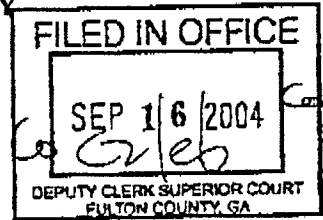


IN THE SUPERIOR COURT OF FULTON COUNTY

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 Tyrone Brooks,)

Plaintiffs,)

vs.)

Cathy Cox, in her official capacity as)
Secretary of State of Georgia,)

Defendant.)

CASE NO.

2004CV91122

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This lawsuit seeks to enjoin the Secretary of State from placing on the November 2, 2004 general election ballot the proposed amendment to the Georgia Constitution contained in Senate Resolution 595 ("SR 595") and passed by the General Assembly during the 2004 legislative session (the "Proposed Amendment"). The Proposed Amendment is fatally flawed as a constitutional matter, since it contains multiple sections which deal with more than one subject matter. The Proposed Amendment 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, the Proposed Amendment is fatally flawed, because the language designated by the General Assembly to be placed on the ballot is affirmatively misleading in that

it addresses only the definition of marriage and thus has the effect of unfairly attempting to influence voters. Accordingly, the ballot language by which the Proposed Amendment will be presented to the Georgia electorate deprives voters of their due process right to an effective vote in violation of the Georgia Constitution.

3. All Georgia voters are entitled to have only those proposed amendments that comply with the Constitution presented on the ballot and also to have such amendments presented in a manner that complies with the Constitution. Accordingly, this lawsuit addresses matters that both directly affect them as voters and that also affect purely public rights, common to all voters in this state, and seeks to enforce the performance of a purely public duty, *i.e.*, to have the Secretary of State place on the ballot only those proposed amendments that comply with the requirements of the Georgia Constitution.

4. Plaintiffs thus seek to have this Court enter judgment declaring that the Proposed Amendment violates the single subject rule of the Georgia Constitution and/or that the ballot language is so misleading that it violates the rights of all Georgia voters, and further to have this Court enjoin the Secretary of State from placing this Proposed Amendment on the November 2, 2004 general election ballot.

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.; O.C.G.A. § 9-6-20, et seq. and O.C.G.A. § 9-11-65.

6. Venue is proper in this Court since the Secretary of State has her office at Room 214 State Capitol Building, Atlanta, Fulton County, Georgia 30303.

PARTIES

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

for many years. As such they are keenly interested in having all measures that are placed on the ballot for consideration by all voters in the State of Georgia presented in a manner that is consistent with the provisions of the Georgia Constitution and other laws of this state.

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 the Proposed Amendment. 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 this work, both of these plaintiffs are aware of many voters who, when presented with the ballot language, initially voice opposition to marriage for same-sex couples, but who are surprised by the existence of subsection (b) and that the Proposed Amendment may affect 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 cannot cast a vote consistent with both beliefs under the Proposed Amendment.

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 cannot cast a vote consistent with both beliefs under the Proposed Amendment.

10. Plaintiff Rabbi Scott Saulson is a registered voter and a Rabbi for Rodeph Shalom in Rome, Georgia and Chema Yisrcal 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 cannot cast a vote consistent with both beliefs under the Proposed Amendment.

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 cannot cast a vote consistent with both beliefs under the Proposed Amendment.

12. Plaintiff Reverend Timothy McDonald III is the Senior Pastor of the First Iconium Baptist Church in Atlanta, Georgia. Reverend McDonald supports amending the Georgia Constitution to define marriage as the union of man and woman, but opposes amending the Georgia Constitution to ban the legal recognition of civil unions comprised of same-sex couples.

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 Proposed Amendment 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 cannot cast a vote consistent with both beliefs under the Proposed Amendment.

14. Defendant CATHY COX, sued only in her official capacity as Secretary of State for the State of Georgia, is subject to the jurisdiction of this Court, and may be served at Room 214, State Capitol Building, Atlanta, Fulton County, Georgia 30303.

