughout the country and the world.

The Commission believes these issues are best debated and resolved within religious communities rather than the secular community. The Commission was not appointed to participate in debates over religious doctrine.

#### **Finding:**

Our country has a rich tradition of separating matters of church from matters of state. The Commission finds that, with respect to the issues addressed in this Report, the policy of separation of church and state should be followed strictly. Marriage is both a religious and a civil institution. The Commission opposes any effort to put into law the tenants of any one religious faith. At the same time, the Commission opposes any action by the State which would inhibit diverse religious communities from defining their religious institution of marriage according to their own doctrines and faiths or establishing their own religious positions and policies concerning human sexuality.

#### **Recommendation:**

The Commission recommends that actions taken in response to this Report be directed only at relationships between individuals within the secular society. Nothing the Commission recommends should be construed to require religious institutions, in the course of their religious missions, to institute policies contrary to their doctrines.

### **2. Preserve Marital Rights and Benefits.**

The Commission recognizes that marriages provide valuable benefits to society. Among these benefits are procreation, child rearing, economic security, health, safety, and social stability. Families also are the first educators of young children, and they play an essential role in passing shared values from one generation to the next.



The Commission is unanimous in its commitment to do nothing to impact adversely the ability of married persons and families to continue to fulfill the important role they have served in the development, preservation and enrichment of our culture and society. The Commission recognizes that, for a variety of economic and social reasons, married couples and families in America face tremendous challenges and strains. Nothing the Commission recommends should be construed to detract from society's commitment to married persons or to dilute the legal rights and benefits they receive.

**Finding:**

The Commission affirms that marriages play an essential role in our culture, that they provide numerous benefits to society as a whole, and that this is among the chief justifications for extending to married persons these significant rights, benefits and responsibilities.

**Recommendation:**

In implementing the recommendations of the Commission, the State should take no action which, by the force of law, restricts the ability of married persons to access all the various rights, benefits and responsibilities currently provided them by law and society.

**3. Provide Parallel Rights and Responsibilities to Persons in Committed Relationships**

While the Commission agrees that marriages provide society with significant benefits that should be preserved, it found no compelling evidence that these benefits would be threatened or diluted by extending parallel rights to persons in committed relationships. Furthermore, the Commission found compelling evidence that committed relationships provide society with significant benefits, even if those benefits are not identical to those provided by marriages. By formally recognizing committed relationships and extending rights and responsibilities to committed partners, the State can benefit both society and the committed partners. These positions are discussed below.

**a. Extending rights and responsibilities to persons in committed relationships will not harm married persons.**

The Commission does not find convincing the argument that extending benefits to persons in committed relationships will harm heterosexual marriages. There is no evidence of which the Commission is aware that extending benefits to persons in committed relationships would diminish the value of the benefits extended to married persons.

The Commission discussed and rejected the argument that the extension of benefits and responsibilities to committed partners would diminish the value of such benefits and responsibilities currently available to married persons. For instance, the right to inherit or visit

one's spouse in a hospital would not be harmed if similar rights were extended to committed partners. Similarly, post-marital support requirements would not be diminished for a married couple if such responsibilities were also applicable to committed partners who terminate their relationship.

Although the cumulative effect of extending benefits and responsibilities currently enjoyed by married families may result in a net tax loss to the State, the Commission is unaware of any reputable study which has been done to evaluate this potential liability, and believes it to be small, given the relatively small number of individuals to whom the extension of committed relationship benefits would apply.

Furthermore, human sexual orientation is a complex characteristic. For whatever reason – either as a result of genetics, environment, early childhood development, or a combination of factors – a minority of individuals are homosexual. The Commission is aware of no credible evidence to suggest that extending benefits to committed partners will sway anyone to become homosexual or to choose a same-sex relationship over a heterosexual relationship.

**b. Committed relationships provide benefits to society.**

The Commission is convinced that committed relationships provide valuable benefits to society – benefits that are similar to those provided by marriages.

Opponents of extending rights to persons in committed relationships asserted that society derives no benefits from these relationships. In support of this argument, however, they usually pointed to characteristics of transient or non-monogamous relationships rather than committed long-term relationships.

The Commission is persuaded that committed relationships provide many tangible benefits, and that society is strengthened by committed relationships. These benefits include the stability and support of individuals and dependents in long-term relationships and the avoidance of public assistance if partners are recognized and able to care for their family members. These benefits further include improved public health, economic stability, job performance, safety, child rearing, social stability and cultural contributions. These are of significant importance and value to society, and warrant legal support.

Through State acknowledgement of committed relationships and the public notice that is inherent with committed partners asserting the responsibilities and benefits thus expected, the community benefits in a subtle, probably immeasurable, but profound way – what one of the Commission members referred to as “the neighborhood watch” factor. If committed relationships were recognized through State law, committed partners would be more likely to become active participants in the civic responsibilities of community – serving on the local neighborhood association, paying attention to a neighbor's home, becoming more involved in the social fabric of one's community.

## Finding:

The Commission finds that the State, and society at large, benefit from an environment that supports committed, stable relationships, including same-sex committed relationships, that provide mutual emotional, social, financial, legal and medical support.

The Commission also noted from the testimony received that many same-sex couples are raising children – either from previous marriages, adoptions or other circumstances. It clearly is in the best interest of society to provide all children – including these children – with the most stable and nurturing environment possible. The Commission is concerned that children being raised in committed relationships are being deprived by laws that essentially allow these children to have only one legal parent.

The Commission understands that researchers estimate that the total number of children nationwide living with at least one gay parent ranges from six to fourteen million. (Patterson, Charlotte, "Children of Lesbian and Gay Parents," 63 *Child Development*, 1025-1042, 1995.) There is no evidence to suggest that lesbians and gay men are unfit to be parents. Over the past twenty years, a significant amount of research has been conducted by psychologists and therapists on children of lesbian and gay parents. This research has consistently revealed that children of gay and lesbian parents did not differ significantly from, nor were they at greater risk than, children of heterosexual parents. In development of gender identity, role behavior, sexual orientation, abuse and neglect, mental health, peer relationships, moral judgment, self-concept or intelligence, there was no perceived difference. (See "Patterson," above and American Psychological Association. *Lesbian and Gay Parenting: A Resource for Psychologists*. District of Columbia, 1995.) Indeed, the evidence shows that children of lesbian and gay parents grow up just as happy, healthy and well-adjusted as children of heterosexual parents.

In addition to this research, the Commission heard no credible evidence in its hearings to suggest that children are in any way harmed simply because one or both parents are homosexual. On the contrary, many who testified about this issue – including one 14 year old girl being raised by same-sex parents – stated that committed partners are as capable as married couples of providing supportive, nurturing and loving homes for children. Other than the social stigma that may be attached to such homes in some communities, the Commission can identify no reason why this is not true.

The Commission heard the assertion that children are at high risk of sexual molestation and abuse when living with homosexual adults, especially gay men. The Commission received documentation and research from Jerry J. Bigner, Ph.D., and Professor of Human Development and Family Studies at Colorado State University, concluding that such assumptions are unfounded. Dr. Bigner cited a 1990 national study of adult men and women. That study stated that approximately 98 percent of the adults who sexually abuse and molest children are heterosexual male family members. [Finkelhor, D., Hotaling, G., & Lewis, I. A. (1990). *SEXUAL*

*ABUSE IN A NATIONAL SURVEY OF ADULT MEN AND WOMEN: PREVALENCE, CHARACTERISTICS, AND RISK FACTORS.* 14 Child Abuse and Neglect, 19-28.]

Dr. Bigner also refuted the assertion that children of committed partners have a high probability of being homosexual as well. His research found that raising a child in a family with homosexual partners as parents does not determine a child's sexual orientation. Dr. Bigner further stated that it is clear that sexual orientation is something that is not transmitted from parent to child by modeling such behavior. If the sexual orientation of parents were transmissible from parent to child, he asserted, then heterosexual parents would only produce heterosexual children. [See Patterson, C. (1995); 31 *SEXUAL ORIENTATION AND HUMAN DEVELOPMENT: AN OVERVIEW. Developmental Psychology*, 3-11; and Bigner, J. J. (1996) *WORKING WITH GAY FATHERS: DEVELOPMENTAL, POST-DIVORCE, AND THERAPEUTIC ISSUES*, in R. J. Green & J. S. Lairds (Eds.), *LESBIAN AND GAY COUPLES AND FAMILY RELATIONSHIPS: THERAPEUTIC PERSPECTIVES*. (pp. 370-403) San Francisco: Josey-Bass.]

Colorado's adoption laws limit step-parent adoptions to the legal spouse of the parent. Because Colorado does not recognize committed partners as legal spouses, committed partners are not eligible for co-parent adoption status. The Commission believes that children are best served by having two legal parents. This would ensure, for instance, that two adults have mutual financial and legal responsibility for the care and upbringing of the child, and that either of the committed partners could obtain health insurance for the child through an employer. The child also would have access to important protections if either parent dies. These should include social security benefits, pension plan benefits, and employment-related sickness, death, and family leave benefits. Finally, it ensures continuity in the raising of the child in the event one parent dies.

#### Finding:

The Commission finds that in committed relationships which include children – biological or adopted – as part of the family, the interest and welfare of the children are of paramount importance. In most cases, it is in the best interest of the children to have a legal relationship with both committed partners. The sexual orientation of a parent should not be a factor in determining the best interest and welfare of a child. Nor should the right to be a parent, including through adoption, be affected by one's sexual orientation.

In addition, the Commission rejects the assertion that persons in committed relationships are able to access the necessary rights and protections through existing legal means, such as wills and powers of attorney. The overwhelming evidence that came out of the public hearings was that such arrangements cannot create the same level of protection for committed partners that is available to married couples, no matter how thoroughly prepared. Furthermore, creating legal documents to protect some of the needs of committed partners is always more expensive and less secure than the options available through marriage. The expense and legal difficulty of these mechanisms alone put them out of reach of many committed partners.

