

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  
and REPRESENTATIVE TYRONE  
BROOKS,

CIVIL ACTION NUMBER:  
2004CV93494

Plaintiffs,

vs.

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

Defendant.

**FINAL ORDER**

On March 31, 2004 the Georgia House of Representatives approved Senate Resolution 595 which proposed to amend the Georgia Constitution by adding a new section. The resolution in its entirety provided 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
- NO        provide that 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.

On September 16, 2004 Plaintiffs in the present case filed an action against Cathy Cox, in her official capacity as Secretary of State, seeking to enjoin the appearance of S.R. 595 on the November 2, 2004 general election ballot. The Plaintiffs sought to block a vote on the proposed amendment on the grounds that the ballot language was affirmatively misleading and that the substance of the measure violated what is commonly referred to as the single subject rule. The single subject rule is a principle of Georgia constitutional law that prohibits the inclusion in one legislative enactment multiple subjects having no common objective.

Plaintiffs' original action was heard by this Court. The substance of Plaintiffs' complaint was not ruled on. A final order dismissing the action without prejudice on jurisdictional grounds was entered on September 26, 2004. On October 26, 2004 the Georgia Supreme Court affirmed this Court's ruling. Consequently, S.R. 595 appeared on

the November 2, 2004 general election ballot as Amendment One. The measure passed and Cathy Cox, in her official capacity as Secretary of State of Georgia, certified the election results.

On November 9, 2004 Plaintiffs filed the current action against Sonny Perdue, in his official capacity as Governor of the State of Georgia. The action reasserts the constitutional challenges to Amendment One which were raised in the first case. The parties filed dispositive cross motions which were argued before this Court in early 2005. Plaintiffs filed a Motion for Judgment on the Pleadings. The Defendant filed a Motion for Summary Judgment. Motions to intervene were filed by certain members of the Georgia General Assembly and the Christian Coalition of Georgia. Those motions were denied and the proposed intervenors were granted a certificate of immediate review. The Georgia Supreme Court declined to hear their appeal. The remittitur returning jurisdiction to this Court was entered on April 29, 2005. The parties agree that there are no disputed issues of material fact. The legal issues before the Court are whether Amendment One should be declared unconstitutional because the ballot language used to secure its passage was affirmatively misleading and whether the substance of the Amendment violates the single subject rule.

### I. BALLOT LANGUAGE

The language on the November ballot was "Shall the Constitution be amended so as to provide that this state shall recognize as marriage only the union of man and woman?" Voters were then given the option of choosing "yes" or "no." Plaintiffs contend the ballot language was affirmatively misleading because it created the impression that Amendment One only dealt with the definition of marriage and failed to apprise voters of other matters addressed within the Amendment.

The law in this area is well settled. The Legislature has broad discretion with respect to drafting ballot language. The language need only be sufficient to allow voters to identify which amendment they are voting on. (*Sears v. State of Georgia*, 232 Ga. 547 (1974)). The state is not required to adopt ballot language that puts voters on notice of the entirety of a measure. (*Donaldson v. Department Of Transportation*, 262 Ga. 49 (1992)). Rather, it may rely upon voters to educate themselves about an amendment and the courts must presume they have done so. *Id.* Ballot language is subject to only minimal judicial scrutiny. (*Sears, supra*, at p. 555).

Plaintiffs concede that in this case the ballot language was sufficient to tell voters which amendment they were voting on. Their objection is that the ballot failed to inform voters of all of the effects of Amendment One. While it has been urged that the Legislature aspire to be fully informative in its choice of ballot language, the standard for review of challenged language has remained unchanged. If the language "... shows itself upon examination to be adequate to identify the amendment to be ruled upon ..." the Constitution is not violated. (*Sears at p. 556*). The ballot language at issue complied with the law. Plaintiffs' Motion for Judgment on the Pleadings as to the ballot language is,

therefore, Denied. The Defendant's Motion for Summary Judgment on the issue is Granted.

