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DOMESTIC RELATIONS Marriage Generally: Prohibit Same-Sex Marriage

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DOMESTIC RELATIONS

Marriage Generally: Prohibit Same-Sex Marriage

CODE SECTIONS:	O.C.G.A. §§ 19-3-3.1 (new), -30 (amended)
BILL NUMBER:	HB 1580
ACT NUMBER:	755
GEORGIA LAWS:	1996 Ga. Laws 624
SUMMARY:	The Act declares that the public policy of Georgia is to recognize marriages only between a man and a woman. It prohibits marriages between persons of the same sex, denying their recognition in Georgia. Any same-sex marriage entered into pursuant to a marriage license issued outside of Georgia will be void in Georgia. Contractual rights granted by virtue of such a license shall be unenforceable in Georgia's courts. Georgia's courts have no jurisdiction to grant a divorce or separate maintenance or to consider or rule on the parties' respective rights arising as a result of or in connection with a same-sex marriage. Further, the Act prohibits the issuance of marriage licenses to persons of the same sex.
EFFECTIVE DATE:	April 2, 1996[1]

History[2]

In 1993 the Supreme Court of Hawaii ruled that the state's refusal to grant marriage licenses to same-sex couples potentially violated

1. The Act became effective upon approval by the Governor.

2. Several important events regarding the issue of same-sex marriage and gay rights occurred soon after the passage of the Act. Although the events are not legislative history *per se*, they offer valuable insight into the political environment in which the Act was introduced and passed.

First, roughly a month after the Act was signed by Governor Zell Miller, U.S. Representative Bob Barr, coincidentally from Georgia, introduced the "Defense of Marriage Act" in Congress. H.R. 3396, 104th Cong., 2d Sess. (1996). This bill passed the House and Senate and was signed into law by President Clinton on September 21, 1996. *See* The Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996). The Defense of Marriage Act provides that no state shall be required to give effect to any public act or record respecting a same-sex relationship treated as marriage under the laws of another state and establishes a federal definition of "marriage" as "only a legal union between one man and one woman." *Id.* The Act validates the same-sex marriage laws that Georgia and other states have passed. *See id.*

Hawaii's constitutional guarantee of equal protection.[3] The Court remanded *Baehr v. Lewin* to a lower court to determine if the law restricting such marriages met strict scrutiny.[4] Many commentators did not expect the state to be able to meet the strict standard.[5] The decision was expected to lead to the legalization and recognition of same-sex marriages in that state.[6]

This decision led many state legislators across the country to start examining their own states' marriage laws.[7] Because most states' marriage laws were written years ago, when the idea of same-sex marriage was all but unheard of, most state marriage laws do not contain gender-specific language.[8] Many people envisioned a wave of same-sex couples traveling to Hawaii for Las Vegas-style weddings and returning home demanding all the benefits and recognition of a legal marriage in their home state.[9] In response to this possibility, many

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Second, gay activists won a battle in the U.S. Supreme Court when the Court struck down a Colorado constitutional amendment that barred any state legislation protecting homosexuals from discrimination. Romer v. Evans, 116 S. Ct. 1620 (1996). Although the decision created no new rights for homosexuals and failed to give them any special protection, it was the first time the Justices were sympathetic to constitutional claims by homosexuals. *Id.*; *see* Kaplan & Klaidman, *supra*, at 25-26. Contrast the 10-year-old decision in *Bowers v. Hardwick*, in which the Court upheld Georgia's law against sodomy. 478 U.S. 186 (1986). *See generally* Tom Baxter, *From Olympic Path to Campaign Trail, Goal is to Avoid Stumbling on Gay Rights*, ATLANTA CONST., May 23, 1996, at A9.

3. Baehr v. Lewin, 852 P.2d 44, reconsideration granted in part, 875 P.2d 225 (1993). Hawaii's law banning same-sex marriages was "presumed to be unconstitutional." *Id.* at 67. The case involves state constitutional law, and as such, the U.S. Supreme Court cannot review it. Kaplan & Klaidman, *supra* note 2, at 29.

