

**IN THE SUPREME COURT
STATE OF GEORGIA**

SONNY PERDUE, in his official capacity as Governor of the State of
Georgia,

Defendant/Appellant,

vs.

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 and REPRESENTATIVE TYRONE BROOKS,

Plaintiffs/Appellees.

Case No. S06A1547

**BRIEF OF AMICUS CURIAE
UNITED FAMILIES INTERNATIONAL
IN SUPPORT OF THE DEFENDANT/APPELLANT**

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**BRIEF OF AMICUS CURIAE
UNITED FAMILIES INTERNATIONAL
IN SUPPORT OF THE DEFENDANT/APPELLANT**

**I.
The Interest of *Amicus Curiae*
United Families International**

Amicus curiae United Families International (UFI) is a non-sectarian, 501(c)(3) public charity founded in 1978 and based in Gilbert, Arizona, with members in Georgia and nationwide. UFI seeks to maintain and strengthen the family in the United States and other countries. The United Nations has granted to UFI official consultative status as a non-governmental organization, and UFI has participated in United Nations conferences.

Because UFI is committed to supporting those measures that maintain and strengthen marriage and the family, it has supported efforts to amend state constitutions to reaffirm the legal definition of marriage as the union of a man and a woman. Indeed, UFI and its members actively supported all twenty state marriage amendments now in place across the Nation¹; that

¹ ALASKA CONST. art. I, § 25{ TA \ "ALASKA CONST. art. I, § 25" \s "Alaska Const. art. I, § 25" \c 7 }; ARK. CONST. amend. 83{ TA \ "ARK. CONST. amend. 83" \s "Ark. Const. amend. 83" \c 7 }; GA. CONST. art. I, § IV{ TA \ "GA. CONST. art. I, § IV" \s "Ga. Const. art. I, § IV" \c 7 }, ¶ I; HAW. CONST. art. I, § 23{ TA \ "HAW. CONST. art. I, § 23" \s "Haw. Const. art. I, § 23" \c 7 }; KAN. CONST. art. 15, § 16{ TA \ "KAN. CONST. art. 15, § 16" \s "Kan. Const. art. 15, § 16" \c 7 }; KY. CONST. § 233a{ TA \ "KY. CONST. § 233a" \s "Ky. Const. § 233a" \c 7 }; LA. CONST. art. XII, § 15{ TA \ "LA. CONST. art. XII, § 15" \s "La. Const. art. XII, § 15" \c 7 }; MICH. CONST. art. I, § 25{ TA \ "MICH. CONST. art. I, § 25" \s "Mich. Const. art. I, § 25" \c 7 }; MISS. CONST.

support includes education in defense of those amendments both pre-adoption and post-adoption. As a consequence, UFI has a broad perspective on the marriage amendment phenomenon in American law and politics, including extensive experience with the strategies and tactics deployed by the opponents of those amendments. That extensive experience has led to a deep understanding of the defects of legal analysis inhering in those opposing strategies and tactics, including opposition efforts relative to the “single-subject” doctrine. UFI thus respectfully suggests that it has a perspective that can genuinely assist this Court in evaluating Georgia’s marriage amendment – and the challenge now being raised against it.

