

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

Judith R.T. O’Kelley, Charles R.T. O’Kelley, St. Johns Missionary Baptist Church, Rabbi Scott Saulson, Reverend Timothy McDonald III, Senator David Adelman, Representative Tyronne Brooks,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
Sonny Perdue, in his official capacity as Governor of the State of Georgia,)	CASE NO.
)	
Defendant.)	

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

1 This lawsuit requests that this Court declare the amendment to the Georgia Constitution, contained in Senate Resolution 595 (“SR 595”) and ratified after appearing on the November 2, 2004 ballot (“Amendment One”), unconstitutional. Amendment One, which will appear as Article I, Section IV of the Georgia Constitution, is fatally flawed as a constitutional matter because it contains multiple sections which deal with more than one subject matter. Amendment One thus violates the provision of the Georgia Constitution requiring that voters be allowed to vote on proposed amendments separately and one at a time. Ga. Const. Art. X, § I, ¶ II.

2. In addition, Amendment One is fatally flawed, because the language that was designated by the General Assembly and that was placed on the ballot was affirmatively misleading in that it addressed only the definition of marriage and thus had the effect of

unfairly attempting to influence voters. Accordingly, the ballot language by which Amendment One was presented to the Georgia electorate deprived voters of their due process right to an effective vote in violation of the Georgia Constitution.

3. All Georgians are entitled to be governed only by those constitutional amendments that have been enacted through a constitutionally valid procedure consistent with the Georgia Constitution's requirements concerning how proposed constitutional amendments must be drawn and how proposed constitutional amendments are to be presented on the ballot. Accordingly, this lawsuit addresses matters that affect purely public rights, common to all citizens in this state, and further concerns the performance of a purely public duty, *i.e.*, the duty of the Governor to enforce the Georgia Constitution under Ga. Const. Art. V, § II, ¶ II.

4. Plaintiffs thus seek to have this Court enter judgment declaring that Amendment One violates the single subject rule of the Georgia Constitution and/or that the ballot language by which Amendment One was presented to the electorate was so misleading that it violates the due process rights of all Georgians.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under Article 6, § 4, ¶ 1 of the Georgia Constitution; O.C.G.A. § 9-4-1, *et seq.* and O.C.G.A. § 9-6-20, *et seq.*

6. Venue is proper in this Court because the Governor has his office at the Georgia State Capitol, Atlanta, Fulton County, Georgia 30334.

PARTIES

7. The individual Plaintiffs are citizens of the State of Georgia and were registered to vote in the November 2, 2004 general election, and have been regular voters

in elections in Georgia for many years. As such, Plaintiffs are entitled to be governed only by those constitutional amendments that comply with the Georgia Constitution's directives for construction and presentation on the ballot.

8. Plaintiffs Judith R. T. O'Kelley and Charles R. T. O'Kelley are registered voters residing in Athens, Georgia, and are both attorneys licensed to practice in Georgia. Plaintiff Judith R.T. O'Kelley is the Campaign Chair for Northeast Georgians Against Discrimination, part of the statewide campaign to oppose Amendment One. Plaintiff Charles R.T. O'Kelley is the Martin E. Kilpatrick Chair of Corporate Law at the University of Georgia School of Law, and has been the faculty advisor for the law school's gay and lesbian support group since its inception. He is also a member of the Outreach Committee of Northeast Georgians Against Discrimination. Through their work, both of these plaintiffs are aware of many voters who, when presented with the ballot language, initially voiced opposition to marriage for same-sex couples, but who were surprised by the existence of subsection (b) and that Amendment One affects legal rights and benefits other than marriage for same-sex couples. Both of these plaintiffs are aware of voters who support civil unions but oppose marriage for same-sex couples, and who thus were unable to cast a vote on Amendment One consistent with both beliefs.

9. Plaintiff Saint John's Missionary Baptist Church is a congregation in Brunswick, Georgia. Its members have differing views on the issue of marriage for same-sex couples, but most or all are in favor of civil unions for same-sex couples. Those registered voter members of the Saint John's Missionary Baptist Church who support civil unions but oppose marriage for same-sex couples were unable to cast a vote on Amendment One consistent with both beliefs.

10. Plaintiff Rabbi Scott Saulson is a registered voter and a Rabbi for Rodeph Shalom in Rome, Georgia and Chema Yisreal in Atlanta, Georgia. Rabbi Saulson's congregants have differing views on the issue of marriage for same-sex couples, and differing views on civil unions. Those voting members of the synagogues who support civil unions but oppose marriage for same-sex couples were unable to cast a vote on Amendment One consistent with both beliefs.