4. *Baehr*, 852 P.2d at 68. To meet the strict scrutiny standard, the state must show that the statute's sex-based classification is justified by a compelling state interest and that the statute is narrowly tailored to avoid unnecessary abridgements of the applicant couples' state constitutional rights. *Id.* at 67. A trial court scheduled hearings for August 1996. Kaplan & Klaidman, *supra* note 2, at 29.

5. *See generally* Telephone Interview with Larry Pellegrini, Lobbyist for Georgia Equality Project, an advocacy group for gays and lesbians (June 26, 1996) [hereinafter Pellegrini Interview]; *see* Christina Cheakalos, *Focus on Same-Sex Marriage*, ATLANTA J. & CONST., Mar. 31, 1996, at A12.

6. Telephone Interview with Sen. Edwin Gochenour, Senate District No. 27 (Apr. 24, 1996) [hereinafter Gochenour Interview]; Telephone Interview with Teresa Nelson, American Civil Liberties Union (June 11, 1996) [hereinafter Nelson Interview]; Pellegrini Interview, *supra* note 5. Although no state currently recognizes same-sex marriages, same-sex marriages legally exist in Denmark, Norway, and Sweden. *See* Lawrence Ingrassia, *Danes Don't Debate Same-Sex Marriages, They Celebrate Them*, WALL ST. J., June 8, 1994, at A1.

7. Gochenour Interview, *supra* note 6.

8. *Id.*

9. Telephone Interview with Rep. Ron Crews, House District No. 78 (Apr. 23, 1996) [hereinafter Crews Interview]; *see Lawmakers '96* (GPTV broadcast, Mar. 14, 1996) (videotape available in Georgia State University College of Law Library);

states introduced legislation to change their marriage laws to prohibit same-sex marriages.[10]

Prior to the introduction of HB 1580, Georgia's marriage laws did not specify that marriages could be obtained only between a woman and man.[11] The Code lacked any gender-specific language except for one section that addressed marriages between a "male" and a "female" from different states.[12] This language merely implied that a Georgia marriage required a woman and a man.[13]

HB 1580

Introduction

The Act amends the marriage provisions in the Code by adding Code section 19-3-3.1.[14] This section declares that the public policy of Georgia is to recognize only marriages between a woman and a man.[15] It prohibits same-sex marriages and provides that any same-sex marriage entered into pursuant to a license issued in another state will be void in Georgia.[16] The Act provides that Georgia's courts have no jurisdiction to grant a divorce or rule on the parties' respective rights

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Kaplan & Klaidman, *supra* note 2, at 29.

10. Alaska, Arizona, Idaho, Illinois, Kansas, Louisiana, Oklahoma, South Carolina, South Dakota, Tennessee, and Utah have passed similar legislation. *See* ALASKA STAT. § 25.05.013 (Supp. 1996), ARIZ. REV. STAT. ANN. § 25-101, -112 (Supp. 1996), IDAHO CODE § 32-209 (1996), ILL. REV. STAT. ch. 40, para. 212, 213.1 (Supp. 1996), KAN. STAT. ANN. § 23-101 (Supp. 1996), LA. CIV. CODE. ANN. art. 89 (West 1996), OKLA. STAT. tit. 43, § 3 (Supp. 1996), S.C. CODE ANN. § 20-1-10, -15 (Law. Co-op. 1996), S.D. CODIFIED LAWS ANN. § 25-1-1 (1996), TENN. CODE ANN. § 36-3-1 (Supp. 1996), UTAH CODE ANN. § 30-1-2 (1995); *see also* Kaplan & Klaidman, *supra* note 2, at 29. California, Delaware, Missouri, Pennsylvania, Michigan and New York have similar legislation pending. Kaplan & Klaidman, *supra* note 2, at 29. Seventeen other states introduced similar legislation that failed to advance. *Id.*

11. Crews Interview, *supra* note 9; *see* 1968 Ga. Laws 1249, § 1, at 1337 (codified at O.C.G.A. § 19-3-3 (1991)).

12. Crews Interview, *supra* note 9; *see* 1987 Ga. Laws 409 (formerly found at O.C.G.A. § 19-3-30(b) (1991)).

13. Crews Interview, *supra* note 9.

14. O.C.G.A. § 19-3-3.1 (Supp. 1996).

15. *Id.*

16. *Id.* Unlike opposite-sex married couples, same-sex couples in long-term, monogamous relationships are not considered next of kin and thus may be prevented from visiting in hospitals or making life-and-death decisions involving the health care of their partners. *See* Cheakalos, *supra* note 5. Further, same-sex couples usually are not entitled to share employee benefits and cannot take advantage of probate laws designed to benefit married couples. Pellegrini Interview, *supra* note 5. *See generally* Van Dyck v. Van Dyck, 262 Ga. 720, 425 S.E.2d 853 (1993) (Sears, J., concurring) (discussing the legal consequences of "gay 'coupling' ").