The Commission believes that the State has an interest in encouraging committed relationships and should be concerned about the lack of protections currently available to these relationships and the inadequacy of the legal mechanisms that are available.

**Finding:**

The Commission finds that existing legal mechanisms, such as wills and powers of attorney, are not adequate to protect the needs of persons in committed relationships. They can not afford committed partners the comprehensive set of rights and responsibilities afforded to married persons and in most cases are not as secure from legal challenge.

The Commission acknowledges the arguments concerning Amendment 2 regarding the “will of the people” and recognizes that a majority of Colorado voters supported Amendment 2 in 1992. This suggests a majority of Coloradans may not currently support extending any rights or responsibilities to committed relationships. The Commission understands and has great respect for decisions made through the democratic process.

The Commission, however, notes that our system of government involves more than just majority rule. We are a democratic society, but we also are a diverse, pluralistic society. The genius of the Constitution is in part its recognition of this pluralism and the wise checks it provides against the majority denying certain rights to the minority. Few advances in rights or protections have come easily or by majority vote. One needs only consider the anti-slavery, women’s suffrage and civil rights experiences to understand this.

Amendment 2 was passed by a vote of the people. Amendment 2 also was struck down by both the Colorado Supreme Court and the U.S. Supreme Court. Both events are essential elements of our system of government. The Commission has no doubt that much of this Report and its recommendations will be controversial, and that is why it has taken so much time in this Chapter to explain its reasoning. The Commission hopes that this Report will, in part, help Coloradans bridge the gulf between how they voted and how the courts ruled on Amendment 2, so that over time Colorado can reach a greater social consensus on these difficult but critical issues.

Finally, for a variety of reasons the Commission finds compelling those arguments presented concerning equity, fairness, and equal access to social benefits.

Even outside the context of committed relationships, there are a number of “rights” which accrue to married persons that the Commission perceives as matters of self-determination. For instance, a competent adult should have the absolute right to designate anyone he or she wishes – whether a committed partner or some other person of trust – to make emergency decisions, and this designation should be respected and protected by the State.

Furthermore, the Commission is persuaded that, at the very least, the basic principles of fairness and equal protection require that opponents must show that there is a compelling state interest

not to extend benefits to persons in committed relationships. It is the Commission's judgment that such a burden has not and probably cannot be met.

**Finding:**

The Commission finds there are sound and compelling reasons to provide rights and benefits to persons in committed relationships, parallel to those currently provided to persons who are married.

**Recommendation:**

Based on the above findings, the Commission recommends that the State revise its statutes to extend to persons in committed relationships the legal rights and benefits, as well as responsibilities and obligations, currently afforded to persons who are married.

## **Chapter III – The Major Legal Benefits Extended to Married Couples**

The Executive Order directed the Commission to examine the major legal and economic rights, responsibilities, benefits and obligations extended to married persons that are not extended to persons who are in a long-term, committed relationship with a member of the same sex. As noted in Chapter I, this Report refers to such relationships as “committed relationships” and the persons in a committed relationship as “committed partners.”

The Commission created a Legal Subcommittee to research the law and compile a list of the major areas in the law in which legal benefits are extended to married couples but not to committed partners. The Legal Subcommittee was comprised of the following attorneys: Jerome Borison, Elizabeth Bryant, Martha Ertman, Terry O’Neill, Scot Peterson, Nancy Severson, Julie Tolleson, Gina Weitzenkorn and Kim Willoughby; and a law student, Karla Robertson.<sup>1</sup> Following the research by the Legal Subcommittee, the Commission identified twelve legal areas as significant examples of the disparity in the legal treatment and economic consequences of married relationships as compared to committed relationships. The twelve areas identified should not be considered an exhaustive list of the differences between the legal and economic treatment of married persons and committed partners.

The Commission acknowledges that there are other types of personal relationships that cannot result in a marriage (such as a mother and her adult dependent son, or two widows sharing a household to save costs) and therefore the parties cannot receive the benefits extended to married persons. The Commission did not consider these other types of relationships in its analysis because such analysis was outside the scope of the Governor’s Executive Order; and these other relationships could be analyzed in subsequent research should public demand arise. The Commission encourages research into the legal treatment of these relationships.

This Chapter describes the twelve major legal areas identified by the Commission. For each area, the legal rights and responsibilities are briefly described. This is followed by a discussion of how these rights and responsibilities apply to married persons and how they generally do not apply to committed partners.

Each of these legal areas generally have “default” rules that apply to married couples. A married couple can enter into a marital agreement to contract around the default rules; however, most married couples do not do so because they accept (often without a great deal of understanding) the general rights and responsibilities of marriage or do not want to spend the considerable time and money involved in preparing pre-marital or post-marital agreements. As a result, the default rules described in this document govern most marital relationships.

A statement about which governing bodies have jurisdiction over the legal area is also provided.

## I. PROBATE AND INHERITANCE UNDER COLORADO LAW.

Probate and Inheritance laws determine what happens to a person's assets when he or she dies, specifically who will inherit the person's assets. The laws apply different rules depending on whether or not a person has a will. Nearly 75% of all Americans do not have wills.<sup>2</sup> This is due to a variety of reasons, including their not wanting to face their own mortality or make difficult decisions about distributing their assets. They also do not want to incur the intangible (inconvenience and disclosure of private information about their assets) and economic costs of having a will prepared by an attorney. These factors discourage people from contracting for their own personalized inheritance provisions, making the default rules provided by the law particularly important.

### 1. Statutory Protection for Persons Without a Will.

(a) Married Persons Are Protected Whether or Not there is a Will. Colorado statutes protect the surviving spouse. If a married person does not have a will at death (called "dying intestate"), the surviving spouse is entitled to inherit a certain percentage of the deceased spouse's assets.<sup>3</sup> Also, the surviving spouse has priority under the statutes to serve as the person to administer the estate of the deceased spouse.<sup>4</sup> Even if a married person does have a will at death (called "dying testate"), the will cannot disinherit the surviving spouse unless there is an enforceable marital agreement which specifically waives the surviving spouse's right to the statutory entitlement.<sup>5</sup>

(b) Committed Partners Need a Will to Inherit. Colorado statutes do not protect the surviving committed partner of a deceased committed partner who dies without a will. If a person in a committed relationship dies without a will, the assets owned in the name of the deceased committed partner will be distributed to the deceased partner's blood relatives.<sup>6</sup> The committed partner is not mentioned anywhere in the Colorado intestacy statutes. In fact, the State of Colorado will inherit the deceased partner's assets before a surviving partner will.<sup>7</sup> If a person in a committed relationship dies with a valid will (one which has been admitted to probate by a court), a surviving committed partner can inherit from the deceased committed partner. However, the intangible costs (as listed above for married couples, but with the additional fear factor of making themselves known as gay or lesbian to the attorney and other family members) and the economic costs associated with the preparation of the document deter many committed partners from having a will prepared. Even if persons in a committed relationship have prepared wills, wills providing for committed partners are more likely to be challenged by a deceased partner's blood relatives.

### 2. Additional Statutory Protection for Married Persons.

(a) Statutory Allowances for Surviving Spouse. A surviving spouse is also eligible for certain allowances from the deceased spouse's estate which take priority over the claims of creditors of the deceased spouse. The law protects the surviving spouse from being impoverished. These allowances include a family allowance of \$12,000<sup>8</sup>, an exempt property allowance of \$15,000<sup>9</sup>, and a homestead exemption of \$30,000.<sup>10</sup>



(b) No Statutory Allowances for Surviving Committed Partner. In addition to not having basic statutory protection regarding the inheritance of a committed partner's assets, committed partners do not enjoy any statutory allowances (such as the \$12,000 family allowance, the \$15,000 exempt property allowance, or the \$30,000 homestead exemption).

3. Statutory Provisions Protecting Persons Who Divorce.

(a) Statutory Protection for Married Persons Who Divorce. Colorado statutes also protect divorced couples whose wills name the former surviving spouse as beneficiary. A person who is divorced from the deceased person or whose marriage to the deceased person has been annulled is not a surviving spouse and does not inherit under the deceased person's will.<sup>11</sup> For example, Jane names her husband, Dick, to inherit from her estate under her will. Jane and Dick divorce and Jane does not change her will to remove the reference to Dick as her spouse. Jane subsequently dies. Dick cannot inherit from Jane's estate since he is no longer her spouse.

(b) No Statutory Protection for Committed Partners. With married couples, a divorce automatically terminates any right to inherit. This does not happen with committed partners who have named each other to inherit under their wills. For example, Jane names her committed partner, Jill, to inherit from her estate under her will. Jane's and Jill's relationship dissolves. Jane does not change her will to remove reference to Jill. Jane dies, and Jill inherits from Jane's estate according to the provisions in Jane's will.

4. Jurisdiction. Colorado Revised Statutes and case law (court decisions) and federal tax laws govern the above-described inheritance rights.

II. MEDICAL/HEALTH-RELATED RIGHTS.

This area addresses who is given the legal authority to make decisions regarding a person's physical and financial well-being when the person lacks sufficient understanding or capacity to make or communicate responsible decisions (referred to in this Legal Area II as an "incapacitated person").

1. Guardian and Conservator of an Incapacitated Person. A guardian has the legal authority to make decisions regarding the physical and medical needs of an incapacitated person.<sup>12</sup> A conservator has the authority to make decisions regarding the finances and assets of an incapacitated person.<sup>13</sup>

(a) Married Persons have Statutory Priority for Appointment as Guardian and Conservator. A spouse has priority under the Colorado statutes to be appointed by a court as the guardian<sup>14</sup> and/or conservator<sup>15</sup> of his or her spouse.

