

local news

Civil rights watch

A city ordinance granting discrimination protections takes a licking, but officials stress that it keeps on ticking

by Inga Sorensen

It wasn't the most amiable of anniversary presents.

Less than two weeks before the six-year anniversary of the Portland City Council's unanimous passage of an ordinance prohibiting discrimination based on sexual orientation and source of income, a Multnomah County circuit court judge declared a vital component of the measure invalid.

The sideswiped section had permitted individual citizens to enforce their rights under the ordinance in state court.

In a crisp, one-sentence finding, Judge Pro Tem Monte Bricker wrote on Sept. 22: "I find that the City of Portland has no authority to confer by ordinance access to Circuit Court by a private party."

With that, Bricker granted summary judgment in favor of Besaw's Cafe, 2301 NW Savier St.

Plaintiff David Sims, a gay man who was fired from his job as a Besaw's cook in 1996, claims his dismissal was prompted by his sexual orientation.

"He was told by a co-worker to tone down his behavior because the owner of Besaw's did not like gay people," says Sims' attorney Renée E. Jacobs.

Besaw's owners, Richard and Geri Beasley, have publicly denied that claim, saying Sims was let go due to performance issues. They also say they have employed other gay people.

The Beasleys' attorney, Charles W. Carnese, meanwhile, argued Sims had no right to take a city matter to a state court. Bricker agreed.

Under the judge's ruling, those who feel they've been discriminated against on the basis of sexual orientation have no recourse in the courts, because sexual orientation is not a protected category under current state or federal civil rights laws.

People are covered on the basis of many other factors, including race, gender, national origin, religion and age.

Under state law, those claiming discrimination may use two methods to enforce their rights. They may make their case to administrative enforcement via the Oregon Bureau of Labor and Industries, and/or may exercise an independent right of access to the courts to directly enforce their rights.

The city designed its civil rights ordinance to mirror state law, providing for administrative review through BOLI and giving individuals the choice of seeking redress through the courts.

While the ordinance still stands, Bricker's decision disposes of the latter option, leaving BOLI the sole avenue for enforcement.

Some have criticized the agency for being slow-moving and ineffective.

Portland Mayor Vera Katz offered little confidence in BOLI when, in response to Bricker's ruling, she said the agency "is unacceptable to me to adequately protect our citizens' civil rights."

The city, meanwhile, is poised to appeal the decision in *Sims vs. Besaw's Cafe*.

Katz, who moved swiftly in denouncing the judge's ruling, tells *Just Out* that gay and lesbian rights has always been important to her.

"I was there from the start," she says, adding that she jumped all over this matter "so the gay

and lesbian community knows that city leaders are committed to their rights."

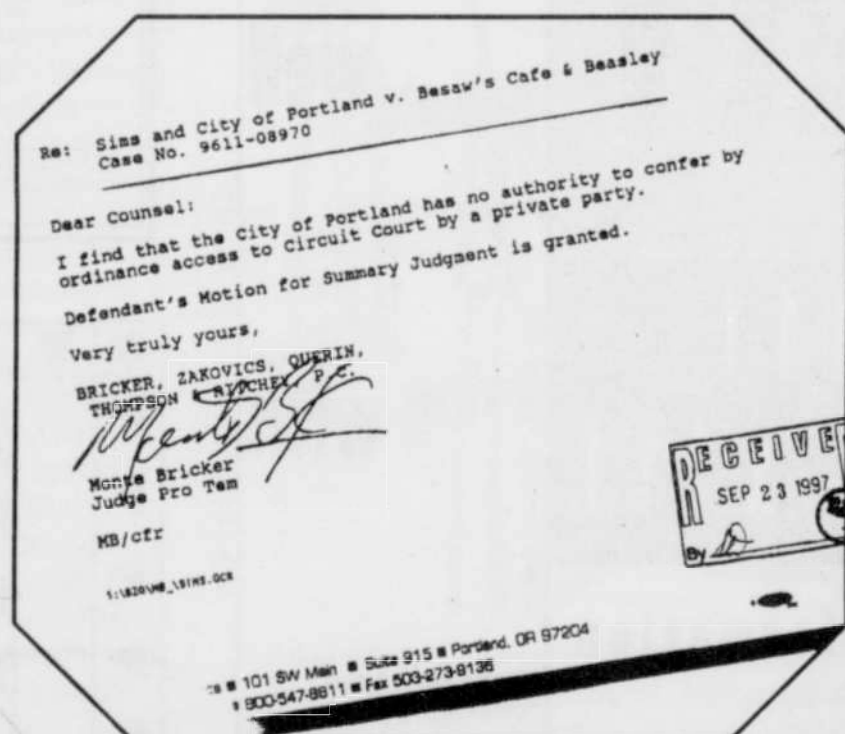
She held a brown-bag briefing with members of the gay and lesbian community Sept. 26 to discuss the issue.