## II. SINGLE SUBJECT RULE

Plaintiffs next contend that Amendment One is unconstitutional because it violates the single subject rule. Plaintiffs assert that the subject of Amendment One is the definition of marriage. They argue that the Amendment is constitutionally flawed because it accomplishes at least four separate objectives unrelated to defining marriage. Those objectives, as identified by Plaintiffs, are: (1) excluding same sex couples from marriage; (2) prohibiting recognition or creation of legal unions between persons of the same sex; (3) barring the courts from recognizing certain judgments, acts and records from other states and jurisdictions; and (4) divesting the courts of jurisdiction to rule on rights arising out of same sex relationships.

The Defendant acknowledges that Amendment One may have some of the effects alleged by Plaintiffs. (See, Response To Plaintiffs' Motion For Judgment On the Pleadings, p.8). However, the Defendant contends that the Amendment is constitutional because all of its parts are germane to the same subject. The subject of Amendment One is described by Defendant as "the non-recognition of conjugal relationships between persons of the same sex." (Defendant's Brief On Motion For Summary Judgment, p. 2).

Under Georgia law "[t]he legislature is absolutely unrestricted in its power to legislate, so long as it does not undertake to enact measures prohibited by the State or Federal Constitution." (*Sears v. State of Georgia*, 232 Ga. 547, 554 (1974)). One of the state constitutional law principles which limits the Legislature's authority is the single subject rule; it is also referred to as the multiple subject matter rule. The rule prohibits omnibus legislation. It requires that each legislative act and constitutional amendment address only one general subject. "The test of whether a ... constitutional amendment violates the multiple subject matter rule is whether all of the parts of the ... constitutional amendment are germane to the accomplishment of a single objective." (*Sears, supra* at p. 556 (quoting *Carter v. Burson*, 230 Ga. 511, 519 (1973))).

The parties disagree as to the general subject of Amendment One. Therefore, the first question which must be resolved by the Court is what was the Legislature's intent regarding the subject of the Amendment. For the reasons set forth below, the Court finds that the intended subject of Amendment One is neither as narrow as Plaintiffs contend nor as broad as Defendant asserts.

Defendant's assertion that the subject of the Amendment is the non-recognition of same sex conjugal relationships is an attempt to define the intended subject of the Amendment by looking to the impact of its provisions. However, in determining legislative intent this Court must first look to the plain language used by the Legislature. The meaning and intent of legislation is to be ascertained in the first instance by what it says—not its outcomes. Defendant's formulation as to the subject of Amendment One

fails because it is not grounded in either the plain language or stated purpose of the Amendment. Taking Amendment One at face value and reading it as expansively as possible, its subject would be marriage—not same sex conjugal relationships.

Plaintiffs, of course, argue for a much more limited construction of the Amendment's subject. They contend that the intended subject of Amendment One is the establishment of a constitutional definition of marriage. (Memorandum Of Law In Support Of Plaintiffs' Motion For Judgment On The Pleadings, p. 3). In support of their argument they point to the ballot language which asked the public to vote on whether marriage should be recognized as only the union of man and woman. The preamble to S.R. 595 also states that the purpose of the amendment is to "provide that this state shall recognize as marriage only the union of man and woman."

Plaintiffs are correct that Amendment One creates a constitutional definition of marriage. But, once again the Court's analysis of the Amendment's intended subject must be based upon its language—not its results. In stating the purpose of Amendment One, the word used by the Legislature was "recognize." While to recognize may in some circumstances mean to define a thing; the word also has a broader meaning. One synonym for recognize is "acknowledge." (Roget's II, The New Thesaurus, 1988, p. 806). Viewed in this light, to "recognize" encompasses more than to merely define. Included in the concept of recognition is the notion of acknowledging or accepting a thing as valid.

