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**Documenting Discrimination on the Basis of Sexual Orientation  
and Gender Identity in State Employment**

**Title**

Georgia - Sexual Orientation and Gender Identity Law and Documentation of Discrimination

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## MEMORANDUM

**From:** Williams Institute  
**Date:** September 2009  
**RE:** **Georgia – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

### I. OVERVIEW

Based on research conducted as of January 1, 2009, Georgia has no state statute prohibiting public or private discrimination based on sexual orientation or gender expression. Furthermore, Georgia courts have issued no judicial rulings that prohibit discrimination on the basis of sexual orientation or gender expression in either the public or private contexts. A few municipalities such as Atlanta and Doraville have created their own statutes protecting either sexual orientation or gender expression, and Georgia courts have left these laws undisturbed.<sup>1</sup> At least one municipality has introduced an “anti-gay” measure. In 1993, Cobb County incumbent Commissioner, Gordon Wysong, attempted to hold onto his seat by emphasizing his support of the “Cobb County Commission Anti-Gay Lifestyle Resolution.”<sup>2</sup>

Documented examples of employment discrimination by state and local government employers against LGBT people in Georgia include:

- A Legislative Editor for the Georgia General Assembly’s Office of Legislative Counsel who was fired after she was diagnosed with Gender Identity Disorder and began appearing (upon a doctor’s orders) at work as a woman prior to undergoing gender reassignment surgery. Since 2005, she had been responsible for editing proposed legislation and resolutions for the Georgia Assembly. In 2009, in rejecting the state’s motion to dismiss, a U.S. District Court ruled that the editor’s complaint “clearly states a claim for denial of equal protection” under the 14<sup>th</sup> Amendment on alternative theories of discrimination on the basis of sex and a medical condition. The court summarized the grounds for termination as, “In the view of Glenn’s employers, gender transition surgery and presentation as a woman in the workplace would be seen as immoral... and would make other employees uncomfortable.” The court held that “Unequal treatment fails even the most deferential equal protection review when the disadvantage imposed is born of animosity toward the class of persons affected,” quoting the Supreme

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<sup>1</sup> See *City of Atlanta v. McKinney et. al.*, 454 S.E.2d 517 (Ga. 1995); *City of Atlanta v. Morgan*, 268 Ga. 586 (1997).

<sup>2</sup> PEOPLE FOR THE AMERICAN WAY FOUNDATION, *HOSTILE CLIMATE: REPORT ON ANTI-GAY ACTIVITY* 121 (1999 ed.).

Court's opinion in *Romer v. Evans*<sup>3</sup>. Glenn v. Brumby, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).

- An openly gay University of Georgia, Athens Professor who in February of 2009 was accused by two Georgia state representatives of recruiting “young teenage gays” to accompany him on international trips, despite the fact that he is not involved with study abroad programs and teaches graduate level classes. The professor was cleared of any misconduct after an investigation. The state representatives also said they would pressure the University of Georgia in Athens, Georgia State University, and Kennesaw State University to terminate any professors who teach “queer theory” courses. The University of Georgia defended its course offerings and the professors. The legislators also called three other professors into the State Senate to defend their research on sexuality and the outbreak of HIV and AIDS.<sup>4</sup>
- A Georgia Division of Family and Child Services (DFCS) employee who reported in 2006 that after other employees complained about working with her because she was a lesbian, she was subjected to a humiliating and invasive four-hour interrogation during which she was asked if she was a lesbian, who looked after her children, who she lived with and who her friends were. She was then told not to tell anybody else about what happened during the interview. Two weeks later DFCS suspended her for “alleged misconduct.”<sup>5</sup>
- The first openly transgender city council member in the Georgia who lost-re-election after two terms after two other candidates for city council filed petitions, during the election, to contest it on grounds she was committing fraud on the voters, drawing attention and national publicity to the fact that she had transitioned. In 2008, the Georgia Supreme Court ruled in favor of the transgender politician, finding that none of the alleged irregularities was specific enough to cast doubt on the results of the election.<sup>6</sup>
- In 2006, five years after a bus driver was hired by public school district in McDonough, Georgia, a co-worker found a personal ad he had posted six years earlier on a gay dating site. The co-worker printed the ad and distributed it at one of the high schools in the district. Immediately after the posting was passed around, he was fired. When he asked for a reason, school officials told him it was “in the best interests of the school system” and that he already “knew the answer.”