II. Recurring Themes in American Marriage Amendments and in the Opposition Tactics Deployed Against Them.

art. IV, § 263A{ TA \ "MISS. CONST. art. IV, § 263A" \s "Miss. Const. art. IV, § 263A" \c 7 }; MO. CONST. art. I, § 33{ TA \ "MO. CONST. art. I, § 33" \s "Mo. Const. art. I, § 33" \c 7 }; MONT. CONST. art. XIII, § 7{ TA \ "MONT. CONST. art. XIII, § 7" \s "Mont. Const. art. XIII, § 7" \c 7 }; NEB. CONST. art. I, § 29{ TA \ "NEB. CONST. art. I, § 29" \s "Neb. Const. art. I, § 29" \c 7 }; NEV. CONST. art. 1, § 21{ TA \ "NEV. CONST. art. 1, § 21" \s "Nev. Const. art. 1, § 21" \c 7 }; N.D. CONST. art. XI, § 28{ TA \ "N.D. CONST. art. XI, § 28" \s "N.D. Const. art. XI, § 28" \c 7 }; OHIO CONST. art. XV, § 11{ TA \ "OHIO CONST. art. XV, § 11" \s "Ohio Const. art. XV, § 11" \c 7 }; OKLA. CONST. art. II, § 35{ TA \ "OKLA. CONST. art. II, § 35" \s "Okla. Const. art. II, § 35" \c 7 }; OR. CONST. art. XV, § 5a{ TA \ "OR. CONST. art. XV, § 5a" \s "Or. Const. art. XV, § 5a" \c 7 }; TEX. CONST., Art. I, sec. 32{ TA \ "TEX. CONST., Art. I, sec. 32" \s "Tex. Const., Art. I, sec. 32" \c 7 }; UTAH CONST. art. I, § 29{ TA \ "UTAH CONST. art. I, § 29" \s "Utah Const. art. I, § 29" \c 7 }. Alabama adopted its marriage amendment 6 June 2006, and it has not yet been codified. The text of each of these twenty amendments is available at <http://marriagelawfoundation.org/mlf/laws.html>.

Before June 2000 (which brought the court-compelled Vermont Civil Union Act²), all fifty states legally sanctioned (that is, approved) one and only one sexually based relationship, and that was marriage as the union of a man and a woman.³ This was so despite efforts stretching back many years to persuade politically or compel judicially an expanded regime of official sanction, one that approved not only married heterosexual relations but also the sexually based relationships of same-sex couples. These political/judicial efforts have been met by equally vigorous counter-efforts, leading to what has been called, cleverly but aptly, “The War of the Ring.”⁴

² An Act Relating to Civil Unions, Act 91 of 2000(now codified in { TA \ "VT. STAT. ANN., tit. 15 §1201" \s "Vt. Stat. Ann., tit. 15 §1201" \c 2 }VT. STAT. ANN., tit. 15 §1201). The judicial compulsion came in *Baker v. State*, 744 A.2d 864 (Vt. 1999){ TA \ "*Baker v. State*, 744 A.2d 864 (Vt. 1999)" \s "*Baker v. State*, 744 A.2d 864 (Vt. 1999)" \c 1 }.

³ The well-known history summarized in this section is set forth in some detail, with full citations, in William C. Duncan, *Revisiting State Marriage Recognition Provisions*, 38 CREIGHTON L. REV. 233 (2005){ TA \ "William C. Duncan, *Revisiting State Marriage Recognition Provisions*, 38 CREIGHTON L. REV. 233 (2005)" \s "William C. Duncan, *Revisiting State Marriage Recognition Provisions*, 38 Creighton L. Rev. 233 (2005)" \c 3 } and William C. Duncan, *Marriage Amendments and the Reader in Bad Faith*, 7 FLORIDA COASTAL L. REV. 233 (2006){ TA \ "William C. Duncan, *Marriage Amendments and the Reader in Bad Faith*, 7 FLORIDA COASTAL L. REV. 233 (2006)" \s "William C. Duncan, *Marriage Amendments and the Reader in Bad Faith*, 7 Florida Coastal L. Rev. 233 (2006)" \c 3 }.

⁴ Daniel Cere, *The War of the Ring*, in *DIVORCING MARRIAGE: UNVEILING THE DANGERS IN CANADA’S NEW SOCIAL EXPERIMENT* 9 (Daniel Cere & Douglas Farrow eds., 2004){ TA \ "DIVORCING MARRIAGE: UNVEILING THE DANGERS IN CANADA’S NEW SOCIAL EXPERIMENT 9 (Daniel Cere & Douglas

On one side are those who want marriage legally redefined to “the union of any two persons,” with the law treating the parties’ gender as irrelevant to the civil meaning of marriage. Hence, *genderless marriage*. On the other side are those who want to preserve “the union of a man and a woman” as a core meaning of the marriage institution. Hence, *man/woman marriage*. The state marriage amendments, of course, are one front in the War of the Ring.

The near-success of genderless marriage advocates in the Hawaiian courts led to the first marriage amendment in 1998. Others (nineteen more as of this week) have followed as those seeking legal sanction of same-sex relationships have intensified their political and judicial efforts and, as in Massachusetts, have succeeded. Undoubtedly additional states will yet adopt their own marriage amendments.