(b) No Statutory Priority for Persons in Committed Relationship. There is no specific statutory priority for a committed partner. However, a committed partner could fall under the statute if he or she is caring for the incapacitated person.<sup>16</sup> A person in a committed relationship can nominate his or her committed partner in a will or a separate written statement to be guardian<sup>17</sup> and/or conservator.<sup>18</sup> However, preparing this documentation generally involves the

hiring of an attorney, which in turn involves additional intangible and economic costs. A committed partner also can submit a petition to a court requesting that he or she be named guardian<sup>19</sup> or conservator<sup>20</sup> for a committed partner. Such a petition is subject to challenge by blood relatives or other interested persons<sup>21</sup> and also can be quite costly, particularly if the petition is contested by a relative of the incapacitated person. Subject to a determination by the court of the best interests of the incapacitated person, the court will select the person who the court believes is the best qualified to serve as guardian and/or conservator.<sup>22</sup>

## 2. Right to Visit Spouse at Health Care Facilities.

(a) Married Persons Have Automatic Right to Visit. Because persons who are married are legal members of a person's family, they automatically are given the right to visit their relatives in medical facilities.

(b) Committed Partners Do Not Have Automatic Right to Visit. Because committed partners are not legally recognized as spouses, or even as family members, they can be denied visiting rights when a committed partner is in a medical facility. A person in a committed relationship can sign a health care power of attorney which designates his or her committed partner as the agent to make medical decisions on their behalf, which would allow the committed partner to visit.<sup>23</sup> However, because of the intangible and economic costs of such documentation, many people do not prepare this document.

## 3. Right to Make Medical Decisions on Behalf of a Spouse.

(a) Married Persons. Colorado statutes provide a list of "interested persons" who can make decisions about another person who is not conscious or cannot communicate wishes about medical needs (referred to as "incapacitated"). The statute provides that a spouse is one of the "interested persons".<sup>24</sup> Also named in the statute as "interested persons" are parents, adult children, adult grandchildren, brothers and sisters and close friends.<sup>25</sup> That group of "interested persons" must decide which one of them will make the medical decisions on behalf of the "incapacitated person."<sup>26</sup> If they cannot agree which one of them will make decisions, a court will have to decide,<sup>27</sup> which can be costly. Unless it can be proven to a court that the spouse is not the best choice, the spouse will likely be selected to make medical decisions.

(b) Committed Partners. A committed partner can be considered a close friend and, therefore, an "interested person" under the statute. However, if blood relatives do not unanimously agree that the committed partner shall be the one to make the decisions on behalf of his or her "incapacitated" partner, a court will have to decide. Prior to becoming "incapacitated," a committed partner can sign a health care power of attorney which designates his or her committed partner as the agent to make medical decisions on their behalf.<sup>28</sup> However, because of the intangible and economic costs of such documentation, many people do not prepare this document.

4. Right to Make Decisions about the Medical Use of a Deceased Person's Body. A person can make an organ donation through a designation on their Colorado driver's license or through a written statement signed by that person.<sup>29</sup>

(a) Spouse Has Right to Decide. In the event there is no such written designation, the surviving spouse has priority under Colorado statutes to make decisions regarding organ donation.<sup>30</sup>

(b) Committed Partner Has No Right to Decide. If a deceased person has not made a written designation regarding organ donation, a committed partner does not have the legal ability to make decisions regarding organ donation.

5. Right to Make Decisions about the Burial or Cremation of a Deceased Person's Body.

(a) Spouse Has Right to Decide. Colorado courts have not directly addressed the issue of who has the right to possession of the body of a deceased person and to control the burial or other disposition of the body. However, courts in other states have generally concluded that the surviving spouse has the primary right to possession of the body of a deceased person and to control the burial or other disposition of the body.<sup>31</sup> If there is no surviving spouse, the blood relatives have the right to make decisions regarding burial or disposition.<sup>32</sup>

(b) Committed Partner Has No Right to Decide. A committed partner has no legal right to make, or even to participate in, decisions regarding the disposition of the body of the deceased committed partner, unless no blood relatives can be found or the body is left unclaimed.<sup>33</sup>

6. Right to Take Leave From Work for Family-Related Emergency. In 1993, the United States Congress passed the Family and Medical Leave Act ("FMLA"),<sup>34</sup> which required employers with fifty or more employees to provide up to twelve weeks of unpaid leave during any twelve-month period for the care of an immediate family member with a serious illness or as a result of a birth, adoption or new foster care placement. Immediate family member is defined as a spouse, child or parent.

(a) Spouse Has Right to Take Leave. Married persons are entitled to unpaid leave under FMLA for the care of a spouse, child or parent.

(b) Committed Partner Has No Right to Take Leave. Committed partners do not qualify as spouses under FMLA, and therefore are not entitled to any leave to care for their committed partner or a child of their committed partner.

7. Jurisdiction. Colorado Revised Statutes, federal law and case law (court decisions) govern the above-described medical and health-related benefits.

### III. CONTRACTUAL RELATIONSHIPS.

Marriage creates certain legal spousal rights and responsibilities. In Colorado, a legally valid marriage can be either solemnized through a ceremony and registration or a common law marriage.<sup>35</sup> A common law marriage is formed when a man and a woman intend to be in a

marriage, cohabit and hold themselves out to their friends, family and community as being in a marriage.<sup>36</sup> Committed partners cannot marry and cannot become common law spouses.

1. Married Persons. Married persons have a legal right to request support or maintenance from their spouse upon the filing of a divorce or legal separation.<sup>37</sup> Colorado statutes provide for the payment of temporary support to a spouse and dependent children prior to a final dissolution decree<sup>38</sup> and impose a penalty for non-payment.<sup>39</sup> Spouses can alter the legal rights and responsibilities conferred upon them by the law through a pre-nuptial or post-nuptial agreement.<sup>40</sup> However, a court can modify or ignore the provisions of a pre-nuptial or post-nuptial agreement if the court determines the document is unfair.<sup>41</sup>

2. Committed Partners. Persons in a committed relationship do not have a legal obligation to provide maintenance or support for one another. Only by the creation of a written "living together" agreement or other contract can certain rights and responsibilities be created between persons in a committed relationship.

3. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the above-described contractual relationships. Colorado courts have not issued a reported decision on the construction and enforceability of living together agreements for committed partners.

#### IV. CHILDREN.

Colorado laws dealing with child custody, child support and parental visitation generally come into play when a couple has ended their relationship. The laws governing child-related topics give certain rights and responsibilities to biological parents.<sup>42</sup> It is very difficult for a non-biological parent to share in any of the legal rights and responsibilities of child rearing, even where the person has been financially and psychologically significant in a child's life. The marital status of biological parents is generally not relevant in determining their rights and responsibilities vis a vis children. However, marital status does matter in the areas discussed below.

##### 1. Custody/Visitation (Parenting Time).

(a) Married Persons. Under current Colorado law, when a couple's marriage is dissolved or they become legally separated, the custody of any children born to or adopted by them during their marriage is determined by the court.<sup>43</sup> The court can award sole custody of the children to one of the parents, or award joint custody to both parents. The award of custody is based upon the best interests of the children.<sup>44</sup> The custodian(s) of the children are able to make all major decisions concerning the children regarding their health, education and general welfare. Effective February 1, 1999, Colorado courts will no longer designate a custodial parent. The parents or legal caretakers of children will be allocated parental responsibilities for the children.<sup>45</sup> In dissolution of marriage or legal separation actions, parents also are granted parenting time with the children.<sup>46</sup> This is the time that the children spend with each parent. Unless it can be shown that the children will suffer physical or emotional harm, parents are awarded reasonable parenting time with their children.

(b) Non-Married Parents. In situations where the parents of children are not married to each other, either parent can petition the court to determine paternity<sup>47</sup> as well as custody and parenting time. The determination of custody and parenting time, as in a dissolution of marriage or legal separation action, is made to further the best interests of the children.<sup>48</sup> A biological parent, even one who has not financially supported or spent much time with his or her children, has the right to petition the court for custody and parenting time.<sup>49</sup>

(c) Grandparents Rights. Under Colorado law, grandparents may petition the court for an order granting them visitation with their grandchildren if there has been a custody case or if one of the children's parents is deceased.<sup>50</sup>

(d) Committed Partners. The committed partner of a parent has no right to seek visitation with the partner's children after the termination of the relationship or after the death of the parent. No matter how involved the committed partner has been in the children's lives emotionally, he or she has no legal right to visitation. A committed partner can, however, petition the court for custody if the children are not living with a parent or if the children have been living with the partner for more than six months.<sup>51</sup>

## 2. Support.

(a) Married Persons. Parents of children have an obligation to support their children under Colorado law. Upon the filing of a dissolution of marriage or legal separation action, the court may order one parent to pay child support to the other parent. The amount of child support is based on the Colorado Child Support Guidelines, a formula adopted by the legislature to determine the appropriate amount of child support to be paid.<sup>52</sup>

(b) Unmarried Parents. Children whose parents have never been married to each other are entitled to child support just as the children of married parents. This can be ordered by the court through the filing of a paternity action, a support action or a custody action. The absence of a marriage does not affect the ability to obtain an order of child support.

(c) Committed Partners. Even though a parent's committed partner may have been a contributor to the financial support of the parent's children, that partner has no obligation to pay child support upon the termination of the committed relationship. The children have no legal right to receive any support from the committed partner.

## 3. Adoption.

(a) Married Persons. A step-parent may adopt his or her spouse's children if the other birth parent: (i) has abandoned the children for a period of one year or more; (ii) has failed without cause to provide for reasonable support for the children for one year or more; or (iii) consents to the adoption.<sup>53</sup>

(b) Committed Partners. Even if the other birth parent has abandoned the children, failed to support the children, or consents to the committed partner adopting the child, under

Colorado law, the committed partner cannot under any circumstances adopt his or her partner's children regardless of the emotional or financial commitment of the partner to the children.

