

IN THE SUPREME COURT OF THE STATE OF OREGON

MARY LI and REBECCA KENNEDY; STEPHEN )  
KNOX, M.D. And ERIC WARSHAW, M.D.; ) Multnomah County Circuit  
KELLY BURKE and DOLORES DOYLE; DONNA ) Court Case No. 0403-  
03057  
POTTER and PAMELA MOEN; DOMINICK )  
VETRI and DOUGLAS DEWITT; SALLY ) Supreme Court No.  
SHEKLOW and ENID LEFTON; IRENE ) SC S51612  
FARRERA and NINA KORICAN; WALTER )  
FRANKEL and CURTIS KIEFER; JULIE )  
WILLIAMS and COLEEN BELISLE; BASIC )  
RIGHTS OREGON; and AMERICAN CIVIL )  
LIBERTIES UNION OF OREGON, )  
)  
Plaintiffs-Respondents, Cross- )  
Appellants, )  
)  
and )  
)  
MULTNOMAH COUNTY, )  
)  
Intervenor-Plaintiff-Respondent, )  
Cross-Appellant, )  
)  
v. )  
)  
STATE OF OREGON; THEODORE )  
KULONGOSKI, in his official capacity as Governor )  
of the State of Oregon; HARDY MYERS, in his )  
official capacity as Attorney General of the State )  
of Oregon; GARY WEEKS, in his official capacity )  
as Director of the Department of Human Services )  
of the State of Oregon; and JENNIFER )  
WOODWARD, in her official capacity as State )  
Registrar of the State of Oregon, )  
)  
Defendant-Appellants, Cross- )  
Respondents, )

OCTOBER 2004

and )  
)  
DEFENSE OF MARRIAGE COALITION, CECIL )  
MICHAEL THOMAS, NANCY JO THOMAS, )  
DAN MATES, and DICK OSBORNE, )  
)  
Intervenors-Defendants-Appellants, )  
Cross-Respondents. )

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**BRIEF ON THE MERITS OF AMICUS CURIAE LEGAL MOMENTUM  
(FORMERLY NOW LEGAL DEFENSE AND EDUCATION FUND),  
NATIONAL ASSOCIATION OF WOMEN LAWYERS, NATIONAL  
COUNCIL OF JEWISH WOMEN, NATIONAL ORGANIZATION FOR  
WOMEN (NOW) FOUNDATION, WOMEN'S LAW PROJECT,  
NORTHWEST WOMEN'S LAW CENTER, NARAL PRO-CHOICE  
OREGON, YOUNG WOMEN'S CHRISTIAN ASSOCIATION (YWCA) OF  
SALEM, NATIONAL ORGANIZATION FOR WOMEN (NOW), OREGON  
CHAPTER, LEAGUE OF WOMEN VOTERS OF OREGON, NATIONAL  
COUNCIL OF JEWISH WOMEN (NCJW), PORTLAND SECTION,  
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW) OF  
OREGON, AND OREGON TRIAL LAWYERS ASSOCIATION (OTLA)**

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Appeal from the Judgment of the Circuit Court of Multnomah County  
Honorable Frank C. Bearden, Judge

Maureen Leonard OSB 82316  
520 SW Sixth Avenue, Suite 920  
Portland, Oregon 97204  
Telephone: 503-224-0212

\*Hon. Betty Roberts OSB 67107  
2309 SW First Avenue, Suite 842  
Portland, Oregon 97201  
Telephone: 503-221-9929

Ellen Taussig Conaty OSB 01426  
1515 SW Fifth Avenue, Suite 808

Portland, Oregon 97201  
Telephone: 503-417-1117

Attorneys for Amicus Curiae Womens' Organizations and OTLA

\*This brief was prepared with the assistance of Justice Roberts. Justice Roberts is an inactive member of the Oregon State Bar and a former member of the Oregon Supreme Court.

Lynn R. Nakamoto OSB 88087  
Markowitz Herbold, et al.  
1211 SW Fifth Avenue, Suite 3000  
Portland, Oregon 97204  
Telephone: 503-295-3085

Kenneth Y. Choe, *Pro Hac Vice*  
ACLU Foundation  
125 Broad Street  
New York, NY 10004  
Telephone: 212-549-2553

Attorneys for Plaintiffs-Respondents-Cross-Appellants Li, et al.

