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An Essay on the History of Lesbian and Gay Rights in Florida

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* This article deals with the development of substantive legal rights for lesbians and gay men as a group. This does not, however, minimize the importance of: individual criminal or discrimination cases; allegations of abuse by law enforcement officers and agencies; efforts to train or otherwise sensitize law enforcement officers and agencies; most zoning controversies; the multitude of raids on lesbian/gay-oriented bars, bookstores and baths; the multitude of raids on college campuses, roadside rest stops, parks and other "cruising" areas; the sad abundance of gay-bashings; federal immigration and military (including ROTC) issues; union recognition of the rights of lesbians and gay men; estate litigation; failures to fund lesbian/gay groups at Florida's colleges and universities; the denial of rally permits; progress on rights recognition by Florida businesses; attempts to lure gay tourism; advances made in media coverage of lesbians and gay men; the rise and fall of various lesbian/gay political clubs and movements; lesbian/gay progress within the respective political parties; the appointment and election of lesbians and gay men to offices of public trust; and other such activities with a less than direct impact on the general rights of lesbians and gay men as a class.

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The manuscript of this article, incomplete at the time of Allan Terl's untimely death, has received editorial attention from Professors William E. Adams, Jr. and Michael L. Richmond of the Shepard Broad Law Center, Nova Southeastern University. They would like to thank Jesse Monteagudo for his assistance and Arlene Simon, Esq. for her earlier attention to the manuscript. Many of the sources used by Mr. Terl might not be readily available, but are included in the papers held by Mr. Terl's estate. Many of The Weekly News articles were able to be verified by accessing the archived collection at The Stonewall Library and Archives in Fort Lauderdale. We would like to thank Fred Searcy, Jr. for assisting us in this endeavor. The editors would also like to recognize the yeoman contribution made by the editorial staff of the *Nova Law Review* in preparing this paper for publication. Needless to say, any history is inevitably incomplete even at the moment of its publication. The history of lesbian and gay rights in Florida continues to be written, as indicated by references within the footnotes to Professor Adams' updating article also in this issue.

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I. INTRODUCTION

Sodomy laws, which criminalize private consensual behavior between adults, engender the irrational prejudice that underlies all discrimination against gay men and lesbian women.¹ “As long as these laws exist, gay men and lesbians are labeled as criminals because they are violating the law whenever they engage in the very acts that define them as gay men and lesbians.”² Contemporary practice has extended their application to lesbian mother child-custody cases, challenges to the validity of the will of a gay man or lesbian, and even to contract disputes.³

II. BEFORE 1970

The American colonies imported their sodomy laws from English common and statutory law.⁴ Florida’s original sodomy law, phrased in terms of “crimes against nature,” dates back to 1868.⁵ In 1917, the legislature modified the statutes to include an additional prohibition against “unnatural and lascivious” acts.⁶ Each time rights for lesbians and gay men come into question, those opposed to such rights quickly remind us of the statutory criminality of such behavior, as though it were the exclusive domain of lesbians and gay men. Because of the breadth of the definition, such statutes cover the sexual practices of many heterosexuals as well as gays and lesbians.⁷

1. See generally Abby R. Rubinfeld, *Lessons Learned: A Reflection Upon Bowers v. Hardwick*, 11 NOVA L. REV. 59 (1986).

2. *Id.* at 60.

3. *Id.* at 60–61.

4. Richard T. Jones, Note, *Sodomy—Crime or Sin?*, 12 U. FLA. L. REV. 83, 85 (1959).

5. See *Franklin v. State*, 257 So. 2d 21, 22 (Fla. 1971).

6. Ch. 17-7361, § 1, 1917 Fla. Laws 211, 211. Although “unnatural and lascivious” acts were added to the *Florida Statutes* in 1917, the sodomy statute containing the “crimes against nature” language existed until 1974, when it was finally repealed. See ch. 74-121, § 1, 1974 Fla. Laws 372, 372.

7. Prior to 1956, the Supreme Court of Florida had dealt with 13 cases involving the “crime against nature.” Of these, six dealt with heterosexual encounters and two with older men and younger boys. The first case in Florida involving the “crime against nature” contained the brutal language, “[t]he creatures who are guilty are entitled to a consideration of their case because they are called human beings and are entitled to the protection of the laws.”

Apart from Florida's sodomy law, the documentation history of the rights of lesbians and gay men in Florida began in 1954.⁸ The City of Miami in Dade County enacted an ordinance prohibiting alcoholic beverage licensees either from knowingly employing "a homosexual person, lesbian or pervert" or from selling or serving alcoholic beverages to homosexuals or allowing them to congregate or remain in the licensee's place of business.⁹ Mayor Abe Aronovitz urged passage of the ordinance to halt the gathering of "perverts" along what had become known as "Powder Puff Lane."¹⁰

In 1955, civil rights attorney Harris L. Kimball was arrested for lewd and lascivious conduct after having sex with another man on a deserted stretch of lakefront late at night in Orlando.¹¹ Within thirty days, disbarment proceedings began against him on the ground that he had violated a state law prohibiting homosexual relations¹² and thereby engaged in behavior contrary to good morals and Florida law.¹³ His conduct was deemed unprofessional, and the Supreme Court of Florida disbarred him in 1957.¹⁴

In 1956, the Florida Legislature, not content with its sodomy statute, started down a long road of repression the first of several Florida Legislative Investigative Committees ("Investigative Committee").¹⁵ Initially, under the chairmanship of Representative Henry Land,¹⁶ the seven-member Investigative Committee dealt primarily with race relations. However the chairmanship of the Investigative Committee later changed to Senator Charley Johns.¹⁷ When the Investigative Committee "became mired in legal battles with the determined members of the NAACP, with people who fought the intrusion with everything they had, the [Investigative Committee]

Ephraim v. State, 89 So. 344, 344 (Fla. 1921), *overruled in part by Franklin v. State*, 257 So. 2d 21 (Fla. 1971). There were numerous other cases that dealt with the issue of criminalizing same-sex behavior between consenting adults. *See Floyd v. State*, 79 So. 2d 778 (Fla. 1955) (reversing denial of appellate bond); *State v. White*, 68 So. 2d 397 (Fla. 1953) (reversing quashing of the information); *English v. State*, 164 So. 848 (Fla. 1935), *overruled in part by Franklin v. State*, 257 So. 2d 21 (Fla. 1971); *Jackson v. State*, 94 So. 505 (Fla. 1922), *overruled in part by Franklin v. State*, 257 So. 2d 21 (Fla. 1971).

8. MIAMI, FLA., ORDINANCE 5135 (1954) (codified at MIAMI, FLA., CODE § 4-13 (1967)).

9. *Id.*

10. *Ordinance Would Kill Pervert Bars' Permits*, MIAMI HERALD, Sept. 10, 1954, at 4A.

11. *See Florida Bar v. Kimball*, 96 So. 2d 825 (Fla. 1957).

12. *Homosexual Lawyers Keep Fighting Barriers*, N.Y. TIMES, Feb. 3, 1989, at B11.

13. *Kimball*, 96 So. 2d at 825.

14. *Id.*

15. Ellen McGarrahan, *Florida's Secret Shame*, MIAMI HERALD, Dec. 8, 1991, Tropic, at 9.

16. Democrat, Orange County.

17. Democrat, Starke.

turned its attention elsewhere—to people without recourse. To people who could not fight back. To gays.”¹⁸

The Investigative Committee “employed a network of spies . . . [and] informants Traveling undercover, the spies went to parties, parks, public restrooms—anywhere and everywhere homosexual men and women were known to socialize.”¹⁹ Informants “lured people to places where the [Investigative Committee] staff waited, hidden, with cameras At the appropriate moment, the [Investigative Committee] staff person would step out of his hiding place with a flashbulb and camera.”²⁰ Investigative Committee members, targeting college students and educators, rented hotel rooms near campuses in Gainesville and Tampa, and a Investigative Committee informant hosted parties in Tallahassee.²¹ “At the parties, the conversations in the back bedroom were bugged. . . . All the information the guests gave—believing the host was sexually interested himself in one of their friends—was recorded, then turned over to campus police. After the parties, people were summoned . . .” by the campus security chief and, after questioning, expelled from college.²²

An analysis of the Johns Investigative Committee concluded that “[i]t is impossible to know how many people, exactly, the [Investigative Committee] forced from Florida schools.”²³ In the Spring of 1959, the Investigative Committee “forced 16 faculty and staff from the University of Florida Over the next five years, the Johns [Investigative Committee] hunted out homosexual men and women in schools throughout the state.”²⁴ The Investigative Committee turned its attention to professors’ ideas as well as their personal lives.²⁵ It focused specifically on “the use of beatnik literature in the classroom. And that, in turn, caught Florida’s attention.”²⁶ Its report in that regard “stirred concern about the [Investigative Committee]’s tactics in a way its entrapment of homosexuals never did.”²⁷

By April 1963, seventy-one teachers had their teaching certificates revoked, and the Investigative Committee forced the removal of thirty-nine deans and professors from universities.²⁸ Interviews of between 200 and 250

18. McGarrahah, *supra* note 15, at 9.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. McGarrahah, *supra* note 15, at 9.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. McGarrahah, *supra* note 15, at 9.

teachers resulted in the Investigative Committee turning over a list of 123 suspect teachers to the Florida Department of Education.²⁹

In 1963, the Florida Legislature authorized continuation of the Investigative Committee, with a legislative mandate including the “direction to investigate and report on ‘the extent of infiltration into agencies supported by state funds by practicing homosexuals, the effect thereof on [those] agencies and the public, and the policies of various state agencies in dealing therewith.’”³⁰ Although Representative Richard O. Mitchell³¹ chaired the Investigative Committee, its membership still included Senator Johns.

The reconstructed Investigative Committee issued its report in January 1964.³² The first few pages featured a photograph of two naked men embracing and kissing, and another of a young man wearing only a pouch G-string while in rope restraint.³³ The final page before the bibliography featured twenty photographs of one or more naked or virtually naked boys apparently no more than ten years old.³⁴

The report recited that “[s]ince 1959, [Investigative Committee]s have been amassing information on homosexual activities within the state.”³⁵ Under the heading “Who and How Many Are the Homosexuals?” the report made “informed guesses” and then concluded that “the Biblical description of homosexuality as an ‘abomination’ has stood well the test of time.”³⁶ Under the heading “The Special World of Homosexuals,” the report described “‘gay’ society” as “well organized . . . extending from homosexual hangouts in public rest rooms to the offices of several national organizations through which articulate homosexuals seek recognition of their condition as a proper part of our culture and morals and appreciation of their role in our history and heritage.”³⁷

The report described “gay marriages,” noting that while male/male unions rarely lasted over a prolonged period, female/female “marriages” have been known to remain stable over long periods of time, perhaps because women have an “inborn desire” for a more settled existence and

29. *Id.*

30. HOMOSEXUALITY AND CITIZENSHIP IN FLORIDA, REPORT OF THE FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE (Jan. 1964) [hereinafter FLIC REPORT] (on file with author’s estate).

31. Democrat, Leon County.

32. FLIC REPORT, *supra* note 30.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. FLIC REPORT, *supra* note 30.

“because two women living together are less apt to cause comment within a community than would two men.”³⁸

Under the heading “Why Be Concerned?,” the report spoke of “those afflicted with homosexuality.”³⁹ It advised of several courses which those “entangled in the web of homosexuality” may take.⁴⁰ They may “come out” by becoming “full-fledged homosexuals . . . who [go] out for chickens by becoming an active recruiter of extremely young boys.”⁴¹ The report also suggests that “willingness to be a passive partner in homosexual acts can be the key to an ever-available flow of money and gifts.”⁴²

Under the heading “What to Do About Homosexuality?,” the report advised that “[i]n Florida, homosexuality is not treated as an entity by existing laws, but rather individual acts are specified as illegal in those sections of the Statutes dealing with sex offenses.”⁴³ It disclosed that “[m]any homosexuals are picked up and prosecuted on vagrancy or similar nonspecific charges,” with incarceration not a satisfactory answer in many cases “for indeed prison life produces its own specialized brand of deviates, known as ‘institutional homosexuals,’ who would not, in freedom, consider homosexual activity, but in prison turn to it in search of escape from sexual tensions.”⁴⁴

Summarizing recent legislative activity on the issue at that time, the report advised that “[t]he Florida Legislature in 1963 . . . enacted legislation directing the Division of Mental Health and Division of Corrections . . . to plan for the construction of facilities at the prison system’s new receiving and treatment center ‘for the care of child molesters and criminal sexual psychopaths.’”⁴⁵ It went on to report that “[t]he same legislative session revised the Statutes relating to the revocation of teaching certificates to make more certain the withdrawal of teaching privileges from those against whom homosexual charges have been verified.”⁴⁶

One of the Investigative Committee’s recommendations included that “the closet door must be thrown open and the light of public understanding cast upon homosexuality in its relationship to the responsibilities of sound citizenship.”⁴⁷ It recommended that the State Board of Education retain at the earliest practicable time qualified personnel “for the purpose of refuting

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. FLIC REPORT, *supra* note 30 (emphasis added).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. FLIC REPORT, *supra* note 30.

or affirming allegations of homosexuality involving teachers in the public schools.”⁴⁸ It also recommended and initiated the formulation of legislation providing for “[a] Homosexual Practices Control Act for Florida . . .” recognizing that “the problem today is one of control and that established procedures and stern penalties will serve both as encouragement to law enforcement officials and as a deterrent to the homosexual hungry for youth.”⁴⁹

The Investigative Committee even consulted with several Floridians to elicit their opinions on the formulation of effective legislation, including consideration of,

1. Mandatory psychiatric examination prior to sentencing of every person convicted of a homosexual act with a minor and discretionary pre-sentence examination of others;

...

3. Providing for the confidentiality of information relating to the first arrest of a homosexual similar to that now in effect in juvenile cases. . . .

4. Creation of a central records repository for information on homosexuals arrested and convicted in Florida [with] such records [being] open to public employing agencies.

5. Placing sole jurisdiction of a second homosexual offense in a felony court and providing appropriate penalties upon conviction.⁵⁰

The Investigative Committee concluded that a law embodying such elements would

serve to radically reduce the number of homosexuals preying upon the youth of Florida, would stiffen the state’s hand in dealing with those homosexuals apprehended and would provide an element of protection for those homosexuals whose first public venture is relatively mild and whose ability to earn a living or provide for a family would be destroyed by exposure.⁵¹

The 1964 report invited and received public outrage, particularly because of the inflammatory nature of its photographs.⁵² It was “hurriedly

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. FLIC REPORT, *supra* note 30.

withdrawn [from public distribution] by Gov. Farris Bryant.”⁵³ The state attorney in Dade County banned the pamphlet from general distribution.⁵⁴

In 1965, the Investigative Committee ceased operation.⁵⁵ “Its staff walked out after members—led by Johns—ordered an investigation of Gov. Bryant’s handling of a racial crisis . . . [clearly intending] to use the [Investigative Committee] to brand Bryant as an integrationist.”⁵⁶ That same year, the legislature “simply declined to renew funding for the [Investigative Committee]—without much fanfare or public debate.”⁵⁷

Almost thirty years later, a journalist who had been a reporter in Tallahassee during the height of the Johns Investigative Committee’s work summarized its work as “[a] war on privacy, human rights and fair play. . . . They ruled lives, destroyed careers, poisoned institutions. They casually employed police-state tactics, browbeating victims with threats and coercion.”⁵⁸

The Investigative Committee did not stand alone, even from the early days of its work. The City of Miami and even the media trampled on lesbians’ and gays’ privacy rights and undertook steps to publicly identify homosexuals.⁵⁹ The *Miami News* listed the names and addresses of those arrested in raids for operating an establishment for deviates.⁶⁰ Metro-Dade police admitted that they maintained a list of 3000 local persons suspected of being “practicing homosexuals.”⁶¹

In February 1966, the American Civil Liberties Union (“ACLU”) of Florida filed suit challenging the 1954 City of Miami ordinance prohibiting all involvement by homosexual persons in selling or buying alcoholic beverages.⁶² Only four months later, Dade Circuit Judge Carady Crawford found the ordinance had a rational relation to public health, morals, safety and general welfare.⁶³

The next year, the Third District Court of Appeal affirmed Judge Crawford, noting that the “object of the ordinance as a whole is to prevent

53. *Dade Bans State Sex Report*, MIAMI NEWS, Mar. 18, 1964, at 1A (on file with author’s estate).

54. *Id.*

55. *See* McGarahan, *supra* note 15, at 9.

56. *Id.*

57. *Id.*

58. Frank Trippett, *Gay-Bashing by Florida’s Good Ol’ Boys*, MIAMI HERALD, July 25, 1993, at 1C.

59. *See Metro Has List of Homosexuals*, MIAMI NEWS, Apr. 25, 1962, at C1; *Trail Bar Raided as Deviates’ Den*, MIAMI NEWS, Apr. 17, 1960 (on file with author’s estate).

60. *Trail Bar Raided as Deviates’ Den*, *supra* note 59.

61. *Metro Has List of Homosexuals*, *supra* note 59, at C1.

62. *City Bar Law is Challenged*, MIAMI NEWS, Feb. 12, 1966, at 3A.

63. *Homosexual Law OK, Court Says*, MIAMI HERALD, June 11, 1966, at 2B.

the congregation at liquor establishments of persons likely to prey upon the public by attempting to recruit other persons for acts which have been declared illegal by the Legislature.”⁶⁴ The appeal to the United States Supreme Court failed when the Court declined to review the case.⁶⁵

III. THE DECADE OF THE 1970S

The overt repressiveness of the 1960s continued well into the next decade, but some tempering influences began to surface. In 1970, the Florida Board of Regents adopted a policy of prohibiting recognition of gay organizations at any state university “on the grounds that it violates the spirit of the Board of Regents and the *Florida statutes*.”⁶⁶ Between 1970 and 1974, a group calling itself the “People’s Coalition for Gay Rights” petitioned for recognition at the Florida State University (“FSU”).⁶⁷ Upon reviewing applicable case law, the FSU attorney issued a recommendation,⁶⁸ echoed by the FSU President,⁶⁹ that the gay group be recognized, yet we have no record of any implementation of their recommendations.

In December 1970, Hillsborough County Court Judge William C. Brooker denied the petitions of two lesbian couples for marriage licenses.⁷⁰ He noted that Florida law did not specifically prohibit homosexual unions, but he reasoned that “[t]he main object of marriage is the procreation of progeny, and it would therefore be contrary to public policy to grant them the licenses applied for.”⁷¹

In 1971, the Florida Legislature made the “abominable and detestable crime against nature” a second-degree felony, and an “unnatural and lascivious act” a second-degree misdemeanor.⁷² Later that year, the Supreme Court of Florida declared void on its face that aspect of Florida’s sodomy statute which proscribed the commission of the “abominable and detestable

64. *Inman v. City of Miami*, 197 So. 2d 50, 52 (Fla. 3d Dist. Ct. App. 1967) (discussing FLA. STAT. § 800.01-.02 (1967)).

65. Fred Bruning, *Top Court Upholds Miami Law*, MIAMI HERALD, Jan. 16, 1968, at 8B.

66. Pat Land, *Anti-Gay Forces Already at Work in Florida Legislation*, THE WEEKLY NEWS, Feb. 4, 1981, at 3.

67. *Id.*

68. *Id.* (discussing Memorandum from FSU Attorney to FSU President (July 31, 1974)).

69. *Id.* (discussing Letter from FSU President to Chancellor of the State University System (Sept. 17, 1974)).

70. *Judge Blocks 2 Marriages*, ADVOCATE, Jan. 6, 1971, at 6.