(c) Single Person. A single person can adopt children in Colorado.<sup>54</sup>

4. Artificial Insemination.

(a) Married Persons May be Deemed Legal Parents. If a wife becomes pregnant via artificial insemination, her husband may be deemed for all relevant purposes the biological father of the child.<sup>55</sup>

(b) Committed Partners Cannot be Deemed Natural Parents. If one of the female partners in a committed relationship becomes pregnant via artificial insemination, the other partner can not be deemed the biological parent of the child.

5. Children's Right to Inherit.

(a) Children's Right to Inherit from Biological or Adoptive Parent. If there is no will, children, whether biological or legally adopted, will inherit from their parent under Colorado statutes.<sup>56</sup> However, parents do have the ability to disinherit their legal children under a will.

(b) Children's Right to Inherit from Non-Biological Parent. The children of a non-biological parent have no inheritance rights unless the non-biological parent has legally adopted the children or created a will naming the children as beneficiaries. A committed partner cannot adopt his or her partner's children. Therefore, a committed partner must make a will and name the children of his or her committed partner if such children are to inherit from the estate. Even with a will which provides for the committed partner's children, unaccepting blood relatives of the deceased partner may contest the document.

6. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding children.

## V. HEALTH INSURANCE BENEFITS.

There is no state or federal requirement that private employers provide health care insurance coverage for their employees. Such a mandate could only be made by the United States Congress through an amendment to the Employee Retirement Income Security Act ("ERISA").<sup>57</sup> However, many private employers do provide health care insurance coverage to their employees as a benefit.

1. Health Insurance Coverage Provided by Private Employers.

(a) Health Insurance for Spouses and Dependents of Employees. Many employers provide coverage to the spouses and dependents of employees, and employers may require employees to pay for the additional costs of insuring dependents. Even if an amount is withheld from employee salaries to pay part of the premium, the portion contributed by the employer is

still a material benefit. For most workers the group rate for the coverage of spouses and dependents is less than the cost of obtaining the insurance coverage independently.

(b) Health Insurance for Committed Partners. Some employers provide health care insurance coverage to the committed partners of their employees. However, no employer can be mandated to do so. Moreover, almost no Colorado insurers provide such coverage for purchase by employers and no state law dictates that they do so.

(c) Small Employer Insurance Law. Though the State cannot mandate employer health insurance benefit coverage for employees, the State can and does regulate insurance carriers who do business in Colorado. In 1994 the Colorado legislature enacted an insurance reform bill (HB94-1210) that required insurance carriers in Colorado to make "standard" and "basic" health benefit plans available to small employers (those with fifty or fewer employees).<sup>58</sup> The standard and basic plans must include coverage for health care services reasonably required to maintain good health, and must be offered to all eligible employees and their dependents. In the statute, the term "dependents" does not include committed partners of an employee or the children of the employee's committed partner.

2. Health Insurance Coverage Provided by the State of Colorado as a Public Employer.

(a) Health Insurance for Spouses and Dependents of Employees. The State of Colorado makes health insurance coverage available to the spouses and dependents of its employees.

(b) Health Insurance for Committed Partners. The State of Colorado can provide that health care insurance coverage be provided to state employees and the committed partners and dependents of state employees.

3. Tax Treatment for Providing Health Insurance Benefits.

(a) Favorable Tax Treatment for Health Insurance Benefits for Married Persons. The amounts paid by an employer for the health insurance of an employee, the employee's spouse and dependents is not treated as taxable income to the employee.<sup>59</sup> An employer is entitled to a deduction for the ordinary and necessary expenses of carrying on its business, including amounts paid or incurred for hospital and medical expense benefits or insurance.<sup>60</sup>

(b) Unfavorable Tax Treatment for Health Insurance Benefits for Committed Partners. If an employer offers health care insurance coverage for the committed partners of its employees, the amounts paid on behalf of the employees for the coverage of their committed partners are considered part of the employee's taxable income.<sup>61</sup> If a committed partner of an employee can qualify as a "dependent" of the employee, the amounts paid on behalf of the employee for the coverage of his or her committed partner is not considered part of the employee's income.<sup>62</sup> In order to qualify as a "dependent" of the employee, the committed partner must (1) be a United States citizen or resident, (2) not have filed a joint tax return, (3) have a gross income of less than an indexed amount (\$2,650 in 1997), (4) receive more than half

of his or her support from the employee, and (5) either be a relative or else have his or her principal abode in the employee's home and be a member of the employee's household.<sup>63</sup> However, the "member-of-the-household" test is not satisfied if the employee-committed partner relationship violates local law.<sup>64</sup> The tax treatment to the employer is the same as with married persons.<sup>65</sup>

4. Continuation of Coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")<sup>66</sup> includes provisions whereby persons covered under an employer health plan who are losing coverage for any of several specific reasons may elect to continue coverage under the employer's plan at their own expense.<sup>67</sup>

(a) Married Persons. Depending on the event triggering the loss of insurance coverage, COBRA continuation coverage elections may be made by the covered employee or a "qualified beneficiary," defined as a spouse or dependent child of the employee who has coverage under the plan.<sup>68</sup>

(b) Committed Partners. COBRA elections are not required to be made available to committed partners of employees.

5. Jurisdiction. The federal government, through laws such as the Employee Retirement Income Security Act ("ERISA")<sup>69</sup> and the Internal Revenue Code ("IRC"),<sup>70</sup> governs the funding, administration and taxation of health care insurance for private employers and federal employees. The State of Colorado, as an employer, has control over the nature and extent of benefits extended to state employees.

## VI. RETIREMENT BENEFITS.

This area addresses who can receive the retirement benefits of a person at the person's death.

1. Survivor Benefits. There are two types of tax-qualified retirement plans: defined contribution plans<sup>71</sup> and defined benefit plans.<sup>72</sup> Defined contribution plans include 401(k), profit sharing, money purchase, target benefit plans and employee stock option plans. Defined benefit plans include pension or retirement plans characterized by a benefit formula usually based on average compensation and years of service.

(a) Married Persons. Retirement benefits payable to married participants under defined benefit and money purchase plans (and some profit sharing plans) must be paid in the form of a joint and survivor annuity for the participant and the participant's spouse unless both the participant and the participant's spouse elect in writing to have the benefits paid in another form, such as a lump sum payment.<sup>73</sup> Under the statutory joint and survivor annuity, the retiree receives benefit payments for life with at least fifty percent of that amount payable for life to the surviving spouse after the death of the retiree.<sup>74</sup>

(b) Committed Partners. Absent a surviving spouse, defined contribution and defined benefit plans generally allow the participant to designate anyone as beneficiary; therefore, a participant may designate his or her committed partner as beneficiary.



## 2. Rollover of Retirement Benefits.

(a) Surviving Spouse Can Rollover Retirement Benefits. A surviving spouse has the benefit of rolling funds in a deceased spouse's retirement plan into an IRA, without tax penalty.<sup>75</sup> This has the effect of deferring and potentially reducing the ultimate tax liability to the surviving spouse.

(b) Committed Partner Cannot Rollover Retirement Benefits. A legally "unrelated" recipient of a retirement death-benefit cannot roll the payment of a deceased committed partner's retirement into an IRA. The retirement payment is treated as a current distribution of income to the recipient, and is subject to taxation.<sup>76</sup>

2. Jurisdiction. The federal government, through laws such as the Employee Retirement Income Security Act ("ERISA")<sup>77</sup> and the Internal Revenue Code ("IRC"),<sup>78</sup> governs the funding, administration and taxation of retirement benefits.

## VII. DISSOLUTION OF RELATIONSHIPS.

This legal area addresses the parties' rights and responsibilities when a marriage or a committed relationship terminates. Marriage creates certain legal rights and responsibilities between spouses pertaining to property and debt division and support of a spouse. Because Colorado is a state that recognizes common law marriage, a man and woman can be deemed married either if they are formally married or if they hold themselves out to others as married. Committed partners cannot be deemed married. They can, in theory, enter into contracts that govern the terms of their partnership, but these contracts cannot convey all the legal rights and responsibilities of marriage and courts sometimes refuse to enforce them.

### 1. Default Rules.

(a) Married Persons have Default Rules. When married persons wish to divorce, statutes provide the rules governing how joint property and debt will be distributed and whether one spouse has a responsibility to provide for the other spouse. The laws help prevent unfairness and bad-faith dealing during the dissolution. Married persons can enter into prenuptial or marital agreements that trump these default rules, but even then, the law requires spouses to disclose information before the contracts will be enforced. Courts will refuse to enforce agreements that restrict the payment of child support.

(b) Committed Partners Have No Default Rules. When committed partners dissolve their union, no laws govern the dissolution. Former partners have no legal obligation to provide for one another, and no dissolution laws prevent unfairness and bad-faith dealing during the dissolution. Committed partners can enter into contractual relationships that control what happens if they separate, but such contracts are rarely made because of the economic and intangible costs. Further, even if the contracts are made, courts might not enforce them.

2. Property Division.

(a) Spouses Receive Equitable Shares of All Joint Property. Upon divorce, joint property is divided equitably between the spouses, regardless of how the property is titled, or who bought the property. The law assumes that nearly all of the property is marital property. The laws also prevent spouses from taking, destroying, wasting, selling or hiding joint property during a dissolution. The law prevents one spouse from receiving an unfair portion of the property and impoverishing the other party.

(b) Committed Partners Have No Dissolution Rules. When committed partners dissolve their relationship, no dissolution laws govern how they should divide property. No dissolution laws prevent one person from receiving or taking more than his or her fair share of property merely because of how property is titled, who bought it, or where it is located.

3. Debt Division.

(a) Spouses are Responsible for Equitable Portions of Debt. Courts equitably divide joint debt, regardless of whose name it is in, between spouses when they divorce. Dissolution statutes provide a means by which joint debts are serviced during the divorce proceeding.

(b) Committed Partners Have No Dissolution Rules. When committed partners dissolve their relationship, no dissolution laws govern how joint debt will be divided. Further, no laws ensure that joint debts get paid during the dissolution process.