The quest for legal sanction for sexually based same-sex relationships has these concrete objectives: preliminarily (if necessary), civil unions; ultimately, genderless marriage (that is, the legal redefinition of marriage from the union of a man and a woman to the union of any two persons). As used in this brief, *civil union* means a legislatively created, legally recognized and regulated status involving a same-sex couple that provides

Farrow eds., 2004)" \s "Divorcing Marriage: Unveiling the Dangers in Canada’s New Social Experiment 9 (Daniel Cere & Douglas Farrow eds., 2004)" \c 3 }

substantially all the legal incidents of marriage.⁵ As will be seen, this is the universal understanding in America of the phrase *civil union*. Because of their marriage-like nature, civil unions are often referred to popularly but fairly as “marriage lite,” “marriage-in-all-but-name,” and “counterfeit marriage.”⁶

⁵ Civil unions (albeit under different names) are now found in four states: Vermont, VT. STAT. ANN., tit. 15 §1201{ TA \s "Vt. Stat. Ann., tit. 15 §1201" }; California, CAL. FAM. CODE §297{ TA \s "CAL. FAM. CODE §297" \s "Cal. Fam. Code §297" \c 2 }; Connecticut, CT. GEN. STAT. §46b-38aa{ TA \s "CT. GEN. STAT. §46b-38aa" \s "Ct. Gen. Stat. §46b-38aa" \c 2 }; and New Jersey, N.J. STAT. ANN. §26:8A-4{ TA \s "N.J. STAT. ANN. §26:8A-4" \s "N.J. Stat. Ann. §26:8A-4" \c 2 }. The California and New Jersey arrangements allow an opposite-sex couple to enter but only where one (California) or both (New Jersey) of the parties are over 62 years of age.

⁶ *E.g.*, Linda Feldmann, *GOP targets gay marriage*, CHRISTIAN SCI. MONITOR, June 6, 2006{ TA \s "Linda Feldmann, *GOP targets gay marriage*, CHRISTIAN SCI. MONITOR, June 6, 2006" \s "Linda Feldmann, *GOP targets gay marriage*, Christian Sci. Monitor, June 6, 2006" \c 3 }; Lynn D. Wardle, *The Proposed Federal Marriage Amendment and the Risks to Federalism in Family Law*, 2 ST. THOMAS L. REV. 137, 162 (2004){ TA \s "Lynn D. Wardle, *The Proposed Federal Marriage Amendment and the Risks to Federalism in Family Law*, 2 ST. THOMAS L. REV. 137, 162 (2004)" \s "Lynn D. Wardle, *The Proposed Federal Marriage Amendment and the Risks to Federalism in Family Law*, 2 St. Thomas L. Rev. 137, 162 (2004)" \c 3 }; Charles Ashby, *Lawmakers push ‘marriage lite’ ballot initiative*, PUEBLO CHIEFTAIN, Jan. 18, 2006{ TA \s "Charles Ashby, *Lawmakers push ‘marriage lite’ ballot initiative*, PUEBLO CHIEFTAIN, Jan. 18, 2006" \s "Charles Ashby, *Lawmakers push ‘marriage lite’ ballot initiative*, Pueblo Chieftain, Jan. 18, 2006" \c 3 }; Vincent J. Samar, *Privacy and the Debate Over Same-Sex Marriage Versus Unions*, 54 DEPAUL L. REV. 783, 789 (2005){ TA \s "Vincent J. Samar, *Privacy and the Debate Over Same-Sex Marriage Versus Unions*, 54 DEPAUL L. REV. 783, 789 (2005)" \s "Vincent J. Samar, *Privacy and the Debate Over Same-Sex Marriage Versus Unions*, 54 DePaul L. Rev. 783, 789 (2005)" \c 3 }.