71. *Id.*

72. Ch. 71-136, §§ 777-78, 1971 Fla. Laws 552, 858 (codified at FLA. STAT. §§ 800.01, .02 (1971)).

crime against nature," holding it unconstitutional for vagueness and uncertainty in its language and, thus, a denial of due process to a criminal defendant.⁷³ Careful to state with specificity that it did not sanction historically forbidden sexual acts, homosexuality or bestiality, the Supreme Court of Florida found that the statutory language did not meet the recognized constitutional test "that it inform the average person of common intelligence" what conduct the statute prohibited.⁷⁴ The court anticipated and recommended a legislative study of the subject and pointed out that pending further legislation on the subject, society would continue to have protection from "this sort of reprehensible act" under the "unnatural and lascivious" provision.⁷⁵

In August 1971, a Dade Circuit Court held a Miami or, more likely, Miami Beach ordinance prohibiting the wearing of clothing of the opposite sex unconstitutional in a case in which the defendant spent six months in jail awaiting trial.⁷⁶ Circuit Court Judge Thomas Testa found the law unconstitutionally vague and indefinite, but the ruling was of little impact due to lack of an appeal.⁷⁷

In December 1971, Judge Donald B. Barnack declared the 1954 Miami liquor control ordinance unconstitutional in a criminal case against four bartenders accused of serving drinks to homosexuals.⁷⁸ The court said that the ordinance "prohibited the presence and consumption of alcoholic beverages by alleged homosexuals regardless of whether their public behavior was proper and lawful."⁷⁹

During the 1972 legislative session, Florida lawmakers introduced bills to replace Florida's voided "crime against nature" law with a slightly milder prohibition,⁸⁰ exempting persons married to each other.⁸¹ The legislature adjourned without reconciling the differing language between the House and

73. *Franklin v. State*, 257 So. 2d 21, 24 (Fla. 1971).

74. *Id.* at 22.

75. *Id.* at 24.

76. *Cross-Dress Ban Illegal*, *ADVOCATE*, Oct. 27, 1971, at 3 (on file with authors estate).

77. *Id.*

78. Raul Ramirez, *Law Upset Forbidding Serving Homosexuals*, *MIAMI HERALD*, Dec. 10, 1971, at 2B.

79. *Id.*

80. Sponsored by Representative Jeff Gautier (Democrat, Miami) and Senator T. Truett Ott (Democrat, Tampa), respectively.

81. *Bill Would Reinstate Tough Law in Florida*, *ADVOCATE*, Feb. 16, 1972, at 2 (on file with author's estate).

Senate versions of the bills and, thus, the effort to strengthen Florida's laws against sodomy failed for that year.⁸²

In June 1972, shortly before the Democratic and Republican National Conventions, which were held in Miami Beach that year, the ACLU of Florida challenged two Miami Beach anti-gay ordinances.⁸³ The first ordinance made it illegal for a man to impersonate a woman.⁸⁴ The second ordinance outlawed a person wearing "a dress not becoming to his sex."⁸⁵ United States District Judge William Mehrrens found the ordinance vague and overly broad.⁸⁶ In March 1973, Hillsborough County Judge Arden Merckle found unconstitutional the proscription against "unnatural and lascivious" acts, which then represented Florida's only sodomy statute.⁸⁷ Later in 1973, the string of court decisions against Florida's sex laws ended abruptly with a decision from the Supreme Court of Florida holding that policing authorities could prosecute an act of sodomy under a misdemeanor statute proscribing "unnatural and lascivious acts."⁸⁸ The court said that an ordinary citizen could easily determine what character of act those words described.⁸⁹

In 1974, the Florida Legislature repealed the "crimes against nature" provision which had already been declared unconstitutional, but it left intact the "unnatural and lascivious act" provision.⁹⁰ That manner of sodomy remains a second-degree misdemeanor today, punishable by imprisonment not to exceed sixty days or a fine not to exceed \$500.⁹¹ During the same session, the legislature considered revisions to the state's Human Rights Act. As a result of a series of five public hearings held around the state, "sexual

82. *Florida Sodomy Law Dies in Legislative Deadlock*, ADVOCATE, May 10, 1972, at 2 (on file with author's estate).

83. Robert Elder, *Gay Activists' Suit Attacks Female Impersonation Law*, MIAMI HERALD, June 22, 1972, at 2D.

84. MIAMI BEACH, FLA., CODE § 25-50 (1964).

85. *Id.* § 25-52.

86. *Impersonation Laws Killed*, MIAMI HERALD, June 23, 1977, at 2B (on file with author's estate). Miami Beach was supposed to be the venue for other suits as well. In May 1973, two Miami Beach homosexuals filed suit against the local police chief charging him and his officers with "'maliciously' harassing them and depriving them of their constitutional rights." Robert Fabricio, *Homosexual Harassing Charged in Beach*, MIAMI HERALD, May 27, 1973, at 2B.

87. *Judge Axes 4th Florida Sex Statute*, ADVOCATE, Apr. 11, 1973, at 1 (on file with author's estate).

88. *Florida High Court Upholds Sex Law*, ADVOCATE, Aug. 15, 1973, at 7 (on file with author's estate).

89. *Id.*

90. Ch. 74-121, § 1, 1974 Fla. Laws 371, 372.

91. FLA. STAT. § 800.02 (1999). See also FLA. STAT. §§ 775.082(4)(b), .0831(1)(e) (1999).

preference” was added to the draft “bill of rights” as a basis for prohibiting discrimination. However, the Human Rights Commission later deleted the provision.⁹²

In May 1975, Dade County Court Judge Morton Perry declared unconstitutional that part of the state’s 100-year-old sodomy law that proscribed “unnatural and lascivious” behavior which had remained even after earlier rulings by the Supreme Court of Florida and the legislature’s revision of the state’s sodomy laws.⁹³ The state originally charged sixty-four men with “attending a party where homosexual activities were taking place . . .” but dropped the charges against forty-three of them before trial.⁹⁴ The court said that the legislature “should redefine . . . ‘unnatural and lascivious’ behavior.”⁹⁵

In July 1975, perhaps in deference to Judge Barmack’s ruling three and one-half years earlier, or perhaps as an early sign of changing attitudes toward lesbians and gay men, Miami finally repealed its 1954 ordinance.⁹⁶ On January 18, 1977, after the second reading before a packed, decidedly anti-ordinance crowd,⁹⁷ the Dade County Commission adopted an ordinance prohibiting discrimination based on sexual orientation⁹⁸ by a vote of five-to-three.⁹⁹ It extended Dade’s nondiscrimination protections in the areas of employment and housing, and public accommodations.¹⁰⁰ By mid-April, Circuit Court Judge Sam I. Silver had found the new ordinance constitutional.¹⁰¹

The subject of a massive petition drive, the ordinance suffered bitter attacks from the religious right and, most notably, from singer Anita

92. *Rights Bill May Take Another Year to Pass*, ADVOCATE, Apr. 10, 1974, at 7 (on file with author’s estate).

93. Joe Oglesby, *Homosexual Charges Tossed Out*, MIAMI HERALD, May 9, 1975, at 6B.

94. *43 Charges Dropped in Homosexual Case*, MIAMI HERALD, Apr. 9, 1975, at 4B.

95. Oglesby, *supra* note 93, at 6B.

96. MIAMI, FLA., ORDINANCE 5135 (1954) (codified at MIAMI, FLA., CODE § 4-13 (1967), *repealed by* MIAMI, FLA., ORDINANCE 8426 (1975)).

97. The initial introduction came in the waning days of 1976. *One Year After: Dade County—History of an Ordinance*, THE WEEKLY NEWS, June 6, 1978, at 3 [hereinafter *One Year After*].

98. DADE COUNTY, FLA., ORDINANCE ch. 11A, § 1 (1977) (formerly Ordinance No. 77-4).

99. *One Year After*, *supra* note 97, at 3.

100. John Arnold, *Gay Rights Referendum Set June 7*, MIAMI HERALD, Mar. 16, 1977, at 1B. See Adon Taft, *Churchgoers, Ministers, Split in Views of Gay Rights Issue*, MIAMI HERALD, May 22, 1977, at 1D.

101. James Buchanan & John Arnold, *Gay Law is Constitutional*, MIAMI HERALD, Apr. 16, 1977, at 1B.

Bryant,¹⁰² who adopted the slogan “save our children.”¹⁰³ Pursuant to provisions of the Metro Charter, the Metro Commission either had to repeal the new provision or submit it to the voters at referendum.¹⁰⁴ The same five member majority of the Metro Commission who voted for the ordinance in the first place voted to send the issue to referendum rather than repeal it.¹⁰⁵ In early May, a three judge panel of the Third District Court of Appeal refused, without comment, to stay the referendum then scheduled for June 7.¹⁰⁶

There followed one of the most bitter campaigns ever to face an electorate.¹⁰⁷ Public officials and religious leaders lined up on both sides of the issue.¹⁰⁸ Local media took editorial positions.¹⁰⁹ Charges of lies and deception abounded.¹¹⁰ Violence against gays increased noticeably.¹¹¹ Voters repealed the ordinance by a margin of better than two-to-one in a June 7, 1977, special election.¹¹² Bryant called it a victory for “God and decency” and praised the vote for the “normal majority.”¹¹³

Seemingly as an outgrowth of the state and national attention to Dade County that year, the Florida Legislature enacted a change to Florida’s marriage laws, adding, as a requirement for the issuance of a marriage license, that one party be male and the other party female.¹¹⁴ From the same legislature came a prohibition against adoption by homosexuals.¹¹⁵ “No

102. *Id.*

103. Robert Hooker, *Askew Would Vote ‘No’ on Gay Rights; Miami Gays Seethe*, MIAMI HERALD, Apr. 30, 1977, at 1A.

104. John Arnold, *Ruvin Swing Vote May Throw Gay-Rights Issue to Voters*, MIAMI HERALD, Apr. 17, 1977, at 2D.

105. John Arnold, *Dade Will Be Gay-Rights Battlefield*, MIAMI HERALD, Apr. 20, 1977, at 1A.

106. Gayle Pollard, *Court Won’t Delay Gay Rights Vote*, MIAMI HERALD, May 3, 1977, at 4B.

107. *See generally* Hooker, *supra* note 103, at 1A.

108. Hooker, *supra* note 103, at 1A. Taft, *supra* note 100, at 1D.

109. *See* Editorial, *An Unneeded Ordinance*, MIAMI HERALD, June 5, 1977, at 2E; *Is This Law Really Necessary?* (WTVJ television broadcast, 1977); *For Repeal* (WTVJ television broadcast, 1977).

110. *See generally* Editorial, *An Unneeded Ordinance*, MIAMI HERALD, June 5, 1977, at 2E.

111. Andy Rosenblatt, *Campaign to Find Gays’ Attackers Stepped Up*, MIAMI HERALD, July 20, 1977, at 1B.

112. Carl Hiaasen, *Gay Rights Law is Defeated*, MIAMI HERALD, June 8, 1977, at 1A.

113. *Id.* Carl Hiaasen, *‘Decency’ is Winner, Anita Says*, MIAMI HERALD, June 8, 1977, at 1A.

114. Ch. 77-139, § 1, 1977 Fla. Laws 465, 465 (codified at FLA. STAT. § 741.04 (1977)).

115. Ch. 77-140, § 1, 1977 Fla. Laws, 466, 466 (codified at FLA. STAT. § 63.042 (1977)).

person eligible to adopt under this statute may adopt, if that person is a homosexual.”¹¹⁶ State Senator Alan Trask¹¹⁷ sponsored both the marriage and adoption laws.

Almost in tandem, the Florida Board of Bar Examiners questioned the “good moral character” of openly gay applicant Robert F. Eimers, active in the Dade County effort, for admission to The Florida Bar.¹¹⁸ Florida’s first supreme court ruling that homosexuals have any manner of rights against discrimination, notwithstanding their sexual orientation, sprang from this action.¹¹⁹ The Board deadlocked and “informed the Supreme Court of Florida that after months of ‘tortuous debate’ it could not reach a decision.”¹²⁰

The Board submitted to the Supreme Court of Florida the question of

[w]hether an applicant with an admitted homosexual orientation who is fully qualified for admission to The Florida Bar in all other respects can qualify for admission under the provisions . . . [which place] a strict prohibition against any recommendation by the Board . . . for a person not determined to be of good moral character.¹²¹

The court found that the Fourteenth Amendment required an examination “whether there is a rational connection between homosexual orientation and fitness to practice law.”¹²² Although responding affirmatively, the court limited its response “to situations in which the applicant’s sexual orientation or preference is at issue . . . [without addressing] the circumstance where evidence establishes that an individual has actually engaged in homosexual acts.”¹²³

Succeeding months brought with them a sequence of proposed ordinances—both repealing and granting rights—which never achieved passage. Also in 1977, the Board of County Commissioners in Broward County had before it a proposed “cabaret” amendment to the ordinance regulating establishments serving alcoholic beverages.¹²⁴ The amendment would have prohibited the operation of such an establishment “to become a

116. *Id.*

117. *Democrat*, Winter Haven.

118. *In re Florida Bd. of Bar Exam’rs*, 358 So. 2d 7, 8 (Fla. 1978).

119. *See id.* at 8.

120. *Florida Gay Rights Victory*, THE WEEKLY NEWS BULLETIN, Mar. 21, 1978, at 16.

121. *In re Florida Bd. of Bar Exam’rs*, 358 So. 2d 7, 8 (Fla. 1978).

122. *Id.* at 9.

123. *Id.* at 8.

124. *See A Commentary on the Proposed Broward Cabaret Ordinance*, THE WEEKLY NEWS BULLETIN, Nov. 8, 1977, at 7 (on file with author’s estate).

place of habituation for thieves, prostitutes, homosexuals or other disorderly persons.”¹²⁵ The Board of County Commissioners apparently failed to enact the amendment.¹²⁶

In August 1977, just two months after the repeal of the Dade County civil rights ordinance, the media reported an indirect effort to establish sexual orientation nondiscrimination in Palm Beach County.¹²⁷ It came through an ordinance proposed to “assure equal opportunity in employment to all persons regardless of race, sex, color, age, handicaps, religion, national origin, marital status or political affiliation.”¹²⁸ The report continued that “buried deep in the ordinance . . . is a six-line provision that may endanger the entire proposal,” making it unlawful to discriminate in employment “for any reason, except where such reason is directly related to the job being applied for or being performed.”¹²⁹ The proposed ordinance did not mention the word “homosexual” and one otherwise supportive county commissioner questioned whether the proposal extended to sexual orientation.¹³⁰ The proposal failed,¹³¹ but not before the deletion of the original draft’s inclusion of lesbians and gay men, because members of the Human Resources Committee were “unwilling to become embroiled in a Dade-like gay rights” controversy.¹³² Also in 1977, activists in Gainesville, in Alachua County, asked the City Commission to add the words “sexual and affectional preference” to the city’s antidiscrimination ordinance, but commissioners voted down the proposal by a vote of four-to-one.¹³³

In June 1978, one of the leaders of the failed effort to retain the 1977 Dade County ordinance raised the possibility of a rerun of that battle.¹³⁴ The new proposal was included within a larger package to provide nondiscrimination protections on not only “affectional and sexual preferences” but also on other bases such as creed, political affiliation, pregnancy, personal appearance, and lifestyle.¹³⁵ It further proposed free bus

125. *Id.*

126. Letter from Assistant Broward County Attorney Edward G. Labrador, to Alan Terl (Oct. 7, 1996) (on file with author’s estate).

127. See Mary Voboril, *Gay Rights May Be Secured by Proposal in Palm Beach*, MIAMI HERALD, Aug. 4, 1977, at 14A.

128. *Id.*

129. *Id.*

130. *Id.*

131. Letter from Tammy K. Fields, Assistant County Attorney for Palm Beach County, to Alan Terl (Nov. 21, 1996) (on file with author’s estate).

132. *Gay Rights Dropped From Two More Laws*, ADVOCATE, Oct. 19, 1977, at 12 (on file with author’s estate).

133. *Wrap-up*, THE WEEKLY NEWS, May 14, 1990, at 2 (on file with author’s estate).

134. Sam Jacobs, *New Vote Sought on Gay Rights*, MIAMI HERALD, June 7, 1978, at 1B.

135. *Id.*

service for the elderly, the disabled, and those on welfare, and would have established several nude beaches in Dade County, all in a rather awkward effort to generate wider support for the proposals.¹³⁶

Community response clearly differed from 1977. The county commissioner who authored the 1977 ordinance refused to support the new effort.¹³⁷ Fund-raising and other supportive efforts failed.¹³⁸ Approval of the petitions did not come for four months on the ground that the county had yet to see and approve the wording.¹³⁹ However, on October 3, 1978, Dade County election officials advised that they had verified the necessary signatures to put the "Full Equality Ordinance" on the ballot, and the Metro Commission placed the issue on the November 1978 ballot.¹⁴⁰

Circuit Judge John Gale dismissed a suit to remove the revised, proposed ordinance from the ballot, finding it not sufficiently confusing to require its removal from the ballot.¹⁴¹ The Catholic Archdiocese of Miami publicly announced its opposition to the ballot proposal, taking the same anti-lesbian/gay rights position it had for the 1977 election.¹⁴² The measure was defeated by a vote of fifty-eight-to-forty-two percent,¹⁴³ a significantly closer margin than that by which the voters rejected the 1977 proposal.¹⁴⁴

Proponents publicly spoke of yet a third effort,¹⁴⁵ yet the Dade County Coalition for Human Rights ("DCCHR"), which with others had effectively led the 1977 effort, refused by unanimous vote of its general membership to support the proposed referendum effort.¹⁴⁶ By mid-November 1979, the Dade County Attorney had not yet approved the proposed wording of the petitions, and promoters accused the Dade County Public Attorney of trying

136. *Id.*

137. Paul Kaplan, 'Closetitis' Blamed for Failure of Gay Rights Party, MIAMI NEWS, June 8, 1978, at 5A.

138. *Id.*

139. Morton Lucoff, *Drive to Put New Gay Rights Law On Ballot is Delayed*, MIAMI NEWS, June 7, 1978, at 5A.

140. *Full Equality Ordinance Will Be On Ballot, Nov. 7*, THE WEEKLY NEWS, Oct. 10, 1978, at 4 (on file with author's estate). See Morton Lucoff, *Gay Rights Back on Dade Ballot*, MIAMI NEWS, Oct. 4, 1978, at 12A.

141. *Gay Rights on Ballot*, MIAMI HERALD, Oct. 28, 1978, at 1B.

142. Charmayne Marsh, *Catholic Church Again Opposes Gay-Rights Law*, MIAMI NEWS, Oct. 21, 1978, at 1A.

143. *Letter to the Editor*, THE WEEKLY NEWS, Nov. 28, 1978, at 23.

144. Joanne Hooley, *Voters Nay the Gays But Both Sides Call It a Victory*, MIAMI NEWS, Nov. 8, 1978, at 1A (on file with author's estate).

145. *Kunst Pushes Third Gay Rights Vote*, KEY WEST CITIZEN, Aug. 19, 1979, at 2.

146. See Mike Chase, *Coalition Won't Support Kunst*, THE WEEKLY NEWS, Nov. 7, 1979, at 1.

to sabotage the referendum effort.¹⁴⁷ Within a matter of weeks, the County Attorney approved the language of the petition.¹⁴⁸ DCCHR reluctantly reversed its position at a meeting of January 31, 1980, yet clearly its endorsement of the referendum effort came despite opposition by the same individuals who had led the unsuccessful 1977 and 1978 efforts.¹⁴⁹ No one seems to have gathered the signatures necessary to place the issue back on the ballot, and the issue did not resurface in Dade County for the next seventeen years.

In 1979, the decade ended on a bleak note. Relying on evidence that society condemns homosexuality, Circuit Judge R.A. Green, Jr., awarded custody of a lesbian's three daughters to their father, a Washington State resident living with a woman outside of wedlock.¹⁵⁰ Judge Green did this notwithstanding the fact that the mother had asserted that she would leave her lover in order to gain custody.¹⁵¹

IV. THE DECADE OF THE 1980S

The 1980s opened with one of the most significant advances for human rights in the history of Florida's jurisprudence. In 1980, Florida voters approved the "Right of privacy" amendment to the state constitution.¹⁵² The amendment provides in pertinent part that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's life except as otherwise provided herein. . . ."¹⁵³ Both the legal and the lesbian and gay communities saw the privacy amendment as a potential source for future protection from police harassment for victimless crimes, including consensual sex between adults in private.¹⁵⁴ Until a few weeks before the election, the amendment generated little controversy; several people then identified it as a gay issue and campaigned around the state opposing it, apparently becoming at least in part responsible for opposition

147. Leanne Seibert, *CURE Must Reword Ordinance*, THE WEEKLY NEWS, Nov. 14, 1979, at 1.

148. Paul H. Butler, *Kunst Petition Gets O.K.*, THE WEEKLY NEWS, Nov. 28, 1979, at 1.

149. William L. Coulter, *No, No, Robert!*, THE WEEKLY NEWS, Feb. 6, 1980, at 11.

150. *Lesbian's Daughters Awarded to Father*, ADVOCATE, July 12, 1979, at 7 (on file with author's estate).