arising as a result of a same-sex marriage.[17] It also prohibits the issuance of marriage licenses to same-sex couples.[18]

Evolution of the Act

Similar same-sex marriage provisions were introduced in the House and in the Senate in three separate bills.[19] Representative Ron Crews introduced HB 1580 on the House floor on February 2, 1996.[20] As introduced, HB 1580 added the language "[m]arriage is the union of a man and a woman" to the marriage provisions in the Code.[21] The language was derived from the Black's Law Dictionary definition of marriage.[22] While examining the Common Law Marriage bill[23] in the House Special Judiciary Committee, Representative Crews noted the lack of gender-specific language in the Code provisions relating to marriage.[24] He drafted and introduced HB 1580, which would have added the language, "[m]arriage is the union of a man and a woman" and would have required an actual contract "between a man and a woman" in order to constitute a valid marriage.[25] HB 1580, as introduced, passed in the House and was sent to the Senate where it was forwarded to the Senate Special Judiciary Committee.[26]

Three days after Representative Crews introduced HB 1580 in the House, Senator Edwin Gochenour introduced a similar bill, SB 681, in the Senate.[27] SB 681 would have amended the Code provision relating to marriage by adding a new section 19-3-3.1 containing language almost identical to that of the Act.[28] Senator Gochenour introduced SB

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17. O.C.G.A. § 19-3-3.1(b) (Supp. 1996).

18. *Id.* § 19-3-30(b).

19. HB 1580, as introduced, 1996 Ga. Gen. Assem.; SB 681, as introduced, 1996 Ga. Gen. Assem.; HB 1278 (HFA), 1996 Ga. Gen. Assem.

20. Final Composite Status Sheet, Mar. 18, 1996.

21. HB 1580, as introduced, 1996 Ga. Gen. Assem.

22. Crews Interview, *supra* note 9. Marriage is defined as the "[l]egal union of one man and one woman as husband and wife." BLACK'S LAW DICTIONARY 972 (6th ed. 1990).

23. The Common Law Marriage bill was introduced by Representative Barbara Mobley, House District No. 69, and others to amend the provisions of the Code relating to marriage to specify that common law marriages would no longer be recognized in Georgia. HB 1278, as introduced, 1996 Ga. Gen. Assem.; *see* O.C.G.A. § 19-3-1.1 (Supp. 1996).

24. Crews Interview, *supra* note 9.

25. HB 1580, as introduced, 1996 Ga. Gen. Assem.

26. Final Composite Status Sheet, Mar. 18, 1996. HB 1580, as introduced, passed in the House and was sent to the Senate on Feb. 13, 1996. *Id.* The bill was sent to the Senate Special Judiciary Committee on Feb. 14, 1996. *Id.*

27. SB 681, as introduced, 1996 Ga. Gen. Assem. SB 681 was introduced February 5, 1996. Final Composite Status Sheet, Mar. 18, 1996.

28. *Compare* SB 681, as introduced, 1996 Ga. Gen. Assem., *with* O.C.G.A. § 19-3-3.1 (Supp. 1996); Gochenour Interview, *supra* note 6.

681 after he received a fax copy of similar legislation introduced in Tennessee.[29] The language was very similar to that of legislation introduced in other states.[30] He modified it into the format for Georgia legislation and introduced it in the Senate.[31] The bill was sent to the Senate Special Judiciary the same day.[32]

The third provision regarding same-sex marriage introduced in the General Assembly was a House floor amendment to the Common Law Marriage bill, HB 1278.[33] Four House floor amendments to HB 1278 were proposed that would have added provisions prohibiting same-sex marriages.[34] Two of those amendments were adopted into the bill.[35] The bill passed in the House and was sent to the Senate, where it was forwarded to the Senate Special Judiciary Committee.[36]

Once all three bills were in the Senate Special Judiciary Committee, they were modified, combined and streamlined into a single bill.[37] The same-sex marriage language that had been added by amendment onto the common law marriage bill was removed.[38] The language from SB 681 was added to HB 1580.[39] The Committee deleted the definition of marriage in HB 1580 because the new, stronger language of SB 681

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29. Gochenour Interview, *supra* note 6; *Short Takes; Homophobic Union*, ATLANTA CONST., Feb. 24, 1996, at A12.