Agnes Sowle OSB 87348  
Jenny Morf OSB 98298  
Multnomah County Counsel  
501 SE Hawthorne Blvd., Suite 500  
Portland, Oregon 97214  
Telephone: 503-988-3138

Attorneys for Intervenor-Plaintiff-Respondent Multnomah County

Hardy Myers OSB 64077  
Attorney General  
Peter Shephard OSB 80106  
Deputy Attorney General  
Michael C. Livingston OSB 81297  
Assistant Attorney General  
1162 Court Street NE, Suite 400  
Salem, Oregon 97301-4096  
Telephone: 503-378-4402

Attorneys for Defendants-Appellants-Cross-Respondents State of Oregon et al.

\*This brief was prepared with the assistance of Justice Roberts. Justice Roberts is an inactive member of the Oregon State Bar and a former member of the Oregon Supreme Court.

Kelly W. G. Clark OSB 83172  
Kristian Roggendorf OSB 01399  
O'Donnell & Clark, L.L.P.  
1706 NW Glisan, #6  
Portland, Oregon 97209  
Telephone: 503-306-0224

Raymond M. Cihak OSB 94560  
Pamela S. Hediger OSB 91309  
Evashevski Elliott Cihak & Hediger, P.C.  
P. O. Box 781  
Corvallis, Oregon 97339  
Telephone: 541-754-0303

Jordan Lorence, *Pro Hac Vice*  
Benjamin W. Bull, *Pro Hac Vice*  
Alliance Defense Fund  
15333 North Pima Road, Suite 165  
Scottsdale, AZ 85260  
Telephone: 480-444-0020

Herbert G. Grey OSB 81025  
4800 SW Griffith Drive, #320  
Beaverton, Oregon 97005  
Telephone: 503-641-4908

Kelly E. Ford OSB 87223  
Kelly E. Ford, P.C.  
4800 SW Griffith Drive, #320  
Beaverton, Oregon 97005  
Telephone: 503-641-8757

Kevin Clarkson, *Pro Hac Vice*  
Brena Bell & Clarkson  
310 K Street, Suite 601  
Anchorage, AK 99501  
Telephone: 907-258-2000

\*This brief was prepared with the assistance of Justice Roberts. Justice Roberts is an inactive member of the Oregon State Bar and a former member of the Oregon Supreme Court.

Attorneys for Intervenors-Defendants-Appellants-Cross Respondents  
Defense of Marriage Coalition, et al.

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# **BRIEF OF AMICUS CURIAE WOMEN'S ORGANIZATIONS AND OREGON TRIAL LAWYERS ASSOCIATION**

## **INTERESTS OF AMICI**

The following organizations urge this court to extend the privilege of marriage to same-sex couples: Legal Momentum (formerly NOW Legal Defense Education Fund), National Organization for Women (NOW) Foundation, National Association of Women Lawyers, National Council of Jewish Women, Women's Law Project, Northwest Women's Law Center, NARAL Pro-Choice Oregon, Young Women's Christian Association (YWCA) of Salem, National Organization for Women (NOW), Oregon Chapter, League of Women Voters of Oregon, National Council of Jewish Women (NCJW), Portland Section, National Organization of Women, Oregon Chapter, American Association of University Women (AAUW) of Oregon, and Oregon Trial Lawyers Association (OTLA).

The numerous women's organizations advocate at the national and local levels for change to end gender stereotyping. These organizations support the rights of all women and men to live free from government-enforced gender stereotypes. This includes the right of lesbians and gay men to define themselves and their families in the ways available to heterosexual couples.

OTLA is an organization of lawyers who represent claimants in employment discrimination, domestic relations, civil rights, personal injury and consumer

litigation. Clients include gay and lesbian domestic partners who are precluded from seeking damages for loss of consortium and loss of society and companionship for the injury or death of their life partners. These clients are damaged by tortious injuries to their loved ones, but the law does not recognize or compensate their harms because they are not married.

The interests of the individual amici organizations are stated more fully in the appendix attached to this brief.