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<sup>3</sup> *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>4</sup> *Pulpit Power: Does the Religious Right Still Control Georgia?*, SOUTHERN VOICE, Mar. 13, 2009; *Georgia Lawmakers Clash Over Queer Theory, Academic Freedom*, SOUTHERN VOICE, Feb. 11, 2009; *Sex Research Puts University of Georgia Professors in Hot Seat*, DIGITAL J., Febr. 23, 2009; *Professor cleared of allegations*, RED & BLACK, Feb. 17, 2009.

<sup>5</sup> E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

<sup>6</sup> *Fuller v. Thomas*, 284 Ga. 397 (GA 2008).

He made a complaint to the Board of Education, but received no response. He has not been able to get another job at a school in the area since.<sup>7</sup>

- In 2005, a woman applied for a job as a Disease Investigator with the Fulton County Health Department. When she applied for the job, she was using a male name, but by the time they called her back, she had transitioned and had legally changed her name. The first month went well, but the supervisor at the department was showing increasing discomfort with her transition. He began to make her work life miserable and he forbade her from using the female restroom. Belcher complained to Human Resources, but they did nothing except repeat her complaint to the supervisor without her consent. In February 2006, she was fired without cause and replaced by an untrained and under-qualified employee. Without her job, she was unable to take care of herself and her children financially.<sup>8</sup>
- An attorney who, prior to the Supreme Court's decision in *Lawrence v. Texas*, had her offer of employment withdrawn from the Georgia Attorney General's Office after she had participated in a wedding ceremony, recognized by her congregation, with her same-sex partner. The Attorney General withdrew the employment offer after concluding that the Plaintiff's participation in the ceremony would interfere with the Department's ability to enforce Georgia's sodomy law, and in general, create difficulties maintaining a supportive working relationship among the office lawyers. In 1997, the Eleventh Circuit upheld a district court decision allowing the Georgia Attorney General to withdraw the offer of employment with three judges dissenting from the majority en banc decision.<sup>9</sup> *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997).

There is also little anti-discrimination protection in non-employment contexts. The state has had no hate crimes law since 2004, when the Georgia Supreme Court ruled its former law unconstitutionally vague. Georgia law does not address school issues relating to sexual orientation or gender identity. Courts in Georgia typically have not restricted custody and visitation of a gay or lesbian parent as long as there is no evidence of harm to the child. However, there have been no cases dealing with transgender parents or same-sex co-parents.

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and policies involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments

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<sup>7</sup> Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

<sup>8</sup> Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

<sup>9</sup> *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997).

against LGBT people. Part IV discusses state laws and policies outside the employment context.

## II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW

### A. State-Wide Employment Statutes

Currently, the state of Georgia has not enacted laws to protect sexual orientation and gender identity from employment discrimination.

### B. Attempts to Enact State Legislation

None.

### C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions

#### 1. Executive Orders

None.

#### 2. State Government Personnel Regulations

Fulton County's personnel regulations contain an equal employment opportunity policy, which states: "Equal opportunities for employment, promotion and other personnel transactions shall be offered on a non-discriminatory basis without regard to race, color, religion, national origin, gender, age, disability, or sexual orientation."<sup>10</sup>

#### 3. Attorney General Opinions

None.

### D. Local Legislation

#### 1. City of Atlanta

The Atlanta City Code of Ordinances protects against discrimination on the basis of sexual status or domestic relationship status as well as gender identity. Under the Code, anyone who employs 10 or more people may not discriminate on the basis of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, or disability.<sup>11</sup>

Atlanta's Human Rights Commission has issued the following policy statement:

In the city, with its great cosmopolitan population consisting of large numbers of people of every race, color, creed, religion, sex, marital status, parental status, familial

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<sup>10</sup> Fulton County PR1700-1, "Equal Employment Opportunity," in Fulton County Personnel Regulations at 121 (rev'd 2000), available at <http://www.co.fulton.ga.us/images/stories/Personnel/personnelregs20001.pdf>.