30. Gochenour Interview, *supra* note 6; *see supra* note 10 and accompanying text.

31. SB 681, as introduced, 1996 Ga. Gen. Assem.

32. Final Composite Status Sheet, Mar. 18, 1996.

33. Journal of the House, 1996 Ga. Gen. Assem., Feb. 13, 1996, at 916-17; *see supra* note 23 and accompanying text.

34. Journal of the House, 1996 Ga. Gen. Assem., Feb. 13, 1996, at 916. Representatives Lewis and Watts, along with others, offered an amendment that would have added the language, "[m]arriage is the union of a man and a woman" and a provision that required an actual contract "between a man and a woman" to constitute a valid marriage. *Id.* Representative Walker offered two different amendments, similar in language and effect, that would have declared, "Marriages between persons of the same sex are prohibited in this state," and any marriage entered into by persons of the same sex in another state would be void in Georgia. *Id.* Representative Crews, along with others, offered an amendment that would have added the prerequisite to obtaining a valid marriage that an actual contract "between a man and a woman" is required. *Id.*

35. Representative Lewis' amendment and one of Representative Walker's amendments were adopted into the bill. Journal of the House, 1996 Ga. Gen. Assem., Feb. 13, 1996, at 916.

36. Final Composite Status Sheet, Mar. 18, 1996; Gochenour Interview, *supra* note 6. HB 1278 passed in the House and was sent to the Senate on Feb. 13, 1996. Final Composite Status Sheet, Mar. 18, 1996. It was forwarded to the Senate Special Judiciary Committee on Feb. 14, 1996. *Id.*

37. Gochenour Interview, *supra* note 6; *see* HB 1580 (SCS), 1996 Ga. Gen. Assem.

38. Gochenour Interview, *supra* note 6; *see* HB 1278 (SCS), 1996 Ga. Gen. Assem.

39. Gochenour Interview, *supra* note 6; *see* HB 1580 (SCS), 1996 Ga. Gen. Assem. Originally, HB 1580 stated "what marriage is," while SB 681 stated "what marriage is not." Crews Interview, *supra* note 9.

made that definition redundant and unnecessary.[40] The Committee used HB 1580 as the final bill because it had already passed in the House, and it would be easier to have the House concur in the Senate amendments than to send another similar bill through the House voting process.[41]

Originally, HB 1580 did not contain any provisions involving Georgia's recognition or nonrecognition of same-sex marriages attained in another state.[42] After HB 1580 had been introduced, Representative Crews received a copy of a Tennessee Attorney General's Opinion regarding similar legislation in that state and containing suggestions about what language should be in a bill to avoid a Full Faith and Credit Clause violation.[43] The Tennessee Attorney General's Opinion recommended, among other things, that drafters of same-sex marriage prohibition legislation include a statement declaring a strong public policy against recognition of same-sex marriages.[44] The same-sex marriage prohibition language suggested by the Tennessee Attorney General's Opinion was the same as that in the Tennessee bill faxed to Senator Gochenour.[45] Legislative counsel recommended that language to the Senate Special Judiciary Committee, which then incorporated it into the Act.[46]

The Act passed unanimously in the Senate, although about eight members walked out during the voting.[47] The Act passed overwhelmingly in the House as well.[48] What at first appears to be tremendous support was partially an attempt by gay rights supporters to control the impact of their losses.[49] Opponents successfully kept the bill buried in the Senate Rules Committee until the last week the bill

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40. Gochenour Interview, *supra* note 6.

41. *Id.*

42. HB 1580, as introduced, 1996 Ga. Gen. Assem.

43. Crews Interview, *supra* note 9. The United States Constitution requires each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. U.S. CONST. art IV, § 1; *see infra* notes 79-87 and accompanying text.