When considering the single subject rule "subject matter" ... is to be given a broad and extended meaning so as to allow the legislature authority to include in one act all matters having a natural or logical connection." (*Crews v. Cook*, 220 Ga. 479, 481(1964)). The single subject rule does not prohibit the Legislature from enacting comprehensive laws on a general topic. In keeping with its expansive legislative authority, the General Assembly could have stated that the purpose of Amendment One was to create comprehensive legislation about marriage. In this Court's view, the intent they, in fact, expressed is much narrower--although not as narrow as Plaintiffs argue. It is the Court's belief that, following the guidance of *Crews* and in recognition of the Legislature's general authority to enact comprehensive legislation, the term "recognize" as it is used in Amendment One should be read in its broader sense. For that reason the Court finds that the subject matter or objective of Amendment One is the acknowledgment of the union of man and woman as the only valid form of marriage in Georgia.

Historically in this state marriage has been understood to be a connection recognized by the law between an otherwise unrelated man and woman. Same sex relationships have never been recognized under Georgia law. In 1996 the Legislature enacted O.C.G.A. 19-3-3.1. The statute expressly prohibits marriages between persons of the same sex and declares it to be the state's public policy to "recognize only the union of man and woman." *Id.* In Massachusetts and several foreign countries same sex relationships are recognized as marriages. In Vermont same sex relationships are classified as civil unions, a separate legal status from marriage.

Thus, at the time Amendment One was proposed, Georgia law defined marriage as exclusive to men and women and expressly prohibited same sex marriages. Same sex relationships had no recognized legal status under state law. Outside of Georgia same sex relationships were treated as marriages in some jurisdictions and some had been classified as civil unions. It is in this context that Amendment One's constitutionality must be evaluated.

The only issue to be decided by the courts at this juncture is whether Amendment One's contents are germane to its objective. The policy making body of this state is the General Assembly. The wisdom, rightness, morality or substantive constitutionality of the policies embodied in Amendment One are not at issue before this Court.

The substantive provisions of the Amendment consist of two paragraphs. Paragraph I (a) restates the key points of O.C.G.A. 19-3-3.1. The first sentence limits the recognition of marriage to unions between a man and a woman. The second sentence prohibits marriages between persons of the same sex. Plaintiffs object to the Paragraph's exclusion of same sex couples from marriage.

At this point in history more than one form of marriage has been legally recognized in this and other countries. The General Assembly has made the judgment and proposed to the people that only one form of marriage should exist in Georgia. In aid of that judgment, Amendment One's objective is to recognize or acknowledge marriage between a man and a woman as the only valid form of marriage. Paragraph I (a) of the Amendment furthers that objective by establishing a privileged place for one form of marriage and prohibiting another. The two actions effectuated by Paragraph I (a) are opposite sides of the same coin. Taken together they accomplish what the Legislature intended--the acknowledgment or validation of one form of marriage, which is the stated purpose of Amendment One.

Paragraph I (b) contains three sentences. The first sentence prohibits same sex unions from receiving the benefits of marriage. The second sentence bars recognition of acts, records or judicial proceedings from other states or jurisdictions regarding "a relationship between persons of the same sex that is treated as a marriage" by the other state or jurisdiction. The final sentence deprives Georgia courts of jurisdiction over matters arising "as a result of or in connection with such relationships." The phrase "such relationships" refers to the relationships described in the second sentence of the Paragraph.

Plaintiffs believe that Paragraph I (b) does not pass constitutional muster because it relates to multiple subjects. It is true that the Paragraph addresses multiple topics; by its plain language, it denies same sex unions the benefits of marriage; bars recognition of some foreign judgments and decrees; and, precludes Georgia courts from hearing certain matters. However, the fact that the Paragraph addresses multiple issues does not end the inquiry as to the Amendment's constitutionality. The single subject rule is not an absolute bar to the inclusion of multiple topics in one legislative enactment. Multiple

topics may be included in one enactment without violating the single subject rule, so long as the legislation has one objective and each of the distinct topics is germane to that objective. Therefore, the issue to be decided is whether all of the matters addressed in Paragraph I (b) are germane to the objective of Amendment One.