Society (and hence government) has compelling interests in preserving and sustaining the vital social institution of marriage as the union of a man and a woman,⁷ and those interests are rationally advanced by limiting official, legal sanction to only one sexually based relationship, man/woman marriage. Indeed, a number of thoughtful advocates of genderless marriage⁸ (as well as many thoughtful advocates of man/woman

⁷ E.g., Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Genderless Marriage*, 1 DUKE J. CONST. L. & PUB. POL'Y 1 (2006){ TA \ "Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Genderless Marriage*, 1 DUKE J. CONST. L. & PUB. POL'Y 1 (2006)" \s "Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Genderless Marriage*, 1 Duke J. Const. L. & Pub. Pol'y 1 (2006)" \c 3 }; Monte Neil Stewart, *Judicial Redefinition of Marriage*, 21 Can. J. Fam. L. 11-132 (2004){ TA \ "Monte Neil Stewart, *Judicial Redefinition of Marriage*, 21 Can. J. Fam. L. 11-132 (2004)" \s "Monte Neil Stewart, *Judicial Redefinition of Marriage*, 21 Can. J. Fam. L. 11-132 (2004)" \c 3 }; Maggie Gallagher, *(How) Will Gay Marriage Weaken Marriage as a Social Institution: A Reply to Andrew Koppelman*, 2 U. ST. THOMAS L. J. 33, 34 (2004){ TA \ "Maggie Gallagher, *(How) Will Gay Marriage Weaken Marriage as a Social Institution: A Reply to Andrew Koppelman*, 2 U. ST. THOMAS L. J. 33, 34 (2004)" \s "Maggie Gallagher, *(How) Will Gay Marriage Weaken Marriage as a Social Institution: A Reply to Andrew Koppelman*, 2 U. St. Thomas L. J. 33, 34 (2004)" \c 3 }. A collection of superb essays on our society's compelling interests in man/woman marriage are collected at THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET, & MORALS (Robert P. George & Jean Bethke Elshtain eds. 2006){ TA \ "THE MEANING OF MARRIAGE: FAMILY, STATE, MARKET, & MORALS (Robert P. George & Jean Bethke Elshtain eds. 2006)" \s "The Meaning of Marriage: Family, State, Market, & Morals (Robert P. George & Jean Bethke Elshtain eds. 2006)" \c 3 }.

⁸ E.g., William N. Eskridge, *The Emerging Menu of Quasi-Marriage Options*{ TA \ "William N. Eskridge, *The Emerging Menu of Quasi-Marriage Options*" \s "William N. Eskridge, *The Emerging Menu of Quasi-Marriage Options*" \c 3 }, available at http://writ.news.findlaw.com/commentary/20000707_eskridge.html; Jonathan Rauch, *Family's Value: Why Gay Marriage Is Good for Kids*, THE

marriage⁹) oppose civil unions exactly because of their corrosive and destabilizing influence on the marriage institution.

Each of the twenty state marriage amendments intends to protect society's compelling interests in man/woman marriage. Hawaii's does this by taking the power to define marriage away from the courts and putting it in the hands of only the legislature.¹⁰ The other nineteen amendments do this by directly defining marriage as the union of a man and a woman and, thereby, precluding in-state recognition of foreign same-sex marriages.¹¹ And thirteen, including Georgia's, provide an additional important

NEW REPUBLIC, May 30, 2005 { TA \ "Jonathan Rauch, *Family's Value: Why Gay Marriage Is Good for Kids*, THE NEW REPUBLIC, May 30, 2005" \s "Jonathan Rauch, Family's Value: Why Gay Marriage Is Good for Kids, The New Republic, May 30, 2005" \c 3 }.

⁹ See Lynn D. Wardle, *Counting the Costs of Civil Unions: Some Potential Detrimental Effects on Family Law* 11 WIDENER J. PUB. L. 401 (2002) { TA \ "Lynn D. Wardle, *Counting the Costs of Civil Unions: Some Potential Detrimental Effects on Family Law* 11 WIDENER J. PUB. L. 401 (2002)" \s "Lynn D. Wardle, Counting the Costs of Civil Unions: Some Potential Detrimental Effects on Family Law 11 Widener J. Pub. L. 401 (2002)" \c 3 }; Lynne Marie Kohm, *How Will the Proliferation and Recognition of Domestic Partnerships Affect Marriage?* 4 J. L. & FAM. STUDIES 105 (2002) { TA \ "Lynne Marie Kohm, *How Will the Proliferation and Recognition of Domestic Partnerships Affect Marriage?* 4 J. L. & FAM. STUDIES 105 (2002)" \s "Lynne Marie Kohm, How Will the Proliferation and Recognition of Domestic Partnerships Affect Marriage? 4 J. L. & Fam. Studies 105 (2002)" \c 3 }.