4. Spousal Support.

(a) Previously Married Persons Can Receive Spousal Support. Married persons may have the responsibility to pay spousal support or maintenance to their former spouses, if one is in need of the support and the other is able to pay. The court has discretion to determine the amount and duration of support. The State of Colorado will enforce the order for support, and failing to pay support is a class 5 felony.<sup>79</sup>

(b) Committed Partners Cannot Receive Support. Committed partners have no legal right to or responsibility for spousal support, but can provide for it in a contract. Courts, however, might not enforce such contracts.

5. Tax Treatment Regarding the Payment of Support.

(a) Former Spouse Who Pays Support. The full amount of maintenance or support paid by a former spouse is a deductible expense to the payor for income tax purposes.<sup>80</sup>

(b) Former Committed Partner Who Pays Support. None of the amount of maintenance or support paid by a former committed partner pursuant to a contractual or other agreement is a deductible expense for purposes of the income tax. Further, the payment of support may be considered a gift, and the payor may incur a gift tax on the amounts paid in

excess of \$10,000 in any one year. See Gift, Income and Estate Tax Benefits discussion in Legal Areas XII.1.(a)(2), and XII.1.(d)(2), below, for further discussion on the tax consequences.

6. Jurisdiction. Colorado Revised Statutes, federal tax law and case law (court decisions) govern what happens when relationships dissolve.

#### VIII. MISCELLANEOUS/ADDITIONAL BENEFITS.

This area addresses other miscellaneous benefits that accrue to married persons that did not fit into the other major legal categories discussed in this Chapter.

##### 1. Communication Between Spouses.

(a) Spousal Privilege and Confidential Marital Communications. Conversations between married persons are considered confidential and are protected from disclosure. A spouse cannot be forced to testify against his or her spouse in a trial.<sup>81</sup>

(b) No Spousal Privilege with Committed Partners. Colorado law does not consider conversations between committed partners to be confidential communications. A person can be forced to testify against his or her committed partner, even on private matters.

(c) Jurisdiction. Federal and state statutes and case law (court decisions) govern the legal rights and responsibilities regarding privileged communications.

##### 2. Social Security Benefits.

(a) Married Persons. Married persons receive significant advantages in the nation's Social Security<sup>82</sup> programs, particularly in the size of the monthly benefit amount that is paid under the Old Age and Survivors Insurance Program ("OASI").<sup>83</sup>

(b) Committed Partners. Benefits under the nation's Social Security programs are not available to committed partners. The Defense of Marriage Act<sup>84</sup> provides that committed partners are not spouses for the purposes of federal law.

(c) Jurisdiction. Federal law, federal administrative agency regulations and case law (court decisions) govern Social Security programs.

#### IX. WORKERS COMPENSATION BENEFITS.

This area addresses who can receive worker's compensation benefits when a person suffers an employment-related death.

1. Married Persons. Colorado's workers' compensation law allows death benefits to be paid to a dependent spouse after the working spouse suffers an employment-related death.<sup>85</sup> This monthly payment to the spouse does not end until the surviving spouse's death or remarriage.<sup>86</sup> The worker's compensation act presumes that the legal spouse of the deceased

employee is a dependent entitled to benefits.<sup>87</sup> The act also allows several other classes of persons, including mother, father, child, sibling, grandparent or grandchild, to obtain benefits if they are disabled and dependent on the deceased worker for support.<sup>88</sup>

2. Committed Partners. Workers' compensation benefits are not paid to a partner in a committed relationship.

3. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding workers' compensation benefits.

#### X. WRONGFUL DEATH BENEFITS.

This area addresses who can recover for damages and loss of support as a result of the wrongful death of a person.

1. Married Persons Can Recover for the Death of a Spouse. In a wrongful-death lawsuit, a surviving spouse is allowed to sue for the loss of support from the deceased spouse and also to sue on behalf of the deceased spouse for the loss to the deceased spouse's estate. The suit also may attempt to recover damages, including loss of companionship, consortium and marital care, as well as the expenses of any illness and burial.<sup>89</sup> This type of legal action may not be pursued by persons other than those listed in the statute.<sup>90</sup>

2. Committed Partners Cannot Recover for the Death of the Committed Partner. A committed partner cannot sue for support or loss of companionship, consortium, care or the expenses of illness and burial. For example, if a third party causes the wrongful death of a committed partner the person or entity responsible for the death will have no liability to the surviving committed partner. The law does not recognize any economic or emotional injury to the surviving committed partner.

3. Jurisdiction. The Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding wrongful death benefits.

#### XI. OTHER INSURANCE BENEFITS.

In addition to health insurance benefits discussed above in Legal Area V, the Commission recognizes other insurance benefits as major legal and economic benefits.

1. Family Discounts on Insurance.

(a) Family Discounts Available to Married Persons. Insurers generally give automatic family discounts for various types of insurance and offer special consideration of spouses. These special discounts may include premium discounts for life insurance, auto insurance, home insurance and private disability insurance.

(b) Family Discounts Generally Not Available to Committed Partners. The Commission is not aware of any insurance discount offered based on a committed relationship.

(c) Jurisdiction. Federal and Colorado Statutes, administrative agency regulations and case law (court decisions) govern insurance regulation.

2. Ability to Own Insurance on the Life of a Spouse. In order to own a life insurance policy on the life of another person, a person must have an “insurable interest” on the insured’s life. Insurable interest means that there must be a reasonable basis, founded upon the relation of the parties to each other, either monetary or of blood or affinity, to expect some benefit or advantage from the continuance of the insured person’s life. A person cannot own life insurance on the life of another person merely for the purpose of speculating on the life of another. However, a person can own life insurance on his or her own life, and designate any beneficiary.

(a) Married Persons have Automatic Insurable Interest. A spouse has an automatic insurable interest in the life of his or her spouse. For example, Jane can own a life insurance policy on her husband, Dick, merely because they are married.

(b) Committed Partners do not have Automatic Insurable Interest. A person in a committed relationship does not have an automatic insurable interest in the life of his or her partner. Another purpose for the life insurance must be shown. For example, Jane cannot own life insurance on the life of her committed partner, Jill, merely because they are committed partners. Jane can own life insurance on Jill’s life if they own a legitimate business together and the purpose of the insurance is to protect Jane’s monetary interest in the business if Jill should die.

(c) Jurisdiction. Case law (court decisions) governs the legal rights and responsibilities regarding insurable interest.

## XII. GIFT, INCOME AND ESTATE TAX BENEFITS.

This area addresses the tax consequences, both benefits and burdens, that exist for married persons. The tax issues discussed below are not exhaustive but represent the more significant ones available to spouses on a day-to-day basis.

### 1. Gift and Income Tax Benefits.

#### (a) Gift Tax Benefits.

(1) Unlimited Tax-Free Gifts Between Spouses. Spouses have an unlimited marital deduction, which allows a spouse to transfer ownership of any amount of assets to his or her spouse without incurring liability for payment of gift tax.<sup>91</sup> Such transfers of assets can continue back and forth indefinitely during the life of both spouses, and at the death of a spouse, the surviving spouse can inherit the deceased spouse’s assets tax-free. See Estate Taxes discussion in Legal Area XII.2(a), below, for further information regarding the ability of a surviving spouse to inherit tax-free. Individually, a person is limited to gifts of \$10,000 per year tax-free to persons other than his or her spouse. Additionally, with his or her spouse’s

permission, a spouse can use the spouse's ability to gift \$10,000 and give a total of \$20,000 in one year.<sup>92</sup>

(2) Limit of \$10,000 Per Year on Tax-Free Gifts Between Committed Partners. Other than marital transfers, individuals are limited to a \$10,000 per year cap on tax-free transfers.<sup>93</sup> Thus, persons in committed relationships can only transfer tax-free up to \$10,000 in assets between themselves each year. Gifts in excess of \$10,000 in any one year reduce the "credit" against tax of the payor and may, if large enough, generate a gift tax to the payor. Persons in a committed relationship are subject to the same rules as apply to non-spousal gifts.

(b) Joint Filing on Tax Return.

(1) Applicable to Married Couples. Married couples may elect to file their income taxes jointly or separately.<sup>94</sup> There can be advantages or disadvantages to joint filing, depending on the financial circumstances of the spouses. For example, there is a tax penalty on married couples when both spouses work and have income over a certain amount. However, there is also a tax benefit to families who have only one working spouse and income of a certain amount.

(2) Not Applicable to Committed Partners. Committed partners do not have the option of filing jointly. The Defense of Marriage Act<sup>95</sup> provides that committed partners are not spouses for the purposes of federal law.

(c) Insurance and Fringe Benefits Provided by Employer .

(1) Favorable Tax Treatment for Married Persons. The amounts paid by an employer for the health insurance and fringe benefits of an employee or the employee's spouse and dependents are, within limits, not treated as taxable income to the employee.<sup>96</sup> An employer is entitled to a deduction for the ordinary and necessary expenses of carrying on its business, including amounts paid or incurred for hospital and medical expense benefits or insurance, as well as fringe benefits.<sup>97</sup>

(2) Unfavorable Tax Treatment for Committed Partners. If an employer offers health care insurance coverage and fringe benefits for the committed partners of its employees and the dependents of the committed partners, the amounts paid on behalf of the employees for the coverage of their committed partners and their dependents are considered part of the employee's income and are taxable as such. The tax treatment to the employer is the same as with married persons.

(3) Jurisdiction. The federal government, through laws such as the Employee Retirement Income Security Act ("ERISA")<sup>98</sup> and the Internal Revenue Code ("IRC"),<sup>99</sup> governs these benefits.

(d) Income Tax Benefits Upon Divorce.