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:

- () YES Shall the Constitution be amended so as to provide that
() 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. Among other duties, Defendant Cox, in her official capacity as Secretary of State, is responsible for placing proposed constitutional amendments on the ballots to be used by voters in any 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. The Proposed Amendment violates this constitutionally mandated "single-subject rule," because it does more than simply prohibit marriage between persons of the same sex. As set forth in subsection (b), the Proposed Amendment, 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 vote on a proposed constitutional amendment that contains only 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 Proposed Amendment is allowed to appear on the November 2, 2004 ballot in its present form, Plaintiffs and all members of the public will be deprived of this right.

20. The Proposed Amendment, by including the restriction set forth in subsection (b), along with the definition of marriage in subsection (a), forces voters to make an unfair and, by virtue of the single subject rule, a constitutionally improper choice. Those voters, such as Reverend McDonald, who wish to vote in favor of constitutionally defining marriage as the union of man and woman, but who wish to vote against a prohibition against the legal recognition of civil unions comprised of same-sex couples, will be 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 throughout the State of Georgia have the right to vote on proposed 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 proposed amendment.

23. SR 595 dictates the specific language that is to appear 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 the Proposed Amendment and its impact, this language is confusing and misleading in that it unfairly leads voters to conclude that the sole

purpose and effect of the Proposed Amendment is simply to provide that Georgia will recognize as marriage only the union of a man and woman. However, subsection (b) of the Proposed Amendment 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 the Proposed Amendment.

26. The language designated by the General Assembly to appear on the ballot only references the constitutional definition of marriage contained in subsection (a) of the Proposed Amendment and gives the voter no hint that the amendment would do anything more. The ballot language thus has the effect of confusing or misleading voters to conclude that the constitutional definition set forth in subsection (a) is all that is contained in the Proposed Amendment.

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 the Proposed Amendment. Accordingly, the present suit, which seeks to enjoin the use of biased and constitutionally inadequate ballot language, is a matter of purely public interest.

Claims for Relief

28. There is an actual controversy between Plaintiffs and Defendant since, upon information and belief, Defendant will place the ballot language designated by the General Assembly on the November 2, 2004 ballot unless this Court orders otherwise. If the Proposed

Amendment, which violates the single subject rule and employs improper ballot language, is allowed to be presented to the voters on November 2, 2004, then Plaintiffs, as well as every other voter in the State of Georgia, will suffer irreparable harm.

29. Plaintiffs have no adequate remedy at law, and are entitled to have this Court declare that the Proposed Amendment violates the single-subject rule and/or that the ballot language is constitutionally improper, and to issue a preliminary and permanent injunction that the Secretary of State not present this Proposed Amendment on the November 2, 2004 ballot.

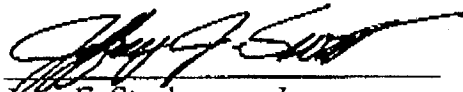
30. Plaintiffs are entitled to have this Court hear and decide their claims on an expedited basis in order to prevent the irreparable harm that would occur if the Proposed Amendment were allowed to be presented on the November 2, 2004 ballot.

31. The claims presented in this Complaint involve purely questions of law for the Court to decide, and thus the Court can and should consolidate the hearing on Plaintiffs' Motion for Preliminary and Permanent Injunction.

Wherefore Plaintiffs pray that this Court:

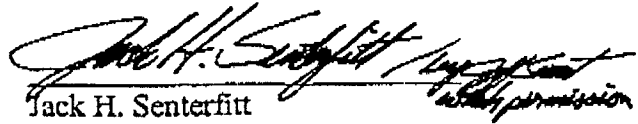
- (a) grant a declaratory judgment that the Proposed Amendment violates the single-subject rule as set forth in Article X, § I, ¶ II of the Georgia Constitution, and/or that the Proposed Amendment is constitutionally defective by virtue of the misleading language designated by the General Assembly to appear on the ballot;
- (b) issue a preliminary and permanent injunction that Defendant, in her official capacity as Secretary of State, does not present this Proposed Amendment on the November 2, 2004 ballot;
- (c) grant such other relief as this Court deems just and proper.

This 16th day of September, 2004.



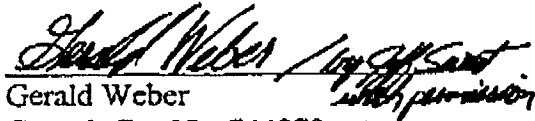
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