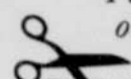




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LOCAL news

**KUDOS
TO THE COURT**

Continued from the cover

The ruling goes even further. It prohibits private employers from discriminating on the basis of sexual orientation in hiring, firing, promotions and pay. It does not, however, require them to provide health benefits.

"With [the Dec. 9] release of the decision in *Tanner vs. OHSU*, the Oregon Court of Appeals became the first court in the nation to decide that government is constitutionally required to recognize domestic partnerships," says Dave Fidanque, executive director of the American Civil Liberties Union of Oregon. "The Court of Appeals has also made it clear that current Oregon law prohibits any employer—whether public or private—from discriminating in the workplace on the basis of sexual orientation. That makes Oregon the eleventh state to prohibit sexual orientation discrimination in employment and the first to do so on the basis of state law prohibiting gender discrimination."

He continues: "The importance of these... aspects of the decision carry well beyond the actual parties in this case. This decision completely changes the legal landscape of employment law in Oregon.... For the first time, an appellate court has said that discrimination based on sexual orientation is unconstitutional."

Lisa Chickadonz and Christine Tanner, parents of Jacob and Katie, have created a life and family.

"How long have you been together?" asks a reporter at a hastily convened news conference prompted by the ruling.

Tanner offers an answer that many people in long-term unions—regardless of sexual orientation—can relate to: "Long enough to forget how long it's been," she says, evoking laughs from around the room. After activating her powers of recall, she adds, "Fifteen years."

Her partner, who sits a few feet away, smiles. On this day, the women look as mellow as their children. Mellow, or perhaps exhausted.

After all, for nearly seven years they, along with four other lesbians—Barbara Limandri, Regenia Phillips, Terrie Lyons and Kathleen Grogan—have been mired in the swampy glop of the judicial system.

In 1992, a lawsuit was brought by the group—two OHSU nursing professors and a pharmacy supervisor—who, joined by their respective partners, sued to obtain medical, dental and life insurance benefits.

Portland attorney Carl Kiss, who represents the plaintiffs, argued the state's policy "basically created a benefits store offering great insurance coverage at bargain basement rates [but] a sign was [placed] in that store's front window announcing that certain of its products would never be sold" to gay men and lesbians.

"As a result, these three couples had to pay more elsewhere for replacement insurance, and the replacement coverage was often not as good as the coverage sold at the benefits store," he added.

He said the policy forced gay and lesbian employees to "drink at a separate water fountain—and at a water fountain where they had to pay more for a smaller glass of water."

In August 1996, Multnomah County Circuit Judge Stephen L. Gallagher Jr. agreed and ruled that domestic partners of gay men and lesbians have a constitutional right to spousal health benefits.

He wrote: "In all respects, each couple has



PHOTO BY LINDA KLEWER

Print and television journalists attended a news conference with the plaintiffs and their attorney after the ruling was announced Dec. 9

successfully maintained a loving, functional, cohesive family-type relationship which they wish to maintain until parted by death. But for state law prohibiting same-sex marriages, each couple would have at all times...gladly and voluntarily exchanged the vows of marriage between themselves to achieve that legal status. Of this, the Court has no doubt."

"As the judge found, each couple's relationship is identical to a marriage in all ways within their power to make," Kiss said after Gallagher's ruling. "But the state, which says, 'We'll give you benefits if you get married,' refuses to allow these couples the right to do so."

It's a Catch-22, said Kiss, that the judge—and ultimately the Court of Appeals—refused to ignore. Gallagher ruled the state and OHSU illegally discriminated against their gay and lesbian employees by offering insurance fringe benefits to heterosexual employees' spouses, but not to gay and lesbian employees' domestic partners. He ordered the state and OHSU to make their insurance fringe benefits equally available to the domestic partners of their gay and lesbian employees.

Gallagher also found the state's benefits policy violated Oregon's statute prohibiting employment discrimination and state constitutional guarantees of equal privileges and immunities.

"The [Oregon] statute says not only that you can't discriminate on the basis of sex, you also can't discriminate on the basis of the sex of someone with whom the employee associates, in this case the female partners of the employees," Kiss told *Just Out* following the 1996 ruling.

He added that Gallagher's decision, by implication, "would prohibit every Oregon employer from discriminating against [gay men and lesbians] in any employment decision, including hiring, firing, promotion and pay."

OHSU wound up appealing the decision, but on Dec. 9, 1998, Kiss's speculation became reality. Like Gallagher, the Court of Appeals found that "benefits are not made available on equal terms. They are made available on terms that, for gay and lesbian couples, are a legal impossibility."

Even more striking, the appellate court concluded that gay men and lesbians comprise a distinct class and have "been and continue to be the subject of adverse social and political stereotyping and prejudice."

"I'm giddy," admits Jean Harris, executive director of Basic Rights Oregon, a gay and lesbian rights organization. "This feels really good."

She's giddy for a good reason: For a quarter century, supporters of gay and lesbian rights have unsuccessfully lobbied the Oregon Legisla-

ture for, at minimum, protections against employment discrimination based on sexual orientation.

"The Oregon Court of Appeals has accomplished with a single opinion what the Oregon legislative assembly has failed to accomplish during the past 25 years of trying," says state Rep. George Eighmey, an openly gay lawmaker who leaves office in January due to term limits.

"But," he adds, "all the discussion and work have indeed paid off in that over the years we've been able to educate the lawyers who ultimately land on the Court of Appeals [about gay issues]," says Eighmey.

It appears none of the parties in the case will appeal. However, some conservative state lawmakers are reportedly making noises about crafting a voter referral designed to undo the ruling.

Harris, meanwhile, says the public overwhelmingly supports employment protections for gay men and lesbians.

Given that, she says she'd "rather fight the right wing on job discrimination and health benefits" than any other gay-related issue.

Katherine Tennyson of Right to Pride, which lobbies the Oregon Legislature on an array of gay rights and HIV-related issues, says she expects her group will have to fight hard against anti-gay forces this upcoming session, which opens in January. (Both the House and Senate are controlled by the GOP.)

"We have a new speaker [conservative Republican Lynn Snodgrass from Boring] who doesn't seem willing to listen...and some lawmakers will be inclined to push their 'special rights' argument. They can point to this ruling and say, 'See, gays are discriminated against but they still want more and more,'" she says.

What gay men and lesbians will likely now be getting is an opportunity to take their sexual orientation employment discrimination claims to court—a right they have by and large been denied in the past.

And all state and local governments must provide spousal benefits to the domestic partners of their employees; while the state and OHSU have already begun doing so, most cities and county governments have not.

All this spells "a lot of work" says the ACLU's Fidanque, who notes the case has 30 days to clear an appeal, and legislative opponents lurk just around the corner.

Not only that, the Oregon Bureau of Labor and Industries, the state agency that investigates discrimination claims, will need to come up with administrative rules to cope with the decision.

"The ACLU, along with groups like BRO and RTP, will be monitoring how this is all handled," Fidanque says, adding, "There's plenty of flux right now."

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