<sup>11</sup> ATLANTA CODE OF ORD. Ch. 94, art. V §94-112(a).

status, sexual orientation, national origin, gender identity, and age, many of them with physical and mental disabilities, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of differences of race, color, creed, religion, sex, marital status, parental status, familial status, sexual orientation, national origin, gender identity, age, and disability. The council finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free democratic society.<sup>12</sup>

Atlanta's Charter also includes a Bill of Rights providing non discrimination protection on the basis of sexual orientation and gender identity.<sup>13</sup>

In *City of Atlanta v. McKinney*, the Court upheld city ordinances that prohibit discrimination on the basis of sexual orientation and that establish a domestic partnership registry for jail visitation.

## 2. **City of Doraville**

In 2008, the city of Doraville added gender identity to its municipal anti-discrimination policy, providing protection for transgender workers, along the lines previously adopted in Atlanta. City officials said they were not aware of any transgender employees, but responded to a request to adopt the policy in the wake of a federal lawsuit by a transgender woman who asserted that she was fired from a staff position in the state legislature after announcing her decision to transition from male to female gender.<sup>14</sup>

## 3. **City of Tybee**

Tybee Island prohibits discrimination against applicants for employment and employees of the city on the basis of "political affiliation, race, color, national origin, sexual orientation, age, religion or handicapped status."<sup>15</sup>

## 4. **County of DeKalb**

DeKalb County prohibits county discrimination on the basis of sexual orientation.<sup>16</sup>

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<sup>12</sup> ATLANTA CODE OF ORDINANCES, Ch. 94, Art. 11, § 94-11.

<sup>13</sup> ATLANTA CODE OF ORDINANCES, Subpart A, Bill of Rights, § 4.

<sup>14</sup> City of Doraville, 2008 & 2009 ORDINANCES, 2008-24, *available at* <http://www.doravillega.us/FAQs/Government/Find-recent-ordinances.html>.

<sup>15</sup> TYBEE CODE §2-4-1.

<sup>16</sup> DEKALB CODE Art. I §20-16 & Art. IX§20-194.

**5. Athens-Clarke County**

The Athens-Clarke County Code prohibits discrimination based on sexual orientation or gender identity in government employment.<sup>17</sup>

**6. City of Clarkson**

The City of Clarkson prohibits discrimination in city employment based on sexual orientation or gender identity.<sup>18</sup>

**7. City of Doraville**

The city of Doraville prohibits discrimination in city employment based on sexual orientation or gender identity.<sup>19</sup>

**8. City of East Point**

The city of East Point prohibits discrimination based on sexual orientation.<sup>20</sup>

**E. Occupational Licensing Requirements**

The following licensing regulations require a determination of moral character. No case law was found involving the use of these moral character requirements in denying the license on the basis of sexual orientation or gender identity.

- Certified public accountants<sup>21</sup>
- Industrial loan applicants<sup>22</sup>
- Industrial loan agents<sup>23</sup>
- Criminal justice agency employees<sup>24</sup>
- Firefighters<sup>25</sup>
- Embalmers<sup>26</sup>
- Funeral directors<sup>27</sup>
- Emergency rescue specialists<sup>28</sup>
- Physicians<sup>29</sup>
- Physician's assistants<sup>30</sup>

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<sup>17</sup> ATHENS-CLARKE COUNTY CODE, Part III, Tit. 1, Ch. 1-17, §. 1-17-1.

<sup>18</sup> CITY OF CLARKSTON CODE, Art. 1, Sec. 14-3 and Art. 9, §14-90.

<sup>19</sup> CITY OF DORAVILLE CODE, Ch. 2, Art. IX, § 2-244 (enacted by Ordinance 2008-24).

<sup>20</sup> CITY OF EAST POINT CODE, Div. 1, Bill of Rights, § 6.

