

UCLA

**Documenting Discrimination on the Basis of Sexual Orientation
and Gender Identity in State Employment**

Title

Nebraska - Sexual Orientation and Gender Identity Law and Documentation of
Discrimination

Permalink

<https://escholarship.org/uc/item/9w82f50b>

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Publication Date

2009-09-23



MEMORANDUM

From: Williams Institute

Date: September 2009

RE: **Nebraska – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

I. OVERVIEW

Attempts to pass a law in Nebraska prohibiting employment discrimination based on sexual orientation have failed for the last fourteen years.¹ As a result, in 1996, the Nebraska Attorney General opined that the Nebraska Equal Opportunity Commission (NEOC) does not have jurisdiction to consider any claim based on sexual orientation discrimination.

Most recently, a bill introduced in January 2007, which would have prohibited employers (including the State of Nebraska) from discriminating based on sexual orientation, was debated briefly and then postponed indefinitely. Former state Senator Ernie Chambers, who had introduced the bill, characterized the debate over the bill as “unsatisfactory, even silly.”² Opponents of the bill questioned whether it would protect pedophiles or transvestites who want to be teachers, said it was not needed based on their false belief that gay households have higher incomes, and argued that the bill was unnecessary as long as people “keep private what goes on in their bedrooms.”³ A state senator opposing the bill said, “I don’t think we should unleash such things on the unsuspecting public. . . . We’re talking here about values. We’re talking here about behavior. We’re talking here about ethics.”⁴

Documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local government employers in Nebraska include:

- An openly gay and HIV positive man who was recently terminated from his position as a volunteer firefighter when a city employee learned of his HIV status and sexual orientation. He was eventually reinstated after ACLU Nebraska

¹ See, e.g., Neb. Leg. 759, 99th Leg., 1st Reg. Sess. (2005); Neb. Leg. 19, 97th Leg., 1st Reg. Sess. (2001); Neb. Leg. 869, 95th Leg., 2d Reg. Sess. (1997); Neb. Leg. 395, 93d Leg., 1st Reg. Sess. (1993); see also Arthur S. Leonard, *Other Legislative Notes*, LESBIAN & GAY L. NOTES 108 (June 2007), available at <http://old.nyls.edu/pdfs/ln0706.pdf>; Martha Stoddard, *Gay Discrimination Ban Again Fails To Become Nebraska Law*, OMAHA WORLD-HERALD, May 23, 2007, available at http://www.omaha.com/index.php?u_page=2798&u_sid=238883.

² JoAnne Young, *Senators Shoot Down Bill To Protect Gays*, LINCOLN J. STAR, May 22, 2007, available at <http://www.journalstar.com/articles/2007/05/23/news/politics/doc46537b7ef3703942207604.txt>.

³ Stoddard, *supra* note 1.

⁴ *Id.*

contacted the city.⁵ The firefighter later decided to run for office in city government and won.⁶

- An academic advisor who in 2002 sued Metropolitan Community College (“Metro”), alleging that he had suffered harassment because he was gay.⁷ According to the advisor, he began to receive anonymous harassing correspondence after he attended a staff meeting during which he came out to other staff members. He reported the situation to his supervisors, who responded by investigating his claims and disciplining a specific employee who had made fun of him. Nonetheless, the harassment continued, so the advisor resigned. He filed suit, claiming that Metro violated his substantive due process rights, since no state law prohibited sexual orientation discrimination. The court granted summary judgment to Metro, finding that the harassment did not “shock the conscience” as would be required for a substantive due process violation and that Metro had done enough to address it.⁸

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

⁵ See ACLU Nebraska Legal Program, GLBT Rights, <http://www.aclunebraska.org/glb.htm> (last visited Sept. 4, 2009).

⁶ See *id.*

⁷ *Cracolice v. Metropolitan Community College*, No. 8:01CV3240, 2002 WL 31548706 (D. Neb. Nov. 15, 2002).

⁸ *Id.* at 4.

