

Her reason for being there was succinct. "We would like to become full citizens," said Salem resident Joan Warnock on the Oregon Capitol steps Dec. 15 in Salem.

It was the day the Oregon Supreme Court heard final arguments in *Li vs. Oregon*, the lawsuit challenging the state's denial of marriage rights to same-sex couples. Warnock and her partner of 23 years, Hanneliese Selbach, joined about 100 marriage equality supporters at a prehearing gathering organized by Basic Rights Oregon.

BRO executive director Roey Thorpe called the struggle for marriage equality "the movement of our time."

"It's about love," she said. "True love will not fail."

The crowd erupted in cheers and began the quick walk to neighboring Willamette University to watch the court proceedings on closed-caption television. Meanwhile, Thorpe and several plaintiffs in the case made their way to the Supreme Court building.

Plaintiff Kelly Burke said she was feeling both excited and pragmatic about the possible outcomes of the case. She wants her 3-year-old son, Avery, to grow up in family that is considered married just like those of his peers.

"I feel like we're going to come out of it with something," she said. She and her spouse, Dolores Doyle, were married March 3 in Multnomah County.

It remains to be seen, however, what rights—if any—gay and lesbian couples will come away with from this case. The seven justices asked tough questions of both sides in the hour-plus allotted for oral arguments. The questions cen-

PARTING WORDS

Oregon Supreme Court considers same-sex marriage case

by Meg Daly

tered on procedural and statutory issues in the case, not the fundamental constitutional rights of gays and lesbians.

Despite the fact that three of the four litigants—the state of Oregon, Multnomah County and the American Civil Liberties Union on behalf of nine same-sex couples and Basic Rights Oregon—agree that the case was not rendered moot by the passage of Measure 36, the mootness question was of primary concern to the justices. They echoed the concern raised by Kelly Clark, attorney for the Defense of Marriage Coalition, regarding the package of marriage benefits being sought by the same-sex couples.

Clark called the benefits "unnamed" and "unidentifiable," though he did indicate that he knew there were 500 such benefits at stake. "Nobody in this courtroom knows what benefits they are asking for," he said.

Justice Michael Gillette questioned ACLU attorney Kenneth Choe about this issue.

"How can we give substance to a phrase like 'complete package of benefits'?" he asked.

Choe said the Oregon Constitution guarantees equal protection under the law and therefore there is no basis for denying the legal benefits of marriage to a citizen based on his or her sexual orientation.

While Clark has argued that this is a "radically amended claim," Choe reminded the court



Marriage equality supporters on the steps of the Oregon Capitol

that both married and unmarried same-sex couples are plaintiffs in the case and that the unmarried couples have always sought marriage rights in addition to the status of marriage.

BRO lobbyist Maura Roche said Clark was being somewhat disingenuous in his assertion that the benefits are unnamed. "Our briefs didn't regurgitate all...the statutes that reference privileges based on being a spouse." But, she added, the statutes do exist.

In a panel discussion at Willamette after the hearing, ACLU co-counsel Lynn Nakamoto said, while it is impossible to predict, the court

could decide the case on unconstitutional issues and not rule at all on the constitutionality of the 3,042 same-sex marriages.

Choe said, however, "We have argued vigorously that the court must reach this issue."

Much of the rest of the discussion involved candid disclosure about strategy, answering lingering questions about why the ACLU was pursuing civil unions rather than challenging the constitutionality of Measure 36. Choe said that one of the two ways to challenge a state's constitution is to take it to the U.S. Supreme Court, which, he noted, "is not our friend on this issue."

Choe said the ACLU consulted with queer rights groups and legal experts throughout the nation about this question and heard back resounding concern "that we would lose and it would be nationally binding."

There was also concern that if the ACLU won a Supreme Court case in favor of same-sex marriage, the backlash in Congress could mean swift passage of the Federal Marriage Amendment banning gay marriage.

"Congress is not our friend, and it has gotten worse," said Choe.

He said that the other way to invalidate a constitutional amendment is through state election law but that it is unclear if that basis is open to marriage equality supporters at this time.

Choe told the crowd of about 200 attending the panel discussion that he was "grateful to the LGBT community in Oregon.... You've done yourselves proud."

A ruling in the case could come anytime and is expected by early 2005. **JM**

Staff Writer MEG DALY can be reached at megdaly@justout.com.

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