<sup>21</sup> GA. COMP. R. & REGS. § 20-3-.08

<sup>22</sup> GA. COMP. R. & REGS. § 120-1-1-.02

<sup>23</sup> GA. COMP. R. & REGS. § 120-2-1-.02

<sup>24</sup> GA. COMP. R. & REGS. § 140-2-.09

<sup>25</sup> GA. COMP. R. & REGS. § 205-2-1-.04

<sup>26</sup> GA. COMP. R. & REGS. § 250-5-.01

<sup>27</sup> GA. COMP. R. & REGS. § 250-5-.04

<sup>28</sup> GA. COMP. R. & REGS. § 266-1-.01

<sup>29</sup> GA. COMP. R. & REGS. § 360-2-.02

<sup>30</sup> GA. COMP. R. & REGS. § 360-5-.03



Acupuncturists<sup>31</sup>  
Auricular Detoxification Specialists<sup>32</sup>  
Owners of driver improvement clinic<sup>33</sup>  
Driver training school instructors<sup>34</sup>  
Opticians<sup>35</sup>  
Optometrists<sup>36</sup>  
Law enforcement employees<sup>37</sup>  
Law enforcement training school directors<sup>38</sup>  
Chaplains<sup>39</sup>  
Law enforcement communications officers<sup>40</sup>  
Pharmacist<sup>41</sup>  
Veterinary Technicians<sup>42</sup>

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<sup>31</sup> GA. COMP. R. & REGS. § 360-6-.03

<sup>32</sup> GA. COMP. R. & REGS. § 375-5-1-.05

<sup>33</sup> GA. COMP. R. & REGS. § 375-5-1-.05

<sup>34</sup> GA. COMP. R. & REGS. §§ 375-5-2-.20; 375-5-3-.20 & 375-5-1-.16

<sup>35</sup> GA. COMP. R. & REGS. § 420-5-.01

<sup>36</sup> GA. COMP. R. & REGS. § 430-2-.02

<sup>37</sup> GA. COMP. R. & REGS. § 464-3-.02

<sup>38</sup> GA. COMP. R. & REGS. § 464-5-.19

<sup>39</sup> GA. COMP. R. & REGS. § 464-11-.03

<sup>40</sup> GA. COMP. R. & REGS. § 464-14-.02

<sup>41</sup> GA. COMP. R. & REGS. §§ 480-2-.01, 480-2-.05

<sup>42</sup> GA. COMP. R. & REGS. § 700-6-.01

### III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

#### A. Case Law

##### 1. State & Local Government Employees

Glenn v. Brumby, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).

Plaintiff, a Legislative Editor for the Georgia General Assembly's Office of Legislative Counsel and a male-to-female transsexual, was fired for "immoral" behavior after she was diagnosed with Gender Identity Disorder and began appearing (upon a doctor's orders) at work as a woman prior to undergoing gender reassignment surgery. A U.S. District Court ruled that Georgia legislative officials may have violated the Fourteenth Amendment's Equal Protection Clause when they terminated an employee because she was undergoing gender transition. Rejecting a motion to dismiss, the court found that Glenn's complaint "clearly states a claim for denial of equal protection" on alternative theories of sex discrimination or discrimination on the basis of a medical condition, gender identity disorder.

Glenn, perceived by the defendants as male, was hired by the Georgia General Assembly's Office of Legislative Counsel in 2005 to be a Legislative Editor, making her responsible for editing proposed legislation and resolutions for grammar, spelling, and format. She did not have any policy-making role. Glenn was diagnosed with gender identity disorder in 2005, and her doctors determined that gender transition was a "medically necessary treatment" for her. In line with the accepted medical protocol for dealing with gender identity disorder, they recommended that she begin living full-time as a woman prior to undergoing gender reassignment surgery. In October 2006, Glenn informed her immediate superior at work that she was a transsexual who planned to transition in 2007. The superior responded that she foresaw no problem with this, but when Glenn showed up to work on October 31 garbed and groomed as a woman, the superior's supervisor sent her home as "inappropriately dressed." In July 2007, Glenn notified her immediate superior that she intended to proceed with gender transition, and a few months later provided educational materials to her, who passed them along to the supervisor, who said he would consult with legislative leaders about how to handle the situation. On October 16, 2007, Glenn was discharged. The court summarized the grounds for termination as, "In the view of Glenn's employers, gender transition surgery and presentation as a woman in the workplace would be seen as immoral, could not happen appropriately in Glenn's workplace, and would make other employees uncomfortable."

