

GAY
MARRIAGE

THE WHITE HOUSE
WASHINGTON

May 1, 1996

April 24, 1996

MEMORANDUM FOR HAROLD ICKES
GEORGE STEPHANOPOULOS

FROM: JACK QUINN
KATHLEEN WALLMAN

RE: SAME SEX MARRIAGE

You recently asked whether the Constitution required other states to recognize Hawaii's same sex marriages. The attached memorandum from the Department of Justice explains that it does not.

We will stay abreast of this issue and the various ways it may arise so that we may be prepared to respond appropriately.

You have asked us to take a quick look at whether the Full Faith and Credit Clause of Article IV of the Constitution would require states to recognize Hawaiian same-sex marriages (assuming that such relationships soon may be authorized by the laws of Hawaii).

Attachment Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Recognition by the courts and legislature of Hawaii of the validity of same-sex marriages would constitute "Acts, Records, and judicial Proceedings" within the meaning of the Full Faith and Credit Clause. However, applying basic principles set forth by the U.S. Supreme Court, the Full Faith and Credit Clause would not obligate the other 49 states to give effect to same-sex marriages if such action would contravene the public policy of those states.

A complete assessment of the Full Faith and Credit Clause implications of the recognition of same-sex marriages by Hawaii would require a state-by-state inquiry. Based on our limited research into the matter, it appears that a large number of states would be able to show an existing public policy against same-sex marriages. This would obviously be the case in those states that, by statute, bar same-sex marriages - either through an explicit statutory prohibition or through other provisions that limit the scope of permissible marital relationships. Even where the issue cannot be resolved through an analysis of relevant state statutes, a public policy against same-sex marriages might also be reflected in state administrative rules and practices and state court decisions refusing to recognize such relationships.

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U. S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

April 24, 1996

MEMORANDUM

To: Jack Quinn
Counsel to the President

Kathleen Wallman
Deputy Counsel to the President

From: John R. Schmidt *JRS*

Re: Same-Sex Marriage/Full Faith and Credit Clause

You have asked us to take a quick look at whether the Full Faith and Credit Clause of Article IV of the Constitution would require states to recognize Hawaiian same-sex marriages (assuming that such relationships soon may be authorized under the laws of Hawaii).

The Full Faith and Credit Clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." Recognition by the courts and legislature of Hawaii of the validity of same-sex marriages would constitute "Acts, Records, and judicial Proceedings" within the meaning of the Full Faith and Credit Clause. However, applying basic principles set forth by the U.S. Supreme Court, the Full Faith and Credit Clause would not obligate the other 49 states to give effect to Hawaiian same-sex marriages if such action would contravene the public policy of those states.

A complete assessment of the Full Faith and Credit Clause implications of the recognition of same-sex marriages by Hawaii would require a state-by-state inquiry. Based on our limited research into the matter, it appears that a large number of states would be able to show an existing public policy against same-sex marriages. This would obviously be the case in states that, by statute, bar same-sex marriage -- either through an explicit statutory prohibition or through other provisions that limit the scope of permissible marital relationships. Even where the issue cannot be resolved through an analysis of relevant state statutes, a public policy against same-sex marriage might also be reflected in state administrative rules and practices and state court decisions refusing to recognize such relationships.