151. *Id.*

152. FLA. CONST. art. I, § 23.

153. *Id.*

154. *Florida Privacy Act Might Help Gay Rights*, ADVOCATE, Dec. 25, 1980, at 11 (on file with author's estate).

by some of the state's major newspapers.¹⁵⁵ Ultimately, the amendment passed comfortably.

In February 1981, United States District Judge Ben Krentzman issued a temporary restraining order prohibiting Polk Community College from refusing to recognize a gay student group.¹⁵⁶ The court stated that it is "very nearly always in the public interest to permit the free expression of constitutional rights."¹⁵⁷

Despite the Privacy Amendment, the 1981 session of the Florida Legislature saw new efforts at restricting the rights of lesbians and gay men. State Senator Alan Trask,¹⁵⁸ who had sponsored the 1977 bills to prohibit homosexuals from marrying,¹⁵⁹ and adopting,¹⁶⁰ introduced legislation which would have prohibited establishing gay organizations on the campuses of the state's community colleges.¹⁶¹ The bill was withdrawn later in the session.¹⁶²

However, later in the session, Senator Trask also introduced an anti-gay amendment to an appropriations bill.¹⁶³ The amendment would have denied state funding to schools which "recommend or advocate sexual relations between unmarried persons."¹⁶⁴ In remarks accompanying the filing of the amendment, the sponsor specifically referred to Lesbian and Gay Awareness Week, celebrated at FSU.¹⁶⁵ The final version of the Senate's appropriations bill that year did include the "Trask Amendment"¹⁶⁶ and another amendment sponsored by Senator Jack Gordon¹⁶⁷ directing that \$50,000 of the amount appropriated be "used, if necessary, to defend the State of Florida against any lawsuits arising from any proviso which may be declared in violation of the Florida Constitution or the *United States Constitution*."¹⁶⁸ By raising the

155. *Id.*

156. *In the Public Interest*, THE WEEKLY NEWS, Feb. 25, 1981, at 3 (on file with author's estate).

157. *Wall v. District Board of Trustees of Polk Community College*, Case No. 81-125-Civ.-T-K (on file with author's estate).

158. *Democrat*, Winter Haven.

159. *See supra* note 114.

160. *See supra* note 115.

161. S. 108, 13th Leg., Reg. Sess. (Fla. 1981).

162. *What!?!? No More Slow Dancing?*, THE WEEKLY NEWS, Apr. 29, 1981, at 3.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Anti-Gay Amendments Passed at State and National Level*, THE WEEKLY NEWS, June 24, 1981, at 3.

167. *Democrat*, Miami Beach.

168. *Senator Gordon's Amendment*, THE WEEKLY NEWS, June 24, 1981, at 12 (on file with author's estate).

specter of potential lawsuits, the Gordon Amendment¹⁶⁹ was designed to weaken the Trask Amendment and scare off its proponents. Representative Tom Bush¹⁷⁰ introduced a companion to the Trask Amendment into the Florida House, and the legislature adopted the so-called "Bush-Trask Amendment" to the House appropriations bills.¹⁷¹ Governor Bob Graham allowed the amendment to remain in the state budget bill, which he signed into law on June 30, even though he expressed doubts about its constitutionality.¹⁷²

In May 1981, the United States District Court in Orlando refused to grant a temporary injunction against the refusal of both the University of Central Florida ("UCF") and the Florida Board of Regents to allow the use of UCF's campus as the site for the Sixth Annual Florida Conference for Lesbians and Gay Men.¹⁷³ Judge George Young found that there had never been a clear agreement or understanding reached regarding the facility's use and that the University had not been fully informed about how large the gathering would be.¹⁷⁴ The suit died because the conference was held a few days later at an alternate location.¹⁷⁵

By July 1981,¹⁷⁶ Florida Commissioner of Education, Ralph Turlington, filed suit to overturn the Bush-Trask Amendment because he believed it violated gay people's rights to freedom of speech.¹⁷⁷ The Bush-Trask Amendment also came under fire in a suit by the Florida Task Force,¹⁷⁸ on the basis that it illegally attached substantive law to an appropriations bill.¹⁷⁹ Before these cases reached trial, two significant developments occurred.

Reaching the question unanswered in the *Eimers* case, the Supreme Court of Florida attempted to determine "to what extent the Florida Board of Bar Examiners, in furtherance of its effort to determine the fitness of applicants for admission to the Florida Bar, may inquire into an applicant's

169. \$50,000, *In Case*, THE WEEKLY NEWS, May 20, 1981, at 3 (on file with author's estate).

170. Republican, Fort Lauderdale.

171. *The Bush Amendment*, THE WEEKLY NEWS, May 20, 1981, at 12.

172. Brian Jones, *Bush-Trask in Court*, THE WEEKLY NEWS, July 8, 1981, at 3.

173. Gay Community Services of Central Florida, Inc., and the Florida Task Force, the state's lesbian/gay rights lobby, sponsored the conference. *FLA Conference to Change Sites*, THE WEEKLY NEWS, May 20, 1981, at 3.

174. Letter from Jere M. Fishback, Esq., counsel for the Plaintiffs, to Alan Terl (Aug. 29, 1996) (on file with author's estate).

175. *Id.*

176. Jones, *supra* note 172, at 3.

177. *See Department of Educ. v. Lewis*, 416 So. 2d 455 (Fla. 1982).

178. *It's State v. State in Bush-Trask*, THE WEEKLY NEWS, Aug. 12, 1981, at 3.

179. *Task Force Refuses Quick Ruling on Lawsuit*, THE WEEKLY NEWS, Sept. 30, 1981, at 6 (on file with author's estate).

sexual conduct.”¹⁸⁰ On inquiry by the Board, an applicant had “admitted a continuing sexual preference for men but refused to answer questions about his past sexual conduct and indicated that he had no present intention regarding future homosexual acts. He did state that he would obey all the laws of Florida.”¹⁸¹ In a footnote, the court declined to respond to the applicant’s contention that Florida’s proscription of unnatural and lascivious acts cannot constitutionally apply to private consensual conduct between adults.¹⁸²

In a per curiam opinion citing the *Eimers* case and from which two of the seven justices dissented, the court held that “[t]he investigation performed by the Florida Board of Bar Examiners should be limited to inquiries which bear a rational relationship to an applicant’s fitness to practice law.”¹⁸³ It continued: “Private noncommercial sex acts between consenting adults are not relevant to prove fitness to practice law.”¹⁸⁴ Notwithstanding the ruling, allegations surfaced in August 1981 that the Florida Board of Bar Examiners continued to question lawyers about homosexuality.¹⁸⁵

In August 1981, officials at FSU proposed, and then withdrew, an order to require some faculty members and campus groups to sign a pledge to uphold the Bush-Trask Amendment.¹⁸⁶ Instructors of five noncredit courses, taught at the Center for Participant Education (“CPE”), all of which contained material relating to homosexuality, were singled out to sign the oath.¹⁸⁷ Officials withdrew the proposal after protests by the ACLU of Florida and the CPE.¹⁸⁸

In September 1981, Education Commissioner Turlington’s challenge to the Bush-Trask Amendment went to trial.¹⁸⁹ Circuit Judge John Rudd allowed future American Bar Association (“ABA”) President Talbot “Sandy” D’Alemberte to join the plaintiffs’ side, argued by former ABA

180. *In re Florida Bd. of Bar Exam’rs*, 403 So. 2d 1315, 1316 (1981).

181. *Id.*

182. *Id.*

183. *Id.* at 1317.

184. *Id.*

185. Brian Jones, *Examiners Still Questioning Gays*, THE WEEKLY NEWS, Aug. 26, 1981, at 3.

186. *Sex Loyalty Oaths at FSU*, THE WEEKLY NEWS, Sept. 2, 1981, at 3 (on file with author’s estate).

187. *Id.*

188. *Id.*

189. *Judge to Rule ‘Within Days’ On Trask-Bush*, THE WEEKLY NEWS, Sept. 16, 1981, at 3 (on file with author’s estate); *Judge Upholds Trask-Bush Law*, THE WEEKLY NEWS, Sept. 23, 1981, at 3 (on file with author’s estate).

President Chesterfield Smith.¹⁹⁰ Later that month, Judge Rudd ruled that the legislature acted within the state and *United States Constitutions* when it passed the amendment.¹⁹¹ The Florida Task Force's challenge to the law remained pending but before the same judge.¹⁹²

In October, Education Commissioner Turlington appealed Judge Rudd's ruling.¹⁹³ Lawyers for Turlington said that the constitutional issues were so grave that the state's highest court should quickly review the case.¹⁹⁴ The District Court of Appeal agreed and certified the case to the Supreme Court of Florida.¹⁹⁵

Later that month, United States District Court Judge Ben Krentzman, sitting in Tampa, ruled, in a suit brought by a University of South Florida ("USF") student group formed to advocate sex between unmarried persons, that the Bush-Trask Amendment could not block the annual budget of the university.¹⁹⁶ Ironically Judge Krentzman's ruling a year earlier had paved the way for introduction of the Bush-Trask Amendment.¹⁹⁷

The end of 1981 saw Senator Trask once again in action, as he filed legislation which would make fornication a crime once again.¹⁹⁸ The bill aimed to overcome the Supreme Court of Florida's striking of part of Florida's sodomy statute as unconstitutional in 1979, by defining "fornication" as sexual intercourse other than between a man and his wife.¹⁹⁹ By early 1982, members of both houses of the legislature had introduced

190. See *Judge Upholds Trask-Bush Law*, THE WEEKLY NEWS, Sept. 23, 1981, at 3 (on file with author's estate).

191. *Id.*

192. *Id.* In September 1981, two men were arrested at the Fort Lauderdale Airport after a Sheriff's deputy objected to two men kissing goodbye as one was about to depart. *Two Men Face Criminal Charges After Airport 'Goodbye Kiss'*, THE WEEKLY NEWS, Sept. 30, 1981, at 3 (on file with author's estate). A scuffle ensued, and the two men were later found guilty of battery on a police officer, resisting arrest without violence, and disorderly conduct by Circuit Judge John G. Ferris. *Id.* During the two-day, nonjury trial, the arresting officer testified that he would not have asked a man and a woman to stop kissing and hugging because that's "proper." *Airport Kissing Trial Ends with Probation for Defendants*, THE WEEKLY NEWS, Apr. 7, 1982, at 3 (on file with author's estate).

193. *Bush-Trask Headed for State Supreme Court*, THE WEEKLY NEWS, Oct. 7, 1981, at 3 (on file with author's estate).

194. *Id.*

195. *Id.*

196. *Sex in Court! Judge Blocks Bush-Trask Law*, THE WEEKLY NEWS, Oct. 14, 1981, at 3 (on file with author's estate).

197. See *Bush-Trask Headed for State Supreme Court*, *supra* note 193, at 3.

198. S. 91, 14th Leg., Reg. Sess. (Fla. 1982); *News Analysis*, THE WEEKLY NEWS, Dec. 2, 1981, at 3 (on file with author's estate).

199. *Id.*

bills²⁰⁰ to repeal Florida's existing and constitutionally flawed fornication law.²⁰¹ Senator Trask had also introduced a watered down version of the earlier Bush-Trask Amendment.²⁰² The revised bill would have financially penalized schools where student organizations on campus advocated breaking the law as defined by state statutes.²⁰³

On February 4, 1982, the Supreme Court of Florida unanimously held the Bush-Trask Amendment unconstitutional as an abridgment of the right to free speech.²⁰⁴ The opinion, written by Chief Justice Joseph A. Boyd, was direct and straightforward. "The right of persons to express themselves freely is not limited to statements of views that are acceptable to the majority of people. . . . A state cannot abridge freedom of speech on campus any more than it may do so off campus."²⁰⁵

The supreme court's ruling came in Commissioner of Education Turlington's challenge to the amendment.²⁰⁶ The Bush-Trask Amendment died without ever being enforced, essentially because of the federal ruling in Tampa.²⁰⁷

On the same day as the supreme court issued its ruling, however, the University of Florida Lesbian and Gay Society ("UFLAGS") learned that it would lose its office space in the student union, the only welcoming place on campus for gay students at the University of Florida ("UF").²⁰⁸ The Bush-Trask Amendment apparently played no part in the decision to oust UFLAGS—rather, the administration claimed UFLAGS did not serve the interests of a sufficiently large group of students.²⁰⁹

Back in Tallahassee, Senator Trask changed the direction of his 1982 watered down version of the Bush-Trask Amendment.²¹⁰ Rather than withholding funds from state learning institutions which permit groups that

200. H.R. 336, 14th Leg., Reg. Sess. (Fla. 1982) (sponsored by Representative Andy Johnson (Democrat, Jacksonville)); S. 762, 14th Leg., Reg. Sess. (Fla. 1982) (sponsored by Senator Jack Gordon (Democrat, Miami Beach)).

201. *Florida Task Force News*, THE WEEKLY NEWS, Feb. 3, 1982, at 16 (on file with author's estate).

202. S. 442, 14th Leg., Reg. Sess. (Fla. 1982).

203. *Id.*

204. Department of Educ. v. Lewis, 416 So. 2d 455, 461–62 (Fla. 1982). See *Trask-Bush Proviso Struck Down*, THE WEEKLY NEWS, Feb. 10, 1982, at 3 (on file with author's estate).

205. *Lewis*, 416 So. 2d at 461–62.

206. *Id.* at 458.

207. S. 442, 14th Leg., Reg. Sess. (Fla. 1982).

208. *UFLAGS Refused Office Space on Gainesville Campus*, THE WEEKLY NEWS, Feb. 17, 1982, at 3 (on file with author's estate).

209. *Id.*

210. *Trask Introduces 'New & Improved' S.B. 442*, THE WEEKLY NEWS, Mar. 3, 1982, at 3 (on file with author's estate).

advocate unlawful or disruptive activities, the further revised version²¹¹ proposed to expel and bar from admission, to any state college or university, for two years, any student who engaged in “disruptive activities.”²¹² Activities which could result in the banning of a student included violations of criminal law, such as existing laws against homosexual activity.²¹³ On March 4, 1982, the Senate Education Committee rejected Trask’s bill.²¹⁴

In April 1982, UFLAGS filed suit in federal court, alleging discrimination, violation of free speech and association rights, and violation of equal protection guarantees.²¹⁵ One day before the first scheduled hearing in the case, it settled and UFLAGS regained its office space.²¹⁶

The 1982 legislature ended with the demise of attempts in both houses to repeal Florida’s fornication law.²¹⁷ The House bill failed in committee; Senator Gordon’s bill was never heard by committee after the House failure.²¹⁸ A four-year gap in official attention to lesbian/gay issues followed the 1982 legislative session. This may well have resulted from the resignation in disgrace of State Senator Trask from the legislature,²¹⁹ the defeat of Representative Tom Bush in his 1982 campaign for a seat in the Florida Senate,²²⁰ and a slow-starting, but ever-increasing awareness of, and preoccupation of the lesbian/gay community with the emerging threat posed by the illness ultimately labeled Acquired Immune Deficiency Syndrome (“AIDS”).

One exception to this gap occurred in December 1982, when the Supreme Court of Florida allowed the readmission of Harris Kimball to The Florida Bar, but only upon his successfully passing The Florida Bar Examination.²²¹ Kimball had objected to a referee’s recommendation to that effect, and without discussing the cause for Kimball’s disbarment, the court

211. *See Bush-Trask Headed for State Supreme Court, supra* note 193, at 3.

212. *See Trask Introduces ‘New & Improved’ S.B. 442, supra* note 210, at 3.

213. *Id.*

214. *SB-442 Killed in Senate Committee, THE WEEKLY NEWS*, Mar. 10, 1982, at 14 (on file with author’s estate).

215. *UFLAGS Sues University of Florida Over Office Ouster, THE WEEKLY NEWS*, Apr. 14, 1982, at 3 (on file with author’s estate).

216. *UFLAGS Retakes Office Space at U of F, THE WEEKLY NEWS*, May 19, 1982, at 3 (on file with author’s estate).

217. S. 91, 14th Leg., Reg. Sess. (Fla. 1982). *See also Florida’s Sex Laws, THE WEEKLY NEWS*, June 25, 1982, at 10 (on file with author’s estate).

218. *Florida’s Sex Laws, supra* note 217, at 10.

219. *Facing Senate Investigating Committee, Trask Decided Not To Seek Reelection, THE WEEKLY NEWS*, June 16, 1982, at 3 (on file with author’s estate); *Gilbert Hoping To Try Trask, THE WEEKLY NEWS*, Sept. 8, 1982, at 6 (on file with author’s estate).

220. *Gay Voters Flex Muscles, THE WEEKLY NEWS*, Nov. 10, 1982, at 3 (on file with author’s estate).

221. *In re* Petition of Kimball, 425 So. 2d 531 (Fla. 1982).

agreed with the referee, relying on the terms of the disbarment and the rules for readmission.²²²

In June 1985, a federal jury awarded \$100,000 to two men who had sued the City of DeLand claiming the city violated their civil rights when it refused to issue them an occupational license for a hair styling salon at their residential address.²²³ The jury found that the city had “willfully and intentionally deprived plaintiffs of due process of law in denial of an occupational license” and “willfully and intentionally deprived [one of the plaintiffs of his] right of privacy and/or freedom of association.”²²⁴

Unexpectedly, the next chapter in this history occurred because of the lead of the National Association of Insurance Commissioners (“NAIC”). Recognizing an increasing pattern of insurer discrimination against persons with AIDS and those then perceived as being at highest risk for AIDS—gay men,²²⁵ the NAIC on December 11, 1986, while meeting in Orlando,²²⁶ adopted guidelines recommended by its Advisory Committee on AIDS.²²⁷ Those guidelines included a prohibition of discrimination on the basis of sexual orientation in deciding who must undergo HIV antibody testing as a part of the insurance application process.²²⁸ NAIC’s adoption of the guidelines, significant in terms of policy direction, carried no real authority in any particular state unless and until that state adopted the guidelines as policy.²²⁹

In July 1987, the Florida Insurance Commission formally proposed the adoption of the NAIC nondiscrimination guidelines, including the sexual

222. *Id.* at 534.

223. *Two Hair Stylists Get \$100,000 in Suit Against DeLand*, THE WEEKLY NEWS, June 12, 1985, at 22 (on file with author’s estate).

224. *Id.*

225. See Allan H. Terl, *Emerging Issues of AIDS and Insurance*, 12 NOVA L. REV. 1291 (1988).

226. *Insurance Commissioners Ban Discrimination of Gay Clients*, THE WEEKLY NEWS, Dec. 17, 1986, at 24 (on file with author’s estate).

227. National Association of Insurance Commissioners’ Proposed Bulletin on “Medical/Lifestyle Questions and Underwriting Guidelines” (extended to apply specifically to HMOs in June 1988) (on file with author’s estate).

228. *Id.*

229. In February 1987, the Florida Right to Privacy Coalition was formed by representatives of the Florida ACLU, Florida N.O.W., the National Lawyers Guild, the Florida Young Democrats, and a variety of civil rights/civil liberties and political groups for the specific purpose of repealing the state sodomy statute. *Coalition Seeks To Build Privacy Momentum*, THE WEEKLY NEWS, Feb. 25, 1987, at 8 (on file with author’s estate). Neither a repeal of the legislation nor a court challenge ever materialized.

orientation provision.²³⁰ Before the proposed rules could take effect, however, the Florida Legislature made the rules unnecessary.

Sensing a need to deal with AIDS in a comprehensive manner, rather than allowing the courts to shape Florida's AIDS law on a case-by-case basis, the leadership of the Florida House of Representatives in 1987–1988 appointed a Legislative Task Force on AIDS.²³¹ Chaired by Representative Lois J. Frankel,²³² the Task Force tackled virtually every issue then intertwined with AIDS in an enlightened manner.²³³ Its work product, the Omnibus AIDS Act of 1988,²³⁴ included the sexual orientation nondiscrimination recommendation of the NAIC.²³⁵ Accordingly, the Florida Legislature took the first step toward rights for lesbians and gay men in over a decade. A similar provision of the Omnibus AIDS Act extended the nondiscrimination requirement to health maintenance organizations.²³⁶

The 1988 session of the legislature also considered the first attempt at hate crimes legislation for Florida.²³⁷ Its coverage included sexual orientation, and the Senate bill passed in that chamber's Criminal Justice Committee.²³⁸ However, even the lobbyist for the Florida Task Force saw only a slim chance for full passage that year,²³⁹ and the bill did not become law.²⁴⁰

In 1989, after a gap of a dozen years, a local ordinance protecting against sexual orientation discrimination was proposed.²⁴¹ For the first time since the 1977 repeal of the Dade County ordinance and the failed 1977

230. INFORMATIONAL BULLETIN NO. 87-206 (July 9, 1987) (on file with author's estate).

231. *Id.*

232. Democrat, West Palm Beach.

233. For a detailed discussion of the enactment of the 1988 Omnibus AIDS Act, its legislative history and the subsequent amendments to it, see ROBERT CRAIG WATERS, AIDS AND FLORIDA LAW (D&S/Butterworth Legal Publishers 1989–1995).