II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

A. State-Wide Employment Statutes

Currently, the state of Nebraska has not enacted laws to prohibit sexual orientation and gender identity employment discrimination. Nebraska statutes do prohibit employment discrimination based only on race, color, religion, sex, disability, marital status, national origin, or age.⁹ As a result, the NEOC, which has the power and duty to “receive, investigate, and pass upon charges of unlawful employment practices anywhere in the state,”¹⁰ does not recognize sexual orientation as a basis for filing a complaint.¹¹

B. Attempts to Enact State Legislation

Attempts to pass a law in Nebraska prohibiting employment discrimination based on sexual orientation have been ongoing for more than fourteen years, since former state Senator Tim Hall introduced the first such bill in 1993.¹² Most recently, former state Senator Ernie Chambers introduced L.B. 475 on January 17, 2007, which proposed to (i) prohibit employers (including the State of Nebraska, governmental agencies, and political subdivisions), employment agencies, and labor organizations from discriminating based on sexual orientation and (ii) authorize all cities and villages within Nebraska to enact ordinances prohibiting discrimination based on sexual orientation.¹³ L.B. 475 never became law because a motion to indefinitely postpone the bill, offered by former state Senator Phil Erdman, passed on May 22, 2007 by a 24-15 vote.¹⁴

Former state Senator Chambers characterized the debate over L.B. 475 as “unsatisfactory, even silly,” saying that high school students have more intellectual conversations.¹⁵ State Senator Tony Fulton, an opponent of L.B. 475, questioned whether the bill would protect pedophiles or transvestites who want to be teachers.¹⁶ He also stated that job discrimination is not a problem for homosexuals as demonstrated by studies showing that gay households have higher average incomes.¹⁷ Another opponent of L.B. 475, state Senator Tom Carlson, argued that the bill was unnecessary as long as people “keep private what goes on in their bedrooms.”¹⁸ State Senator Carlson was quoted as saying, “I don’t think we should unleash such things on the unsuspecting

⁹ See Age Discrim. in Employ. Act, NEB. REV. STAT. §§ 48-1001-10; Neb. Fair Employ. Practice Act, NEB. REV. STAT. §§ 48-1101-26; Equal Pay Act, NEB. REV. STAT. §§ 48-1210-27.01.

¹⁰ NEB. REV. STAT. § 48-1117.

¹¹ See Nebraska Equal Opportunity Commission FAQ No.16, <http://www.neoc.ne.gov/faq/faq.htm> (last visited Sept. 4, 2009).

¹² See sources cited *supra* note 1.

¹³ Neb. Leg. 475, 100th Leg., 1st Reg. Sess. (2007).

¹⁴ See Neb. Leg. 100-85, 1st Reg. Sess., at 22 (2007).

¹⁵ Young, *supra* note 2.

¹⁶ Stoddard, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*

public. . . . We're talking here about values. We're talking here about behavior. We're talking here about ethics."¹⁹

C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

1. Executive Orders

None.

2. State Government Personnel Regulations

In general, personnel regulations for state/local government employees prohibit state agencies from employment discrimination, and prohibit state employees from workplace harassment, based only on race, color, religion, national origin, age, sex, marital status, or physical or mental disability.²⁰ However, the personnel rules for the Nebraska Department of Education, and the workplace policies for the Nebraska Commission for the Blind and Visually Impaired, also prohibit harassment based on sexual orientation.²¹ Moreover, the University of Nebraska-Lincoln has adopted a non-discrimination policy, which provides that "educational programs, support services and workplace behavior, including decisions regarding hiring, promotion, discipline, termination and all other terms and conditions of employment, should be made without discrimination on the basis of . . . sexual orientation."²²

3. Attorney General Opinions

In 1996 the Nebraska Attorney General issued Opinion No. 96042, concluding that the NEOC should prescreen complaints to determine which complaints the commission lacks subject matter jurisdiction to investigate.²³ The opinion specifically provides that the NEOC would not have jurisdiction to investigate a claim of discrimination based on sexual orientation because sexual orientation is not protected by the Nebraska Fair Employment Practice Act.²⁴ A few months later, the Nebraska Attorney General issued Opinion No. 96044 regarding same-sex harassment, which included a statement that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination against a homosexual employee.²⁵

¹⁹ *Id.*

²⁰ See 273 NEB. ADMIN. CODE §§ 4-001, 14-003.16; DEP'T OF ADMIN. SERV., HUMAN RES. POLICIES AND PROC. MANUAL 4, 7 (2002), available at <http://www.das.state.ne.us/personnel/hrcentral/policymanual/P&PSectionII.pdf> (last visited Jan 23, 2009).