The various provisions of Paragraph I (b) accomplish two things: (1) they establish how matters arising from same sex relationships which are treated as marriages outside of Georgia will be addressed in Georgia; and (2) they determine how unions between persons of the same sex will be treated in Georgia.

Marriage was limited to men and women and same sex marriages were prohibited in Georgia before Amendment One was proposed. The objective of the Amendment is to recognize, at the constitutional level, the union between a man and a woman as the only valid form of marriage in Georgia. The General Assembly clearly foresaw that, because same sex marriage has been legalized in other places, issues regarding those relationships might arise in Georgia. In recognition of that fact there are provisions in Amendment One addressing how same sex marriages and issues arising from those marriages will be treated in Georgia.

The net effect of those provisions is that same sex relationships treated as marriages outside of Georgia are treated as meretricious relationships within the state. The second sentence of Paragraph I (b) bars the effectuation of any public act, record or decree "respecting" such marriages. Therefore, marriage licenses, child custody agreements, divorce decrees or other court orders relating to those relationships could be unenforceable in Georgia. The third sentence of Paragraph I (b) strips Georgia courts of the authority to grant divorces, enter separate maintenance decrees or hear disputes arising from or connected with same sex marriages. In sum, the Amendment places same sex relationships that are treated as marriages by other states or jurisdictions outside the bounds of Georgia law. Under Amendment One such relationships are neither recognized nor protected by the law.

The measures in the second and third sentences of Paragraph I (b) serve to invalidate same sex marriage insofar as it may appear in this state. Adopting measures that serve to invalidate other forms of marriage furthers the public policy of acknowledging only one form of marriage as legitimate and valid. The measures contained in sentences two and three of Paragraph I (b) are germane and relevant to Amendment One's objective because their effect is to de-legitimize same sex marriages. One may disagree with the outcomes and policy judgment inherent in the last two sentences of Paragraph I (b). Declining to recognize legal documents from other states or countries and barring access to Georgia courts for disputes arising from or associated with same sex marriages are severe measures. But, there is no question that they further and support the goal of acknowledging only one form of marriage.

Paragraph I (a) and the measures set forth in the sentences of I (b) addressing the treatment of relationships recognized as marriages outside of Georgia can fairly be said to be "distinct propositions bearing on the same question." (*See, Hammond v. Clark*, 136

Ga. 313 (1911)). As such the inclusion in Amendment One of those portions of Paragraph I (b) discussed above does not violate the single subject rule.

The remaining sentence of Paragraph I (b) states that “[n]o union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage.” Unlike the other sentences in the Paragraph it contains no limiting or qualifying language. Its reach is not confined to legal unions or same sex relationships treated as marriages by other states or jurisdictions.

Defendant acknowledges that the provision could preclude future legislatures from recognizing civil unions; at the same time he also asserts that the word “union” is interchangeable with marriage. The two propositions are, however, incompatible. If “union” as used in the sentence is synonymous with marriage then the provision does not relate to civil unions and there is no reason to conclude that future legislatures would be barred from creating or recognizing such unions.

Defendant’s argument that “union” and marriage as they appear in Amendment One are interchangeable is unpersuasive. O.C.G.A. 19-3-3.1, enacted in 1996, contains the sentence “[n]o marriage between persons of the same sex shall be recognized as entitled to the benefits of marriage.” It cannot be credibly argued that the General Assembly, when it drafted Amendment One and included a virtually identical sentence, was oblivious to the intense debate in this state and country about civil unions; and, somehow fortuitously chose to substitute the politically charged word union for marriage. If the Legislature had intended for the provision to address same sex marriages it knew how to say so. The Court finds that the General Assembly meant exactly what it said. “No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage.”