234. Ch. 88-380, §§ 47, 53, 1988 Fla. Laws 1996, 2031–34, 2038 (codified at FLA. STAT. § 627.429 (1989)); Ch. 88-380, §§ 51, 54, 1988 Fla. Laws 1996, 2035–38 (codified at FLA. STAT. § 641.3007 (1989)).

235. *Id.*

236. *Id.* (codified at FLA. STAT. § 641.3007(4) (1989)).

237. S. 698, 20th Leg., Reg. Sess. (Fla. 1988) (introduced by Senator Carrie Meek, Democrat, Miami); H.R. 575, 20th Leg., Reg. Sess. (Fla. 1988) (introduced by Representative Elaine Gordon, Democrat, North Miami).

238. *Budget Clears State House, Senate; Florida Hate Crimes Bill Discovered*, THE WEEKLY NEWS, May 25, 1988, at 3, 38 (on file with author's estate).

239. *Id.*

240. *State Releases Final AIDS Budget; Hate Crime Bill Dies*, THE WEEKLY NEWS, June 22, 1988, at 3 (on file with author's estate).

241. *Tampa Human Rights Drive*, THE WEEKLY NEWS, Jan. 18, 1989, at 20 (on file with author's estate).

efforts in Palm Beach County, Gainesville, and Dade, the City of Tampa began a legislative trend.²⁴² Local activists and political leaders sensed that the time might be right to again raise this issue, which had previously caused such agony for so much of Florida.²⁴³ Shortly thereafter, the same forces proposed an ordinance for Hillsborough County as well. Quickly following suit, activists and political leaders in Palm Beach County felt that the climate was right there too, and introduced a sexual orientation nondiscrimination ordinance that same year.²⁴⁴ In January 1989, the Individual Rights and Responsibilities Committee (“IRRC”) of The Florida Bar, for the first time, endorsed a ban on sexual orientation discrimination.²⁴⁵

Also in early 1989, the ACLU of Florida formally set as a priority in its litigation program, a challenge to the constitutionality of the state’s statutory prohibition against adoptions by homosexuals.²⁴⁶ Over the next two years, the ACLU screened potential plaintiffs in an effort to design the best possible test case.²⁴⁷

In February 1989, another group outside Florida took action which would form one of the bases for still further development of these proposals.²⁴⁸ The ABA, long considered a bastion of conservatism and the status quo, surfaced as an organization willing to take a noteworthy lead on a variety of progressive issues.²⁴⁹ On its third consideration of this issue in seven years,²⁵⁰ the ABA House of Delegates passed a sexual orientation nondiscrimination policy by a better than two-to-one vote.²⁵¹ The policy, in large part, reflected the findings of an analytical report which documented the need for such policies and which further refuted all of the reasons

242. *Id.*

243. *Id.*

244. *County Eased Into Rights Leadership*, BOCA RATON NEWS, Feb. 11, 1990, at 1A (on file with author’s estate).

245. *Florida Bar Association Considers Anti-Discrimination Rule for State Legal System*, THE WEEKLY NEWS, Jan. 25, 1989, at 16 (on file with author’s estate).

246. *See ACLU Seeking Gays Looking to Adopt*, a news release of the ACLU of Florida, Feb. 25, 1989 (on file with author’s estate); *ACLU Seeks Gay People To Adopt*, THE WEEKLY NEWS, Mar. 1, 1989, at 34 (on file with author’s estate).

247. *ACLU Seeking Gays Looking to Adopt*, *supra* note 246, at 34.

248. *American Bar Association Calls for Legislation Prohibiting Discrimination Against Lesbian/Gay People*, THE WEEKLY NEWS, Feb. 15, 1989, at 14 (on file with author’s estate).

249. *Id.*

250. *Id.*

251. *Id.* The resolution read: “BE IT RESOLVED, that the American Bar Association urges the Federal Government, the states and local governments to enact legislation, subject of such exceptions as may be appropriate, prohibiting discrimination on the basis of sexual orientation in employment, housing and public accommodations. ‘Sexual orientation’ means heterosexuality, bisexuality and homosexuality.” *Id.*

regularly cited by the opponents to sexual orientation nondiscrimination proposals. Among the sponsors was the Dade County Bar Association.

With a more organized approach than had occurred in the prior year, a coalition of individuals from groups including the Anti-Defamation League of the B'nai B'rith, the ACLU, and lesbian/gay rights activists, proposed that Florida join the federal government and multiple other states, which had already enacted in various forms, reporting of special protections against and enhanced penalties for hate crimes evidencing prejudice on specified prohibited bases, including the sexual orientation of the victim.²⁵²

The 1989 legislative session indeed enacted the Florida Hate Crimes Act, but it dealt only with crimes evidencing prejudice based on race, color, ancestry, ethnicity, religion, or national origin of the victim.²⁵³ Crimes evidencing prejudice on the basis of the sexual orientation of the victim had fallen to the cutting room floor.²⁵⁴

Largely on the impetus of the newly-adopted ABA policy, local activists went to the Broward County Human Rights Board ("BCHRB") and asked it to propose a local ordinance for Broward County.²⁵⁵ The BCHRB held one public hearing and endorsed the proposal by a vote of twelve-to-four, thus providing the first vote by a public body supporting a local sexual orientation nondiscrimination ordinance since the Dade County enactment more than a decade earlier.²⁵⁶ Only after making the proposal did the local activists recognize that the BCHRB lacked the power to act as requested. The Broward County Human Rights Act,²⁵⁷ to which sexual orientation nondiscrimination protections would be added under the proposal, was not a local ordinance, but a state law enacted by the Florida Legislature for the benefit of only Broward County, subject to ratification by the Broward County electorate.²⁵⁸ Amendment of the act would therefore require a change in state law and approval by the voters at a countywide referendum.

252. In April 1989, after months of quiet groundwork by area lesbian and gay activists, the Hillsborough County Commission voted four-to-two to refer a proposed sexual orientation nondiscrimination amendment to the County's Human Rights Ordinance to the County's legal department for an opinion. *Hillsborough Co. Commission To Consider Pro-Gay Ordinance*, THE WEEKLY NEWS, Apr. 26, 1989, at 3 (on file with author's estate).

253. Ch. 89-133, §1, 1989 Fla. Laws 381, 381 (codified at FLA. STAT. § 775.085 (1989), amended by ch. 99-172, § 1, 1999 Fla. Laws 964, 964).

254. Chip Halvorsen, *Progressive 'AIDS Glitch Bill' Passes*, THE WEEKLY NEWS, June 7, 1989, at 3.

255. Steve Bousquet, *Gays Seek Stronger Bias Law*, MIAMI HERALD, July 19, 1989, at 1BR.

256. Steve Bousquet, *Board Urges Expanded Gay Rights*, MIAMI HERALD, Sept. 12, 1989, at 1BR.

257. Ch. 93-386, § 1, 1993 Fla. Laws 204, 205.

258. Bousquet, *supra* note 256, at 1BR. The act was approved by a majority of the voters in the general election of November 6, 1984.

In late-October 1989, by a vote of six-to-one, the Broward County Commission sent the proposed addition of sexual orientation nondiscrimination coverage forward to the Broward County Legislative Delegation with a resolution calling for the necessary change to state law and the requisite referendum.²⁵⁹ By January 1990, the Broward Legislative Delegation had voted twelve-to-four to sponsor the Broward proposal as a local bill,²⁶⁰ and the measure encountered only token opposition in the full legislature.²⁶¹ The referendum was set for the primary election in September 1990.

In August 1989, Hillsborough County activists successfully took the first step on their road towards a sexual orientation nondiscrimination ordinance.²⁶² By a vote of four-to-three, the Board of County Commissioners agreed to hold a public hearing on the proposal.²⁶³

In September 1989, activists in Dade County began an unsuccessful effort to add coverage for sexual orientation discrimination to the Dade County antidiscrimination ordinance.²⁶⁴ They needed to collect sufficient petition signatures to get the Board of County Commissioners to place the issue on the ballot.²⁶⁵ By late-October of that year, however, volunteers had collected only 500 of the 30,000 signatures necessary to force the Metro Commission either to enact a sexual orientation nondiscrimination ordinance or to put the issue to a public vote.²⁶⁶

Also in September 1989, the Legislation Committee of The Florida Bar had before it the request of The Florida Bar's Committee on Individual Rights and Responsibilities to support sexual orientation nondiscrimination legislation. The process required two steps. First, it requires a finding that the legislation is related to the purposes of The Florida Bar and, second, a

259. Steve Bousquet, *County Backs Vote On Gay Bias*, MIAMI HERALD, Oct. 25, 1989 at 1BR.

260. *Id.*

261. The Florida House of Representatives initially approved the bill by a vote of 109-to-zero. Steve Bousquet, *State House OKs County Referendum on Gay Rights*, MIAMI HERALD, May 18, 1990, at 7BR. The county's three Republicans cast negative votes with the House clerk after the roll call vote. Steve Bousquet, *3 Broward Republicans Voted Against Gay-Rights Referendum*, MIAMI HERALD, May 19, 1990, at 2BR. The Florida Senate approved the bill by a vote of 38-to-zero. *Senate OKs Gay-Rights Bill*, SUN-SENTINEL (Fort Lauderdale), May 29, 1990, at 1A (on file with author's estate).

262. See *Hillsborough Activists Win "Small Victory;" County Commission Schedules Rights Hearing*, THE WEEKLY NEWS, Aug. 23, 1989, at 3.

263. *Id.*

264. *Dade Gay Cop/Activist Launches New Rights Drive*, THE WEEKLY NEWS, Sept. 13, 1989, at 3 (on file with author's estate).

265. *Id.*

266. Debbie Sontag, *A Cop's Crusade*, MIAMI HERALD, Dec. 17, 1989, at 1G.

vote on the substance of the proposal.²⁶⁷ A motion to find the proposal lay within The Florida Bar's proper subject matter jurisdiction but died for lack of a second.

In October of 1989, after a six-hour public hearing before a crowd of 500, the Hillsborough County Commission rejected its proposed sexual orientation nondiscrimination ordinance by a vote of five-to-two.²⁶⁸ The city of Tampa followed suit within two weeks, with the City Commission rejecting its proposed sexual orientation nondiscrimination ordinance by a vote of four-to-two with one abstention.²⁶⁹

In November 1989, news surfaced that the Polk County Sheriff required gay male and lesbian inmates at the county jail to wear what the sheriff called "pink tags."²⁷⁰ Sheriff's officials segregated homosexual men and women from the rest of the inmates and made them wear pink bracelets ostensibly for their own protection, arguing that they were subject to beatings from heterosexual inmates.²⁷¹ The practice had apparently gone on for ten years.²⁷² By January 1990, as a result of the public outcry, the Sheriff discontinued the practice and allowed inmates who previously fell into the pink-tagged homosexual category to request placement in protective custody if they felt endangered after the change.²⁷³

V. THE DECADE OF THE 1990S

A. *Litigation*

In September 1990, the ACLU of Florida filed its first challenge to the discriminatory adoption statute.²⁷⁴ The plaintiff, Ed Seebol, was a single, gay man with an unquestionably substantial and respectable reputation in the community and served as executive director of AIDS Help, Inc., in Key

267. See R. REGULATING FLA. BAR Rule 2-9.3 (1999).

268. *Gay Rights Plan Fails on 5-2: Hillsborough Rejects Anti-Bias Proposal*, ST. PETERSBURG TIMES, Oct. 13, 1989, at 1B.

269. Karen Dukess, *Tampa Turns Down Gay-Rights Measure*, ST. PETERSBURG TIMES, Oct. 27, 1989, at 1B.

270. *Polk County Sheriff Requires Gay, Lesbian Prisoners to Wear Degrading 'Pink Tags'*, THE WEEKLY NEWS, Nov. 22, 1989, at 3.

271. *Id.*

272. *Id.*

273. Memorandum from Captain Dale C. Tray, Assistant Director, Detention Bureau, Polk County Sheriff's Office to Concerned Personnel (Jan. 12, 1990) (on file with author's estate).

274. *ACLU/Florida Sues HRS Over Denial of Adoption Bid by 'Ideal' Gay Applicant Due to Sexual Orientation*, THE WEEKLY NEWS, Oct. 3, 1990, at 10 [hereinafter *ACLU/Florida*].

West.²⁷⁵ Seebol had even indicated his willingness to adopt a difficult to place “special needs” child, but the local office of the Florida Department of Health and Rehabilitative Services (“HRS”),²⁷⁶ which oversees the adoption process, turned him down, specifically because he noted his sexual orientation on his application.²⁷⁷

On March 15, 1991, Judge M. Ignatius Lester of the Circuit Court for the 16th Judicial Circuit for Monroe County ruled in the *Seebol* case, holding Florida’s statutory prohibition against adoption by homosexuals unconstitutional as violative of the state’s guarantees of equal protection of the laws, of due process of law, and of the state constitutional right to privacy.²⁷⁸ HRS had not defended the suit. The Attorney General of Florida had not defended the constitutionality of the statutory provision. Henceforth, there was no appeal. Thus, the ruling stood as precedent, but only in Monroe County.²⁷⁹

On the heels of the *Seebol* decision, a gay male couple from Sarasota stepped forward to serve as the plaintiffs in a second challenge to Florida’s statutory adoption prohibition.²⁸⁰ Both had filed adoption petitions which HRS denied because they disclosed their homosexuality.²⁸¹ On their behalf, the ACLU of Florida filed *Cox v. Health & Rehabilitative Services*.²⁸² This time, HRS actively defended the case. It argued, among other things, that allowing adoptions by homosexuals would deprive a child of an “opposite sex role model,” and that having homosexual parents “limits the child’s choice of sexual preference” and “does not appear to be in the child’s best interest.”²⁸³ In March 1993, Judge Scott M. Browning followed the reasoning of the *Seebol* decision and found that the statutory prohibition against adoption by homosexuals unconstitutionally violated the rights of

275. *Id.*

276. Currently, the Department of Children and Family Services.

277. Letter from Carmen Dominguez Frick, District Legal Counsel, HRS District XI, to Edward Seebol (May 10, 1990) (on file with author’s estate). See also *ACLU/Florida*, *supra* note 274, at 10.

278. *Seebol v. Farie*, 16 Fla. L. Weekly C52 (16th Cir. Ct. Mar. 15, 1991).

279. As early as 1986, the ACLU of Florida had sought plaintiffs willing to challenge Florida’s legislative prohibition against adoption by homosexuals. *Ready to Adopt? Time to Call ACLU*, *THE WEEKLY NEWS*, Nov. 26, 1986, at 10 (on file with author’s estate). The failure to identify an appropriate plaintiff put the effort on hold for several years. *Id.*

280. *Sarasota Couple to Sue HRS Over Their Rejection as Adoptive Parents Because of Their Sexual Orientation*, *THE WEEKLY NEWS*, May 22, 1991, at 13.

281. *Id.*

282. 627 So. 2d 902 (Fla. 2d Dist. Ct. App. 1993), *reversed and remanded* 656 So. 2d 902 (Fla. 1995).

283. See *Cox*, 627 So. 2d at 1220. See also *HRS Lays Out Reasons for Banning Gay Adoptions*, *ST. PETERSBURG TIMES*, Dec. 13, 1992, at 4B.

equal protection, due process, and the constitutional right to privacy.²⁸⁴ The court pointed out that the law encourages homosexuals to lie.²⁸⁵ Within a month, HRS announced that it would appeal the circuit court's decision.²⁸⁶

On December 1, 1993, the Second District Court of Appeal ruled in the appeal of the *Cox* case.²⁸⁷ All eleven judges of the Second District, sitting *en banc*, overturned the circuit court ruling which had found the statutory prohibition against adoption by homosexuals unconstitutional.²⁸⁸ The court criticized the trial court's failure to take testimony and its reliance instead on assorted academic treatises, but it nevertheless said that whether homosexuals should be allowed to adopt is an issue for the legislature rather than for the courts.²⁸⁹ The Second District Court of Appeal ruling also suggested a possible setback in the then-pending third ACLU case filed to challenge the adoption prohibition of June Amer.²⁹⁰ The ACLU of Florida immediately appealed to the Supreme Court of Florida.²⁹¹ Among those filing *amicus* briefs was the Florida Catholic Conference.²⁹²

In late-April 1995, the Supreme Court of Florida sent *Cox*²⁹³ back to the Sarasota County Circuit Court to hear more evidence to decide whether the statutory prohibition against adoption by homosexuals violates state constitutional rights.²⁹⁴ In a per curiam opinion, the Supreme Court of Florida approved the decision of the district court of appeal except those portions which did not remand the equal protection issue to the trial court for further proceedings.²⁹⁵ The decision thus effectively upheld the

284. See *Cox*, 627 So. 2d at 1210. See also *2nd Judge Rejects Gay Adoption Ban*, ORLANDO SENTINEL, Mar. 6, 1993, at B3.

285. See *Cox*, 627 So. 2d at 1210.

286. *Health Officials Seek Gay Adoption Ruling*, MIAMI HERALD, Apr. 2, 1993, at 6B (on file with author's estate).

287. Florida Dep't of Health & Rehabilitative Servs. v. *Cox*, 627 So. 2d 1210 (Fla. 2d Dist. Ct. App. 1993).

288. *Id.* at 1220.

289. *Id.* at 1213. See also *Ban on Gay Adoptions is Upheld*, MIAMI HERALD, Dec. 3, 1993, at 5B (on file with author's estate).

290. Trevor Jensen, *Court Ruling May Work Against Lesbian's Bid to Adopt*, SUN-SENTINEL (Fort Lauderdale), Dec. 3, 1993, at 4B.

291. *Cox v. Florida Dep't of Health & Rehabilitative Servs.*, 656 So. 2d 902 (Fla. 1995).

292. *Can State Continue to Prevent Gay Adults from Adopting Children?*, DAILY BUSINESS REVIEW, Feb. 24, 1995, at A28 (on file with author's estate).

293. The appeal to the Supreme Court of Florida was taken only by *Cox*, Jackman having abandoned his interest in the case. Initial Brief of Petitioners, *Cox v. Florida Dep't of Health & Rehabilitative Servs.*, 656 So. 2d 902 (Fla. 1995) (No. 82967).

294. *Cox*, 656 So. 2d at 903. See also *Gay Adoption to be Reheard*, MIAMI HERALD, Apr. 28, 1995, at 5B (on file with author's estate).

295. *Cox*, 656 So. 2d at 903.

constitutionality of the statute against the challenges on the basis of the privacy and due process guarantees of the Florida Constitution.²⁹⁶ Justice Gerald Kogan, in an opinion concurring in part and dissenting in part and in which Justice Harry Lee Anstead concurred, disagreed with the majority's failure to further analyze the due process aspects of the case and would have remanded on that issue as well.²⁹⁷

In December 1995, the *Cox* case was voluntarily dismissed before the mandated retrial could begin.²⁹⁸ News reports termed the reasons "purely personal," citing the partners separation after a seven-year relationship and implying that the strain of the legal battle and the media attention to them may have contributed to that development.²⁹⁹

In June 1992, the ACLU of Florida had filed the third in its series of challenges to Florida's statutory prohibition against adoption by homosexuals.³⁰⁰ This case was brought in Broward County on behalf of June Amer, who, like Ed Seebol before her, had expressed an interest in adopting a "special needs" child.³⁰¹ The ACLU had placed its suit on behalf of June Amer on the back burner while the courts dealt with *Cox*.³⁰² By late-1995, with that case having concluded, the ACLU moved the *Amer* matter into the lead in this effort.³⁰³

During the course of the *Amer* litigation, two other cases came into prominence, although having little effect on *Amer* as they dealt with foster parents. In August 1992, the Florida ACLU filed suit on behalf of a lesbian couple, Bonnie Lynn Matthews and Elaine Kohler, from whom HRS took a six-year-old boy who had been in their foster care.³⁰⁴ Notwithstanding the fact that the plain language of the discriminatory adoption provision, enacted in 1977, refers only to adoption, state social workers "told the couple to forget about being foster parents."³⁰⁵ During the same month, lesbian Sharon McCracken in Broward County received a license to be a foster

296. *Id.* See also LEGAL DIRECTOR'S ACTIVITY REPORT, ACLU OF FLORIDA (May 1995) (on file with author's estate).