²¹ 93 NEB. ADMIN. CODE §§ 13-001.15 to .16; 192 Neb. Admin. Code §§ 4-005.01.

²² UNIV. OF NEB.-LINCOLN, POLICY AND PROCEDURES ON UNLAWFUL DISCRIMIN., <http://bf.unl.edu/hrpolicy/OtherPolicies.shtml> (last visited Feb. 10, 2009).

²³ Neb. Op. Att'y Gen. 96042 (1996), 1996 WL 263228.

²⁴ *Id.* at 1.

²⁵ Neb. Op. Att'y Gen. 96044 (1996), 1996 WL 283722.

D. Local Legislation

None.

E. Occupational Licensing Requirements

A comprehensive search of internet sources did not uncover any occupational licensing requirements that expressly reference sexual orientation or gender identity; however, several licenses subject the applicant or license holder to morality-type requirements. Certificates and permits to teach, provide special services, and administer in schools may be based upon “moral, mental, and physical fitness for teaching, all in accordance with sound educational practices”; moreover, the school board may determine that a certificated employee’s contract shall be amended or terminated based on “immorality.”²⁶ A health professional’s credentials may be denied or refused renewal based on “immoral or dishonorable conduct evidencing unfitness to practice the profession.”²⁷ Finally, licenses for attorneys, nursing home administrators, and employment agency operators all require the holder to have “good moral character.”²⁸

²⁶ NEB. REV. STAT. §§ 79-808, -824, -827, -829.

²⁷ *Id.* § 38-178.

²⁸ *Id.* §§ 7-102, 38-2419, 48-503.

III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

A. Case Law

1. State & Local Government Employees

Cracolice v. Metropolitan Community College, 2002 WL 31548706 (D. Neb. Nov. 15, 2002).

In *Cracolice v. Metropolitan Community College*,²⁹ Gregory Cracolice, an academic advisor, sued Metropolitan Community College (“Metro”), alleging that he had suffered harassment and had been denied a promotion because he is gay. According to Cracolice, he began to receive anonymous harassing correspondence after he attended a staff meeting during which he and other staff members announced their sexual orientation. Cracolice reported the situation to his supervisors, who responded by investigating Cracolice’s claims, having his mail box watched, reminding employees how to treat each other, and disciplining a specific employee who made fun of Cracolice. Nonetheless, the harassment continued, so Cracolice resigned. Cracolice also asserted that Metro failed to fulfill its promise to promote him to one of three coordinator positions (out of over one hundred applicants, Cracolice made the top fifteen but was ultimately not selected). Cracolice claimed that Metro violated his substantive due process rights (no claim under Title VII and no claim to the Nebraska Equal Opportunity Commission was made in this case). The court granted summary judgment to Metro, finding that Metro essentially did all it could to address the harassment, conduct which did not “shock the conscience” as would be required for a substantive due process violation; moreover, Cracolice offered no evidence that he was guaranteed a coordinator position.³⁰

2. Private Employees

Miller v. Kellogg USA, Inc., 2006 WL 1314330 (D. Neb. May 11, 2006).

Miller v. Kellogg USA, Inc.,³¹ a case involving claims of same-sex harassment and retaliatory discharge in the private employer context, could have implications for state action as well. While most of the opinion is not relevant to employment discrimination based on sexual orientation or gender identity, the court did mention the possibility that harassment based on sex under Title VII of the Civil Rights Act of 1964 could include harassment based on the perception that the plaintiff is homosexual, i.e., that the plaintiff fails to conform to gender stereotypes.³² The court noted that it is unclear whether the Eighth Circuit recognizes this type of same-sex harassment claim because, in one case, the Eighth Circuit held that the defendant’s conduct was sufficient to support a same-sex harassment claim even though some acts indicated harassment

²⁹ No. 8:01CV3240, 2002 WL 31548706 (D. Neb. Nov. 15, 2002).

³⁰ *Id.* at 4.

³¹ No. 8:04CV500, 2006 WL 1314330 (D. Neb. May 11, 2006).