(1) Tax Benefit to Married Persons. If a marriage dissolves, both parties are exempt from certain tax consequences. Property settlements (such as transfers from one spouse to the other) are exempt from gift tax and capital gains tax (until the spouse receiving the property sells it). Maintenance payments are considered deductible expenses to the payor and income to the payee. The requirement to pay maintenance has priority over other creditors if the payor declares bankruptcy; and maintenance is not dischargeable in bankruptcy. Also, the Internal Revenue Service will offset refunds against past due amounts owed.<sup>100</sup>

(2) No Tax Benefit to Committed Partners. When a committed relationship dissolves, no income tax benefits accrue to either party. Transfers under property settlements are not exempt from gift tax or capital gains tax, and the gain or loss must be recognized at the time the settlement is made. Committed partners have no legal obligation to pay support or maintenance nor does the ex-committed partner have the right to receive maintenance. However, if one of the parties agrees to provide maintenance or support payments to the other, such payments are treated as income to the payee (unless the amount is \$10,000 or less and considered a gift), no deduction is allowed to the payor, and if the payment is more than \$10,000 in a year, the payor will have his or her credit against gift tax reduced and may ultimately pay a gift tax.

2. Estate Tax Benefits.

There are major legal and economic benefits to married persons in the federal estate tax laws. The estate tax is based solely on federal law, and controls the State of Colorado's tax treatment.

(a) Estate Assets Total \$625,000 or More.

(1) No Estate Tax Incurred Upon Death of Spouse. Under the federal estate and gift tax laws, when a spouse dies with assets in excess of \$625,000 (the amount in 1998, although this amount will increase over the next several years and reach \$1,000,000 in the year 2006), no estate tax is incurred if the assets are transferred to the surviving spouse.<sup>101</sup> This is due to the unlimited marital deduction (see also Legal Area XII.1(a)(1), above). Likewise, the surviving spouse who receives an estate (or total gifts) beyond \$625,000 from his or her spouse does not owe estate or gift taxes. The positive effect of this law for a surviving spouse is to allow the spouse to defer payment of the tax until his or her own death.

(2) Estate Tax Incurred Upon Death of Committed Partner. When a person dies with assets in excess of \$625,000, an estate tax on the value of the assets transferred in excess of \$625,000 must be paid by the deceased person's estate if the assets are transferred to a person other than the surviving spouse.<sup>102</sup> The amount of estate tax paid by the decedent's estate will be based on the value of the estate or gifts made in excess of the \$625,000 ceiling. In the case of a committed partner who dies with an estate with a value under \$625,000, there is no estate tax due. However, in the case of a committed partner who has an estate worth over \$625,000, an estate tax is likely due immediately and no deferral is available. The value of the

deferral can be substantial, amounting to hundreds of thousands of dollars (or millions of dollars), depending on the amount of assets in the deceased partner's estate.

3. Jurisdiction. The federal government, through laws such as the Internal Revenue Code ("IRC")<sup>103</sup> and the Employee Retirement Income Security Act ("ERISA")<sup>104</sup> governs the gift, income and estate taxes. The state laws generally follow the federal laws. Furthermore, the Defense of Marriage Act,<sup>105</sup> would pre-empt any tax law changes attempted by the individual states to recognize committed partners as married persons for the purposes of tax laws.

## SUMMARY

Though the above list of major legal and economic benefits and responsibilities extended to married persons but not extended to committed partners is not exhaustive, the Commission finds that it is sufficiently complete to reflect the extensive benefits conferred to married persons under Colorado and federal law. The Commission believes that married individuals take these wide-ranging benefits for granted, and, therefore, the public is not keenly sensitive to the difficulties committed partners face in sharing their emotional and economic lives.

The Commission further recognizes that committed partners cannot obtain all the rights and responsibilities afforded married couples through legal instruments, no matter how thoroughly prepared. Furthermore, the significant intangible and economic costs deter most committed partners from creating the documentation necessary to secure even those benefits which can be created by contract. Beyond the time and money necessary to hire an attorney, creating contractual substitutes for some of the legal rights routinely accorded spouses involves making difficult decisions; confronting mortality and the possibility of injury, illness or relationship dissolution; incurring tax liabilities; and risking job loss, family rejection or other penalty as a result of making themselves known as gay or lesbian. Many of these intangible and economic costs also exist as barriers to contracting for married couples; however, the law recognizes these barriers for married persons and provides the default rules described in this Chapter.



## **Chapter IV -- Implementation of Commission Recommendations**

In Chapter II, Section 3 of this Report, the Commission set forth its findings and recommendations. The findings and recommendations were:

### **1. Separate Secular and Religious Concerns.**

- Our country has a rich tradition of separating matters of church from matters of state. The Commission finds that, with respect to the issues addressed in this Report, the policy of separation of church and state should be followed. Marriage is both a religious and a legal institution. The Commission opposes any effort strictly to put into law the tenants of any one religious faith. At the same time, the Commission opposes any action by the State which would inhibit diverse religious communities from defining their religious institution of marriage according to their own doctrines and faiths or establishing their own religious positions and policies concerning human sexuality.
- The Commission recommends that actions taken in response to this Report be directed only at relationships among individuals within the secular society. Nothing the Commission recommends should be construed to suggest that religious institutions, in the course of their religious missions, institute policies contrary to their doctrines.

### **2. Preserve Marital Rights and Benefits.**

- The Commission affirms that marriages play an essential role in our culture, that they provide numerous benefits to society as a whole, and that these social benefits justify extending to married persons significant rights, benefits and responsibilities.
- In implementing the recommendations of the Commission, the State should take no action which, by the force of law, restricts the ability of married persons to access all the various rights, benefits and responsibilities currently provided them by law and society.

### **3. Provide Parallel Rights and Responsibilities to Persons in Committed Relationships**

- The Commission finds that the State, and society at large, benefit from an environment that supports committed, stable relationships, including same-sex committed relationships, that provide mutual emotional, social, financial, legal and medical support.
- The Commission finds that in committed relationships which include children - biological or adopted - as part of the family, the interests and welfare of the children are of paramount importance. In most cases, it is in the best interest of the children to have a legal relationship with both committed partners. The sexual orientation of a parent should not be a factor in determining the best interest and welfare of a child. Nor should the right to be a parent, including through adoption, be affected by one's sexual orientation.

- The Commission finds that existing legal mechanisms, such as wills and powers of attorney, are not adequate to protect the needs of persons in committed relationships. They can not afford committed partners the comprehensive set of rights and responsibilities afforded to married persons, and are not immune from legal challenge.
- The Commission finds there are sound and compelling reasons to provide rights and benefits to persons in committed relationships, parallel to those currently provided to persons who are married.
- Based on the above findings, the Commission recommends that the State revise its statutes to extend to persons in committed relationships the legal rights and benefits, as well as responsibilities and obligations, currently afforded to persons who are married.

To implement these recommendations, in light of the analysis of the key legal areas of rights, benefits, obligations and responsibilities afforded married couples described in Chapter III, the Commission recommends that the State recognize same-sex committed relationships and protect these relationships in the same manner that it protects married relationships. To do this, the Commission recommends that the State enact a law that recognizes same-sex committed relationships and amends existing laws to extend rights and responsibilities to persons in same-sex committed relationships.

Since the State can only change laws and regulations within its jurisdiction, the Commission's specific recommendations relate only to state laws, regulations and policies. The Commission additionally has included policy recommendations at the end of this Chapter suggesting federal law changes to extend rights, protections, responsibilities and obligations now afforded only to married persons to partners in same-sex committed relationships. The Commission further encourages governmental agencies and private entities to review and modify internal policies and procedures to extend the same or similar benefits to couples in same-sex committed relationships that are extended to married couples.

As in the body of the Report, the balance of this Chapter will refer to same-sex committed relationships as "committed relationships" and the persons in a committed relationship as "committed partners."

### **Specific Recommendations:**

#### **1. Create a Legal Framework to Define and Register Committed Relationships**

The Commission first recommends that the State of Colorado create a legal framework to recognize the establishment and registration of committed relationships. By creating a legal framework for committed relationships, the State will be able to extend provisions of Colorado law that protect married persons to persons in committed relationships. The Commission adopted the following as its recommended definition of a committed relationship eligible for registration:

*"A committed relationship eligible for registration is between two people of the same-sex who affirm that they are not related by kinship, are of the legal age of consent and are not otherwise married or registered in another committed relationship."*

The proposed legal framework for the formation and dissolution of a committed relationship is included as an attachment to this Chapter IV.

## **2. Amend Existing Laws to Extend Rights and Responsibilities Afforded Marriage to Registered Committed Relationships.**

To avoid a piecemeal, and possibly incomplete, approach to proposed legislation, the Commission prefers that the Colorado laws providing rights, protections, obligations and responsibilities for married persons not be addressed and amended separately. Instead, the Commission recommends that a single law be adopted, creating the framework for the legal establishment of committed relationships. It should make reference to those laws extending rights, protections, obligations and responsibilities to married couples and amend such laws by reference to apply also to registered committed partners.

To the extent that certain of these laws need to address specific differences between marriages and committed relationships, such differences should be addressed within the enabling legislation. Chapter III provides a detailed overview of the various areas of the law extending rights and protections to married couples that should be extended to committed relationships. That Chapter suggests that the following areas of existing law should be amended to provide rights, protections, obligations and responsibilities to committed partners:

### **a. Probate and Inheritance**

Colorado laws protect the surviving spouse if a husband or wife dies without a will. In addition, surviving spouses are entitled to certain statutory allowances that take priority over claims of creditors of the deceased spouse. Statutory protections also nullify inheritance rights of former spouses if they divorce. These laws should be amended to extend the same rights to the surviving partner in a committed relationship, and to provide the same protection to persons who dissolve their committed relationship.