Glenn sued her employer, alleging discrimination on the basis of medical condition and on the basis of sex. The defendants moved to dismiss, arguing that she was attempting to bring a "class of one" equal protection claim, of a type the Supreme Court recently ruled cannot be asserted in the context of government employment. The court found that Glenn's allegations were "not consistent with a class-of-one claim, " because she did not assert that the defendants acted against her because of "characteristics unique

solely to Glenn," but rather because of her gender identity disorder and her sex, characteristics shared by others. In denying the motion to dismiss, the court stated, "Unequal treatment fails even the most deferential equal protection review when the disadvantage imposed is born of animosity toward the class of persons affected," quoting the Supreme Court's opinion in *Romer v. Evans*.<sup>43</sup>

Shahar v. Bowers, 114 F.3d 1097 (11th Cir. 1997).

The Eleventh Circuit upheld a district court decision allowing the Georgia Attorney General to withdraw an offer of employment to the Plaintiff after the Attorney General learned that she had participated in a religious wedding ceremony, recognized by her congregation, with her same-sex partner. The Attorney General withdrew the employment offer after concluding that the Plaintiff's participation in the ceremony would create the appearance of conflicting interpretations of Georgia law and affect public credibility about the Department's interpretations, interfere with the Department's ability to handle controversial matters, interfere with the Department's ability to enforce Georgia's sodomy law, and, in general, create difficulties maintaining a supportive working relationship among the office lawyers. The Attorney General also called into question the Plaintiff's judgment. Regarding Plaintiff's First Amendment claim, the Court ruled that strict scrutiny was not the appropriate standard to measure the Attorney General's decision. Relying instead on the balancing test adopted by the Supreme Court in *Pickering v. Board of Ed.*, 391 U.S. 563 (1968), the Court found the Attorney General's interest in promoting efficient public service prevailed over the Plaintiff's personal intimate association interests. The Court did not address Plaintiff's Equal Protection claim on the basis that even assuming Plaintiff has the right to marry a person of the same sex, the Attorney General's act was still lawful. Three judges dissented from the majority en banc decision.<sup>44</sup>

## 2. Private Employees

E.E.O.C. v. Family Dollar Stores, Inc., 2009 WL 4098723 (N.D.Ga.).

Plaintiff and the EEOC brought an action against Family Dollar Stores alleging that a store manager's vulgar comments and actions constituted discrimination on the basis of the Plaintiff's sex. The store manager made numerous comments about the Plaintiff's perceived sexual orientation. The Plaintiff, however, is not homosexual. In granting summary judgment for the Defendant, the court ruled that the manager's comments about the Plaintiff did not amount to a prima facie case of sexual harassment. According to the court, harassment based on sexual orientation is not actionable under Title VII, although harassment based on sexual stereotyping is actionable.<sup>45</sup>

### B. Administrative Complaints

None.

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<sup>43</sup> *Glenn v. Brumby*, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).

<sup>44</sup> *Shahar v. Bowers*, 114 F.3d 1097 (11th Cir. 1997).

<sup>45</sup> *E.E.O.C. v. Family Dollar Stores, Inc.*, 2009 WL 4098723 (N.D.Ga.).

### C. Other Documented Examples of Discrimination

#### Georgia State Universities

In February 2009, State Representatives Calvin Hill and Charlice Byrd criticized the University of Georgia in Athens, Georgia State University and Kennesaw State University for offering courses on queer theory and supporting research on sexuality. Byrd further suggested that openly gay UGA professor Dr. Robert Hill recruited “young teenage gays” to accompany him on international trips, despite the fact that Professor Hill is not involved with study abroad programs and teaches graduate level classes. Professor Hill was cleared of misconduct after an investigation. Representatives Byrd and Calvin Hill further stated that queer theory is not a worthwhile area of study, and suggested that the courses are “advocating one lifestyle” over another. Byrd and Hill said that they will team with the religious groups to pressure fellow lawmakers and the University System Board to eliminate the jobs of the professors. The University of Georgia defended its course offerings and the professors. Nevertheless, Dr. Kirk Elifson, Dr. Mindy Stompler and Dr. Donald Reitzes were called into the State Senate to explain their research on sexuality and outbreak of HIV and AIDS.<sup>46</sup>

#### State Division of Family and Children Services

In 2006, a DFCS employee reported that after other employees complained about working with her because she was a lesbian, she was subjected to a humiliating and invasive four-hour interrogation during which she was asked if she was a lesbian, who looked after her children, who she lived with and who her friends were. She was then told not to tell anybody else about what happened during the interview. Two weeks later DFCS suspended her for “alleged misconduct.”<sup>47</sup>