The next area of inquiry is the meaning and intent of the phrase “benefits of marriage.” The word “benefit” is a noun meaning “advantage; useful aid; material aid ... provided or due as a right.” (The Merriam-Webster Dictionary Home & Office Edition, p. 47 (1998)). The advantages and aid associated with marriage are both personal and public in nature. The personal advantages of marriage come from the companionship, caring, intimacy and commitment associated with sharing one’s life with another. They are unique to each individual and not susceptible to government regulation. Those “benefits of marriage” are clearly not the intended subject of Amendment One.

Many of the public advantages of marriage, on the other hand, are directly attributable to laws and policies adopted and enforced by government. It is only those benefits of marriage which are amenable to government control. One must conclude, therefore, that it is that panoply of rights and entitlements which is the subject of Amendment One. Viewed in context, then, the phrase “benefits of marriage” is properly understood as a euphemism for the array of government created advantages, rights and privileges which our laws afford people based upon marriage. Those benefits exist in areas as diverse as housing, taxation, inheritance, healthcare, child custody and medical decision-making. For example, because some zoning laws prohibit cohabitation by

unmarried adults, there are places where only married couples may reside. Being married can also confer automatic pension and inheritance rights. And, of course, the greatest benefit of marriage is that it creates a web of connection between unrelated individuals which is recognized and protected by law.

Based upon its operative phrases "union between persons of the same sex" and "benefits of marriage" the objective of the first sentence of Paragraph I (b) is evident. Its 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. The first sentence of Paragraph I (b), unlike the Paragraph's sentences addressing same sex marriages, does not limit its reach to same sex unions created or recognized by other states or jurisdictions. Consequently, it bars the state of Georgia from granting same sex unions between Georgia residents any of the advantages given to marriages under state law. As stated previously, having one's relationship recognized by the government is one of the principal public benefits of civil marriage. Creating or recognizing civil unions in this state would confer on same sex couples a legal status and such recognition might be considered a benefit of marriage. In this Court's judgment, therefore, Amendment One could be read to preclude future legislatures from creating or recognizing civil union as a valid legal status.

The state and its citizens may decide through legislation or by constitutional amendment to reject civil unions and decide what status, if any, unmarried couples--whether same or mixed sex--will have in the eyes of the law. The state may decide how same sex relationships will be treated under its tax, insurance, pension, inheritance or other laws. Those are all, in the first instance, public policy decisions which are left to the sound judgment of the citizens and the Legislature.

The single subject rule does not preclude voters from making such policy judgments. What it requires is that those questions be decided without being tied to other, unrelated, issues. The principle underlying the rule is that "[n]o voter should be compelled, in order to support a measure which he favors, to vote also for a wholly different one which his judgment disapproves, or, in order to vote against the proposition he desires to defeat, to vote also against the one which commends itself to the approval of his judgment." (*Rea v. City of Lafayette*, 130 Ga. 771, 772 (1908)).

The people of Georgia were free to decide in one constitutional amendment what constitutes a valid marriage. In conjunction with defining a valid marriage, stating what constitutes an "invalid" marriage and prohibiting such marriages was a logical step. Addressing how "invalid" marriages from other states and the issues arising from those marriages would be treated in Georgia was consistent with the goal of dealing comprehensively with the subject of acknowledging only one form of marriage. However, nothing about declaring the union of man and woman the only valid form of marriage required a decision as to the treatment of same sex relationships within the state. Likewise, deciding that same sex relationships should be given some form of legal recognition in Georgia would have no effect on the state's recognition of the union of a man and a woman as the only valid form of civil marriage. Deciding how same sex

relationships between Georgians shall be treated by the state is not germane to the objective of recognizing only one form of marriage because it has no effect on achieving or furthering that result.

There are as a factual matter same sex relationships in Georgia. They do not exist in the eyes of the law because they have no legal status. Outside of Georgia there are same sex relationships that are treated as marriages and there are same sex relationships that have a recognized legal status other than marriage—civil union. The phrase “union between persons of the same sex” as it applies to same sex couples in this state describes a relationship—not a legal status. Marriage under our law exists only between men and women and civil union is not a recognized legal status.