297. *Cox*, 656 So. 2d at 903-04. See also *Supreme Court Looks at Law Preventing Gay Adoptions*, FLORIDA BAR NEWS, June 1, 1995, at 16 (on file with author's estate).

298. *Two Men Give Up Fight to Adopt Handicapped Kids*, MIAMI HERALD, Dec. 15, 1995, at 5B.

299. *Id.*

300. See *Amer v. Johnson*, No. 92-14370(11) (Fla. 17th Cir. Ct. Sept. 5, 1997).

301. *Id.* See also *Lesbian Sues HRS for Blocking Adoption*, THE WEEKLY NEWS, June 10, 1992, at 12 (on file with author's estate).

302. Jaime Abdo, *Lesbian Leads Battle to Adopt*, SUN-SENTINEL (Fort Lauderdale), Dec. 18, 1995, at 3B.

303. *Id.*

304. Lisa Demer, *Lesbian Couple Sues Over Loss of Foster Child*, TAMPA TRIBUNE, Aug. 15, 1992, at 1.

305. *Id.*

parent.³⁰⁶ The action came only after she threatened suit.³⁰⁷ News reports credited her with being the first openly gay person to be granted such a license.³⁰⁸ HRS officials distinguished the cases, saying that it would treat an unmarried heterosexual couple living together the same as it had the Tampa lesbian couple.³⁰⁹ However, in a sworn statement in the Tampa case, an HRS official made clear that “in this district, we would not be licensing homosexuals.”³¹⁰

In May 1993, the circuit court in Hillsborough County delivered a split decision in the *Matthews v. Weinberg* foster care case.³¹¹ Holding that the state cannot decide whether to grant a foster parent’s license based solely on a person’s “sexual status,” the court nevertheless upheld an HRS rule against licensing unmarried couples as foster parents.³¹² The ACLU appealed the latter aspect of the ruling.³¹³

In October 1994, the Second District Court of Appeal struck down HRS’ policy that prohibited unmarried couples—homosexual or heterosexual—from becoming foster parents.³¹⁴ Its decision was based on HRS’ failure to follow rule-making procedures required under Florida law.³¹⁵

While the ruling applies only to the fourteen county jurisdictions within the Second District, there was wide acknowledgment that the case would carry great legal weight throughout the state.³¹⁶ In January 1995, the original plaintiffs in the case, the unmarried lesbian couple who sought foster care

306. Wendy Bounds, *Lesbian is Stalled in Effort to Become a Foster Mother*, MIAMI HERALD, Aug. 1, 1992, at 1B.

307. *Id.*

308. *Lesbian Wins License to be Foster Parent*, ST. PETERSBURG TIMES, Aug. 15, 1992, at 1B.

309. Lisa Demer, *Gay Couples Can’t Parent, Says HRS*, TAMPA TRIBUNE, Sept. 1, 1992, Florida/Metro Section at 1.

310. Lisa Demer, *HRS Counselor Says Homosexuals Barred as Foster Parents*, TAMPA TRIBUNE, Oct. 8, 1992, at 1.

311. *See Matthews v. Weinberg*, 645 So. 2d 487, 490 (Fla. 2d Dist. Ct. App. 1994); Mike Mahan, *Appeal Heard for Unmarried Foster Parents*, ST. PETERSBURG TIMES, July 14, 1994, at 3B.

312. *Matthews*, 645 So. 2d at 490. *See also* Sue Carlton, *Order Mixed on Foster Parent Rules*, ST. PETERSBURG TIMES, May 26, 1993, at 1B.

313. *Matthews*, 645 So. 2d at 490. *See also* Mahan, *supra* note 311, at 3B.

314. *Matthews*, 645 So. 2d at 490.

315. *Id.*

316. *Court Rules in Favor of Lesbians in Fight Over Foster Rights*, TAMPA TRIBUNE, Oct. 1, 1994, at 6. Also in October 1994, an effort to get the Gainesville City Commission to rescind its 1992 recommendation that the Alachua County Commission not enact sexual orientation nondiscrimination procedures met with no success. Chad Terhune, *City to Reconsider Anti-Gay Statement*, GAINESVILLE SUN, Oct. 26, 1994, at 1B.

approval, appealed to the Supreme Court of Florida in an attempt to gain a ruling on the eligibility of unmarried couples to serve as foster parents.³¹⁷

Other cases related to battles by parents in same-sex relationships seeking an award of custody or retention of custody of their natural children.³¹⁸ In August 1995, Judge Joseph Q. Tarbuck of the circuit court of Escambia County ruled in a custody modification case then before him.³¹⁹ Because the mother was a lesbian, the court removed an eleven-year-old girl from the custody of the mother who had raised her from birth and steered her successfully through Attention Deficit Disorder.³²⁰ Custody was awarded instead to the child's natural father, who had shot his first wife to death, spent eight years in prison for the murder, spouted racist views, and had fallen behind on his child support.³²¹ The court reasoned that "the child should be given the opportunity and the option to live in a non-lesbian world or atmosphere to decide if that's what she wants—that's the life she wants to pursue when she reaches adulthood."³²² Judge Tarbuck continued: "I don't think that this child ought to be lead into [a lesbian] relationship before she has a full opportunity to know that she can live another lifestyle just by virtue of the fact of her living accommodations."³²³ An appeal was taken by the mother to the First District Court of Appeal.³²⁴

In August 1996, a unanimous three-judge panel of the First District Court of Appeal declined to overturn Judge Tarbuck's award of custody to

317. See *Matthews v. Weinberg*, 624 So. 2d 919 (Fla. 1995).

318. In September 1991, an appeal followed a trial court's modification of a 1985 award of custody of a minor daughter to the child's lesbian mother. The modification had allowed the mother to relocate to San Francisco. The child's father appealed the modification, arguing that San Francisco is "notorious for the number of lesbians and homosexuals living there," and because the daughter was allegedly living under conditions which would hinder her becoming a normal healthy woman. However, the appellate court's terse per curiam opinion in no way suggests that the father's outrageous claims in any way contributed to its having reversed the trial court's order allowing removal of the child from Florida. *Mize v. Mize*, 589 So. 2d 959 (Fla. 5th Dist. Ct. App. 1991).

319. *Ward v. Ward*, No. 92-2424-CA01-H (Fla. 1st Cir. Ct. filed Aug. 1995) (on file with author's estate).

320. John McKinnon, *A Lesbian Mom's Loss of Custody Now a Key Case, Judge Awarded Girl, 11, to Dad—Who's a Killer*, MIAMI HERALD, Feb. 1, 1996, at 6A. *Lesbian Mother, Murderer Father, and a Child*, MIAMI HERALD, Feb. 9, 1996, at 1A.

321. See *Lesbian Mother, Murderer Father, and a Child*, MIAMI HERALD, Feb. 9, 1996, at 1A.

322. Transcript of Custody Award Decision Hearing, at 1, lines 12–17, *Ward v. Ward*, No. 92-2424-CA01-H (on file with author's estate).

323. *Id.* at 84, lines 2–7.

324. See *Ward v. Ward*, 742 So. 2d 250 (Fla. 1st Dist. Ct. App. 1996).

the father in the *Ward* case.³²⁵ “[T]he focus of this case is not on the mother’s sexual orientation, but on the best interests of the child,” the unsigned opinion read.³²⁶ It found that the trial judge’s decision was supported by “competent and substantial evidence” that the child was being harmed by conduct to which she was being exposed in her mother’s home.³²⁷ The panel cautioned that it was “not suggesting that the sexual orientation of the custodial parent by itself justifies a custody change.”³²⁸ An appeal was filed within a matter of weeks.³²⁹

In January 1997, the mother in the *Ward* case died.³³⁰ Her daughter would remain with the child’s father, who had killed his first wife.³³¹ Counsel for the deceased lesbian mother asked the First District Court of Appeal to withdraw or vacate its opinion and dismiss the appeal.³³²

In 1993, Judge Jere Tolton of the circuit court for Okaloosa County reached a decision similar to that in *Ward* in a dispute involving an initial child custody award.³³³ He cited the mother’s lesbianism in awarding

325. *Id.* at 255. See also Jackie Halifax, *Lesbian Mom Loses Custody Appeal*, MIAMI HERALD, Aug. 31, 1996, at 5B.

326. *Ward*, 742 So. 2d at 252.

327. *Id.*

328. *Id.* at 254.

329. *Gay Mother Appeals Ruling on Custody*, SUN-SENTINEL (Fort Lauderdale), Sept. 18, 1996, at 17A.

330. *Lesbian in Custody Case is Dead She Lost Daughter to Killer Father*, SUN-SENTINEL (Fort Lauderdale), Jan. 23, 1997, at 24B.

331. *Id.* However, within a week of the lesbian mother’s death, a formal complaint had been filed against Judge Tarbuck for violation of those provisions of the Canons of Judicial Ethics which prohibit disparagement on the basis of sexual orientation and gender in the performance of their judicial duties. Letter from Thomas C. MacDonald, Jr., General Counsel, Judicial Qualifications Commission, to Allan H. Terl (Mar. 5, 1997) (on file with author’s estate). The complaint noted that an “earlier filing might have negatively impacted the mother . . . if an appellate court had remanded the case back to Judge Tarbuck.” *Id.* By early March, “[a]fter full investigation and consideration of the complaint, the [JQC] concluded that the matter [did] not warrant further proceedings.” *Id.* It dismissed the complaints and closed its file on the matter. *Id.*

332. Letter from Charlene M. Carres, Esq., to the First District Court of Appeal (Jan. 28, 1997) (on file with author’s estate).

333. See *Maradie v. Maradie*, 680 So. 2d 538 (Fla. 1st Dist. Ct. App. 1996). *In re The Marriage of Maradie*, No. 93-442-FD (Fla. 1st Cir. Ct. 1993) (on file with author’s estate). Also in July 1993, Judge A. C. Soud of the Circuit Court for Duval County barred a gay man from any say in the upbringing of his children. *Jacksonville Judge Rules Against Gay Father*, THE WEEKLY NEWS, Aug. 4, 1993, at 14. The judge called the father’s homosexual lifestyle “detrimental to his children” and “so indicative of moral unfitness that it disqualifies his ability to live up to and perform the societal duty of parenting children.” *McAbee v. McAbee* (on file with author’s estate).

custody of their four-year-old daughter to the child's natural father.³³⁴ The court wrote,

Mrs. Maradie, with her homosexual lover, spend nights and sleep together in the same bed, kiss, hold hands and speak in terms of endearment in front of the child. The possibility of negative impact on the child, especially as she grows older and reaches her late pre-teen and early teen years, is considerable. The Court does not have to have expert evidence to reach this conclusion, but can take judicial notice that a homosexual environment is not a traditional home environment, and can adversely affect a child.³³⁵

The mother in that case also appealed to the First District Court of Appeal.³³⁶

In July 1996, the First District Court of Appeal granted a new hearing in the *Maradie* case, holding that the Okaloosa County Circuit Court could not assume without evidence that "a homosexual environment [would] adversely affect a child."³³⁷ "We do not mean to suggest that trial courts may not consider the parent's sexual conduct," the ruling said. "In considering the parent's moral fitness, however, the trial court should focus on whether the parent's behavior has a direct impact on the welfare of the child."³³⁸

In January 1996, Judge Jack R. Heflin of the circuit court for Okaloosa County removed two children from the custody of their mother because she was a lesbian or bisexual and the father could "provide a more traditional family environment for the children."³³⁹ The custody award was made to the father notwithstanding testimony in which the child's maternal grandmother stated that she had witnessed acts of violence by the father against both the lesbian mother and the older of the couple's children, and further testimony that the father had been Baker Acted based on an expressed desire to commit suicide.³⁴⁰ The First District Court of Appeal affirmed the circuit court's decision.³⁴¹

Other cases during the decade challenged the inability of same-sex couples to marry. In June 1993, a lesbian couple, Shawna Underwood and Denia Davis, challenged Florida's statutory requirement that marriage

334. *Court Faces 2 Lesbian Custody Cases*, MIAMI HERALD, Mar. 12, 1996, at 5B.

335. *Maradie*, 680 So. 2d at 540-41 (footnote omitted).

336. *Id.* at 540.

337. *Id.* at 542. See also Bill Bergstrom, *Lesbian Mom Gains New Custody Hearing*, MIAMI HERALD, July 18, 1996, at 5B.

338. *Maradie*, 680 So. 2d at 542.

339. *Packard v. Packard*, No. 94-1817-FD (Fla. 1st Cir. Ct. 1977).

340. *Id.*

341. *Packard v. Packard*, 727 So. 2d 918 (Fla. 1st Dist. Ct. App. 1998).

license applicants be of the opposite sex.³⁴² Filed in the circuit court for Orange County, the suit³⁴³ was voluntarily dismissed after extensive discussions with lesbian and gay rights legal experts who suggested that the same-sex marriage case, then pending in Hawaii, would be a better first test of this issue.³⁴⁴ However, at the end of March 1997, a three-judge panel of the Fifth District Court of Appeal affirmed a decision by Brevard County Circuit Judge Edward M. Jackson recognizing as enforceable a nuptial-type agreement between two women.³⁴⁵ Neither party had urged that the agreement was void as against public policy.³⁴⁶ The court pointed out that “[e]ven though the state has prohibited same-sex marriages and same-sex adoptions, it has not prohibited this type of agreement.”³⁴⁷ The sponsor of Florida’s version of the Defense of Marriage Act³⁴⁸ questioned the appellate court’s authority to uphold a “nuptial agreement” between parties whom the law prohibits from marrying.³⁴⁹

One case in the employment area strongly protected the privacy rights relating to the personal life of employees.³⁵⁰ In March 1992, an Orlando jury ruled in favor of a deputy, fired from the Orange County Sheriff’s Department for being gay.³⁵¹ It found that the deputy was coerced into resigning following an investigation by the sheriff into the deputy’s sexual orientation and private life.³⁵² With the jury having resolved the issue of whether the deputy resigned or was fired, the next step was for the court to determine whether the firing violated the deputy’s rights to privacy and equal protection.³⁵³ Circuit Court Judge William Gridley ruled that Orange County Sheriff Walt Gallagher had violated the rights of Deputy Thomas

342. See Bob Levenson, *Lesbian Couple Sue to Gain Right to Wed*, ORLANDO SENTINEL, July 9, 1993, at A1.

343. *Underwood v. State*, No. CI-93-4656 (Fla. 9th Cir. Ct. 1993) (on file with author’s estate).

344. Letter from Peter Warren Kenney, counsel for the plaintiffs (Feb. 7, 1995) (on file with author’s estate).

345. Posik v. Layton, 695 So. 2d 759, 759 (Fla. 5th Dist. Ct. App. 1996).

346. See *id.*

347. *Id.* at 761.

348. FLA. STAT. § 741.212 (1999).

349. *Ruling May Sidestep Ban on Gay Marriages*, MIAMI HERALD, June 12, 1997, at 5B.

350. See *Woodard v. Gallagher*, No. 89-5776, 1992 WL 252279 (Fla. 9th Cir. Ct. June 9, 1992).

351. *Id.* at *1.

352. *Id.*; see also *Deputy’s Lawsuit Sets Precedent*, THE WEEKLY NEWS, Mar. 18, 1992, at 3 (on file with author’s estate).

353. *Woodard*, No. 89-5776 at *1; see also Bob Levenson, *Jurors Say Deputy Was Forced to Quit*, ORLANDO SENTINEL, Mar. 10, 1992, at A1.

Woodard when he forced Woodard to resign for being gay.³⁵⁴ The judge ruled that “the [state] constitutional right to privacy protects the individual from the prejudice or punitive use” of information about the plaintiff’s sexual orientation and private sexual conduct.³⁵⁵

Litigation involving the Florida Hate Crimes Act³⁵⁶ also occupied the courts during the nineties. In April 1992, Circuit Court Judge J. Leonard Fleet of Broward County ruled the Florida Hate Crimes Act unconstitutionally broad, and he dismissed misdemeanor battery charges against a man accused of shouting derogatory names at a Jewish lawyer.³⁵⁷ The Florida Attorney General voiced full confidence in the law’s constitutionality and prepared for an appeal.³⁵⁸ In late-November 1992, the Third District Court of Appeal declared Florida’s Hate Crimes Act unconstitutionally vague.³⁵⁹ Just a few days later, the Florida Hate Crimes Law was declared unconstitutionally vague by Pinellas County Circuit Judge Robert Beach.³⁶⁰ In January 1994, the Supreme Court of Florida put to rest the question of the constitutionality of the Florida Hate Crimes Act.³⁶¹ In a five-to-two decision, the court held that the statute applies only to bias motivated crimes and, when so read, is constitutional.³⁶²

Finally, significant changes in ethical rules governing the conduct of attorneys and judges emerged in the decade. On July 1, 1993, the Supreme Court of Florida adopted a revised rule of ethics, for the first time prohibiting attorneys from engaging in certain discriminatory acts.³⁶³ Significantly, lawyers could not

engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly,

354. *Woodard*, No. 89-5776 at *3.

355. *See id.* *See also Circuit Court Finds Sheriff Violated Officer’s Right To Privacy; Orders Reinstatement and Back Pay*, THE WEEKLY NEWS, June 17, 1992, at 10 (on file with author’s estate).

356. Ch. 91-83, § 1, 1991 Fla. Laws 625, 626 (amending FLA. STAT. § 775.085 (1991)).

357. *Hate-Crimes Law Voided*, THE WEEKLY NEWS, Apr. 29, 1992, at 3 (on file with author’s estate).

358. *Id.*

359. *See Richards v. State*, 608 So. 2d 917, 921 (Fla. 3d Dist. Ct. App. 1992), *rev’d*, 638 So. 2d 44 (Fla. 1994). *See also Appeals Court Throws out Hate Crimes Law; State Will Appeal*, THE WEEKLY NEWS, Dec. 2, 1992, at 8.

360. *No Hate-Crimes Law in Pinellas*, GAZETTE (Hillsborough County), May 1993, at 13 (on file with author’s estate).

361. *See State v. Stalder*, 630 So. 2d 1072 (Fla. 1994).

362. *Id.* at 1077.

363. Florida Bar re: Amendments to Rules Regulating The Florida Bar, 624 So. 2d 720, 722 (Fla. 1993).

or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, *sexual orientation*, age, socioeconomic status, employment, or physical characteristic.³⁶⁴

The new rules, which “stop short of regulating the employment practices of lawyers” and will be “subject to an evolutionary development of details,” took effect January 1, 1994.³⁶⁵

On September 29, 1994, the Supreme Court of Florida issues revised *Canons of Judicial Conduct* adding a new canon to extend the substance of the lawyer nondiscrimination rule to the Florida judiciary.³⁶⁶ The new rule also specifically includes “sexual orientation” as a ground on which prejudice is prohibited.³⁶⁷ It applies to judges in the performance of their judicial duties.³⁶⁸ It provides further that judges “shall require lawyers in proceedings before the judge to refrain from manifesting . . . prejudice.”³⁶⁹

B. *Initiatives and Legislation*

At the beginning of 1990, the Palm Beach County Commission made that jurisdiction the first in Florida to adopt a sexual orientation nondiscrimination ordinance in a dozen years.³⁷⁰ This modest ordinance, approved by a four-to-one vote of the Board of County Commissioners, applied only to housing and public accommodations.³⁷¹ Shortly thereafter, however, by a unanimous vote of the Board of County Commissioners, Palm Beach County became the first jurisdiction in Florida to protect homosexual county employees from discrimination by amending the county’s Affirmative Action Plan to provide for redress for lesbian and gay county employees.³⁷² Later in the year, local activists began openly discussing extending similar protections for employees in the private sector.³⁷³

364. *Id.* (amending rule 4-8.4(d)) (emphasis added).

365. Robert Craig, *Florida’s New Antidisparagement Ethics Rules*, FLA. B.J., Nov. 1993, at 30, 34 (1993) (on file with author’s estate).

366. *In re* Code of Judicial Conduct, 643 So. 2d 1037 (Fla. 1994).

367. *Id.* at 1039; CANONS OF JUDICIAL CONDUCT, Canon 3B(5) (1999).