#### McDonough Public School

In 2006, five years after a bus driver was hired by public school district in McDonough, Georgia, a co-worker found a personal ad he had posted six years earlier on a gay dating site. The co-worker printed the ad and distributed it at one of the high schools in the district. Immediately after the posting was passed around, he was fired. When he asked for a reason, school officials told him it was “in the best interests of the school system” and that he already “knew the answer.” He made a complaint to the Board of Education, but received no response. He called Atlanta Legal Aid to seek legal help, but they turned him away, explaining that sexual orientation discrimination was not

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<sup>46</sup> *Pulpit Power: Does the Religious Right Still Control Georgia?*, SOUTHERN VOICE, Mar. 13, 2009; *Georgia Lawmakers Clash Over Queer Theory, Academic Freedom*, SOUTHERN VOICE, Feb. 11, 2009; *Sex Research Puts University of Georgia Professors in Hot Seat*, DIGITAL J., Feb. 23, 2009; *Professor cleared of Allegations*, RED & BLACK, Feb. 17, 2009.

<sup>47</sup> E-mail from Ming Wong, National Center for Lesbian Rights, to Christy Mallory, the Williams Institute (May 7, 2009, 11:15:00 PST) (on file with the Williams Institute).

prohibited in Georgia. He has not been able to get another job at a school in the area since.<sup>48</sup>

#### Fulton County Health Department

In 2005, a woman applied for a job as a Disease Investigator with the Fulton County Health Department. When she applied for the job, she was using a male name, but by the time they called her back, she had transitioned and had legally changed her name. The first month went well, but the supervisor at the department was showing increasing discomfort with her transition. He began to make her work life miserable and he forbade her from using the female restroom. Belcher complained to Human Resources, but they did nothing except repeat her complaint to the supervisor without her consent. In February 2006, she was fired without cause and replaced by an untrained and under-qualified employee. Without her job, she was unable to take care of herself and her children financially.<sup>49</sup>

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<sup>48</sup> Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

<sup>49</sup> Email from Ken Choe, Senior Staff Attorney, American Civil Liberties Union, to Brad Sears, Executive Director, the Williams Institute (Sept. 11, 2009, 14:10:00 PST) (on file with the Williams Institute).

#### **IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW**

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

##### **A. Criminalization of Same-Sex Sexual Behavior**

The Georgia sodomy law was struck down in 1998 in *Powell v. State*, 510 S.E.2d 18 (Ga. 1998).

##### **B. Hate Crimes**

In 2007, a hate crimes bill introduced by state Sen. Vincent Fort (D-Atlanta) included both sexual orientation and gender identity as part of the definition of a hate crime. The bill made it out of the Senate Judiciary committee, but failed to reach the Senate floor. At the time of this memo hate crimes bills are pending in the Georgia state House<sup>50</sup> and Senate.<sup>51</sup> Georgia is one of five states — including Arkansas, Indiana, South Carolina and Wyoming — without a hate crimes law.

##### **C. Health Care**

Same-sex partners are not given authority to make medical decisions for an incapacitated patient under Georgia law in the absence of an express advance directive.<sup>52</sup> An adult may execute an advance directive appointing his or her domestic partner as a health care agent. The directive must be in writing, signed by the declarant and witnessed by two individuals.<sup>53</sup>

##### **D. Gender Identity**

When a transgender politician identified herself as a female on ballots for a city council position, two politicians filed petitions to contest the general election on grounds of fraud, misconduct, irregularity, and illegality, and sought judgment declaring results of general election invalid. The Georgia Supreme Court ruled in favor of the transgender politician, finding that none of the alleged irregularities was specific enough to cast doubt on the results of the election.<sup>54</sup>

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<sup>50</sup> Introduced on January 16, 2009. Pending as of July 10, 2009: HB 111 (To provide enhanced penalty for crimes motivated by the victims' certain traits, including sexual orientation and gender identity).

<sup>51</sup> Introduced on March 4, 2009. Pending as of July 10, 2009: SB 234 (To provide enhanced penalty for crimes motivated by the victims' certain traits, including sexual orientation and gender identity).