11. Plaintiff Senator David Adelman is a registered voter and a member of the Georgia General Assembly representing Senate District 42, which includes portions of DeKalb County. When Senate Resolution 595 was debated in the Senate, Senator Adelman voted against the resolution. Some members of his district support both marriage rights for same-sex couples and civil unions, some oppose both, and others support civil unions but not marriage for same-sex couples. Those members of Senate District 42 who support civil unions but not marriage for same-sex couples were not able to cast a vote on Amendment One consistent with both beliefs.

12. Plaintiff Reverend Timothy McDonald III is the Senior Pastor of the First Iconium Baptist Church in Atlanta, Georgia. Reverend McDonald supported amending the Georgia Constitution to define marriage as the union of man and woman, but opposed amending the Georgia Constitution to ban the legal recognition of civil unions comprised of same-sex couples. Reverend McDonald therefore was not able to cast a vote on Amendment One consistent with both beliefs.

13. Plaintiff Representative Tyrone Brooks is a registered voter and a member of the Georgia General Assembly representing House District 63, which includes portions of Douglas County and Fulton County. When SR 595 was debated in the House of

Representatives, Representative Brooks voted against the resolution, but worked on three amendments that would have limited the scope of the Amendment One to a single subject by deleting subsection (b); none of these passed and Representative Brooks voted against SR 595. Some members of his district support both marriage rights for same-sex couples and civil unions, some oppose both, and others support civil unions but not marriage for same-sex couples. Those members of House District 63 who support civil unions but not marriage for same-sex couples were not able to cast a vote on Amendment One consistent with both beliefs.

14. Defendant Sonny Perdue, sued only in his official capacity as Governor of the State of Georgia, is subject to the jurisdiction of this Court, and may be served at the Office of the Governor, Georgia State Capitol, Atlanta, Fulton County, Georgia 30334. Among other duties, pursuant to Ga. Const. Art. V, § II, ¶ II, Defendant Perdue, in his official capacity as Governor of the State of Georgia, is responsible for enforcing the Georgia Constitution.

STATEMENT OF THE CASE

15. The Georgia General Assembly, during the 2004 session, passed SR 595. In its entirety SR 595 reads as follows:

A RESOLUTION

Proposing an amendment to the Constitution so as to provide that this state shall recognize as marriage only the union of man and woman; to provide for submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article I of the Constitution is amended by adding a new Section IV to read as follows:

“SECTION IV.
MARRIAGE

Paragraph I. *Recognition of marriage.* (a) This state shall recognize as marriage only the union of man and woman. Marriages between persons of the same sex are prohibited in this state.

(b) No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. This state shall not give effect to any public act, record, or judicial proceeding of any other state or jurisdiction respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state or jurisdiction. The courts of this state shall have no jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties’ respective rights arising as a result of or in connection with such relationship.”

SECTION 2.

The above proposed amendment to the Constitution shall be published and submitted as provided in Article X, Section I, Paragraph II of the Constitution. The ballot submitting the above proposed amendment shall have written or printed thereon the following:

- | | |
|------------------------------|--|
| <input type="checkbox"/> YES | Shall the Constitution be amended so as to provide that |
| <input type="checkbox"/> NO | this state shall recognize as marriage only the union of man and woman?” |

All persons desiring to vote in favor of ratifying the proposed amendment shall vote “Yes.” All persons desiring to vote against ratifying the proposed amendment shall vote “No.” If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this state.

16. On November 2, 2004, Amendment One appeared on the general election ballot. The ballot summary stated that the subject of Amendment One was “[t]o define marriage as the union of man and woman.” On November 9, 2004, Secretary of State Cathy Cox certified that Amendment One had been ratified by receiving a majority of the votes cast in the general election.

Single-Subject Rule

17. Article X, § I, ¶ II of the Georgia Constitution provides in pertinent part:
“When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment separately . .

18. Amendment One violates this constitutionally mandated “single-subject rule,” because it does more than simply define marriage. As set forth in subsection (b), Amendment One, among other things, also prohibits recognition of civil unions between persons of the same sex and limits the subject matter jurisdiction of the courts of this State.

19. Plaintiffs, as citizens and voters, have the right, as set forth in Article X, § I, ¶ II of the Georgia Constitution, to be governed only by those constitutional amendments that contain a single subject. This is a right that is guaranteed to each and every Georgia citizen and voter, and is therefore a matter of public right, common to all members of the public in this State. If the Governor proceeds to enforce Amendment One, as it will be his constitutional duty to do in the absence of a declaration that Amendment One is unconstitutional, Plaintiffs and all members of the public will be deprived of this right.