368. *See* CANONS OF JUDICIAL CONDUCT, CANON 3B.

369. CANONS OF JUDICIAL CONDUCT, CANON 3B(6).

370. PALM BEACH COUNTY, FLA., CODE § 90-1 (1990) (on file with author’s estate).

371. *See* Larry Aydlette, *Clergy’s Testimony, Quiet Lobbying Helped Sway County Commissioners*, PALM BEACH POST, Jan. 21, 1990, at 16A.

372. *See* Meg James, *Job Policy to Protect Gay Rights Affirmative Action Plan Targets County Hiring*, PALM BEACH POST, Feb. 4, 1990, at 1B. *See also* John F. Kiriakon, *West Palm*

Also in 1990, activists at Florida International University ("FIU") began the process of proposing the addition of sexual orientation to the university's nondiscrimination policies.³⁷⁴ FIU President Modesto A. "Mitch" Maidique supported the change, but felt the decision should be made on a state university system-wide level rather than by an individual campus.³⁷⁵ The State University System replied that it had, through the Collective Bargaining Advisory Committee, agreed "to recognize in collective bargaining contracts and elsewhere in policy, those protections against discrimination contained in Federal or state statutes and regulations, or in well-developed judicial case law."³⁷⁶ Because sexual orientation lacks such status, the State University System declined to pursue the change.³⁷⁷ Activists at FIU, Florida Atlantic University ("FAU"), and other schools within the State University System continued to pursue this expansion of nondiscrimination policies.

During the 1990 session of the Florida Legislature, a proposed amendment to add coverage for crimes evidencing prejudice on the basis of sexual orientation to the Florida Hate Crimes Act passed through necessary committees in both houses, but the bills died in both chambers in the end of session crush.³⁷⁸ House Bill 2449 and Senate Bill 3000 originally proposed enhanced penalties for crimes that "manifest prejudice, bigotry, or bias against any definable and identifiable segment of the population," which was meant to include crimes based on the victims' sexual orientation, among other categories.³⁷⁹ This version passed its first House committee.³⁸⁰ The bill was amended, however, so that "sexual orientation" was added to the then existing list in the Hate Crimes Act instead of using the more general language.³⁸¹

Beach City Commissioners Vote To Ban Anti-Gay Discrimination In City Employment Practices, THE WEEKLY NEWS, May 22, 1991, at 3.

373. See Gillian Haggerty, *Activist, 71, Puts Mature Face on Gay-Rights Movement*, PALM BEACH POST, Oct. 21, 1990, at 1B.

374. Letter from Modesto Maidique, President, Florida International University, to James J. Parry, Associate Vice Chancellor of Labor Relations, Office of Human Resources, State University System (June 8, 1990) (on file with author's estate).

375. *Id.*

376. Letter from James J. Parry, to Modesto Maidique, President, Florida International University (July 9, 1990) (on file with author's estate).

377. *Id.*

378. See H.R. 2449, 22d Leg., Reg. Sess. (Fla. 1990); S. 3000, 22d Leg., Reg. Sess. (Fla. 1990).

379. H.R. 2449, 22d Reg. Sess. (Fla. 1990); S. 3000, 22d Reg. Sess. (Fla. 1990).

380. *Id.*

381. *Id.*

The 1990 elections significantly impacted lesbian and gay rights in Florida.³⁸² In the September primary, after a particularly nasty campaign that in many respects echoed the 1977 Anita Bryant "Save Our Children" crusade in Dade County,³⁸³ the referendum on the Broward "Human Rights Amendment" went down to defeat by a vote of 58.6-to-41.4%. Analysts cited the opposition of Archbishop Edward McCarthy of the Miami Catholic Archdiocese and others who cloaked their opposition in religious terms as a major factor in the defeat.³⁸⁴ During the same election, however, and due at least in part of the work to the lesbian and gay community in greater Tampa, two Hillsborough County Commissioners who had voted against the Hillsborough County sexual orientation nondiscrimination ordinance lost their bids for reelection.³⁸⁵ That seemingly set the stage for a reversal of the commissioners' prior rejection of the local ordinance.³⁸⁶

In the aftermath of the loss in the Broward County "Human Rights Amendment" referendum, local activists began the process of moving forward again. They approached the County Human Rights Relations Division (now the Human Rights Division) and obtained agreement that the Division would accept complaints of discrimination on the basis of sexual orientation.³⁸⁷ Even though the Division had no jurisdiction to redress such complaints, the new process would help to document the nature and extent of the problem.³⁸⁸

Joined by representatives of such other groups as Florida N.O.W., a Broward lesbian/gay democratic club, and the Dade Political Action Committee working on lesbian/gay issues, Broward and Dade activists began a series of meetings with Miami Archbishop McCarthy and his top staff in an effort to find some common ground on which to build a better relationship between the Archdiocese and the lesbian/gay community.³⁸⁹

In December 1990, Mayor Vicki Coceano of the City of Miramar in Broward County canceled the city's permission to allow a production of the

382. *See id.*

383. Carl Hiaasen, *Gay-Rights Law Is Defeated by a Margin Greater Than 2-to-1*, MIAMI HERALD, June 8, 1977, at 1A.

384. Steve Bousquet, *Broward Says No to Gay-Rights Protection*, MIAMI HERALD, Sept. 5, 1990, at 1A.

385. *Fight for Rights Continues in Hillsborough*, GAZETTE (Hillsborough County), Apr. 1991, at 1.

386. Wayne Garcia, *Proposal on Gay Rights Lives Again*, TAMPA TRIBUNE, Mar. 7, 1991, at 1.

387. *Broward Human Rights Board Agrees to Keep Track of Sexual Orientation Discrimination Complaints*, THE WEEKLY NEWS, Oct. 24, 1990, at 9.

388. *Id.*

389. John Kiriakon, *Activists, Miami Archbishop Discuss Hate-Crimes Reform*, THE WEEKLY NEWS, Nov. 7, 1990, at 10.

play "Norman, Is That You?" at a municipal theater.³⁹⁰ She had received a single complaint from a city resident that the play had a homosexual theme.³⁹¹ Local activists quickly used the cancellation as a spring board to keep sexual orientation nondiscrimination discussions alive in Broward.³⁹² Within weeks, the Miramar City Council voted unanimously to apologize for the city's poor handling of the cancellation of the play, and activists began efforts to get the city to enact a sexual orientation nondiscrimination ordinance.³⁹³

A series of local ordinances in 1991 dealt with discrimination based on sexual orientation.³⁹⁴ City commissioners in the City of West Palm Beach in Palm Beach County made that the first city in Florida to ban discrimination based on sexual orientation in its municipal employment policies.³⁹⁵ In August 1991, the cities of Temple Terrace and Plant City in Hillsborough County drafted their own human rights ordinance excluding coverage for discrimination on the basis of sexual orientation. Shortly thereafter, the city councils of both cities petitioned the Board of County Commissioners of Hillsborough County to amend the County's sexual orientation nondiscrimination ordinance to exempt their municipalities from the coverage of the county's Human Rights Ordinance. The County Attorney issued a formal opinion that any such exemption would violate the Equal Protection Clause of the Fourteenth Amendment of the *United States Constitution*.³⁹⁶

In late-August 1991, the School Board of Palm Beach County refused to add sexual orientation to its list of categories protected from employment discrimination.³⁹⁷ Instead, it voted to change the wording of the nondiscrimination clause to prohibit all discrimination currently covered by federal or state laws (with sexual orientation being a protected class at neither level).³⁹⁸ In late-August, the Chief of Police for the City of Miami Beach in Dade County issued a new discrimination policy for the city's law

390. Keith Eddings, *City Cancels Play With Homosexual Themes*, MIAMI HERALD, Dec. 5, 1990, at 1BR.

391. *Id.*

392. *See Letters from Our Readers*, THE WEEKLY NEWS, Dec. 19, 1990, at 6.

393. John Kiriakon, *Activists Win Apology*, THE WEEKLY NEWS, Dec. 26, 1990, at 3. *See also Letters From Our Readers*, THE WEEKLY NEWS, May 1, 1991, at 6.

394. *See, e.g.*, Kiriakon, *supra* note 393, at 3.

395. *See id.*

396. Memorandum from Emeline C. Acton, Hillsborough County Attorney, to Phyllis Busansky, Chair, Hillsborough County Board of County Commissioners (Sept. 11, 1991) (on file with author's estate).

397. *Palm Beach County Schools Nix Anti-Bias Protections*, THE WEEKLY NEWS, Aug. 28, 1991, at 11 (on file with author's estate).

398. *Id.*

enforcement employees. The revised policy included a prohibition against discrimination or harassment on the basis of sexual orientation.³⁹⁹

In September 1991, the City of Key West in Monroe County adopted sexual orientation nondiscrimination protections. Its ordinance extended to employment, credit transactions, bonding and public accommodations.⁴⁰⁰ The measure received the support of a unanimous City Commission.⁴⁰¹ By late-1991, the cities of West Palm Beach, Boynton Beach, and Riviera Beach, all in Palm Beach County, had each adopted a resolution prohibiting the respective municipalities from doing official business with or appropriating funds for country clubs or other organizations with discriminatory membership policies.⁴⁰²

The 1991 session of the legislature provided a pleasant surprise. The addition of coverage for crimes evidencing prejudice on the basis of sexual orientation to the Florida Hate Crimes Act received an endorsement from Archbishop McCarthy,⁴⁰³ who also recommended support for the proposal by the full Florida Catholic Conference.⁴⁰⁴ The Senate bill⁴⁰⁵ was sponsored by Senator Eleanor Weinstock⁴⁰⁶ and the House bill by Representative James Burke.⁴⁰⁷ With Archbishop McCarthy's support added to the lobbying efforts of the Florida Task Force, the Anti-Defamation League, the ACLU of Florida, and others, the amendment passed the Florida Senate by a vote of thirty-three-to-three and passed the House by a vote of seventy-nine-to-twenty-nine.⁴⁰⁸ Despite a strong push by Christian fundamentalists to get the Governor to veto the bill,⁴⁰⁹ it passed and was signed into law.⁴¹⁰

By late-1991 and early into 1992, Governor Lawton Chiles had proposed reform of the statewide civil rights laws to combine the then

399. *Miami Beach Police Chief Orders Cops to End Anti-Gay Discrimination, Harassment*, THE WEEKLY NEWS, Sept. 4, 1991, at 3 (on file with author's estate).

400. KEY WEST, FLA., CODE § 91-30 (1991) (on file with author's estate).

401. *Human Rights Law Approved by City*, KEY WEST CITIZEN, Sept. 5, 1991, at 1A.

402. *Three Palm Beach County Cities Ban Official Business at Social Clubs That Discriminate Against Gays*, THE WEEKLY NEWS, Dec. 18, 1991, at 3 (on file with author's estate).

403. Marjorie L. Donohue, *Archdiocese Backs Penalties for Crimes Against Gays*, FLORIDA CATHOLIC, Apr. 19, 1991, at 14.

404. *Panel OKs Hate-Crimes Measure*, THE WEEKLY NEWS, Apr. 3, 1991, at 3.

405. S. 1482, 23d Leg., Reg. Sess. (Fla. 1991).

406. Democrat, West Palm Beach.

407. Democrat, Miami.

408. *Victory on Hate Crimes!*, THE WEEKLY NEWS, May 8, 1991, at 3 (on file with author's estate).

409. *Activists Ask Supporters to Call Chiles*, THE WEEKLY NEWS, May 8, 1991, at 3 (on file with author's estate).

410. Ch. 91-83, § 1, 1991 Fla. Laws 625, 626 (codified at FLA. STAT. § 775.085 (1991)).

existing Florida Human Rights Act and the Florida Fair Housing Act into a new Florida Civil Rights Act. Despite pressure from multiple directions,⁴¹¹ the Governor successfully resisted any attempt to use his 1992 civil rights reforms as a vehicle to add sexual orientation into the list of kinds of discrimination prohibited in Florida.⁴¹² An attempt to add sexual orientation protections to the Governor's bill⁴¹³ failed by a vote of six-to-three in the court system, Probate and Consumer Law Subcommittee of the House Judiciary Committee and then again by voice vote on reconsideration.⁴¹⁴ The sponsor of the Governor's bill in the Florida House of Representatives⁴¹⁵ reported that Chiles had threatened to veto the measure if it arrived on his desk with sexual orientation protections included.⁴¹⁶

In February 1992, the City of West Palm Beach again broke new ground, this time allowing employees who are domestic partners the same bereavement leave as married people and blood relatives. The provision defined "domestic partner" in a manner to include lesbian and gay partners.⁴¹⁷

In late-May 1992, a subcommittee of the Miami Beach Community Relations Board voted to prepare an antidiscrimination ordinance that included sexual orientation, taking the first step towards that city's sexual orientation nondiscrimination protections.⁴¹⁸ Also in 1992, activists in Alachua County had sought sexual orientation nondiscrimination protections.⁴¹⁹ In June of that year, the Gainesville City Commission, Alachua County's largest municipality, refused to enact sexual orientation nondiscrimination protections and passed, by a vote of three-to-two,⁴²⁰ a

411. *Chiles' Expanded Rights Bill Ignores Gay Bias*, THE WEEKLY NEWS, Nov. 13, 1991, at 3 (on file with author's estate).

412. The Florida Civil Rights Act of 1992 was ultimately codified at FLA. STAT. §§ 760.01--11 (1993).

413. Sponsored by Representative Jim Burke, Democrat, Miami.

414. *House Sponsor of Governor's Rights Bill Charges Chiles Threatened to Veto it if Lesbian/Gay Amendment OK'd*, THE WEEKLY NEWS, Feb. 5, 1992, at 3 (on file with author's estate).

415. Representative Willie Logan, Democrat, Miami.

416. *House Sponsor of Governors Rights Bill Charges Chiles Threatened to Veto It if Lesbian/Gay Amendment OK'd*, *supra* note 414, at 3.

417. *West Palm Beach Does It Again! Bereavement Leave for 'Partners' OK'd*, THE WEEKLY NEWS, Feb. 12, 1992, at 3 (on file with author's estate).

418. *Miami Beach Panel Begins Rights-Law Consideration*, THE WEEKLY NEWS, June 3, 1992, at 3 (on file with author's estate).

419. See Kay Stokes, *Discrimination Controversy*, GAINESVILLE SUN, Sept. 23, 1991, at 1A. See also Tom Leithauser, *Hearing Packs Auditorium*, GAINESVILLE SUN, Oct. 11, 1991, at 1B.

420. Tom Leithauser, *City Withholds Support for Gay Rights Law*, GAINESVILLE SUN, June 2, 1992, at 1A.

reactionary resolution which linked homosexuality to necrophilia, bestiality and pedophilia.⁴²¹ It further recommended that the Alachua County Commission not include coverage for sexual orientation discrimination in its human rights ordinance.⁴²² Shocked lesbian and gay activists staged a sit-in, which resulted in fifteen of them being arrested.⁴²³ Just a week later, the Alachua County Commission, by a vote of four-to-nothing, removed sexual orientation from a proposed amendment to its antidiscrimination ordinance.⁴²⁴

In Miami Beach, the full Community Relations Board, by a vote of six-to-four, adopted the recommendation of its subcommittee and recommended to the city commission adoption of an ordinance guaranteeing that “equality of rights shall not be denied or abridged on account of sexual orientation.”⁴²⁵

Next came the first public vote on lesbian and gay rights since the 1990 vote in Broward County.⁴²⁶ “Take Back Broward” had led a movement to repeal Tampa’s sexual orientation nondiscrimination ordinance, and on November 4, 1992, the voters of Tampa did repeal the ordinance by a vote of 58.5-to-41.5%.⁴²⁷ The vote was held notwithstanding a challenge by the county’s Supervisor of Elections questioning the validity of the signatures on the petitions which forced the referendum.⁴²⁸ During the same election, Temple Terrace voters adopted by a vote of sixty-three-to-thirty-seven percent a municipal human rights ordinance specifically excluding anyone “who may claim” discrimination because of sexual orientation.⁴²⁹

In Miami Beach, with little opposition and just two weeks after the repeal of the Tampa ordinance, the City Commission voted unanimously to preliminarily pass a sexual orientation nondiscrimination ordinance which

421. *Gainesville Activists Arrested After Commission Votes to Condemn Sexual Minorities*, THE WEEKLY NEWS, June 10, 1992, at 3 (on file with author’s estate).

422. *A Community Divided, A Community That Fails*, THE WEEKLY NEWS, Feb. 8, 1995, at 10 (on file with author’s estate).

423. *Gainesville Activists Arrested after Commission Votes to Condemn Sexual Minorities*, *supra* note 421, at 10.

424. David Greeberg, *Gays Are Deleted from Proposal*, GAINESVILLE SUN, June 10, 1992, at 1A.

425. *Florida Stateline*, THE WEEKLY NEWS, June 17, 1992, at 35 (on file with author’s estate).

426. *See supra* text accompanying notes 382–93.

427. *Gay Rights Law is Overturned*, MIAMI HERALD, Nov. 5, 1992, at 23A (on file with author’s estate).

428. Corey Steven Hull, *Tampa Voters Repeal Gay-Rights Ordinance*, THE WEEKLY NEWS, Nov. 11, 1992, at 3.

429. Todd Simmons, *A Farewell to Rights*, GAZETTE (Hillsborough County), Dec. 1992, at 5.

extended to employment, housing, and public accommodations.⁴³⁰ The final adoption of the ordinance occurred on December 2, 1992,⁴³¹ with a similarly unanimous vote.⁴³²

In January 1993, an effort was mounted to pass a sexual orientation nondiscrimination ordinance in the City of Hialeah in Dade County. The proposal was offered by the mayor, who could not vote on proposals before the City Council. The proposal failed when no member of the City Council would bring it up for a vote.⁴³³ In the same month, the Broward County Legislative Delegation heard arguments from sexual orientation nondiscrimination supporters who favored rerunning a countrywide referendum to gain such rights and those who favored alternative approaches.⁴³⁴ After split votes on preliminary questions, the delegation unanimously approved the referendum approach, underscoring the solidarity of the delegation in favor of nondiscrimination rights for lesbians and gay men.⁴³⁵ During the 1993 session, however, the Florida Legislature converted the Broward County Human Rights Act from public local law for the benefit of Broward County to a simple county ordinance, allowing the Board of County Commissioners of Broward County to make any further changes without the need for further action by the legislature or approval by the Broward electorate.⁴³⁶

430. Bonnie Weston, *Gay Rights Passes Beach Test*, MIAMI HERALD, Nov. 19, 1992, at 1A (on file with author's estate).

431. MIAMI BEACH, FLA., ORDINANCE 92-2829 (1992) (on file with author's estate).

432. Judy Camillone, *It's OK to be Gay in Miami Beach!*, THE WEEKLY NEWS, Dec. 9, 1992, at 3.

433. Betty Cortina & David Hancock, *Hialeah Council Balks at Passing Gay Rights Law*, MIAMI HERALD, Jan. 13, 1993, at 1B.

434. Judy Camillone, *Activists Divided Over Tactics*, THE WEEKLY NEWS, Jan. 27, 1993, at 3.

435. *Id.*

436. H.R. 1421, 25th Leg., Reg. Sess. (Fla. 1993) (sponsored by Representatives Debbie Wasserman Schultz (Democrat, Davie) and Steven Brian Feren (Democrat, Plantation)). In 1993, the legislature clarified that a mother's breast feeding of her baby would not fall within conduct prohibited by Florida's sodomy statute, including the proscription against unnatural and lascivious acts. Ch. 93-4, §§ 1, 6, 1993 Fla. Laws 101, 103 (codified at FLA. STAT. §§ 383.015, 847.001 (1995)). The 1993 session of the legislature saw the first introduction of two significant gay rights measures. Representative Mel McAndrews introduced legislation to add coverage for discrimination on the basis of sexual orientation to the Florida Civil Rights Act (House Bill 737). A companion bill (Senate Bill 1530) was introduced by Senator Ron Silver. Neither bill received a hearing. The other measure in 1993 would have repealed Florida's statutory prohibition against adoption by homosexuals (House Bill 1461). Sponsored by Representative Suzanne Jacobs, it did get a hearing in the House Committee on Aging and Human Services, but by prior agreement between the sponsor and the Committee Chair, the bill was withdrawn before the committee could discuss or vote on it.