³² *Id.* at 6.

based on perceived sexual orientation, while in another case, the Eighth Circuit held that harassment based on perceived homosexuality is not actionable.³³ Ultimately, the court in *Miller* did not attempt to resolve this issue, ruling that it did not matter in this case since the plaintiff could not prove another element required to support a prima facie case for same-sex harassment.³⁴

B. Administrative Complaints

None.

C. Other Documented Examples of Discrimination

According to ACLU Nebraska, an openly gay and HIV positive man was recently terminated from his position as a volunteer firefighter for a small rural community when a city employee learned of his HIV status and sexual orientation; however, he was reinstated after ACLU Nebraska contacted the city.³⁵ It appears that the firefighter later decided to run for office in city government and won.³⁶ Non-exhaustive research of electronic sources did not uncover further details about this matter.

³³ *Id.* at 6 n.2 (citing *Schmedding v. Tneme Co., Inc.*, 187 F.3d 862, 865 (8th Cir. 1999) and *Klein v. McGowan*, 198 F.3d 705, 890 (8th Cir. 1999)).

³⁴ *Id.* at 6.

³⁵ See ACLU Nebraska Legal Program, GLBT Rights, <http://www.aclunebraska.org/glb.html> (last visited Sept. 4, 2009).

³⁶ See *id.*

IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indications of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

A. Criminalization of Same-Sex Sexual Behavior

Nebraska's sodomy law was repealed in 1978.

B. Housing & Public Accommodations Discrimination

Nebraska statutes relating to housing and public accommodations prohibit discrimination based only on race, color, creed, religion, national origin, ancestry, handicap, familial status, or sex.³⁷ A comprehensive search of internet sources did not uncover any directly relevant housing regulations involving state agencies or facilities. As of this time, there have been no regulations promulgated under the Nebraska Fair Housing Act.³⁸

While there have been attempts to add sexual orientation as a protected category in housing and public accommodations statutes, none of these attempts have been successful. For example, L.B. 50, which would have prohibited discrimination based on sexual orientation with respect to housing and places of public accommodation, was postponed indefinitely on April 13, 2006.³⁹ In addition, L.B. 215 contained a provision that would have made it an unfair trade practice for real estate agents and brokers to discriminate based on sexual orientation when showing, selling, or renting real estate.⁴⁰ The main purpose of L.B. 215 had been to revise and update Nebraska's real estate law, and neither the Nebraska Real Estate Commission nor the Nebraska Board of Realtors objected to the sexual orientation provision.⁴¹ The initial version of L.B. 215 introduced on January 4, 2001 did not include any anti-discrimination provisions,⁴² but former state Senator Ernie Chambers offered an amendment to the bill that added the anti-discrimination language, which was approved by the Nebraska Legislature 26-8.⁴³ The amended version of L.B. 215 passed 27-16 but was ultimately vetoed by the governor on May 31, 2001, and the Nebraska Legislature fell just four votes short of overriding the

³⁷ See Act Providing Equal Enjoyment of Pub. Accom., Neb. Rev. Stat. §§ 20-132 to -143; Neb. Fair Housing Act, Neb. Rev. Stat. §§ 20-301 to -344.

³⁸ Nebraska Equal Opp. Comm'n, Neb. Fair Housing Act, <http://www.neoc.ne.gov/laws/hsng.htm> (last visited Jan. 23, 2009).

³⁹ Neb. Leg. 50, 99th Leg., 1st Sess. (2005).

⁴⁰ Neb. Leg. 215, 97th Leg., 1st Sess. § 16 (2001).

⁴¹ Robynn Tysver, *Gay-Housing Veto Stands*, Omaha World-Herald, June 1, 2001.