¹⁰ HAW. CONST. art. I, § 23 { TA \s "Haw. Const. art. I, § 23" }.

¹¹ See citations collected in note 1. The text of each of the twenty amendments is available at <http://marriagelawfoundation.org/mlf/laws.html>.

protection to the marriage institution: they prohibit civil unions.¹² Those thirteen do this with somewhat different words and phrases, but to the reader-in-good-faith the intent is always clear: no civil unions, no Vermont, no California. And this bears repeating: the purpose of that added protection is to prevent the corrosive and destabilizing influence on the man/woman marriage institution resulting from official sanction of “marriage lite,” “marriage-in-all-but-name,” or “counterfeit marriage.”

The opponents of state marriage amendments use one tactic everywhere and persistently. They characterize the scope of the amendment as broader than it really is; the mantra is, “It goes too far.” And they use this tactic both pre-adoption and post-adoption. They use this tactic pre-adoption (that is, in the campaign leading up to the vote on Election Day) to get the voters to think that the proposed amendment will hurt all kinds of people in mean ways; hospital visitation and funeral arrangements, with their highly emotive content, lend themselves particularly well to this kind of campaigning. Opponents use this tactic post-adoption to bolster (indeed, as the essential foundation of) their constitutional attacks on the now in-force amendment – whether a state constitutional attack premised on the single-

¹² These states are Alabama, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Dakota, Ohio, Oklahoma, Texas, and Utah. Citations are collected in note 1.

subject doctrine¹³ or a federal constitutional attack of the *Romer* animus/hatred variety.¹⁴ But in deploying this tactic, these opponents hardly qualify as readers-in-good-faith. That is because a fair and good-faith reading of the amendment’s language defeats the constitutional challenge. That is certainly so with respect to Georgia’s marriage amendment, Amendment One, as we show in the following section.

III. Fairly Read, Amendment One Is in Full Harmony with the Single-Subject Rule.

The Superior Court got many things clearly right in its legal analysis. Thus, the Superior Court (and we adopt and build on these):

1. correctly stated Georgia law governing judicial resolution of a challenge brought under the single-subject rule;
2. correctly identified Amendment One’s “subject matter” as “acknowledgement of the union of man and woman as the only valid form of marriage in Georgia” (Final Order at 5), with its objective thus being protection of the man/woman marriage institution;

¹³ E.g., *Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005){ TA \i "Forum for Equality PAC v. McKeithen, 893 So.2d 715 (La. 2005)" \s "Forum for Equality PAC v. McKeithen, 893 So.2d 715 (La. 2005)" \c 1 }.

¹⁴ E.g., *Citizens for Equal Protection v. Bruning*, 368 F. Supp. 2d 980 (D. Neb. 2005){ TA \i "Citizens for Equal Protection v. Bruning, 368 F. Supp. 2d 980 (D. Neb. 2005)" \s "Citizens for Equal Protection v. Bruning, 368 F. Supp. 2d 980 (D. Neb. 2005)" \c 1 } (presently on appeal to the United States Eighth Circuit Court of Appeals).

3. correctly held that the first, second, fourth, and fifth sentences comprising Amendment One clearly satisfy Georgia law’s “germane” test, including its “natural or logical connection” component; and

4. correctly concluded that “Amendment One [specifically, the third sentence] could be read to preclude future legislatures from creating or recognizing civil union as a valid legal status” (Final Order at 9).

Where the Superior Court erred, at the urging of the Plaintiffs/Appellees, was in misreading and mischaracterizing Amendment One’s third sentence. Fortunately, for ease of correction on appeal, the Superior Court plainly stated and flagged that misreading. Here it is: “Its [the third sentence’s] objective is to ensure that unions between persons of the same sex – without restriction – are not afforded *any* of the advantages, rights or privileges afforded to married same sex couples under state law.” Final Order at 9 (emphasis added). Here it is again: “Consequently, it [the third sentence] bars the state of Georgia from granting same sex unions between Georgia residents *any* of the advantages given to marriages under state law.” *Id* (emphasis added). In this way, the Superior Court construed (actually, rewrote) the third sentence to prohibit government conferral on same-sex couples of any particular benefit that also happens to be among the

many benefits provided to married couples – even though the conferral of that benefit will not render the unmarried relationship marriage-like.