44. Crews Interview, *supra* note 9.

45. *Id.*; Gochenour Interview, *supra* note 6.

46. O.C.G.A. § 19-3-3.1 (Supp. 1996); HB 1580 (SCS), 1996 Ga. Gen. Assem.; Crews Interview, *supra* note 9; Gochenour Interview, *supra* note 6.

47. Gochenour Interview, *supra* note 6; Georgia Senate Voting Record, HB 1580 (Mar. 14, 1996). The Act passed with 47 yeas, 0 nays, and 9 not voting. Georgia Senate Voting Record, HB 1580 (Mar. 14, 1996).

48. Gochenour Interview, *supra* note 6; Georgia House of Representatives Voting Record, HB 1580 (agreement to Senate substitute) (Mar. 15, 1996). The Act passed with 150 yeas, 6 nays, and 22 not voting. Georgia House of Representatives Voting Record, HB 1580 (agreement to Senate substitute) (Mar. 15, 1996).

49. Pellegrini Interview, *supra* note 5; Don Melvin, *Capitol Notebook; The Political Odd Couple of the Capitol*, ATLANTA CONST., Mar. 18, 1996, at B5.

was eligible to go to the Senate.[50] Lieutenant Governor Pierre Howard and Senate Majority Leader Sonny Perdue pulled the bill out of the Senate Rules Committee without a vote and ordered it on the calendar for the next day.[51] There were rumors that if HB 1580 did not make it out of committee, some senators would amend the Common Law Marriage bill by adding same-sex prohibition language again.[52] Once it became apparent that the bill was going to make it to the Senate and was likely to pass, gay rights lobbyist Larry Pellegrini encouraged senators opposed to the measure to either walk out or vote in favor of it, so that a "no" vote would not hurt them in the next election.[53] Pellegrini employed the tactic in order to "take the issue away from the Christian Coalition."[54]

Need for the Bill and Its Effect

Although the requirement that marriage be between a woman and man could be inferred from other language in the Code referring to the "female" and the "male," there was no express language indicating that a valid marriage required a woman and a man.[55] After news reports that Hawaii might allow same-sex marriages in its state, Representative Crews wanted to make sure Georgia's law was clear on the issue.[56] The bill was introduced in anticipation of many same-sex couples going to Hawaii for a "quickie wedding," then coming home to Georgia expecting Georgia to recognize the marriage.[57] The bill was intended to make clear that Georgia would not recognize same-sex marriages or claims by same-sex couples for employee spousal benefits and other benefits of legal marriage.[58]

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50. Pellegrini Interview, *supra* note 5.
51. *Id.*
52. *Id.*
53. *Id.* Pellegrini explained:

> There was nothing else we could do—procedurally or otherwise. I just told [the senators who opposed the bill] to do what they needed to do—if they needed to take a walk or if they needed to vote yes, it was fine. We did not want the Christian Coalition to have it on their report card. With no votes against it, they had no one to attack.

Id.; see Melvin, *supra* note 49.

54. Pellegrini Interview, *supra* note 5; Melvin, *supra* note 49.
55. Crews Interview, *supra* note 9; *see* 1987 Ga. Laws 409 (formerly found at O.C.G.A. § 19-3-30(b) (1991)).
56. Crews Interview, *supra* note 9. Some opponents feel that the law was perfectly clear regarding same-sex marriages in Georgia. Pellegrini Interview, *supra* note 5. According to Larry Pellegrini, lobbyist for Georgia Equality Project, "Same-sex partners couldn't marry before the Act, and they can't marry now." *Id.; see also* Cheakalos, *supra* note 5.
57. Gochenour Interview, *supra* note 6; *see supra* note 9 and accompanying text.
58. Gochenour Interview, *supra* note 6.