⁴² See *id.*

⁴³ Arthur S. Leonard, *Lesbian/Gay Legal News: Legislative Notes*, LESBIAN & GAY L. NOTES 86 (May 2001), available at <http://old.nyls.edu/pdfs/lgl0105.pdf>.

veto.⁴⁴ The governor stated in his veto letter that he could not support L.B. 215 because it ““goes beyond mere tolerance and clearly creates a legal classification based upon sexual choices that our citizens make in their personal lives.””⁴⁵

C. **Hate Crimes**

Nebraska’s hate crimes law, which was enacted in 1997, enhances the penalties for certain crimes committed against people based on their “race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability” or based on their association with a person who fits within one of these classifications.⁴⁶

D. **Education**

According to ACLU Nebraska, Norfolk Senior High’s school administration and school board formally denied a request by students who formed a Gay Straight Alliance student club to have the same privileges as other non-curriculum clubs (such as the ability to meet at school, use the photocopier, advertise their meetings in print and announcements, and have speakers); the school changed its mind after an ACLU staff attorney wrote a letter to the school in 2002.⁴⁷

E. **Health Care**

A law passed in 2005 specifically provides that recipients of medical research funds from the Nebraska Health Care Cash Fund cannot discriminate based on sexual orientation.⁴⁸

F. **Gender Identity**

Brandon v. County of Richardson, 624 N.W.2d 604 (Neb. 2001).

In *Brandon v. County of Richardson*,⁴⁹ the mother of Brandon Teena (Brandon was a murder victim who was a transsexual biological female and who had assumed a male identity⁵⁰) sued the county and the sheriff for negligence, wrongful death, and intentional infliction of emotional distress on Brandon during police questioning. Two of Brandon’s male acquaintances who were suspicious of his sexual identity had pulled his pants down at a party, and, after discovering that Brandon was female, had beat and raped Brandon, threatening to kill him if he told the police. Brandon reported the

⁴⁴ NANCY CYR ET AL., A REVIEW: NINETY-SEVENTH LEGISLATURE FIRST SESSION 28 (2001); Arthur S. Leonard, *Lesbian/Gay Legal News: Legislative Notes*, LESBIAN & GAY L. NOTES 140 (Summer 2001), available at <http://old.nyls.edu/pdfs/lgl0107.pdf>.

⁴⁵ *Id.*

⁴⁶ NEB. REV. STAT. § 28-111; NANCY CYR ET AL., A REVIEW: NINETY-FIFTH LEGISLATURE FIRST SESSION 74(1997).

⁴⁷ *See id.*

⁴⁸ NEB. REV. STAT. § 71-7611; *see also* Neb. Leg. 426, 99th Leg., 1st Reg. Sess. § 12 (2005).

⁴⁹ 624 N.W.2d 604 (Neb. 2001).

⁵⁰ Brandon’s story is the basis for the movie *Boys Don’t Cry*, starring Hilary Swank. BOYS DON’T CRY (Fox Searchlight Pictures 1999).

incident to the police, but the sheriff was vulgar and abusive when questioning Brandon about the incident. Moreover, the police did not arrest the perpetrators, even though the sheriff was aware that they both had criminal records and that they had threatened Brandon's life. A few days later, the perpetrators of the original crime murdered Brandon, who was hiding out at a friend's house. They were ultimately convicted for Brandon's murder. In the civil action brought by Brandon's mother, the district court found the county negligent but reduced the award by 85% for the intentional torts of the perpetrators and by 1% for Brandon's contributory negligence; it also denied recovery for intentional infliction of emotional distress on Brandon and awarded only nominal damages for the mother's loss of society.⁵¹

On appeal, the Nebraska Supreme Court wrote a strongly worded opinion, holding that (i) negligence awards cannot be reduced for the acts of intentional tortfeasors, (ii) there was no evidence that Brandon was contributorily negligent, (iii) nominal damages for the mother's loss of society claim is inadequate as a matter of law, and (iv) the sheriff's conduct was "extreme and outrageous, beyond all possible bounds of decency" as a matter of law and could therefore support a claim of intentional infliction of emotional distress on Brandon.⁵² On remand, however, the district court awarded only \$7,000 for the intentional infliction of emotional distress claim and \$5,000 for the loss of society claim, a result upheld by the Nebraska Supreme Court because it was not "clearly wrong."⁵³