"I wanted the community to know that the ordinance isn't completely wiped out," she tells *Just Out*.

Katz adds she will work with the council and city attorney's office to create an alternative enforcement process to take effect while an appeal is pending, and potentially afterwards, should the judge's opinion be affirmed.

"I will be talking to the City Council about creating a new quasi-judicial process where the hearings officer could hear cases based on the city anti-discrimination policy and award remedies or damages, and the plaintiff could then appeal to the Circuit Court if [he or she] didn't like the ruling," she says.

"While this does not give gays, lesbians or



people with a non-job-based income full benefits of a court trial—such as being heard by a jury, and the ability to do depositions and discovery—it does at least give them an entry into the court system," Katz adds.

When asked about the costs of putting such a process in place, the mayor said the city could "dip into its contingency fund, which is for emergencies."

Basic Rights Oregon is the primary group pondering a campaign to place a statewide initiative barring employment discrimination based on sexual orientation on the November 1998 ballot.

Following Bricker's ruling, BRO issued a statement saying, in part: "A recent poll found that 80 percent of all Oregonians believe employment discrimination based on sexual orientation is wrong. The poll also found that a majority think protections are already provided to gays and lesbians. If passed, a statewide initiative would give Oregon gays and lesbians the same rights enjoyed by the rest of the state's citizens."

While Bricker did not explain his ruling, which is not binding on other Multnomah County circuit judges, the decision is likely to influence other cases.

In October 1991—to much fanfare—Portland became the first city in Oregon to pass protections against discrimination in employment, housing and public accommodations, based on sexual orientation.

The cities of Eugene, Corvallis and Ashland now have similar ordinances in place.



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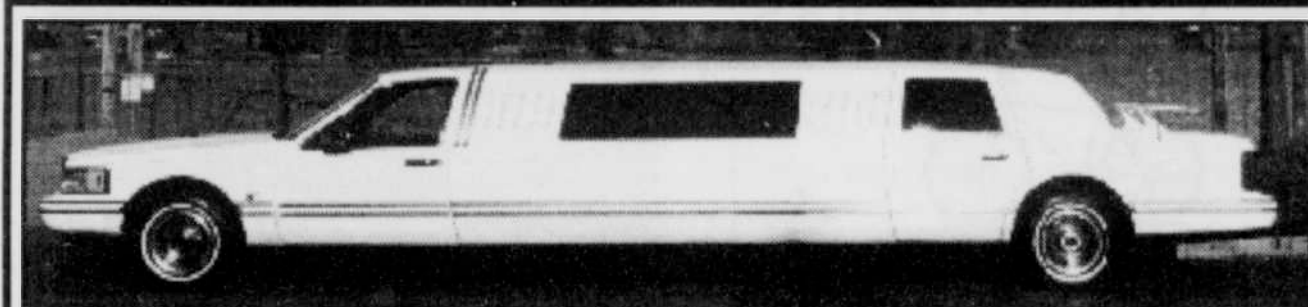
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