20. Amendment One, by including the restrictions set forth in subsection (b), along with the definition of marriage in subsection (a), impermissibly combines multiple subject matters and, on November 2, 2004, forced voters to make an unfair and, by virtue of the single subject rule, a constitutionally improper choice. Those voters, such as Reverend McDonald, who wished to vote in favor of constitutionally defining marriage as the union of man and woman, but who wished to vote against a prohibition against the

legal recognition of civil unions comprised of same-sex couples, were faced with the type of Hobson's choice that the single-subject rule is designed to prevent.

Misleading Ballot Language

21. Georgia Constitution Article X, § I, ¶ II provides in pertinent part: "The language to be used in submitting a proposed amendment or a new Constitution shall be in such words as the General Assembly may provide in the resolution or, in the absence thereof, in such language as the Governor may prescribe."

22. All voters and citizens throughout the State of Georgia have the right to be governed by only those constitutional amendments that are presented on the ballot in an objective and non-partisan manner that does not mislead voters with regard to the scope of the amendment.

23. SR 595 dictated the specific language that appeared on the ballot:

- | | |
|------------------------------|---|
| <input type="checkbox"/> YES | Shall the Constitution be amended so as to |
| <input type="checkbox"/> NO | provide that this state shall recognize as
marriage only the union of man and woman? |

24. Instead of accurately describing Amendment One and its impact, this language misled voters to conclude that the sole purpose and effect of Amendment One is to provide that Georgia will recognize as marriage only the union of a man and woman. However, subsection (b) of Amendment One addresses separate subject matters beyond the definition of marriage, such as prohibiting recognition of "union[s] between persons of the same sex . . . as entitled to the benefits of marriage;" divesting courts of jurisdiction to "consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship;" and barring courts from giving effect to certain public acts, records, or judicial proceedings of other states or jurisdictions.

25. This language is further improper in that it amounts to a nonobjective attempt to influence voters to vote in favor of Amendment One.

26. The language that was designated by the General Assembly and that appeared on the November 2, 2004 ballot only referenced the constitutional definition of marriage contained in subsection (a) of Amendment One and did not suggest to the voter information that Amendment One would do anything more. The ballot language thus had the effect of misleading voters to conclude that the constitutional definition set forth in subsection (a) was all that was contained in Amendment One.

27. Amending the Constitution of the State of Georgia is a serious matter, and as such, the people of this State are entitled to have the decision to amend decided by meaningful votes cast by voters who are not misled at the ballot box regarding the true effects of Amendment One. Accordingly, the present suit, which seeks to declare Amendment One unconstitutional, is a matter of purely public interest.

CLAIM FOR RELIEF

28. There is an actual controversy between Plaintiffs and Defendant, because consistent with his constitutional duties, Defendant will act to enforce Amendment One unless this Court declares that Amendment One is unconstitutional and void.

29. Plaintiffs are entitled to have this Court declare that Amendment One is unconstitutional and void on the grounds that Amendment One violates the single-subject rule and/or that the ballot language through which Amendment One was presented to the electorate was constitutionally improper in controvention of due process standards.

30. Plaintiffs are entitled to have this Court hear and decide their claims on an expedited basis in order to resolve the controversy between Plaintiffs and Defendant,

because this case presents issues of great public importance and because Defendant otherwise will act to enforce Amendment One insofar as his constitutional duties require.

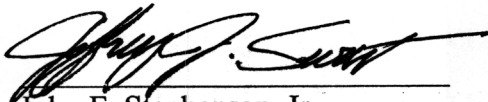
31. The claims presented in this Complaint involve pure questions of law for the Court to decide.

PRAYER FOR RELIEF

Wherefore Plaintiffs pray that this Court:

- (a) grant a declaratory judgment declaring that that Amendment One is unconstitutional and void because: (i) Amendment One violates the single-subject rule as set forth in Article X, § I, ¶ II of the Georgia Constitution and/or (ii) Amendment One was presented to the electorate through affirmatively misleading ballot language in violation of due process standards required by the Georgia Constitution; and
- (b) grant such other relief as this Court deems just and proper.

Respectfully submitted this 9th day of November, 2004.



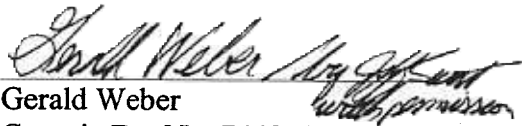
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