<sup>52</sup> O.C.G.A. 31-36A-6.

<sup>53</sup> O.C.G.A. § 31-32-5.

<sup>54</sup> *Fuller v. Thomas*, 284 Ga. 397 (GA 2008).

## E. Parenting

The court issued a “final order” in 2007 restricting a gay father from “exposing his children to his homosexual partners and friends.” A unanimous Georgia Supreme Court opinion rejected the restriction and followed a line of cases which required evidentiary support of harm to the children. The Court did not find such evidence of harm to the children from such contact and overturned the order.<sup>55</sup>

## F. Recognition of Same-Sex Couples

### 1. Marriage, Civil Unions & Domestic Partnership

Since 1998, after the sodomy law was struck down, the only Georgia statewide law that addresses either sexual orientation or gender expression arose in the marriage context. Georgia law and the state constitution both ban recognition of marriages between same-sex couples<sup>56</sup>. The amendment to the Georgia Constitution<sup>57</sup> originally intended to ban same-sex marriages was struck down by a trial court in May 2006, because it violated Georgia’s “single-subject rule,” which requires that ballot initiatives pose a single subject at a time to voters, rather than covering multiple issues.<sup>58</sup> The Georgia Supreme Court reversed, effectively validating the amendment’s constitutionality.<sup>59</sup>

### 2. Benefits

In *City of Atlanta v. McKinney et. al.*, the court held that the city exceeded its authority in extending employee benefits to domestic partners because they are not dependents under state law.<sup>60</sup>

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<sup>55</sup> *Mongerson v. Mongerson* - 2009 WL 1649674 (June 15, 2009). See also *Burns v. Burns*, 560 S.E. 2d 47 (Ga. Ct. App. 2002), *In re R.E.W.*, 471 S.E.3d 6 (Ga. Ct. App. 1996), *cert denied*, 472 S.E.2d 295 (Ga. 1996); *Gay v. Gay*, 253 S.E.2d 846 (Ga. Ct. App. 1979); *Buck v. Buck*, 233 S.E.2d 792 (Ga. 1977); *Moses v. King*, 637 S.E.2d 97 (Ga. Ct. App. 2006).

<sup>56</sup> GA. CODE ANN. § 19-3-3.1; GA. CONST. Art. I, §IV.

<sup>57</sup> In 2004, the Georgia Constitution was amended to state:

This state shall recognize as marriage only the union of man and woman. Marriages between persons of the same sex are prohibited by [t]his state. No union between person of the same sex shall be recognized by [t]his 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 person of the same sex that is treated as a marriage under the law of such other state or jurisdiction. The courts of [t]his 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.

GA. CONST. art. I, § IV ¶1 (2009).

<sup>58</sup> GA. CONST., art. X, § I, ¶ 2.

<sup>59</sup> *Perdue v. O’Kelley et al.*, 632 S.E.2d 110 (2006).

<sup>60</sup> *City of Atlanta v. McKinney*, 454 S.E.2d 517 (Ga. 1995).

In *City of Atlanta v. Morgan*, The Georgia Supreme Court ruled that City's domestic partnership benefits ordinance's definition of "dependent," providing that employee's domestic partner is "dependent" if domestic partner has been supported by employee's earnings for at least six months, was consistent with state law, and accordingly, ordinance did not violate either State Constitution or Municipal Home Rule Act.<sup>61</sup>

**G. Other Non-Employment Sexual Orientation & Gender Identity Related Laws**

University of Georgia "Ex-Gay" Advertisement

The Chancellor of the University System of Georgia requested an opinion as to whether the student-run newspaper at Georgia Institute of Technology may refuse to publish an advertisement because the contents of the advertisement may be "hurtful" to some of the newspaper's readers. A recognized student organization submitted two advertisements for publication by the student newspaper. The contents of the advertisement depicted testimonials by "Ex-Gays" with the slurs "sissy, queer, fag." The opinion of the Attorney General advised that "where there is governmental oversight or involvement, a student-run newspaper at a state educational institution is subject to the free speech requirements of the first Amendment and, therefore, may not exclude materials from publication based on their content absent a compelling state interest for doing so."

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<sup>61</sup> *City of Atlanta v. Morgan*, 268 Ga. 586 (1997).