G. Parenting

1. Adoption

Nebraska statute permits adoption "by any adult person or persons";⁵⁴ however, the Supreme Court of Nebraska held in *In re Adoption of Luke*⁵⁵ that, under Nebraska adoption statutes, a child is not eligible for adoption by a second parent unless the first parent relinquishes his or her parental rights, except when the prospective adoptive parent is the spouse of the first parent (i.e., in a step-parent adoption).⁵⁶ In *Luke*, the biological mother's same-sex partner sought to adopt her child, but the court held that the child was not eligible for adoption because the biological mother did not relinquish her parental rights.⁵⁷ Notably, the court in *Luke* did not address the issue of whether two non-married persons can adopt.⁵⁸ In summary, Nebraska statute seems to allow adoption by a *single* person regardless of his or her sexual orientation (because it permits adoption by "any adult person"), and Nebraska case law does not explicitly prohibit same-sex couples from jointly petitioning to adopt; however, *Luke* established that a same-sex partner cannot adopt his or her partner's child.

⁵¹ *Brandon*, 624 N.W.2d at 611.

⁵² *Id.* at 620, 624, 626-27.

⁵³ *Brandon v. County of Richardson*, 653 N.W.2d 829 (Neb. 2002).

⁵⁴ *Id.* § 43-101.

⁵⁵ 640 N.W.2d 374 (Neb. 2002).

⁵⁶ *Id.* at 382-83.

⁵⁷ *Id.* at 382.

⁵⁸ *Id.* at 378.

2. Child Custody & Visitation

In contrast to its laws governing other areas, Nebraska's laws regarding custody and visitation are relatively favorable to LGBT parents. *Hassenstab v. Hassenstab*⁵⁹ indicates that Nebraska courts will not take a parent's sexual orientation into consideration in custody decisions unless it adversely affects the child. In *Hassenstab*, the court of appeals allowed the mother to continue custody after she had a homosexual relationship, even though there was evidence that she would engage in sexual activity when her daughter was in the house and that her daughter was generally aware of the homosexual relationship.⁶⁰ The court's ruling was based on a lack of evidence that the daughter was directly exposed to the mother's sexual activities or was adversely affected or damaged because of the homosexual relationship, or that the daughter's best interests would require a change in custody.⁶¹ (One judge filed a dissent in *Hassenstab*, arguing that the father should have custody because the mother's conduct would "necessarily impair [the daughter's] moral training."⁶²) In *Russell v. Bridgens*,⁶³ a concurring opinion noted that a same-sex co-parent should be able to petition for custody and visitation if she can establish an *in loco parentis* relationship with the child, even if she has no biological or legal (i.e., adoptive) relationship with the child.⁶⁴

H. Recognition of Same-Sex Couples

In 2000, Nebraska voters adopted Initiative Measure No. 416, a constitutional amendment that bans not only same-sex marriages but also any recognition of same-sex relationships.⁶⁵ In 2005, in *Citizens for Equal Protection, Inc. v. Bruning*,⁶⁶ the United States District Court for the District of Nebraska found this amendment to be unconstitutional in violation of the Equal Protection Clause and the First Amendment.⁶⁷ On appeal, the Eighth Circuit reversed, holding that the amendment is rationally related to legitimate government interest in procreation.⁶⁸ In 2003 the Nebraska Attorney General issued Opinion No. 03004, concluding that legislation granting rights to domestic partners with respect to organ donation or disposition of remains would not be allowed under Article I, Section 29 of the Nebraska Constitution because such legislation would put a same-sex relationship "on the same plane as" a marital relationship.⁶⁹

⁵⁹ 570 N.W.2d 368 (Neb. Ct. App. 1997).

⁶⁰ *Id.* at 373.

⁶¹ *Id.* at 372-73.

⁶² *Id.* at 375 (Hannon, J., dissenting).

⁶³ 647 N.W.2d 56 (Neb. 2002).

⁶⁴ *Id.* at 65 (Gerrard, J., concurring).

⁶⁵ Article I, Section 29 of the Nebraska Constitution currently reads: "Only marriage between a man and a woman shall be valid or recognized in Nebraska. The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska."

⁶⁶ 368 F. Supp. 2d 980 (D. Neb. 2005), *rev'd*, 455 F.3d 859 (8th Cir. 2006).

⁶⁷ *Id.* at 995-1000.

⁶⁸ *Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 867-70 (8th Cir. 2006).

⁶⁹ Neb. Op. Att'y Gen. 03004 (2003), 2003 WL 21207498.