## **INTRODUCTION**

In 1982 this court invalidated a statute that denied a workers' compensation payment to a family because of the gender of the worker killed on the job. In *Hewitt v. SAIF*, 294 Or 33, 653 P2d 970 (1982), this court held that Article I, section 20 prohibited the gender-based classification upon which the statute rested because it reflected "invidious" prejudice about the abilities, contributions and appropriate roles of women and men. 294 Or at 45. This court held that a statute which assigns or proscribes social roles to men and women because of their gender and for no other reason "is exactly the kind of stereotyping which renders the classification suspect in the first place." 294 Or at 46.

Twenty-two years later plaintiffs, nine same-sex couples, Basic Rights Oregon and the American Civil Liberties Union, challenge the individual plaintiffs' exclusion from marriage, a state-regulated civil contract which bestows

significant rights and responsibilities on the parties to the marriage and their families. Their exclusion is based on gender -- their own and that of their chosen marriage partner. Their exclusion from marriage is premised not on genuine biological differences relevant to marriage but on historic stereotyping of gay and lesbian people as immoral or deviant from traditional gender roles. The marriage statute so limited is unconstitutional because it grants the many privileges of marriage only to those who make a gender-“appropriate” choice of marriage partner.

The court asked the parties to respond to five questions, four of which concern Article I, section 20. This brief addresses Article I, section 20 and how *Hewitt’s* interpretation of that provision guides this case. It also incorporates answers to the court’s questions regarding the privileges and immunities clause.

### ***HEWITT’S SETTLED PRINCIPLES***

#### ***1. Laws may not use gender to enforce “appropriate” social roles.***

Article I, section 20 prohibits laws which grant privileges or immunities “which, upon the same terms, shall not belong to all citizens.” When the “terms” of equality implicate gender, *Hewitt* teaches that those terms cannot stand if they are a shorthand for assumptions about social roles that limit the contributions men and women are permitted to make. 294 Or at 46-47.

*Hewitt* illustrates how gender classification disfavors women and men, and how the invidious nature of such classification works a hardship on their families. Marian Williams was killed on the job. Former ORS 656.226 provided workers' compensation death benefits to female unmarried survivors of covered workers and their children, but not to male survivors in the same situation. As a result, Williams' surviving male domestic partner and child received no compensation for her death. The statute was built on gender stereotypes of female financial dependence on men, and male financial responsibility for women, thus constraining both men and women. Former ORS 656.226 not only undervalued women's work, it also denied financial support to the surviving parent because he was a man.

The equally serious effect of the statute was to disfavor the children and destabilize the family relationship. In this case, many of the couples who seek the legitimacy that only marriage provides do so in large part to protect and gain acceptance for their children. Plaintiffs' Opening Brief on the Merits, at 17-19.

*Hewitt* spoke of both "immutable" personal characteristics as well as the "invidious" stereotypes associated with them. The concern of *Hewitt* is with personal characteristics that historically have defined distinct groups, made them targets for adverse social and political prejudices, and shut doors to the benefits

and opportunities of society. Both gender and sexual orientation are such personal characteristics.

The marriage statute allows one class of citizens to marry -- adults who choose partners of the opposite sex -- and disallows another class -- adults who choose partners of the same sex.<sup>1</sup> Access to marriage turns on the gender of the prospective marriage partners. Gays and lesbians exist as an identifiable social class apart from the marriage statute. Their exclusion from marriage denies them the many privileges and immunities available to opposite-sex couples.

The problem with gender classifications is that consciously or unconsciously they are often based on stereotype and prejudgment about the class members. The classification often assumes that class members are capable of only a limited and proscribed contribution to society; the assumption then becomes the justification for disfavored treatment.

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<sup>1</sup> ORS 106.010 provides:

Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 196.150.