At the end of March 1993, with the public hearing room packed with people and an overflow crowd estimated at 300 gathered in a parking garage across from the courthouse to watch the hearing on television sets, the Board of County Commissioners in Alachua County adopted a sexual orientation nondiscrimination ordinance⁴³⁷ by a vote of three-to-two. The crowd reportedly included a dozen Ku Klux Klan members.⁴³⁸ The ordinance covered housing, employment and public accommodations. The Concerned Citizens of Alachua County, the political arm of the American Family Association, immediately began planning a repeal effort.⁴³⁹ The proposed sexual orientation nondiscrimination amendment for Boynton Beach was the next to come up for a vote. It lost by a three-to-two vote, with the American Family Association figuring prominently in the opposition and the out of uniform grand dragon of the local Ku Klux Klan testifying against the proposal.⁴⁴⁰

By 1994, however, Concerned Citizens of Alachua County had collected enough signatures to place two antigay initiatives on the November 1994 ballot. One proposed to amend the County Charter to prohibit the inclusion of "sexual orientation," "sexual preference," or any similar classification in any county ordinance; the other proposed to repeal the inclusion of "sexual orientation" in the county's antidiscrimination ordinance.⁴⁴¹

In June 1994, on the heels of the Supreme Court of Florida's advisory opinion striking down the proposed statewide antigay constitutional amendment,⁴⁴² Alachua County activists filed suit challenging the constitutionality of both of the local antigay initiatives.⁴⁴³ In August 1994, Circuit Court Judge James Tomlinson refused to dismiss the challenge to the

It was, however, apparently the first hearing on a pro-lesbian/gay rights proposal (other than the Broward local bill and the insurance provision in the Omnibus AIDS Act) in the Florida Legislature.

437. ALACHUA COUNTY, FLA., ORDINANCE 92-41 (1992) (on file with author's estate).

438. John Glass, *Gay Rights Advocates Win Bout in Alachua*, MIAMI HERALD, Apr. 1, 1993, at 5B (on file with author's estate).

439. *Gay Rights OK'd In Alachua; Right Begins Repeal Effort*, THE WEEKLY NEWS, Apr. 7, 1993, at 12 (on file with author's estate).

440. *Perversion Not a Civil Right: Boynton Defeats Human Rights Measure*, THE WEEKLY NEWS, Aug. 25, 1993, at 8 (on file with author's estate).

441. *What's What and Who's Who in Alachua County*, THE WEEKLY NEWS, Feb. 8, 1995, at 11 (on file with author's estate).

442. *In re Advisory Opinion to the Attorney General*, 632 So. 2d 1081 (Fla. 1994).

443. *Lassiter v. County of Alachua, sub nom. Morris v. Hill*, No. 94-2084-CA (Fla. 8th Cir. Ct. 1994) Alachua County (on file with author's estate).

two initiatives.⁴⁴⁴ On October 12, less than a month before the scheduled election, the circuit court ruled that the repeal initiative could go onto the ballot.⁴⁴⁵ And on October 25, the court ruled that the proposed amendment to the county charter could also go onto the ballot.⁴⁴⁶

The Alachua County ordinance was repealed by the voters by a margin of fifty-seven-to-forty-three percent in the Republican landslide general election of November 8, 1994.⁴⁴⁷ Thus, in each of the first four times in which the electorate had the opportunity to vote on sexual orientation nondiscrimination ordinances in Florida—Dade County in 1977, Broward County in 1990, Tampa in 1992 and Alachua County in 1994—the result has been the same, and by almost the same margin each time. The second of the Alachua County initiatives, prohibiting the enactment of sexual orientation nondiscrimination ordinances, passed as well,⁴⁴⁸ and by a margin of fifty-nine-to-forty-one percent.⁴⁴⁹ Only after the passage of the two initiatives in Alachua County and the 1994 elections did the Gainesville City Commission agree, by a vote of four-to-one, to rescind its 1992 resolutions recommending that Alachua County not extend its nondiscrimination protections on the basis of sexual orientation.⁴⁵⁰

Throughout the second half of 1993, the American Family Political Committee of Florida, the state component of the American Family Association, had gathered petition signatures to place on the ballot a proposed amendment to the Florida Constitution.⁴⁵¹ The amendment would

444. *Judge Allows Challenge to 2 Anti-Gay Initiatives*, GAINESVILLE SUN, Aug. 18, 1994, at 2B (on file with author's estate).

445. Edith Paal, *Rights Measure Will Be on Ballot*, GAINESVILLE SUN, Oct. 13, 1994, at 1A.

446. *Id.*

447. *Repeal of Law on Gay Rights Just a First Step*, MIAMI HERALD, Nov. 10, 1994, at 22A.

448. ALACHUA COUNTY, FLA. CHARTER amend. 1, as passed by the voters in November 1994 (on file with author's estate).

449. *Gay Rights Loses*, GAINESVILLE SUN, Nov. 9, 1994, at 1A (on file with author's estate).

450. *City Rescinds Anti-Gay Resolution*, GAINESVILLE SUN, Dec. 13, 1994, at 1A.

451. The full text of the proposed amendment was as follows:

1) Article I, Section 10 of the Constitution of the State of Florida is hereby amended by:

Inserting "(a)" before the first word thereof and, adding a new subsection "(b)" at the end thereof to read:

(b) The state, political subdivisions of the state, municipalities or any other governmental entity shall not enact or adopt any law regarding discrimination against persons which creates, establishes, or recognizes any right, privilege or protection for any person based upon any characteristic, trait, status or condition other than race, color, religion, sex, national origin, age, handicap,

have prohibited the enactment or adoption by the state and its political subdivisions of any law which provided for nondiscrimination protections on any basis other than race, color, religion, sex, national origin, age, handicap, ethnic background, marital status, or familial status. Furthermore, it would have repealed any such previously enacted laws. Pursuant to the provisions of Article IV, Section 10, of the Florida Constitution and section 16.061(1) of the *Florida Statutes*, on November 4, 1993, the Attorney General of Florida placed the matter before the Supreme Court of Florida for an advisory opinion concerning the validity of the petition.

One brief in opposition to the petition was filed on behalf of the Florida Public Interest Law Section, the Florida AIDS Legal Defense & Education Fund, the Florida Association of Women Lawyers, Florida Legal Services, Inc., Floridians Respect Everyone's Equality, Floridians United Against Discrimination, Miami Area Legal Services Union, the National Lesbian & Gay Lawyers Association, the Florida Chapter of the National Organization for Women, People for the American Way, the Southern Poverty Law Center, and the United Teachers of Dade's Gay & Lesbian Caucus; a second brief in opposition was filed by the ACLU of Florida. The American Family Political Committee of Florida filed the only brief in support of the petition. Oral argument before the Supreme Court of Florida was made by the Lambda Legal Defense and Education Fund and former ABA President Chesterfield Smith.⁴⁵² On March 3, 1994, the Supreme Court of Florida ruled on the constitutional amendment proposed by the local branch of the American Family Association to repeal and bar sexual orientation

ethnic background, marital status or familial status. As used herein the term "sex" shall mean the biological state of being either a male person or a female person; "marital status" shall mean the state of being lawfully married to a person of the opposite sex, separated, divorced, widowed or single; and "familial status" shall mean the state of being a person domiciled with a minor, as defined by law, who is the parent or person with legal custody of such minor or who is a person with written permission from such parent or person with legal custody of such minor.

2) All laws previously enacted which are inconsistent with this provision are hereby repealed to the extent of such inconsistency.

3) This amendment shall take effect on the date it is approved by the electorate.

Id.

452. As the American Family Association attempted to place this antigay amendment to the Florida Constitution before the voters, Tampa area activists drafted an alternate amendment designed to expand the "Right of privacy" provision. Known as "The Privacy Project," the effort's language did not specifically mention "sexual orientation" or "homosexuality" but instead expressed a right to be let alone. Kevin Klahr, *HRTF Plans Amendment to Florida Constitution*, GAZETTE (Hillsborough County), Aug. 1993, at 5. The effort was apparently abandoned shortly thereafter.

nondiscrimination laws and local ordinances in Florida.⁴⁵³ It held that the proposed amendment “touches upon more than one subject and therefore violates the single-subject provision of the constitution.”⁴⁵⁴ But for the Chief Justice, who recused herself from the case, the decision was unanimous, and the proposed amendment was stricken from the ballot.⁴⁵⁵

In May 1994, the Florida Department of Business and Professional Regulation ruled that within the meaning of their condominium association rules and the attendant circumstances, two same-sex roommates did indeed constitute a “family” and would not be ordered to vacate the condominium unit for violation of a single family use rule.⁴⁵⁶ In September 1994, West Palm Beach became the seventh local government in Florida to enact sexual orientation nondiscrimination protections.⁴⁵⁷ Adopted by a four-to-one vote, the ordinance extends to housing, employment and public accommodations.⁴⁵⁸

Late in 1994, several of the local sexual orientation nondiscrimination ordinances came under attack. A new effort was begun to petition the Tampa ordinance to referendum,⁴⁵⁹ and petitions were also circulated to force the West Palm Beach ordinance onto the ballot.⁴⁶⁰

The Florida component of the American Family Association, which had taken the Tampa and Alachua County ordinances to the voters, renewed its vow to pursue repeal of similar ordinances in Palm Beach County and West Palm Beach.⁴⁶¹ Before the beginning of December, the AFA had again collected enough signatures to force the West Palm Beach ordinance to a referendum.⁴⁶² Even before the vote in West Palm Beach, however, the Palm Beach County Commissioners made public a plan to expand that county’s

453. *In re Advisory Opinion to the Attorney General—Restricts Laws Related to Discrimination*, 632 So. 2d 1018 (Fla. 1994).

454. *Id.* at 1019.

455. Gary Kirkland, *State’s High Court Yanks Anti-Gay-Rights Initiative*, GAINESVILLE SUN, Mar. 4, 1994, at 1A.

456. *Maitland House Management, Inc. v. Martin*, No. 93-0242, Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation (May 27, 1994) (on file with author’s estate).

457. *See WEST PALM BEACH, FLA., ORDINANCE 2777-94 (1994)* (on file with author’s estate).

458. David Kidwell, *City Passes Gay-Rights Law*, MIAMI HERALD, Sept. 14, 1994, at 5B.

459. *Tampa’s Debate About Gay Rights Enters Round Two*, MIAMI HERALD, May 2, 1994, at 5B.

460. *Anti-Gay Election Petitions Turned In*, MIAMI HERALD, Oct. 14, 1994, at 1B.

461. *Id.*

462. *West Palm Sets Jan. 10 Election on Gay-Rights Law*, PALM BEACH POST, Nov. 22, 1994, at 1B.

sexual orientation nondiscrimination ordinance to private employment.⁴⁶³ Beyond the obvious expansion of rights, another effect of such a plan could have mooted the results of the repeal effort then being waged against the West Palm Beach ordinance.⁴⁶⁴ On January 10, 1995, the West Palm Beach electorate voted fifty-six-to-forty-four percent not to repeal the city's sexual orientation nondiscrimination ordinance and thus became the first jurisdiction in Florida to withstand, by popular vote, a repeal effort.⁴⁶⁵

In late-March 1995, the Broward County Charter Review Commission, by a nine-to-one vote, agreed to place on its public hearing agenda the proposed addition of "sexual orientation" to the Broward County Charter as a basis on which the County Commission is required to protect human rights.⁴⁶⁶ A week later, the Broward County Commission agreed to hold a public hearing on the proposal to add coverage for "sexual orientation" discrimination to the Broward County Human Rights Act.⁴⁶⁷ Additionally, Hillsborough County Commissioners voted four-to-three to hold a public hearing on whether to repeal the county's four-year-old ordinance banning discrimination on the basis of sexual orientation.⁴⁶⁸ That same week, activists in Broward County withdrew their request to the Broward County Charter Review Commission for the addition of the basis of "sexual orientation" to the human rights guarantee in the Broward County Charter, opting instead to pursue only a change in the county's human rights ordinance.⁴⁶⁹

On June 13, 1995, following a lengthy public hearing, the Broward County Board of County Commissioners voted six-to-one to add "sexual orientation" as a category protected by the Broward County Human Rights Ordinance.⁴⁷⁰ The ordinance, with the 1995 amendments, covers

463. Jay Croft, *County Ordinance Would Ban Job Bias Against Gays*, PALM BEACH POST, Dec. 30, 1994, at 1B.

464. *Id.*

465. *Voters Uphold Rights of Gays*, MIAMI HERALD, Jan. 11, 1995, at 5B (on file with author's estate).

466. Larry Keller, *Gay Rights Measure on Agenda, County Charter Panel Sets Public Hearings*, SUN-SENTINEL (Fort Lauderdale), Mar. 28, 1995, at 1B (on file with author's estate).

467. Larry Keller, *County Leaders Schedule Gay Discrimination Hearing*, SUN-SENTINEL (Fort Lauderdale), Apr. 5, 1995, at 3B.

468. *Anti-Discrimination Hearing To Be Held*, SUN-SENTINEL (Fort Lauderdale), Apr. 7, 1995, at 22A.

469. Bob LaMendola, *Activists Switch Strategy, Gay-Rights Groups Ask County for Law*, SUN-SENTINEL (Fort Lauderdale), Apr. 27, 1995, at 3B.

470. Joseph Tanfani, *A 'Historic' Victory for Broward's Gays, Foes Vow to Launch Drive For Repeal*, MIAMI HERALD, June 14, 1995, at 1A.

employment and housing, and public accommodations.⁴⁷¹ A series of amendments was also added to exempt religious institutions from the sexual orientation nondiscrimination requirement.⁴⁷² Opponents vowed to begin collecting signatures immediately to place a measure on the next year's ballot to rescind the new provision.⁴⁷³

On July 18, 1995, by a three-to-four vote, the Palm Beach County Board of County Commissioners rejected an effort to add "sexual orientation" as a protected class under a proposed Palm Beach County Equal Employment Ordinance.⁴⁷⁴ The commission then passed the ordinance without the sexual orientation protections by a five-to-two vote.⁴⁷⁵

In late-1995, the Florida Department of Corrections began the formal process of repealing the longstanding listing of "[h]omosexuality" as an offense or deficiency for which an employee could be disciplined.⁴⁷⁶ This and other amendments were proposed to delete provisions deemed "obsolete."⁴⁷⁷ The Economic Impact Statement for the proposed amendments noted that the sections had not been used.⁴⁷⁸ The rule changes took effect January 30, 1996.⁴⁷⁹

The 1996 session of the Colorado Legislature took note of the then pending possibility that same-sex marriages might be in some manner permitted in Hawaii.⁴⁸⁰ In at least twenty states, efforts were underway to deny full faith and credit to same-sex marriages from Hawaii or elsewhere.⁴⁸¹ In Florida, Representative Buddy Johnson⁴⁸² introduced House Bill 2369 to do exactly that.⁴⁸³ The bill was withdrawn from further consideration just

471. BROWARD COUNTY, FLA., ORDINANCE 95-26 (1995) (codified at BROWARD COUNTY, FLA., CODE § 16½-3 (1999)).

472. Larry Keller & Tao Woolfe, *County Commission OK's Gay Rights Law, Opponents Plan Drive For Vote to Rescind Rule*, SUN-SENTINEL (Fort Lauderdale), June 14, 1995, at 1A.

473. *Id.*

474. *Palm Beach Rejects Plan to Extend Employment Protection*, THE WEEKLY NEWS, at 11 (on file with author's estate).

475. *Id.*

476. *Cf.* FLA. ADMIN. CODE ANN. r 33-4.002 (1991) (renumbered as r. 33-208.002 in 1998)).

477. Economic Impact Statement Memorandum from Charles Hazelip to Perri M. King (Nov. 28, 1995) (on file with author's estate).

478. *Id.*

479. *See* FLA. ADMIN. CODE ANN. r 33-208.002 (2000).

480. *Legislature Passes Ban On Same-Sex Marriages*, MIAMI HERALD, Mar. 15, 1996, at 10A (on file with author's estate).

481. *Id.*

482. Republican, Plant City.

483. H.R. 2369, 28th Leg., Reg. Sess. (Fla. 1996).

one week later,⁴⁸⁴ apparently because its sponsor exceeded his bill allotment and possibly because of pressure from the leadership of both houses.⁴⁸⁵

In May 1996, by a six-to-three vote, the United States Supreme Court struck down Colorado's "Amendment 2," which barred state and local units of government within Colorado from providing discrimination protection to lesbians, gay men, and bisexuals.⁴⁸⁶ The Court said that the voter-approved amendment to the Colorado Constitution classified homosexuals not to further a proper legislative end but "to make them unequal to everyone else. . . . A state cannot so deem a class of persons a stranger to its laws."⁴⁸⁷ This was the first time the United States Supreme Court had extended the principle of equal protection of the laws to lesbians and gay men, and the decision would have a direct effect on litigation pending in Florida.⁴⁸⁸

By September 1996, in anticipation of a court decision allowing same-sex marriages in Hawaii, Congress passed, and President Clinton signed into law, the Defense of Marriage Act ("DOMA"),⁴⁸⁹ providing that the federal government will not recognize homosexual marriages, and allowing states to refuse to recognize such unions licensed in other states.⁴⁹⁰

In December 1996, a Hawaii court ruled on a long pending case⁴⁹¹ that the state had failed to show a compelling state interest in denying lesbian and gay couples the right to marry and ordered the state to begin issuing licenses to same-sex couples.⁴⁹² The following day, the same judge put the ruling on hold while the state appealed, acknowledging that Hawaii would have a dilemma if same-sex couples were allowed to marry and the state's supreme court then overturned the lower court's ruling.⁴⁹³ The Supreme

484. Motions Relating to Committee References, 1 H.R.J. 242 (Mar. 12, 1996) (on file with author's estate).

485. *Johnson Withdraws Anti-Marriage Bill*, THE WEEKLY NEWS, Mar. 20, 1996, at 12 (on file with author's estate).

486. *Romer v. Evans*, 517 U.S. 620 (1996).

487. *Id.* at 635. See also Jan Crawford Greenburg, *Gay Rights' Cause Wins Key Victory: Court Throws Out Colorado Amendment*, SUN-SENTINEL (Fort Lauderdale), May 21, 1996, at 1A.

488. *Ruling Favors Gay Marriages in Hawaii*, MIAMI HERALD, Dec. 4, 1996, at A1.

489. Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. §§1, 7 (1996); 28 U.S.C. § 1738C (1996)).

490. *Hawaii Judge Puts Gay-Marriage Ruling on Hold, Delay Is Effective Till State High Court Decides on Appeal*, MIAMI HERALD, Dec. 5, 1996, at 3A (on file with author's estate).

491. *Baehr v. Miike*, No. Civ. 91-1394, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996).

492. *Id.* at *21-22. See also *Ruling Favors Gay Marriages in Hawaii*, *supra* note 488, at 1A.

493. *Hawaii Judge Puts Gay-Marriage Ruling on Hold*, *supra* note 490, at 3A.

Court of Hawaii ordered the state to show cause why the marriage license sought should not be issued and remanded the case to the trial court.⁴⁹⁴

The 1997 session of the legislature saw the anticipated introduction into both chambers of a state version of the Defense of Marriage Act. House Bill 147 was filed by Representative Johnnie Byrd⁴⁹⁵ with twenty-five cosponsors out of the 120 member House; Senate Bill 272 was filed by Senator John Grant⁴⁹⁶ with an absolute majority of the Senate, twenty-one out of the forty-member Senate, as cosponsors.⁴⁹⁷ The new Speaker of the Florida House, Republican Dan Webster,⁴⁹⁸ supported the legislation, saying that it would bolster the “legitimacy of a family” and allow “for what the traditional family was designed to do.”⁴⁹⁹

In early March, the House bill was unanimously approved by the Committee on Government Operations.⁵⁰⁰ By mid-March, the legislation had been approved by the Senate Judiciary Committee by a vote of eight-to-two.⁵⁰¹ In late-March, the Republican controlled House defeated by a vote of eighty-eight-to-twenty-five an amendment sponsored by Representative Lois Frankel⁵⁰² seeking to apply moral standards to all persons seeking to marry in Florida,⁵⁰³ and a day later, the full House passed the nonrecognition bill by a vote of ninety-nine-to-twenty.⁵⁰⁴ The Senate bill was reportedly amended to extend Florida’s right to refuse to recognize not only same-sex marriages but also domestic partnerships which were lawful where they were formed.⁵⁰⁵ In late-April, the Senate passed the bill by a vote of thirty-three-

494. *Id.*

495. Republican, Plant City. See *Representative Johnnie Byrd, Jr.—Online Sunshine* (visited Apr. 9, 2000) <<http://www.leg.state.fl.us/house/members/h.62.html>>.