Lawrence Waggoner, a professor at the University of Michigan Law School, a preeminent scholar of wills and trusts, and a national leader in probate reform, has proposed an amendment to the Uniform Probate Code, which provides an intestacy share for a surviving committed partner. Under the proposal, a committed partner is given the right to share a decedent's intestate estate in an amount that varies depending on whether the decedent is also survived by children or parents. This proposed amendment is more fully described in "*COMMITTED PARTNERS AND INHERITANCE: AN EMPIRICAL STUDY*," Law & Inequality: A Journal of Theory and Practice, Volume XIV, Winter 1998, Number 1

#### **b. Medical and Health-Related Issues**

Colorado laws extend rights to a married spouse to become the guardian and conservator of his or her incapacitated spouse, to be recognized as a family member of the spouse for purposes of visitation in a medical facility, to make health care decisions for a spouse who cannot communicate his or her wishes, and to make decisions regarding burial or cremation or regarding organ donation for a deceased spouse. These laws should be amended to extend the same rights and responsibilities to partners in a committed relationship.

#### **c. Contractual Relationships**

Colorado laws affirm the rights of married couples to enter into pre- and post-marital agreements to modify some of the legal rights and responsibilities imposed by law. This right to modify the parties' rights and responsibilities established by law should also be available to committed partners. The same judicial fairness constraints imposed on married couples entering into these agreements should apply to same-sex couples who execute similar agreements.

#### **d. Children**

Colorado laws enable a spouse to adopt his or her spouse's children if the other biological parent relinquishes his or her parenting rights and responsibilities, either voluntarily or involuntarily. The laws also permit married couples jointly to adopt children who are not biologically related to either parent, and the laws recognize children born to a couple through artificial insemination as the couple's biological children. The laws further provide both biological and legally-adopted children with rights of inheritance from their parents should the parents die without a will. Committed partners should be given equal rights to adopt non-biological children as married couples enjoy and should be presumed the parents of a child born into the relationship regardless of how the child was conceived.

Children of parents in committed relationships, whether biological or adopted, should be given the same statutory rights to inherit from their parents in the event the deceased parent does not leave a will.

#### **e. Health Insurance Benefits**

Private sector employers are not required by state or federal law to offer health insurance benefits to their employees. The Commission believes, however, that employers who do offer health benefits to their employees should provide equal benefits to all employees. If spousal and family benefits are available to married employees, similar benefits should be offered to employees in committed relationships. Colorado insurance laws should be amended to require insurance companies who provide family coverage to employers to include coverage for family members of committed relationships.

Under the Colorado insurance laws, insurance carriers in Colorado are required to make "standard" and "basic" health benefit plans available to small employers (those with 50 or

fewer employees). These laws require the standard and basic plans to include coverage for health care services reasonably required to maintain good health, and to be offered to all eligible employees and their dependents. The State should amend the small group insurance laws to require that such standard and basic plans be offered to the family members (partners and children) of eligible employees who are in committed relationships.

**f. Dissolution of Relationships**

The legal framework establishing committed relationships should address what happens in the event of the dissolution of the relationship. Just as it does with marital relationships, the law should provide default rules governing the distribution of joint property and debt and the custody and provision for children when a committed relationship is dissolved.

**g. Privileged Conversations.**

Colorado law recognizes that conversations between married persons are confidential and protects such conversations from disclosure. Similar protection should be provided to conversations between partners in a committed relationship.

**h. Workers Compensation Benefits**

Colorado laws provide death benefits to a dependent spouse after the working spouse suffers an employment-related death. These benefits should be extended to a surviving partner after the work-related death of his or her committed partner.

**i. Wrongful Death Benefits**

Colorado laws allow a surviving spouse to bring a wrongful death action to sue for the loss of support and companionship, and to recover illness and burial expenses of a deceased spouse. These same rights should be extended to the surviving partner in the event of a wrongful death of a committed partner.

**j. Other Insurance Issues**

Insurance companies offer family discounts and family insurance products to married couples. The State insurance laws should be amended to require insurance companies who offer such discounts and family products to make the same offerings available to same-sex couples.

**3. Federal Laws should be Amended to Recognize Committed Relationships and Extend to Partners in a Committed Relationship the Same Rights Provided to Married Persons.**

The Commission's third recommendation recognizes that changing Colorado law to extend rights and responsibilities to persons in a committed relationship will not provide equal treatment to these individuals unless certain federal laws also are amended. Failure to recognize committed relationships in Federal law would cause persons who enter into such relationships in Colorado

to face adverse tax treatment upon the establishment or exercise of their state rights or responsibilities. Furthermore, some benefits, such as spousal Social Security benefits and spousal retirement benefits, are controlled by federal law.

Accordingly, the Commission encourages Colorado's representatives in Congress to introduce or support legislation changing federal law to ensure equitable treatment of committed relationships. The amendments required would be in the areas of Estate and Income Tax Laws, the Employee Retirement Income Security Act, Social Security and other laws addressing rights, protections, responsibilities and obligations for married persons.

**4. Governmental Agencies and Private Entities should Review and Modify their Internal Policies and Procedures to Extend the Same or Similar Benefits to Couples in Committed Relationships that they Extend to Married Couples.**

The Commission's final recommendation is that Governmental agencies and private entities be encouraged to review and revise their internal policies and procedures to ensure equitable treatment of persons in committed relationships. Additionally, such institutions are encouraged to provide information to staff involved in dealing with partners in committed relationships to ensure appropriate decisions with respect to all parties involved. Similarly, the Commission encourages all private and public institutions with membership or other similar benefit programs offering spousal memberships, discounts, travel and other benefits to offer equal rights to committed partners.

Specifically, the Commission recommends that the State of Colorado offer health benefits to the partners and children of state employees who are in committed relationships to the same extent that health benefits are offered to cover spouses and children of married employees. Such action by the State would both extend appropriately these benefits to its employees who are in committed relationships and would set an example and verifiable claims history for the benefit of the business community.

Employers have voiced fears that providing health benefits to committed partners would greatly increase employers' premiums as a result of HIV/AIDS coverage. Many employers who have extended health benefits to committed partners, however, have found that the increased cost is negligible. For example, the City of Berkeley, California, first began to offer domestic partner insurance in 1985 through its HMO provider, Kaiser Permanente. At that time, and in the epicenter of the AIDS crisis, Kaiser imposed a surcharge to provide such coverage. Within three years, however, the surcharge was first reduced, then eliminated as claims experience failed to justify the need for a loading factor to cover the expected additional costs.

**5. The Commission recommends that the State consider taking action on two important matters which fall outside of the Commission's charge, but which are closely related to the issues considered in this Report.**

In fulfilling its mission, the Commission encountered two areas which merit further review and possible action, but which were not included in the Commission's charge from the Governor's Executive Order.

- The State should consider prohibiting discrimination based on sexual orientation in the workplace, housing and public accommodation. It should include certain criminal acts against homosexuals in existing hate crimes legislation.

Despite public perception to the contrary, it is legal to fire someone or deny public accommodation or housing based solely on one's actual or perceived sexual orientation. In Aspen, Boulder, Fort Collins, Denver, Telluride and a few other cities in Colorado, city ordinances prohibit employment or housing discrimination based on sexual orientation. Similarly, there are a number of major employers in Colorado whose employment policies include sexual orientation in their non-discrimination policies. For an employee to register a committed relationship, however, it is essential that he or she be confident that doing so will not threaten termination of employment or eviction from rental housing. Recognizing this, the Commission recommends that the State consider adding sexual orientation as a protected class for non-discrimination. Similar logic applies to the need to add sexual orientation to existing hate crime legislation.

- The State should consider whether to extend rights, benefits, responsibilities and obligations to relationships that are not marriage, but also do not conform to the definition of "committed relationships" as used in this Report.

Members of the Commission and individuals who testified indicated they felt the rights, responsibilities, benefits and obligations proposed in this Report should not be restricted exclusively to same-sex committed partners. They contended that there are numerous other types of committed relationships that should be extended some or all of the rights and responsibilities described in this Report. However, examining such relationships was beyond the scope of the Governor's Executive Order. The decision to broaden the definition of committed partners to include such other relationships should be closely reviewed, either by a subsequent commission or by the legislature when it considers legislation similar to that recommended in this Report.

### **Conclusion:**

The Commission concludes that State and society as a whole benefit from an environment that supports committed, stable relationships. Extending right and benefits, as well as responsibilities and obligations, to persons in same-sex committed relationships will not take away from the rights and benefits enjoyed by married persons. The Commission strongly recommends that the State recognize committed relationships and protect these relationships in the same manner it recognizes and protects married relationships. To do this, the Commission recommends that State enact a law that recognizes same-sex committed relationships and amends existing laws to extend parallel rights and responsibilities to persons in committed relationships.

**ATTACHMENT TO CHAPTER IV**

**TO THE REPORT OF COMMISSION ON THE RIGHTS AND  
RESPONSIBILITIES OF SAME-SEX PARTNERSHIPS**

**PROPOSED LEGAL FRAMEWORK FOR ESTABLISHING SAME-SEX COMMITTED  
RELATIONSHIPS:**

The following is an outline of provisions to be included in a Colorado Statute setting forth the establishment, registration and licensure, and dissolution of same-sex committed relationships.

**TITLE XX**

**ARTICLE YY**

**COMMITTED RELATIONSHIPS**

**PART 1 - GENERAL**

- XX-YY-101 Legislative Declaration and Purpose. [Purpose of statute]
- XX-YY-102 Definitions.

**PART 2 - FORMATION OF COMMITTED RELATIONSHIPS**

- XX-YY-201 Formalities. A committed relationship between two persons of the same gender who are registered and licensed pursuant to this Part 2 is valid in this state.
- XX-YY-202 Registration Form and License.
- XX-YY-203 Legal Capacity to Create Committed Relationship.
  - (1) persons must be 18 years or older.
  - (2) persons must not be married or licensed in a committed relationship.
  - (3) persons must be legally prohibited from marrying each other.
  - (4) persons must not be related by blood or affinity in way that would prevent them from marrying.
  - (5) persons must have sufficient mental capacity to understand the nature and consequences of licensure.
- XX-YY-204 Void Committed Relationships and the Putative Partner. [Protect persons who entered into committed relationship in good faith]
- XX-YY-205 No Common Law Committed Relationship.
- XX-YY-205 Validity of Committed Relationships Formed in Other Jurisdictions.



