

Peace over rights initiatives clearly not in the cards

By Ed Carson
For the Oregon Daily Emerald

Compromise sometimes generates more conflict than it smooths over.

After months of debate over whether the Oregon Legislature should pass a civil rights law to protect gays and lesbians, the Legislature passed House Bill 3500 at the end of the session.

HB 3500 prohibits Oregon cities and counties from enacting and enforcing charter amendments that would prevent

the local governments from passing ordinances extending anti-discrimination protections to homosexuals.

HB 3500 was a compromise response to Oregon Citizens Alliance-sponsored local measures in several cities and counties that passed in May. Supporters of the bill hoped it would be a cease-fire in the battle over gay rights.

This has not been the case. If anything, the newly signed law has created more furor and more confusion.

It has sparked lawsuits from both sides, a second round of local measures is imminent — though no one knows what impact these measures would really have — and the OCA and its opponents are gearing up to battle for another statewide ballot measure on the divisive issue. Peace in our time — or even just peace for the time being — is clearly not in the cards.

Voters in Creswell and six other cities and counties will vote Tuesday on city and coun-

ty charter amendments that would prohibit anti-discrimination protections for gays and lesbians and prevent spending to promote homosexuality.

Cottage Grove, Oakridge and Veneta will have elections on similar amendments next May because city officials delayed a vote on the amendments in the hope that the issue would be resolved by then.

However, it is not clear whether these votes will mean anything. Will they be enforced or be voided by HB 3500? Voters in the affected areas won't know for sure — no one will — until the courts render decisions on lawsuits relating to the issue.

The American Civil Liberties Union has been trying to have the courts call off these elections on the basis of HB 3500. The ACLU is arguing that a vote on the OCA-sponsored initiatives would entail enacting the amendment, and HB 3500 prohibits enacting, as well as enforcing, such charter amendments.

The ACLU has been unsuccessful so far but is continuing its legal action with the Oregon Court of Appeals.

Kathy Phelps, OCA regional director for Lane County and Southern Oregon, said HB 3500 was an unconstitutional attempt to stop the local charter amendments.

"It was a political maneuver, knowing full well that it was unconstitutional, to buy time and in the hopes that it would stop the initiative process," Phelps said. "It really surprised them when a judge in Molalla and Estacada said they couldn't stop the elections."

Article IV, Section five of the Oregon Constitution reads, "The initiative and referendum powers reserved to the people ... are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district."

Dave Fidanque, executive director of the ACLU of Oregon, said gay rights should be left to the ballot.

"It's not a proper subject for the initiative process," Fidanque said. "The federal Constitution says that states must maintain a republican form of government. It's specifically designed to prevent the majority from denying the rights of political minorities."

The ACLU contends that the OCA's initiatives encourage hatred against homosexuals.

"(They are) specifically directed at inflaming the prejudice of the populace," Fidanque said.

Fidanque conceded that the Supreme Court's interpretation of the U.S. Constitution does not extend protection of homosexuals.

"What the U.S. Supreme Court has said so far is that the Constitution does not require governments to extend protection of homosexuals," Fidanque said.

However, Fidanque argued that preventing city councils and county commissioners from even debating such protection, which is what the local OCA measures would probably do, is unconstitutional.

"What these measures do is shut off from ever considering such protections," Fidanque said. "That's what makes it a fundamental attack on the Bill of Rights."

Fidanque also criticized the initiative process because it doesn't allow for amendments or com-

OCA TIMELINE

Nov. 3, 1992 State Ballot Measure 9 fails 57 percent to 43 percent.

Jan. 14 OCA announces effort to change target city and county charters through initiative process.

May 18 Voters in Cornelius pass city charter amendment prohibiting the local government passing laws or ordinances to protect gays and lesbians from discrimination and from spending money to promote homosexuality.

June 29 Similar measures are voted on in Junction City, Canby, Douglas County, Josephine County, Linn County and Klamath County. All pass.

July 6 Oregon House passes HB 3500, which prohibits local governments from enacting or enforcing city or county charter amendments that ban anti-discrimination protection for homosexuals.

July 9 OCA threatens to launch recall campaigns against legislators who voted in favor of HB3500.

July 29 ACLU files suit against OCA's proposed 1994 statewide anti-gay rights initiative, on grounds it violates constitution.

August OCA files suit against HB3500, on grounds that it violates Oregon constitution.

Sept. 21 Elections to be held for OCA measures in Creswell, Estacada, Lebanon, Medford, Molalla, Sweet Home and Jackson County.

promise.

"You can amend a bill until the very last minute," Fidanque said. "With the initiative, it's up or down."

Actually, Phelps agreed with Fidanque on this point and said she believes it was a major reason why the OCA was unsuccessful last November.

"(Ballot Measure 9) was too pro-active for the majority," Phelps said. "We've had to rewrite it, sort of a form of amendment."

Perhaps taking a cue from a similar initiative that passed in Colorado, Phelps said the OCA worked to make its initiatives more palatable to the majority by asking for suggestions and input from the public.

Phelps said this public input was used to draft its local amendments and the statewide ballot measure for 1994. She said the OCA is confident this amended version of Measure 9 will be supported by a majority of Oregonians.

After the passage of HB 3500, the OCA threatened to mount recall campaigns against legislators who voted in favor of the bill. However, Phelps said the OCA is focusing on the upcoming statewide ballot measure for 1994.

"(OCA Director Lon Mabon) got us on so many things that it's fourth on our priorities," Phelps said.

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