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"It is not unconstitutional for the Legislature to craft marriage statutes as between man and woman," says Kelly Clark, attorney for the coalition. "We will argue that Measure 36 answers the question of whether traditional marriage statutes are constitutional."

But Fidanque says there is much more at play than a pat answer to a simple legal question.

"This case is the first opportunity the Oregon Supreme Court has had to review the issue of whether or not discrimination on the basis of sexual orientation is forbidden by the Oregon Bill of Rights," he says. "The case has become all the more important because the court is using it as a vehicle to re-evaluate all of its prior decisions on discrimination."

That fact concerns many civil rights groups. Recently, Charles F. Hinkle of Stoel Rives in Portland filed a friend-of-the-court brief on behalf of 21 Oregon and national civil rights organizations and leaders including the Urban League of Portland, Asian Pacific American Network of Oregon, Japanese American Citizens League and Southern Poverty Law Center.

The brief states: "In the present case, the opponents of marriage equality...seek to turn the clock back to 1857, to a time when the concept of 'equality' under the law was reserved for white males. If the opponents of marriage equality have their way, the Oregon Constitution

would provide limited means to sue the government if it were to discriminate based on race or gender, and laws barring interracial marriage and forbidding women from entering saloons and authorizing sterilization of mentally disabled persons would be permissible once again."

**Separate but equal?**

According to Clark, restricting marriage rights to heterosexual couples is not a throwback to "separate but equal."

"A legislature could believe...a family is a husband, wife and kids...without having prejudice against anybody," he says.

Fear of gay parenting appears to be a key motivating force behind Clark's case. He claims "the only reason for state legislation of private relationships is because of procreation." And in his client's view, procreating is the sole territory of opposite-sex couples.

To back their claim that kids need one mommy and one daddy only, the Defense of Marriage Coalition relies on conservative Christian "traditional marriage" advocates like Timothy J. Dailey, a "fellow" at the Family Research Council. In an essay linked to the coalition's Web site, he writes: "In a

democratic society, those who choose to cohabit in 'alternative' familial arrangements such as same-sex unions have the freedom to do so. But toleration is one thing; promotion and 'celebration' are another. To entrust children to such arrangements is wholly beyond the pale."

*"There are at least a thousand different paths the court could go down with this case"*

—David Fidanque

will be afforded to same-sex couples in the future.

"I think that day is inevitable, but it's going to be a while," he says. "What we're dealing with is step two in a 10- or 15-part process."

**Pushing forward on many fronts**

In addition to battling the Defense of Marriage Coalition in court, Basic Rights Oregon has a full plate in the coming post-Measure 36 days. Thorpe says BRO will be turning its attention to the new legislative session in January. "We are imagining that LGBT rights and issues will be very much in play this session."

Top on BRO's agenda is passing a civil rights bill that would provide statewide protections based on sexual orientation and gender identity, much like the protections in cities like Portland.

Thorpe is hopeful that the bill has a good chance of passing.


"Our polling showed that over 80 percent of Oregonians support protecting gays and lesbians from discrimination," she says.

Another top issue for the nonprofit organization is adding gender identity to the state hate crimes bill.

"We're not only focused on same-sex marriage," Thorpe says. "But we're not stopping that fight." □

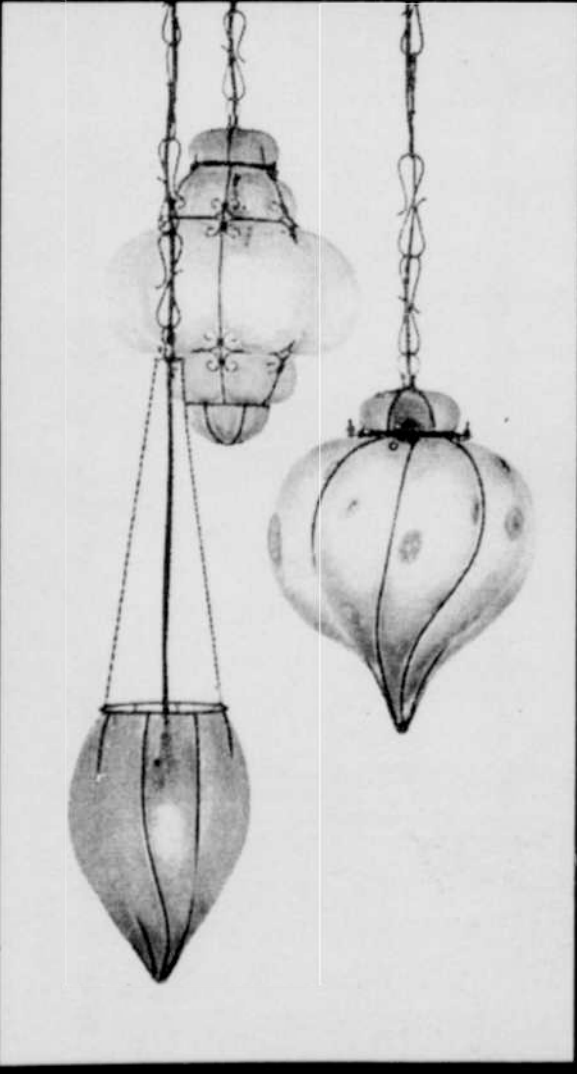
To read the written legal pleadings for Li & Kennedy vs. State of Oregon, go to [www.aclu-or.org](http://www.aclu-or.org).

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