Some opponents believe that the Act has no practical effect and was merely "election-year political grandstanding."[59] They believe that the only practical effect the law will have is potentially to require people to carry around a notebook of paperwork from state to state to show what licenses they have been issued and in what states they are valid.[60] Representative Crews agrees that the Act does not fundamentally change Georgia's law.[61] He explains that the requirement that a marriage be between a man and a woman was implicit in the law and that the bill merely clarified the law.[62] Conversely, Senator Gochenour believes that the Act does change Georgia's law, in that prior to the bill's enactment, a Georgia court could have ruled on the rights of a same-sex couple who attained a marriage in another state.[63] Both legislators agree that the Act does not affect a couple's right to have a private or religious ceremony, only the legal recognition of such a ceremony.[64]

Although lobbyists for several of Georgia's businesses expressed their support for the bill and its prevention of same-sex marriage partners receiving employee spousal benefits, the economic incentives for passing the bill were not discussed in committee, nor on the floor of the House or Senate.[65] When asked whether the law was grounded in morality or economics, Senator Gochenour responded, "Both."[66] Representative Crews, on the other hand, introduced the bill because he "would like to see the laws of our state conform to God's law."[67]

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59. Cheakalos, *supra* note 5. The statement was made by Larry Pellegrini, head of the Georgia Equality Project. *Id.*; Pellegrini Interview, *supra* note 5; Shelley Emling, *'96 Georgia Legislature; Common-Law Union Ban OK'd; Senate Votes to Bar Same-Sex Marriage,* ATLANTA CONST., Mar. 15, 1996, at C2.

60. Pellegrini Interview, *supra* note 5.

61. Crews Interview, *supra* note 9.

62. *Id.* Representative Crews supported his contention with reference to *Bowers v. Hardwick*, the Supreme Court case that upheld Georgia's sodomy law. *Id.; see* 478 U.S. 186 (1986). He explained that Georgia's courts have never recognized same-sex marriages and that from *Bowers*, "it follows that Georgia does not recognize same-sex marriages." Crews Interview, *supra* note 9.

63. Gochenour Interview, *supra* note 6.

64. Crews Interview, *supra* note 9. ("The bill does not preempt religious ceremonies."); Gochenour Interview, *supra* note 6 ("I don't think we can stop them from doing it. That was not the intent of the bill."). For discussion concerning the Act's potential infringement of constitutionally protected freedom of religion, see *infra* notes 86-87 and accompanying text.

65. Crews Interview, *supra* note 9.

66. Gochenour Interview, *supra* note 6.

67. Melvin, *supra* note 49.

Support and Opposition

Although there were a few lobbyists for and against the bills, the bills did not spark as much debate as expected.[68] Only two lobbyists, representatives from the American Civil Liberties Union (ACLU) and from the Georgia Equality Project, formally spoke against the bill in committee.[69] Several other opponents of the bill spoke to senators and representatives individually.[70] Most gay rights supporters expect a long education process and gradual change; thus, they did not want a public showdown with the General Assembly and conservative interest groups.[71] Likewise, few lobbyists spoke in favor of the bill.[72] Representatives from the Georgia Family Council, Georgia Insight, Family Concerns, the Christian Coalition and a few other groups did minimal lobbying.[73] Senator Gochenour indicated that the lobbyists were not necessary, because most legislators already supported the bill.[74] The bill had signatures of forty-two senators backing it.[75] Senator Gochenour rallied the Republicans, while Senate Majority Leader Sonny Perdue rallied the Democrats.[76] Senator Gochenour stated that too many lobbyists would have drawn unnecessary attention to the bill.[77]

Constitutional Issues

Some commentators have expressed concern about the Act's failure to grant Full Faith and Credit to marital agreements should another state allow same-sex marriages.[78] In anticipation of this challenge, the Senate Special Judiciary Committee, with the help of legislative counsel, added the language, "It is declared to be the public policy of

68. Crews Interview, *supra* note 9; Dick Williams, *Adam and Eve, Adam and Steve; Just What Does Marriage Mean in Georgia?*, ATLANTA J., Feb. 20, 1996, at A8. Much of the lesbian and gay population is opposed to established traditions, formalized religion and governmental control in their lives, so it is not surprising that many do not lobby hard for a government-regulated seal of approval in the traditionally religious institution of marriage. Pellegrini Interview, *supra* note 5. Further, about half of lesbians and gays are not partnered, so the marriage issue is not one of their top priorities. *Id.*

69. Crews Interview, *supra* note 9. The lobbyists were Teresa Nelson from the ACLU and Larry Pellegrini from the Georgia Equality Project.