496. Republican, Tampa. See *Senator John A. Grant, Jr.—Online Sunshine* (visited Apr. 9, 2000) <<http://www.leg.state.fl.us/senate/members/s13>>.

497. Mark Silva, *Majority of State Senators Vow Not to Recognize Gay Marriages*, MIAMI HERALD, Feb. 3, 1997, at 5B (on file with author’s estate).

498. Republican, Orlando. Speaker Webster is regularly identified by the media as the leader of the Christian Coalition in the Florida Legislature.

499. John Kennedy, *Webster Wants Gay Marriages Outlawed*, SUN-SENTINEL (Fort Lauderdale), Jan. 30, 1997, at 22B.

500. *Bill Tightens Ban on Same Sex Marriages*, MIAMI HERALD, Mar. 6, 1997, at 6B.

501. *Same-Sex Marriage Ban Approved by Committee*, SUN-SENTINEL (Fort Lauderdale), Mar. 13, 1997, at 7B.

502. Democrat, West Palm Beach.

503. Tyler Bridges, *Same-Sex Marriage Ban Passes House Hurdle*, MIAMI HERALD, Mar. 26, 1997, at 5B.

504. Tyler Bridges, *Same-Sex Marriage Ban Passes House by a 99-20 Vote*, MIAMI HERALD, Mar. 27, 1997, at 6B.

505. Doug Janousek, *Senate Adds to Marriage Ban Measure*, THE WEEKLY NEWS, Apr. 16, 1997, at 13.

to-five.⁵⁰⁶ The City of Key West passed a formal resolution in early May asking Governor Chiles to veto the legislation.⁵⁰⁷ At the end of May, the Governor allowed the bill to become law without his signature.⁵⁰⁸

In mid-June, in “an unexpected vote preceded by an unusual display of prayer, hymn-singing and speaking in tongues by hundreds of Christian activists,”⁵⁰⁹ the Metro Commission rejected the proposed gay rights ordinance by a vote of seven-to-five on the bill’s first reading. First reading is normally “a perfunctory vote that simply moves a [proposed] ordinance along to the next step: a public hearing at a later date in which the issue is fully discussed and a final vote taken.”⁵¹⁰ Within less than a month, an effort was made to resurrect the Dade County sexual orientation nondiscrimination proposal. One method would have been for one of the seven commissioners who voted against it during June’s first reading to move to reconsider; however, no such motion was made at a July public hearing where it was briefly on the agenda.⁵¹¹ Another method for returning the issue to consideration is to wait a required six-month period, after which even a commissioner who voted for it earlier could schedule it for first reading.⁵¹² Proponents vowed to use that method.⁵¹³

In June 1997, local activists formally appeared before the Gainesville City Commission to propose the addition of coverage for sexual orientation to the city’s existing human rights ordinance.⁵¹⁴ In July 1997, activists went to the Monroe County Commission and proposed the adoption of domestic partner benefits, including those for same-sex couples. One county commissioner observed that passage is inevitable.⁵¹⁵ Also in July 1997, what was believed to be the first “palimony” type suit was filed⁵¹⁶ by one gay man against his former lover, who had adopted the plaintiff some thirteen years

506. Mark Silva, *Senators Say No to Same-Sex Marriages, After 33-5 Vote Bill Goes to Chiles*, MIAMI HERALD, Apr. 30, 1997, at 1A.

507. *City Commission Reaches Out to Chiles*, THE WEEKLY NEWS, May 14, 1997, at 9.

508. Tyler Bridges, *Same-Sex Marriage Ban Broadened Chiles Decides Not to Block Bill*, MIAMI HERALD, May 30, 1997, at 1A.

509. Karen Branch, *Metro Kills Gay-Rights Proposal*, MIAMI HERALD, June 18, 1997, at A1 (on file with author’s estate).

510. *Id.*

511. *Morning of Talk About Gay Rights, Commission Refuses to Consider*, MIAMI HERALD, July 9, 1997, at 2B (on file with author’s estate).

512. *Id.*

513. *Id.*

514. HRCNCF PROPOSES CITY BAN ON ANTI-GAY DISCRIMINATION, HUMAN RIGHTS COUNCIL OF NORTH CENTRAL FLORIDA, Vol. 3, No. 2, July 1997, at 1 (on file with author’s estate).

515. Marika Lynch, *Benefits For Unwed Partners?, County Commission Receptive To Proposal*, MIAMI HERALD, July 19, 1997, at 1B.

516. *Eberhardt v. Eberhardt*, 590 So. 2d 1134 (Fla. 4th Dist. Ct. App. 1992).

earlier.⁵¹⁷ Early reports made no mention of whether the adoption had taken place in Florida in violation of the statutory prohibition against such, and if so, what effect that might have on the case.⁵¹⁸

C. *The Hillsborough County/Tampa Experience*

In early 1991, the Hillsborough County Charter Review Board declined to take up the issue of discrimination against lesbians and gay men.⁵¹⁹ One of the county commissioners, who had voted against adoption of the ordinance when it came before the Board of County Commissioners in the prior year as an amendment to the County's Human Rights Ordinance, now sought a referendum instead.⁵²⁰ The Charter Review Board sent the issue back to the Board of County Commissioners, feeling that the matter would be better handled by elected officials.⁵²¹

Later that year, however, the Tampa City Commissioners gave preliminary approval to a sexual orientation nondiscrimination ordinance, with an exemption for religious organizations, by a vote of four-to-three.⁵²² After a six-hour joint public hearing attended by more than 2500 people on both the Hillsborough County and Tampa municipal ordinance proposals, and with the changes brought about by the 1990 elections, Hillsborough became the second Florida county to adopt sexual orientation nondiscrimination protections,⁵²³ reversing by a four-to-three vote the 1989 action of the prior Board of County Commissioners. The ordinance⁵²⁴ offered such protection in the areas of public accommodations, real estate transactions, and county contracting and procurement procedures.⁵²⁵

In Tampa, the City Council gave final approval, by a vote of four-to-three to its municipal ordinance.⁵²⁶ The Tampa ordinance extended sexual orientation nondiscrimination protections to employment, public

517. C. Ron Allen, *Adopted Gay Man Sues Former Lover for Home, Couple Legally Linked By Adoption, Splitting up*, SUN-SENTINEL (Fort Lauderdale), July 23, 1997, at 6B.

518. *Id.*

519. THE GAZETTE (Hillsborough County), Feb. 1991, at 3 (on file with author's estate).

520. *Id.*

521. *Id.*

522. *Tampa City Commission Gives Preliminary Approval to Ordinance Banning Anti-Gay Discrimination*, THE WEEKLY NEWS, May 15, 1991, at 10 (on file with author's estate).

523. *Hillsborough, Tampa Ban Bias*, THE WEEKLY NEWS, June 5, 1991, at 3 (on file with author's estate).

524. HILLSBOROUGH COUNTY, FLA., ORDINANCE 88-9 (1991) (on file with author's estate).

525. *Hillsborough, Tampa Ban Bias*, *supra* note 523, at 3.

526. *Id.*

accommodations, and real estate transactions.⁵²⁷ The local component of the American Family Association immediately announced plans to seek a referendum to repeal the Tampa ordinance.⁵²⁸ In August 1991, after a sixty-day drive to collect signatures, the head of “Take Back Tampa,” the local element of the American Family Association, submitted petitions to remove coverage for discrimination on the basis of sexual orientation from the Tampa Human Rights Ordinance.⁵²⁹ The group claimed to have gathered 15,000 signatures.⁵³⁰ Throughout the summer and fall of 1991, the American Family Association (“AFA”) collected signatures to petition the Tampa sexual orientation nondiscrimination ordinance to a referendum.⁵³¹ In late-November, Circuit Court Judge Guy Spicola ruled that the Hillsborough County Elections Supervisor’s disqualification of hundreds of signatures was improper, and the AFA then claimed enough signatures to force the issue to the ballot.⁵³² In March 1992, the Hillsborough County Commission, by a vote of three-to-four, denied a request to place on the ballot a proposal to allow voters to adopt or repeal county ordinances.⁵³³ The proposal had originated with the “Take Back Tampa” campaign.⁵³⁴

In 1992, Circuit Court Judge Roland Gonzalez ordered⁵³⁵ that the question of whether or not to repeal the city’s human rights ordinance, including its sexual orientation nondiscrimination protections, must appear on the ballot.⁵³⁶ The city vowed to appeal that as well as Judge Spicola’s earlier decision restoring the validity of those “Take Back Tampa” signatures which had been invalidated by the Supervisor of Elections.⁵³⁷

In September 1993, however, the Supreme Court of Florida unanimously invalidated some 462 of the signatures on the petitions that had forced the successful vote on repeal of the Tampa nondiscrimination ordinance.⁵³⁸ Thus, notwithstanding the public’s vote to repeal, the

527. TAMPA, FLA., ORDINANCE 91-88 (1991).

528. *AFA to Seek Repeal of Tampa Action via Referendum*, THE WEEKLY NEWS, June 5, 1991, at 3 (on file with author’s estate).

529. GAZETTE (Hillsborough County), Sept. 1991, at 3 (on file with author’s estate).

530. *Id.*

531. *Id.*

532. *Tampa Judge’s Decision Gives New Life to Push for Anti-Gay Rights Referendum*, THE WEEKLY NEWS, Dec. 4, 1991, at 3 (on file with author’s estate).

533. *Hillsborough Vote Deals Setback to Anti-Gay Activists*, THE WEEKLY NEWS, Mar. 18, 1992, at 12 (on file with author’s estate).

534. *Id.*

535. Rand Hall, *Majority Needed for Minority Rights*, GAZETTE (Hillsborough County), July 1992, at 3.

536. *Id.*

537. *Id.*

538. Rand Hall, *Take Back Tampa—WE DID!*, GAZETTE (Hillsborough County), Nov. 1993, at 5.

ordinance was reinstated.⁵³⁹ The legal challenge to Tampa's sexual orientation nondiscrimination ordinance ended on April 18, 1994, when the United States Supreme Court refused without comment to hear "Take Back Tampa's" case.⁵⁴⁰ "Take Back Tampa" vowed to recirculate the petitions.⁵⁴¹

In December of 1992, an effort to repeal the Hillsborough County ordinance failed when the Board of County Commissioners deadlocked, three-to-three.⁵⁴² And one more vote in January 1993 saw the Hillsborough ordinance upheld by a commission vote of four-to-three.⁵⁴³

The Florida component of the American Family Association, which had taken the Tampa ordinance to the voters, renewed its vow to pursue repeal of the reinstated ordinance in Tampa.⁵⁴⁴ Before the month of November was out, the AFA had again collected enough signatures to force the reinstated Tampa sexual orientation nondiscrimination ordinance onto the ballot.⁵⁴⁵

In early 1995, the same forces which had formed the "Take Back Tampa" group had reacted to the invalidation of a sufficient number of signatures to stop its petitioning the local nondiscrimination ordinance to referendum by gathering new signatures.⁵⁴⁶ Now calling itself "Yes! Repeal Tampa's Homosexual Ordinance Committee," it gathered the necessary valid signatures to place repeal of the city's sexual orientation nondiscrimination ordinance on the March 1995 ballot, along with the city's mayoral and city council elections.⁵⁴⁷ The city approved minor changes from the language of the petitions to the language which appeared on the ballot.⁵⁴⁸

In March 1995, Hillsborough County Court Judge Manuel Menendez removed from the election ballot the second attempt to repeal Tampa's sexual orientation nondiscrimination ordinance.⁵⁴⁹ The judge held that the Tampa City Council lacked the authority to change the wording of the referendum, as it had done, to simplify the ballot language.⁵⁵⁰ City attorneys

539. *Krivanek v. Take Back Tampa Political Comm.*, 625 So. 2d 840 (Fla. 1993).

540. *Clewis v. Krivanek*, 511 U.S. 1030 (1994).

541. Nancy Valmus, *U.S. Supreme Court Refused to Hear Caton*, GAZETTE (Hillsborough County), May 1994, at 14.

542. Tom Scherberger, *Hillsborough Gay Rights Amendment Sustains Challenge*, ST. PETERSBURG TIMES, Dec. 17, 1992, at 8B.

543. *Hillsborough OKs Gay Rights Law*, ORLANDO SENTINEL, Jan. 8, 1993, at B5.

544. *Id.*

545. Rand Hall, *Tampa's Human Rights Ordinance Heads to Voters . . . Again!*, GAZETTE (Hillsborough County), Nov. 1994, at 7.

546. Tom Fielder, *Gay-Rights Law Repeal Attempt In Legal Limbo*, MIAMI HERALD, Mar. 6, 1995, at 5B (on file with author's estate).

547. *Id.*

548. *Id.*

549. *Iorio v. Citizens for a Fair Tampa*, 661 So. 2d 32, 32 (Fla. 2d Dist. Ct. App. 1995).

550. *Ballot Changed*, MIAMI HERALD, Mar. 4, 1995, at 5B.

appealed, triggering an automatic stay of the circuit court's removal of the issue from the ballot.⁵⁵¹ However, the appellate court affirmed the circuit court's decision.⁵⁵² Thus, voters were not allowed to decide the referendum on repealing the city's four-year-old sexual orientation nondiscrimination ordinance.⁵⁵³

In mid-May 1995, after a four-hour public hearing on the matter, the Hillsborough County Board of County Commissioners voted four-to-three to repeal the county's four-year-old ordinance banning discrimination on the basis of sexual orientation.⁵⁵⁴ Some 700 people attended the hearing, moved from the county commission chamber to the Hillsborough County Fairgrounds.⁵⁵⁵ Shortly thereafter, "Take Back Tampa" filed suit⁵⁵⁶ for a court order to declare the Tampa sexual orientation nondiscrimination ordinance invalid, claiming that the city "thwarted the will of the people" by enforcing an ordinance that was rejected by a public referendum.⁵⁵⁷

D. *Developments Within the Florida Bar*

In late-1990, the then-relatively-new Public Interest Law Section ("PILS") of The Florida Bar, adopted one of its first legislative positions: Endorsing an amendment to the Florida Hate Crimes Act to include crimes evidencing prejudice on the basis of the victim's sexual orientation.⁵⁵⁸ Following through on the work begun by the ABA, the section endorsed legislation at the federal, state, and local levels to prohibit discrimination on the basis of sexual orientation in employment, housing, and public accommodations.⁵⁵⁹ This time the requests did not seek the support of the entire Florida Bar to endorse the legislative positions; rather, they sought only to allow the new section to lobby on these issues. The entire Bar's

551. *Tampa Gay Rights Ordinance in Doubt*, SUN-SENTINEL (Fort Lauderdale), Mar. 5, 1995, at 26A.

552. *Tampa Voters Choose Mayor, Not Rights Bill*, SUN-SENTINEL (Fort Lauderdale), Mar. 8, 1995, at 22A (on file with author's estate).

553. *Id.*

554. *County Kills Gay Rights Law*, MIAMI HERALD, May 18, 1995, at 5B.

555. *Shame, Shame, Shame: Hillsborough Bows to Right, Repeals Law Against Discrimination*, THE WEEKLY NEWS, May 24, 1995, at 10 (on file with author's estate).

556. *Take Back Tampa Back Again*, GAZETTE (Hillsborough County), Aug. 1995, at 5.

557. *Id.*

558. Minutes of the meeting of the Executive Council of the Public Interest Law Section of the Florida Bar Approved by the Board of Governors in March 1991, at 3 (November 16, 1990) (on file with author's estate).

559. Minutes of the meeting of the Executive Council of the Public Interest Law Section of The Florida Bar approved by the Board of Governors in March 1991, at 2 (Jan. 24, 1991) (on file with author's estate).

Board of Governors gave the section permission to lobby for these two goals on March 21, 1991.⁵⁶⁰

The section took yet another legislative position designed to further the rights of lesbians and gay men in Florida. PILS endorsed repeal of Florida's statutory prohibition against adoption by homosexuals.⁵⁶¹ Unlike its treatment of the other two sexual orientation positions taken by the section, however, the Board of Governors of The Florida Bar in this case refused to allow PILS to lobby.⁵⁶² It found the position to be one which had the potential of "deep philosophical or emotional division among a substantial segment of the Bar . . ." and thus, outside the parameters of cases which defined allowable lobbying within mandatory membership bar associations, as in Florida's.⁵⁶³

PILS ultimately filed a petition with the Supreme Court of Florida seeking to clarify when the Board of Governors could and could not prohibit a section of The Florida Bar from lobbying on a legislative position the section has taken.⁵⁶⁴ The court, in an unpublished per curium opinion, declined to hear the petition.⁵⁶⁵ The leadership of PILS then formed a voluntary membership organization, the Florida Academy of Public Interest Lawyers, which endorsed the proposal for repeal of the adoption prohibition as its first legislative position.⁵⁶⁶

In September 1993, the Public Interest Law Section sought to take a legislative position on another issue affecting the rights of lesbians and gay men.⁵⁶⁷ This time, PILS endorsed reformation of chapters 798 and 800 of *Florida Statutes*, which proscribe criminal behavior under the headings "Adultery; Cohabitation" and "Lewdness; Indecent Exposure," respectively, to make noncommercial acts between consenting adults in private beyond

560. Public Interest Law Section of The Florida Bar to Lobby to Eliminate Sexual Orientation Discrimination, a news release by the Public Interest Law Section of The Florida Bar, Apr. 9, 1991 (on file with author's estate).

561. Minutes of the meeting of the Executive Committee of the Public Interest Law Section of The Florida Bar, at 3-4 (Sept. 6, 1991) (on file with author's estate).

562. *Id.*

563. Minutes of the meeting of the Board of Governors of The Florida Bar, at 8 (Sept. 13, 1992) (on file with author's estate).

564. The Florida Bar re: Authority of a Voluntary Section to Engage in Legislative Action, 599 So. 2d 658 (Fla. 1992).

565. *Id.*

566. Letter from Stephen F. Hanlon, Esq., to Alan Terl (April 8, 1996) (on file with author's estate).

567. Minutes of the Meeting of Executive Council, Public Interest Law Section of The Florida Bar, at 7 (Sept. 9, 1993) (on file with author's estate).

the scope of the criminal law.⁵⁶⁸ On February 17, 1994, the Board of Governors of The Florida Bar authorized PILS to lobby for those changes.⁵⁶⁹

The year 1994 marked the start of a new biennium for The Florida Bar. All previous legislative positions were sunsetted, and those sections and committees which sought to renew Bar authorization to lobby on behalf of specific proposals had to begin that process anew.⁵⁷⁰ The Public Interest Law Section sought renewed authority to lobby for sexual orientation nondiscrimination ordinances generally, for the specific addition of coverage for sexual orientation nondiscrimination to the Florida Civil Rights Act, and for decriminalization of victimless crimes, all of which positions had previously been approved for section lobbying by the Board of Governors.⁵⁷¹

A new Bar biennium also meant a change of players, however, including those on the Board of Governors' Legislation Committee. This time, the Legislation Committee rejected all three of the sexual orientation proposals as too controversial and divisive. At the full Board of Governors, the lack of a quorum prevented a vote on whether to uphold or overturn the Legislation Committee.⁵⁷²

In February 1995, notwithstanding the prior finding by the Legislation Committee that the issue is "divisive," the Board of Governors of The Florida Bar authorized the Public Interest Law Section of the Bar to lobby in support of sexual orientation nondiscrimination laws and ordinances generally, and specifically for the addition of sexual orientation discrimination to the coverage of the Florida Civil Rights Act.⁵⁷³ A former PILS chair told the Board that sexual orientation discrimination "is the civil rights issue of the 1990s and we can't be a public interest law section if we don't deal with it."⁵⁷⁴ The section did not pursue Board approval of its proposal to lobby for reform of victimless crimes legislation at that time.

[At this point, Allan Terl's manuscript ends.]

568. *Id.*

569. *PILS Gets OK to Lobby Against Sexual Orientation Discrimination*, FLORIDA BAR NEWS, Mar. 1, 1995, at 24.

570. Gary Blankenship, *Board Debates Controversial Section Legislative Positions*, FLORIDA BAR NEWS, Oct. 15, 1994, at 18.

571. *Id.*

572. *Id.*

573. *PILS Gets OK to Lobby Against Sexual Orientation Discrimination*, *supra* note 569, at 24.

574. *Id.*