It appears that the Superior Court, in taking this tack, was unaware that it was adopting an oft-used ploy of marriage amendment opponents wherever a marriage amendment is in play politically or judicially: Say that the amendment language chosen to prohibit civil unions not only prohibits civil unions (meaning a legal arrangement conferring substantially all the legal incidents and benefits of civil marriage) but also prohibits legislative conferral on the unmarried of *any* legal benefit that may also happen to be among those given to the married. Tellingly, and we speak from experience here, the opponents use this ploy regardless of the language chosen by the drafters to communicate “no civil unions, no Vermont, no California.”

This ploy is so frequently used (or over-used) that those of us who regularly deal in these matters nationwide have a shorthand name for it: “the marriage laundry basket” argument. The law in every state creates a very full marriage laundry basket containing all kinds of benefits, rights, obligations, duties, and arrangements needful for marriage (and married couples) to fulfill vitally important societal purposes. Opponents of marriage amendments point out that the very full marriage laundry basket contains a pair of socks and then cry: “The Amendment is going to deprive

the unmarried of socks by keeping the Legislature from ever giving socks to the unmarried. But the unmarried need socks, and it is cruel to keep socks from them. The Amendment goes too far. It is doing something other than protecting marriage.”

But, of course, the marriage amendments, including Georgia’s, do not keep legislatures from providing socks to the unmarried. Just because a particular civil benefit happens to be among those provided the married does not make its conferral tantamount to creation of a marriage-like legal arrangement (a civil union). A husband can visit his wife in the hospital, but he can also visit his son. His legal right to visit to his son does not mean that conferral of that right transforms the father-son relationship into the substantial equivalent of marriage. A wife can have her husband covered under her employer’s health insurance plan, but she can do the same for a number of other qualifying dependents. Her power to extend coverage to another qualifying dependent does not make her relationship with that dependent marriage-like. So as soon as the “marriage laundry basket” argument is examined, it is seen as nonsense.

As seen, the Superior Court bought into the “marriage laundry basket” argument when its Final Order added to Amendment One’s third sentence the word *any*: “Its [the third sentence’s] objective is to ensure that unions

between persons of the same sex – without restriction – are not afforded *any* of the advantages, rights or privileges afforded to married same sex couples under state law.” Final Order at 9 (emphasis added). “Consequently, it [the third sentence] bars the state of Georgia from granting same sex unions between Georgia residents *any* of the advantages given to marriages under state law.” *Id* (emphasis added).

But the Superior Court had no authority to add *any* to the third sentence. The third sentence reads: “No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage.” Thus, it does not read, as the Plaintiffs/Appellees would have it: “No union between persons of the same sex shall be recognized by this state as entitled to any one of the benefits that also happen to be afforded married couples, no matter that the conferral of such a particular benefit will not render the relationship marriage-like.” No, the third sentence is clear; it more than adequately communicates that Georgia will not have civil unions, will not allow legislative or judicial imposition of “marriage lite,” “marriage-in-all-but-name,” or “counterfeit marriage,” will not be like Vermont, and will not be like California.

The reason why the Plaintiffs/Appellees would have the third sentence so radically misconstrued is obvious: doing so provides an essential

foundation to their single-subject challenge to Amendment One, a foundation without which the challenge clearly cannot succeed. (Apparently the Superior Court also sensed a need to create such a foundation.) But this radical misconstruction of the third sentence must fail, for at least three reasons. First, the language actually chosen for Amendment One’s third sentence is plain and sufficient. It speaks of “the benefits of marriage.” It does not speak of “any one of the benefits among the many accorded married couples, no matter that the conferral of such a benefit will not render the relationship marriage-like.” Moreover, the language chosen for the third sentence, much like the language of marriage amendments in other states,¹⁵ prohibits the creation of a legal *status* that is then treated as equivalent to a marriage. The third sentence says that a “union” cannot be “entitled” to the “benefits of marriage.” This makes clear that, to be prohibited, the “benefits of marriage” would have to flow by operation of law (an “entitlement”) to a status (a “union”). Thus, the third sentence did not present to the voters a free-ranging referendum on what particular benefits might be appropriate or otherwise for the unmarried. Rather, by its own language, the third sentence prevents the circumvention – by creation of a legally sanctioned “marriage-