### **PART 3 - RIGHTS AND RESPONSIBILITIES OF PERSONS IN COMMITTED RELATIONSHIPS**

#### **XX-YY-301 Rights of Persons in Committed Relationships.**

- (1) To own property in own name
- (2) To sue and be sued in own name
- (3) To retain separate business and proceeds in own name
- (4) To contract in own name
- (5) To maintain own domicile
- (6) To maintain own credit rating
- (7) To sue for loss of consortium or loss of service of committed partner
- (8) To insure life of committed partner

#### **XX-YY-302 Responsibilities of Persons in Committed Relationships.**

- (1) Jointly and severally responsible for support of children of committed relationship until children attain age of emancipation
- (2) Responsible for own torts and crimes [unless it can be proven they were acting under direct control of other committed partner]

### **PART 4 - COMMITTED RELATIONSHIP AGREEMENTS**

XX-YY-401 Formalities.

XX-YY-402 Content.

XX-YY-403 Effective Date of Agreement.

XX-YY-404 Amendment - revocation.

XX-YY-405 Enforcement.

XX-YY-406 Invalid Committed Partnership.

XX-YY-407 Limitation of Actions.

### **PART 5 - DISSOLUTION OF A COMMITTED RELATIONSHIP**

XX-YY-501 Formalities.

XX-YY-502 Events Causing Dissolution.

- (1) Bilateral Dissolution. Filing of written Dissolution Certificate with appropriate filing authority by both committed partners.
- (2) Unilateral Dissolution. Filing of written Dissolution Certificate with appropriate filing authority by one committed partner and mailing of Dissolution Certificate to last known address of other committed partner.
- (3) Death of one of the committed partners.

XX-YY-503 Disposition of Property and Debt.

XX-YY-504 Support.

XX-YY-505 Custody of Children of Committed Relationship

XX-YY-506 Decree of Dissolution

### **PART 6 - TAX CONSEQUENCES OF COMMITTED RELATIONSHIP**

1. To supplement the work of the Legal Subcommittee, the Student Research Center of the University of Denver College of Law was asked to review Colorado law to locate all references to marital rights, benefits, obligations and responsibilities. Its report is attached as Exhibit A to this Report.
2. Debra Baker, *Where There's a Will, There's a Way*, AMERICAN BAR ASSOCIATION JOURNAL, May 1998, at 60.
3. COLO. REV. STAT. § 15-11-102 (1997).
4. COLO. REV. STAT. § 15-12-203(1)(d) (1997).
5. COLO. REV. STAT. §§ 15-11-201, 15-11-202, 15-11-207, 15-11-301 and 14-2-307 (1997).
6. COLO. REV. STAT. §§ 15-11-102 and 15-11-103 (1997).
7. COLO. REV. STAT. § 15-11-105 (1997).
8. COLO. REV. STAT. § 15-11-404 (1997).
9. COLO. REV. STAT. § 15-11-403 (1997).
10. COLO. REV. STAT. §§ 15-11-402, 38-41-201 and 38-41-204 (1997).
11. COLO. REV. STAT. § 15-11-802 (1997).
12. COLO. REV. STAT. § 15-14-312 (1997).
13. COLO. REV. STAT. §§ 15-14-401, 15-14-417, 15-14-424 and 15-14-425 (1997)
14. COLO. REV. STAT. § 15-14-311 (1997).
15. COLO. REV. STAT. § 15-14-410 (1997).
16. COLO. REV. STAT. § 15-14-410(g) (1997).
17. COLO. REV. STAT. § 15-14-301 (1997).
18. COLO. REV. STAT. § 15-14-410(b) (1997).
19. COLO. REV. STAT. § 15-14-303 (1997).
20. COLO. REV. STAT. § 15-14-404 (1997).
21. COLO. REV. STAT. §§ 15-14-303, 15-14-405 and § 15-14-406 (1997).
22. COLO. REV. STAT. §§ 15-14-31 and 15-14-410 (1997).
23. COLO. REV. STAT. § 15-18.5-103 (1997).
24. COLO. REV. STAT. § 15-18.5-103(3) (1997).
25. COLO. REV. STAT. § 15-18.5-103(3) (1997).
26. COLO. REV. STAT. § 15-18.5-103(4) (1997).
27. COLO. REV. STAT. § 15-18.5-103(4) (1997).
28. COLO. REV. STAT. § 15-14-506 and § 15-18.5-103 (1997).
29. COLO. REV. STAT. § 12-34-105 (1997, as amended by SB98-072).
30. COLO. REV. STAT. § 12-34-103 (1997).
31. See Culpepper v. Pearl Street Bldg., Inc., 877 P.2d 877 (Colo. 1984), 22A Am.Jur2d *Dead Bodies* §21 (1988) and cited cases.
32. See Culpepper v. Pearl Street Bldg., Inc., 877 P.2d 877 (Colo. 1984), 22A Am.Jur2d *Dead Bodies* §25 (1988) and cited cases.
33. COLO. REV. STAT. § 12-34-202 (1997).
34. 29. U.S.C. § 2601 *et seq.*
35. COLO. REV. STAT. § 14-2-104 (1997).
36. People v. Lucero, 747 P.2d 660 (Colo. 1987).
37. COLO. REV. STAT. § 14-10-114 (1997).

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38. COLO. REV. STAT. § 14-10-108 (1997).
39. COLO. REV. STAT. § 14-6-101 (1997).
40. COLO. REV. STAT. § 14-2-301 *et seq.* (1997).
41. COLO. REV. STAT. § 14-2-307 (1997).
42. COLO. REV. STAT. § 14-10-123 (1997).
43. COLO. REV. STAT. § 14-10-123 (1997).
44. COLO. REV. STAT. § 14-10-124 (1997).
45. House Bill 98-1183, signed into law by Governor Romer on June 2, 1998.
46. COLO. REV. STAT. § 14-10-129 (1997).
47. COLO. REV. STAT. § 19-4-107 (1997).
48. COLO. REV. STAT. § 14-10-124 (1997).
49. COLO. REV. STAT. § 14-10-123 (1997).
50. COLO. REV. STAT. § 19-1-117 (1997).
51. COLO. REV. STAT. § 14-10-123 (1997).
52. COLO. REV. STAT. § 14-10-115 (1997).
53. COLO. REV. STAT. § 19-5-203 (1997).
54. COLO. REV. STAT. § 19-5-202 (1997).
55. COLO. REV. STAT. § 19-4-106 (1997).
56. COLO. REV. STAT. § 15-11-114 (1997).
57. 29 U.S.C.S. §§ 1001-1461.
58. Colorado Health Care Coverage Act, COLO. REV. STAT. § 10-16-101 (1994, as amended);  
Small Employer Health Insurance Availability Program, COLO. REV. STAT. § 10-8-601  
(1994, as amended).
59. I.R.C. § 106 and Treas. Reg. § 1.106-1.
60. I.R.C. § 162(a)(1) and Treas. Reg. § 1.162-10(a).
61. Treas. Reg. § 1.61-21(b).
62. Treas. Reg. § 1.106-1.
63. I.R.C. §§ 152(a) and 152(b).
64. I.R.C. § 152(b)(5).
65. I.R.C. § 162(a)(1) and Treas. Reg. § 1.106-1.
66. I.R.C. § 4980B.
67. *See generally* I.R.C. § 4980B and ERISA § 601.
68. I.R.C. § 4980B(g)(1).
69. 29 U.S.C.S. §§ 1001-1461.
70. The Internal Revenue Code of 1986, as amended.
71. *See* I.R.C. § 414(i).
72. *See* I.R.C. § 414(j).
73. I.R.C. § 401(a)(11) and I.R.C. § 417.
74. I.R.C. § 417(b).
75. I.R.C. §§ 402 and 408.
76. I.R.C. § 401(a)(9).
77. 29 U.S.C.S. §§ 1001-1461.
78. The Internal Revenue Code of 1986, as amended.
79. COLO. REV. STAT. § 14-6-101 (1997).
80. I.R.C. § 71.

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81. COLO. REV. STAT. § 13-90-107 (1997).
82. *See* Social Security Act, 42 U.S.C.S. §§ 301 *et seq.*, and Federal Insurance Contributions Act, 26 U.S.C.S. §§ 3101 *et seq.*
83. *See* 42 U.S.C.S. §§ 402(b), 402(c) and 416.
84. 1 U.S.C.A. § 7 (West Supp. 1997); 28 U.S.C.A. § 1738C (West Supp. 1997).
85. COLO. REV. STAT. § 8-42-114 (1997).
86. COLO. REV. STAT. § 8-42-120 (1997).
87. COLO. REV. STAT. § 8-41-501(a) (1997).
88. COLO. REV. STAT. § 8-41-502 (1997).
89. COLO. REV. STAT. §§ 13-21-201 through 203 and § 14-2-209 (1997).
90. Kling v. Phaver, 274 P.2d 97 (Colo. 1954).
91. I.R.C. §§ 2056, 2513, 2516, 2523.
92. I.R.C. §§ 2513, 2516, 2056.
93. I.R.C. §§ 2503, 2505.
94. I.R.C. § 1.
95. 1 U.S.C.A. § 7 (West Supp. 1997); 28 U.S.C.A. § 1738C (West Supp. 1997).
96. I.R.C. § 106 and Treas. Reg. § 1.106-1.
97. I.R.C. § 162(a)(1) and Treas. Reg. § 1.162-10(a).
98. 29 U.S.C.S. §§ 1001-1461.
99. The Internal Revenue Code of 1986, as amended.
100. I.R.C. §§ 2526 and 71.
101. I.R.C. § 2056.
102. I.R.C. § 201D.
103. The Internal Revenue Code of 1986, as amended.
104. 29 U.S.C.S. §§ 1001-1461.
105. 1 U.S.C.A. § 7 (West Supp. 1997); 28 U.S.C.A. § 1738C (West Supp.