

Another battle won

An Oregon Court of Appeals ruling upholds HB 3500, saying the state has the right to pre-empt local authority on some issues

by Inga Sorensen



PHOTO BY LINDA KLEWER

OCA activists sent their children out in support of Ballot Measure 13 with signs reading Protect Our Children. A recent Court of Appeals ruling upholds the rights of all children.

Proponents of an Oregon law that prohibits the enactment of local initiatives targeting gay men and lesbians say they are pleased with a recent court ruling upholding that law. They admit, however, they've won the battle but not the war.

"We're pleased because the ruling clearly says that the state has the right to pre-empt local authority when it comes to important issues like gay and lesbian rights," says Jann Carson, associate director of the Oregon chapter of the American Civil Liberties Union.

Earlier this month, the Oregon Court of Appeals upheld an anti-discrimination measure approved by the state Legislature in 1993. The law, known as House Bill 3500, prohibits local governments from enacting or enforcing measures that grant special treatment to, or single out, citizens or groups due to their sexual orientation.

Following the defeat of Ballot Measure 9 in 1992, the Oregon Citizens Alliance was able to identify and target its solid bases of support. While the harshly worded Measure 9 was defeated statewide, 21 of the state's 36 counties approved it. OCA supporters quickly revamped the initiative, creating watered-down versions of the measure that gained approval in more than two dozen local elections. HB 3500, which was designed to head off the so-called "Balkanization" of Oregon, effectively nullified those local initiatives.

"The Court of Appeals ruling essentially pre-

vents the state from becoming a patchwork quilt of discriminatory measures," says Carson.

Citing a 1978 state Supreme Court ruling, the three-judge Court of Appeals panel unanimously agreed with Marion County Circuit Judge Al Norblad that the state has the authority to pre-empt local governments in areas of "substantive policy," including issues of gay and lesbian rights.

The OCA had argued that HB 3500 was unconstitutional because it violated local governments' right to home rule. OCA officials vow to bring their case to the Oregon Supreme Court.

Though supporters of gay and lesbian rights say they are pleased by the recent Court of Appeals ruling, Carson says a more important decision is on the horizon. She says the state's high court will soon review an appellate decision involving a case brought by Janet Boytano of Klamath Falls. That ruling essentially concluded that OCA-type measures could not be banned from the ballot no matter how constitutionally shabby they might be.

"The Boytano case looks at whether issues of an initiative's constitutionality can be addressed pre-election," says Carson. "The Court of Appeals ruling regarding HB 3500 only looked at issues involving measures that had already been approved. We don't think these initiatives should even be going for a vote, because they're unconstitutional."

The Boytano case, says Carson, will address that very critical question.

"The Court of Appeals ruling essentially prevents the state from becoming a patchwork quilt of discriminatory measures."

—Jann Carson

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