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Big-league bid

Tacoma journalist Sandy Nelson petitions the U.S. Supreme Court to hear her case

by Inga Sorensen

Sandy Nelson's analogy seems apt. "It's like going from [Little League] baseball to the World Series," says the 41-year-old former newspaper reporter, who has been entangled in a multi-year battle tackling the right of an employer to dictate an employee's off-duty activities versus the right of an employee to freely participate in the political process.

Nelson was removed from her reporting position in 1990 by her editors at the *News Tribune*, a daily newspaper in Tacoma, Wash., because she was actively involved in political causes, specifically gay and lesbian rights.

Nelson began her stint as a reporter at the *Tribune* in 1983, but nearly seven years ago was put on night shift as a copy editor, a post she still holds.

In response to the involuntary job switch, Nelson sued the newspaper and its parent, McClatchy Newspapers Inc., to get her reporting position back.

Earlier this year, the state Supreme Court found for the newspaper, saying a Washington state law prohibiting employers from discriminating on the basis of political activities doesn't apply to newspapers.

In the 7-2 ruling, the court said newspapers must be free to enforce conflict-of-interest policies to preserve credibility and "the appearance of objectivity."

Throughout the court wranglings, Nelson says, the *Tribune* never produced evidence that her political activity biased her writing or changed readers' or advertisers' perceptions of her as a fair reporter.

"If allowed to stand, the Washington state Supreme Court's decision denies journalists the rights of citizenship," Nelson says. "Reporters will be silent and afraid to join or be associated with organizations of any stripe for fear of retaliation by their bosses."

On July 25, the American Civil Liberties Union of Washington, on behalf of Nelson, petitioned the U.S. Supreme Court to review and reverse the Washington state Supreme Court's finding.

"From the beginning I knew the case could go this far," Nelson tells *Just Out*. "But still, it's pretty intense when you realize you're going to the United States Supreme Court."

In the petition, Seattle attorney James Lobsenz writes, "If followed in other jurisdictions, [the ruling] threatens to block the enforcement of any employment discrimination statute against a newspaper employer."

He further argues that the state court's decision conflicts with numerous U.S. Supreme Court rulings holding that newspapers are not immune from general laws, including those barring job discrimination.

According to Nelson, the court's ruling in *Nelson vs. McClatchy Newspapers* is the first known decision to accept a newspaper's contention that the First Amendment exempts it from compliance with employment antidiscrimination laws.

In the petition, Lobsenz asks the high court to

consider three questions: Does the First Amendment exempt newspapers from having to comply with employment-discrimination statutes? Does a newspaper's "free press" right to control the content of its paper include the constitutional right to control the off-duty conduct of its editorial employees? And, in order to justify a First Amendment exemption from a general antidiscrimination law, must a newspaper have some evidence that an employee's off-duty conduct is actually having an adverse impact on the "credibility" of the newspaper?

Nelson has long been involved in community causes. She has been active in the socialist-feminist and sexual minority rights movements, and has defended Native American treaty rights as well as health clinics that offer abortion services.

In 1989, Nelson helped form the Committee to Protect Tacoma Human Rights, which sought to



PHOTO BY CHRISTY PORTER

stop the repeal of a city law barring discrimination based on sexual orientation.

When the measure was rescinded by voters, Nelson was among the gay and lesbian rights supporters who launched an initiative campaign to get the law back on the books.

Although Nelson says her political activism didn't overlap with her work as an education reporter, she was told she must discontinue all political activities in order to work as a reporter. When she didn't, she was transferred.

Nelson has received support from around the world. Her endorsers include the Newspaper Guild International; feminists Flo Kennedy, Kate Millett and Phyllis Lyon; the United Front Against Fascism; and the National Lawyers Guild, among dozens of others.

The high court will consider the petition when it reconvenes in October.

For more information about the case or to receive a copy of the U.S. Supreme Court petition, call the Sandy Nelson Defense Committee at (206) 682-0990 in Seattle or (253) 756-9971 in Tacoma.