¹⁵ The text of each of the thirteen marriage amendments that prohibit civil unions, see note 12 *supra*, is available at <http://marriagelawfoundation.org/mlf/laws.html>.

in-all-but-name” status – of the first sentence’s definition of marriage as a man/woman union.

Here is the second reason that the Plaintiffs/Appellees’ radical misconstruction of the third sentence must fail: Amendment One’s historical context shows that misconstruction to be just that, a misconstruction. The main features of Amendment One’s historical context include judge-mandated genderless marriage in Massachusetts and legislative adoption of civil unions in places like Vermont and California. Even the Superior Court accurately noted that the General Assembly could not have been “oblivious to the intense debate in this state and country about civil unions.” (Final Order at 8.) The Superior Court’s error came in not correctly understanding and accurately noting the nature of the legal status of the “civil unions” to which it referred. As seen, the Final Order proceeds on the assumption that *civil union* means *any* legally recognized benefit or arrangement between two people of the same sex, no matter how unmarriage-like. But, of course, that is not what *civil union* means in our country; not one United States jurisdiction uses *civil union* in the way that the Superior Court used it (and that the Plaintiffs/Appellees would have this Court use it). Only two states have established a legal status denominated *civil union*: Vermont and Connecticut (although New Jersey and California

have created an equivalent status, using different names). In both Vermont and Connecticut, the civil union laws provide the virtual equivalent of marriage. Here is Connecticut's language:

Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, which is defined as the union of one man and one woman. Wherever in the general statutes the terms "spouse", "family", "immediate family", "dependent", "next of kin" or any other term that denotes the spousal relationship are used or defined, a party to a civil union shall be included in such use or definition, and wherever in the general statutes, except sections 7-45 and 17b-137a, subdivision (4) of section 45a-727a, and sections 46b-20 to 46b-34, inclusive, 46b-38nn and 46b-150d, the term "marriage" is used or defined, a civil union shall be included in such use or definition.¹⁶

The Vermont language is virtually identical with only very minor grammatical variations.¹⁷

Another important part of Amendment One's historical context is a 2002 Georgia Court of Appeals decision, *Burns v. Burns*, 253 Ga. App. 600, 560 S.E.2d 47 (Ga. Ct. App. 2002){ TA \ "Burns v. Burns, 253 Ga. App. 600, 560 S.E.2d 47 (Ga. Ct. App. 2002)" \s "Burns v. Burns, 253 Ga. App. 600, 560 S.E.2d 47 (Ga. Ct. App. 2002)" \c 1 }, reconsideration denied (Feb. 7, 2003),

¹⁶ CT. GEN. STAT. §§46b-38nn-46b-38oo{ TA \ "CT. GEN. STAT. §§46b-38nn-46b-38oo" \s "Ct. Gen. Stat. §§46b-38nn-46b-38oo" \c 2 }.

¹⁷ VT. STAT. ANN. Tit. 15 §1204{ TA \ "VT. STAT. ANN. Tit. 15 §1204" \s "Vt. Stat. Ann. Tit. 15 §1204" \c 2 }.

certiorari denied (Jul. 15, 2003). There the Court of Appeals heard a case seeking recognition in Georgia of a Vermont civil union for purposes of satisfying the condition of a visitation consent order. The court refused recognition, and Amendment One is correctly understood to endorse that holding. It is also important to note that in *Burns* the Court of Appeals concluded that a civil union is not a marriage (*id.* at 601). This meant that, for the General Assembly to prevent circumvention of Amendment One's first sentence by way of legal recognition of a civil union, it had to add a prohibition of civil unions. It did so with the third sentence.

