

Hawthorne Hawthorne Hawthorne Hawthorne

**LOUNGE**  
*Lizard*

*"Furniture With a Past"*  
OPEN 11-6 EVERYDAY  
1310 Hawthorne Blvd.  
503-232-7575

**Wild Life**  
Gifts and Home Furnishings  
Celebrate Weddings  
for everyone!  
OPEN EVERY DAY 10-7 • 3962 B SE Hawthorne Blvd • Portland • 503-236-3862

Floral Scent No. 79  
**Rain!**

130 FRAGRANCES  
custom scented bath & body

essentialonline.com

Natural Beauty Since 1979  
**ESSENTIAL**  
lotions & oils  
710 NW 23rd Avenue • 503.248-9748  
3638 SE Hawthorne • 503.236-7976

**BEADS FOREVER**  
crystals  
3522 SE HAWTHORNE 503.230.2323

**Coventry Cycle Works**

Professional Service  
Comfortable Bikes  
Recumbants a Specialty!  
**(COME SEE WHY!)**  
Open Tuesday-Sunday  
230-7723  
2025 SE Hawthorne



**GET BACK ON THAT HORSE!**

Check out Just Friends on page 51

**NORTHWESTnews**

**POINT OF LAW**

**County attorney interprets state constitution**

by Floyd Sklaver

**T**he Multnomah County Commission decision to issue marriage licenses to same-sex couples was based on a legal interpretation by County Attorney Agnes Sowle. But what exactly did that interpretation say, and what does it mean to our future as married couples?

The simple answer is that Sowle based her decision on the opinion that denying marriage licenses violates the equal protection clause of the Oregon Constitution. But, in fact, her reasoning is much more complex and involves the marriage statutes and a past decision affecting gays and lesbians by the Oregon Court of Appeals.

To start off with, marriage in Oregon is defined as "a civil contract entered into by males at least 17 years of age and females at least 17 years of age." The definition doesn't state that the contract may only be entered into between partners of the opposite sex. However, the statute does require that the two individuals declare that they take each other as "husband and wife."

And, while the statute doesn't say that only partners of the opposite sex can be husband and wife, the courts have assumed such a traditional understanding and the counties have followed suit, refusing to issue marriage licenses to same-sex couples.

But, as Sowle points out, county commissioners swear an oath to uphold the state's constitution and must do so even if a court hasn't found a particular statute unconstitutional. In other words, for the commissioners the constitution trumps a statute.

In Article 1, Section 20, the Oregon Constitution provides for equality under the laws. It states, "No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not belong to all citizens."

While that seems like a straightforward argument against discrimination, in fact, discrimination is permissible "when there are rational justifications for treating a class differently." That's why the idea that marriage traditionally has been between a man and a woman carries such weight.

But, certain groups are considered "suspect classes" when they are or have been "the subject of adverse social or political stereotyping or prejudice." Examples of suspect classes include gender, ethnic background, military service and, as of 1998, gays and lesbians.

When a suspect class is affected by a discriminatory law, Oregon courts require more than a rational justification. Instead the law must be supported by "genuine differences between the disparately treated class and those to whom the privileges and immunities are granted." For instance, discrimination on the basis of gender is allowed if it can be proven that men and women can't be treated the same because of biological differences

between them. (That's why men aren't allowed in the women's room.)

Gays and lesbians were considered a suspect class for the very first time in 1998. In its decision *Tanner vs. Oregon Health Sciences University*, the Oregon Court of Appeals looked at OHSU's policy of providing medical benefits to the spouses of its married employees while denying them to the domestic partners of its homosexual employees.

The court held that the group—unmarried gay and lesbian couples—are members of a suspect class. The court then analyzed whether the denial of insurance benefits to domestic partners of queer OHSU employees could be justified by their sexual orientation and found that it could not. Therefore, Article 1, Section 20 of the Oregon Constitution required the university to provide the benefits uniformly.

Since the *Tanner* decision was issued, it has been cited numerous times by other courts including, most notably, the Vermont Supreme Court when it determined that denying the privileges and immunities of marriage to same-sex couples was a violation of that state's constitution.

While the *Tanner* decision didn't offer any suggestions about when to classify gays and lesbians as a suspect class, the Vermont ruling did. It said the most commonly cited justification for excluding same-sex couples from marriage (that marriage is linked to procreation and child rearing) no longer has merit because many opposite-sex couples never intend to have children or can't. What's more, a growing number of children are being raised by same-sex couples. In short, the court said the goal of promoting "the security of their children and the community as a whole" is no different for same-sex couples than it is for straight ones.

With the *Tanner* decision, gays and lesbians could now be identified as a suspect class; therefore, Sowle determined that the county could either deny marriage licenses to all couples, straight and gay, or grant them to straight and gay couples on equal terms. Since she couldn't imagine that the Legislature would approve of the first choice, she decided "the appropriate remedy is extending marriage licenses to all couples regardless of sexual orientation." ■

FLOYD SKLAVER is a Portland free-lance writer.



Christine Tanner, the lesbian plaintiff behind the landmark 1998 Oregon Court of Appeals decision, meets the press while waiting in line for her marriage license March 2

PHOTO BY MARTY DAVIS