When the General Assembly crafted Amendment One it had unfettered discretion to declare its objective. It could have, as Defendant argues, made the Amendment’s objective the non-recognition of same sex conjugal relationships. That is not, however, what it did. The stated purpose of Amendment One is to recognize unions between men and women as the only valid form of marriage. To prohibit same sex marriages and deny recognition in any form to same sex relationships treated as marriages is germane to furthering the objective of acknowledging only one form of marriage. But, to conclude that same sex relationships should not be treated as marriages neither requires nor compels one to also conclude that they should have no legal status or to decide how such relationships should be treated under laws regulating matters other than marriage.

Asking voters to decide how the law should treat same sex relationships in the context of a law that has as its intended objective the validation or privileging of marriage between men and women creates precisely the dilemma the single subject rule was adopted to avoid. When the question presented to the public is whether man woman unions should be the only recognized form of marriage, the only thing the voter must weigh as to same sex relationships is whether in his judgment those relationships should be excluded from marriage. It is a zero sum question requiring a yes or no response. The voter either believes same sex relationships should be included within the realm of civil marriage or not; and, he is free to cast his vote accordingly. As to same sex relationships the voter must decide only what they should not be under the law.

Answering the affirmative question of how same sex relationships should be treated by the law is a fundamentally different endeavor. This is true because deciding how a thing should be treated requires consideration of the available choices. Eliminating one possible choice by deciding that the thing is not “x” does not resolve the larger question because it does not preclude the selection of other choices or the creation of other options. In short, the affirmative question is not a zero sum proposition.

The primary consideration for a Georgia voter deciding how to vote on a law addressed to what constitutes a valid marriage is likely to be what does the proposed law declare to be a valid marriage versus what it declares to be an invalid marriage. In deciding how the law should treat same sex relationships voters may choose to consider a wider range of variables because declaring same sex relationships to be marriages or

declaring them invalid are not the only available options. It is possible to decide that same sex relationships should not be marriages and at the same time decide affirmatively that they should have some other standing or status before the law.


The question for our state as it relates to same sex relationships is greater than shall they be marriages. The first question that must be answered is whether same sex relationships shall have any legal status before the law. People who believe marriages between men and women should have a unique and privileged place in our society may also believe that same sex relationships should have some place—although not marriage. The single subject rule protects the right of those people to hold both views and reflect both judgments by their vote. Under our state constitution they cannot be presented with an amendment that compels them to sacrifice or choose one judgment over the other.

The people of Georgia are free to decide by constitutional amendment that in this state only the union of man and woman is a valid form of marriage. The people are also free to decide how same sex relationships will be treated under the law. Currently they have no existence under our law. Whether that situation should continue or change is a matter that the people may choose at some point to decide, either through a constitutional amendment or by legislative action. But, if the issue is to be taken up, our Constitution requires that it be judged on its own merits.

This Court is well aware that Amendment One enjoyed great public support. However, the test of a law is not its popularity. Procedural safeguards such as the single subject rule rarely enjoy popular support. But, ultimately it is those safeguards that preserve our liberties, because they ensure that the actions of government are constrained by the rule of law. The issues for the people with respect same sex relationships are what status, if any, those relationships shall have in the eyes of the law. And if they are afforded legal recognition, how shall they be treated under other laws. Those questions are distinctly different from whether same sex marriages should be allowed or recognized in this state. If the larger questions about same sex relationships are to be considered and answered, they must be presented forthrightly—not as an incidental side note to an entirely different matter.

For all the reasons set forth above the Court finds that Amendment One violates the Georgia Constitution in that it contains multiple objectives, contrary to the requirements of the single subject rule. Plaintiffs' Motion for Judgment on the Pleadings is, therefore, Granted and Defendant's Motion for Summary Judgment is Denied.

So Ordered This 16th Day of May, 2006.

  
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Judge Constance C. Russell  
Fulton County Superior Court, A.J.C.