Thus, an understanding of Amendment One's true historical context leads inexorably to this: The General Assembly was right in seeing a "natural and logical connection" between the third sentence's prohibition of civil unions, on one hand, and, on the other hand, the subject matter and objective of Amendment One, the protection of the man/woman marriage institution in this State. That connection is both natural and logical because the legal provision of officially sanctioned alternatives to marriage (civil unions, properly understood) really cannot but destabilize the man/woman marriage institution.¹⁸ That makes the prohibition of civil unions germane indeed when the

¹⁸ See note 9 *supra*.

objective is, as it is with Amendment One, marriage protection.

Indeed, in light of a correct understanding of civil unions, the “natural and logical connection” relative to civil unions is correctly seen as virtually as strong as the “natural and logical connection” relative to genderless marriage, a connection that the Superior Court itself quite accurately identified. (Final Order at 5.)

The third reason the Plaintiffs/Appellees’ radical misconstruction of the third sentence must fail is this: it violates the well-established rule of this Court that a legislative enactment, when possible, will be construed so as to avoid constitutional difficulties.¹⁹ The Plaintiffs/Appellees’ radical misconstruction of the third sentence, of course, is intended to do just the opposite; the whole purpose of that misconstruction is to render Amendment One unconstitutional under the single-subject doctrine. But this Court’s wise and well-established principle of statutory construction says to avoid unnecessary constitutional difficulties, and thus that principle will not tolerate the approach urged by the Plaintiffs/Appellees and adopted by the

¹⁹ *E.g.*, *Cade v. State*, 207 Ga. 135, 137, 60 S.E.2d 763, 765 (1950) (“[T]his court has many times held that statutes should be construed in such way as to be consistent with the Constitution, if it can be done, and that the conflict between a statute and the constitution should be serious before the court declares the statute unconstitutional”).

Superior Court. Rather, that principle leads to a construction of the third sentence as a prohibition of civil unions (properly understood) and therefore as clearly germane to the protection of the man/woman marriage institution.

IV.

To the Degree the Superior Court Held the Third Sentence Invalid Because Not “Required,” It Applied the Wrong Standard.

In addition to misconstruing the third sentence, the Final Order appears to have applied a standard other than “germaneness” to that sentence. The Final Order says that “nothing about declaring the union of a man and a woman the only valid form of marriage *required* a decision as to the treatment of same sex relationships within the state.” (Final Order at 9; emphasis added.) But deciding whether a particular provision is “required” in order to effectuate an amendment’s intent is much different from deciding whether a provision is “germane” to the amendment’s purpose.

The “required” standard inserts an inappropriate element of judicial second-guessing of policy decisions into a single-subject ruling. That is because it is much more likely that reasonable minds will differ on what is “required” to effectuate an amendment’s objective than is so with respect to what is “germane” to that objective. With Amendment One’s third sentence, the General Assembly concluded that prohibiting civil unions (properly understood) was very much required if Georgia’s man/woman marriage

institution was to be adequately protected. The voters agreed. This Court honors both our system of government and its own crucial part in that system when it defers (as the Superior Court did not) to that imminently rational and sensible policy judgment.

V. Conclusion

Amendment One's third sentence does not in any way contravene the single-subject doctrine. That is because that sentence's prohibition of civil unions (properly understood) both naturally and logically advances the amendment's purpose of protecting Georgia's man/woman marriage institution against the very kinds of corrosive and destabilizing political and judicial schemes undeniably afoot. As the Louisiana Supreme Court noted in rejecting a single-subject challenge to that State's marriage amendment: "In effect, the amendment provides the only contract or legal instrument whereby the state is mandated to bestow all or substantially all of the rights, civil effects, and legal incidents of marriage upon the parties in recognition of the legal status created or established by said contract or instrument is the contract of marriage between one man and one woman." *Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005){ TA \s "Forum for Equality PAC v. McKeithen, 893 So.2d 715 (La. 2005)" }.

In light of all the foregoing, *amicus curiae* United Families International respectfully urges this Court to reverse the Superior Court's Final Order and uphold Amendment One in its entirety.

Date: 9 June 2006

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CERTIFICATE OF SERVICE

This is to certify that the foregoing “Brief of *Amicus Curiae* United Families International In support of Defendant/Appellant” has been served this day by United States mail to the following counsel of record in the above-captioned case:

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