70. Pellegrini Interview, *supra* note 5.

71. *Id.*

72. Crews Interview, *supra* note 9.

73. *Id.*

74. Gochenour Interview, *supra* note 6.

75. *Id.*

76. *Id.*

77. *Id.*

78. Nelson Interview, *supra* note 6.

this state . . . ."[79] to potentially protect the bill from such an attack.[80] Full Faith and Credit is guaranteed by Article IV of the United States Constitution and provides that a state must give full faith and credit to the public acts, records, and judicial proceedings of every other state.[81] However, a state does not have to recognize another state's marriage laws if it can show a strong public policy against recognition of the marriages.[82] The language of the Act declares Georgia's public policy not to recognize same-sex marriages.[83] This language is designed to bolster the state's case should the Act be challenged on Full Faith and Credit grounds.[84]

Most legislators were not concerned with other potential constitutional challenges to the Act, because they believed that any challenge will come under the Full Faith and Credit Clause.[85] However, other challenges could come under Due Process, Equal Protection, and Freedom of Association or Religion grounds.[86] Representative June Hegstrom offered an amendment on the House floor that would have added a provision to the bill specifying that nothing in the bill would infringe upon, nor interfere with, a person's constitutional right to free exercise of religion; however, the amendment did not pass.[87]

According to some opponents, the language of the Act is the strongest used in any of the same-sex marriage bills passed across the country.[88]

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79. O.C.G.A. § 19-3-3.1(a) (Supp. 1996).

80. Gochenour Interview, *supra* note 6; *see supra* note 43 and accompanying text.

81. U.S. CONST. art. IV, § 1.

82. Gochenour Interview, *supra* note 6; *see, e.g.,* Miller v. Lucks, 30 So. 2d 140, 140 (Miss. 1948) (stating that the state is not required to recognize a marriage granted in another state "if it be offensive to the morals and customs of its society, and is contrary to its established public policy").

83. O.C.G.A. § 19-3-3.1(a) (Supp. 1996).

84. Gochenour Interview, *supra* note 6.

85. Crews Interview, *supra* note 9; Gochenour Interview, *supra* note 6.

86. Nelson Interview, *supra* note 6; Pellegrini Interview, *supra* note 5. Teresa Nelson and Larry Pellegrini believe that Due Process and Equal Protection challenges are likely. *Id.* They point out that *Romer v. Evans* made it clear that a group of people cannot be singled out for less than equal treatment. *Id.; see* Romer v. Evans, 116 S. Ct. 1620 (1996). The *Romer* decision will certainly strengthen a constitutional argument that the law violates homosexuals' Equal Protection and Due Process rights. Nelson Interview, *supra* note 6; Pellegrini Interview, *supra* note 5; *see supra* note 2 and accompanying text.

87. Journal of the House, 1996 Ga. Gen. Assem., Feb. 13, 1996, at 916-17. Many legislators felt that the addition of the amendment's language to HB 1580 would have implied that Georgia encouraged or condoned religious marriage ceremonies between same-sex couples. Crews Interview, *supra* note 9. Pellegrini supported the amendment and believes that the "religious right" 's hypocrisy is evidenced by their refusal to support a freedom of religion provision while simultaneously condemning homosexuals in the name of God. Pellegrini Interview, *supra* note 5.

88. Pellegrini Interview, *supra* note 5. According to Pellegrini, the following

As such, they believe the Act will make an excellent test case once Hawaii or another state approves same-sex marriages and a plaintiff comes forth to challenge the Act.[89]

Victoria Davis

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language added by the Act is the most egregious language in any of the same-sex marriage bills across the country:

> *Any* contractual rights granted by virtue of such license shall be *unenforceable in the courts of this state* and the courts of this state shall have *no jurisdiction whatsoever under any circumstances* to grant a divorce or separate maintenance with respect to such marriage or *otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with* such marriage.

O.C.G.A. § 19-3-3.1(b) (Supp. 1996) (emphasis added); Pellegrini Interview, *supra* note 5. Pellegrini and other opponents believed that the language was overbroad and unnecessary, but did not fight to have the language struck. Pellegrini Interview, *supra* note 5. Instead they "left it dirty" in order to strengthen a constitutional challenge to the Act. *Id.*

89. Pellegrini Interview, *supra* note 5; Nelson Interview, *supra* note 6.