

Kelly Clark says if Basic Rights Oregon had asked him for advice about how to win same-sex marriage rights, he would have told them, "Don't go for the whole enchilada at once."

But for obvious reasons, BRO was not about to consult Clark, the attorney for the anti-gay Defense of Marriage Coalition. Though Clark claims his group did not form until after March 3, when Multnomah County began issuing marriage licenses to same-sex couples, its efforts to ban same-sex marriage were under way weeks before the group incorporated.

"We knew in February [that] ballot measures had been filed," says Rebekah Kassell, BRO's communications director. "We knew we were going to have to face this issue in 2004 or 2006."

As the state's leading advocacy organization for gay, lesbian, bisexual and transgender rights, BRO foresaw that it needed an ambitious, multi-tiered plan to navigate the rough waters ahead.

"We knew that the way to win in the long run was to have people married before an amendment passed," says Kassell. "We needed real married couples talking about their real married lives."

Not that they thought the amendment's passage was inevitable.

THE WHOLE ENCHILADA

Full marriage equality still on the horizon

by Meg Daly



Ken Choe, New York attorney for the ACLU

"The passage of Measure 36 was a setback we were hoping never to have to face," says BRO director Roey Thorpe.

Now, in what appears to be a seamless jujitsu move, BRO and the other plaintiffs in the same-sex marriage case before the Oregon Supreme Court will argue for legal civil unions for same-sex couples while at the same time maintaining that nothing short of marriage will equal marriage equality.

Though their opponent has accused them of changing course midstream, the plaintiffs argue they have no choice but to secure what rights they can instead of none at all.

Some media have misconstrued this change in tactics. Reuters reported: "ACLU drops gay marriage case in Oregon." *The Portland Mercury* wrote, "In no uncertain terms, that announcement signals an acceptance of defeat on the marriage issue for same-sex couples."

In fact, the push for marriage equality has not been dropped or defeated, a fact that leaders of BRO and the American Civil Liberties Union have asserted repeatedly. Strategy within the Supreme Court case has necessarily changed because of the passage of Measure 36, says Kassell. "This amendment might take marriage off the table within the context of this case, but it does not remove the state's constitutional obligation to provide, at a minimum, all of the rights and protections of marriage."

Attorneys are considering further legal action to overturn the gay marriage ban, just not through this case.

"We believe the constitutional defects of the amendment are outside the scope of this case," says David Fidanque, ACLU of Oregon executive director.

The focus for this case will remain on securing marriage benefits, if not the full status of marriage, for same-sex couples. What the court does with the 3,000 marriages that were performed before the constitution was amended will determine the next steps taken by BRO and the ACLU.

"The outcome of this case would be important in any future case," says Fidanque.

Meanwhile, the 3,000 same-sex marriages performed in Multnomah County may be the ACLU's ace in the hole.

"The ballot measure can't 'undo' a marriage," says Ken Choe, an attorney with the ACLU.

Kassell admits it may seem odd for BRO and the ACLU to advocate in court for a world in which some queer couples are in a marriage and some are in a civil union.

"From a legal and strategic perspective, we believe that the sheer absurdity of such a world actually helps us to achieve marriage equality for all of us sooner by creating a ripe opportunity for new legal challenge that may be more winnable," she says.

Still, the rush to secure marriage benefits is on. While the ACLU will argue that civil unions are constitutionally required but a poor second best to full marriage, a Republican senator from central Oregon may be muddying the waters with legislation unconnected to the case.

The Associated Press reported Nov. 22 that state Sen. Ben Westlund is drafting a civil union bill. Westlund originally supported Measure 36 but later said he made a mistake.

BRO hopes the Legislature proceeds with caution.

"We would prefer the Legislature to wait for direction from the Supreme Court," says Kassell. "All of the action we are taking is taken with the end goal in mind of full marriage equality for all Oregon citizens." ■

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