Gays and lesbians have been and continue to be the subject of negative stereotyping. The gender stereotyping that gays and lesbians face stems from the same kind of unexamined negative prejudices that made gender classification against women, men and their families “invidious” and “suspect” in *Hewitt*. It is prejudice built on familiar male-female sex discrimination. Rhode, *Sex-Based Discrimination: Common Legacies and Common Challenges*, 5 S Cal Rev L & Women’s Stud 11, 14 (1995)(“Both discrimination on the basis of sex and discrimination on the basis of sexual orientation have rested on similar assumptions about gender differences.”); Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 NY U L Rev 197, 203 (1994) (“[T]he stigmatization of gays in contemporary American society functions as part of a larger system of social control based on gender.”).

Homosexual people are an identified class defined by attraction to persons of the same gender. This attraction is itself a perceived refusal to conform to traditional gender roles. Yoshino, *Covering*, 111 Yale L J 769, 844 (2002)(“Effeminate men and masculine women are often assumed to be homosexual, suggesting that gender and orientation are bundled in popular consciousness[.]”); Koppelman, *Romer v. Evans and Invidious Intent*, 6 Wm & Mary Bill Rts J 89, 129 (1997)(“Most Americans learn no later than high school that one of the nastier sanctions that one will suffer if one deviates from the



behavior traditionally deemed appropriate to one's sex is the imputation of homosexuality. The two stigmas--sex-inappropriateness and homosexuality--are virtually interchangeable, and each is readily used as a metaphor for the other.”).

Marriage as a partnership of a man and a woman is so familiar that it tends to disguise its assumptions about gender roles. Yet, through state approval and the distinctive legal status conferred on the marriage partners, the marriage statute enforces one view of gender-appropriate behavior: that women are supposed to partner only with men and express sexual intimacy only with men; that men are supposed to partner only with women and express sexual intimacy only with women. Those who do not meet these assumptions about gender-appropriate behavior are simply not permitted to make the state-endorsed commitment that is marriage.

The parties in this case interpret the current marriage statutes to require that the marrying couple be a man and a woman. The State acknowledges that the statute does not say this expressly, but references to “husband” and “wife” in the solemnization provisions so indicate.<sup>2</sup> This interpretation is certainly consistent

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<sup>2</sup> ORS 106.041 provides:

with the contemporary meanings of “husband,” a married man, and “wife,” a married woman. Yet even these well understood words derive from origins that reflect particular roles or tasks as much as the gender with which they are associated.

The first definition of “husband” in the Oxford English Dictionary is “freeholder,” a “peasant owning his own house and land.” Compact Edition of the

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All persons wishing to enter into a marriage contract shall obtain a license therefor from the county clerk upon application, directed to any person \* \* \* authorized \* \* \* to solemnize marriages, and authorizing such person \* \* \* to join together as husband and wife the persons named in the license.

ORS 106.150 provides:

\* \* \* no particular form [of solemnization] is required except that the parties thereto shall assent or declare in the presence of the clergyman, county clerk or judicial officer solemnizing the marriage and in the presence of at least two witnesses, that they take each other to be husband and wife.

Oxford English Dictionary, Vol I, A-O (1971), at 1352 (subpage 471). Other definitions include “the manager of a household \* \* \* a steward,” and “[o]ne who tills and cultivates the soil,” (as in, “He was accounted . . . the greatest Husband and the most excellent Manager of Bees in Cornwall.”). *Id.* “Husband” also was the title of various public functionaries and was so used into the mid and late 1800’s. *Id.* The verb form continues to mean, among other things, “to manage with thrift and prudence.” *Id.*

The definition of “wife” is similarly overladen with the tasks performed, as much as by the gender of the one who performed them. The first definition of “wife” includes “a woman of humble rank \* \* \* especially one engaged in the sale of some commodity,” such as alewife, applegate and fishwife. Oxford English Dictionary, *supra*, Vol II, P-Z, at 3775 (subpage 117).

Marriage is a state-sanctioned civil contract which has long carried the weight of assumptions about gender roles. Many legal rights and responsibilities of the parties in a marriage traditionally were assigned by gender, and reflected the gender roles assigned to opposite-sex marriage partners: woman as companion, domestic support and producer of heirs to man; man as protector, provider and decision-maker for woman. These imbalances have undergone considerable change since Oregon’s marriage statute was first enacted. This change has been

driven in large part by the process of shedding assumptions and stereotypes based on gender roles.

Both statutory amendments and judicial decisions have tempered the gender-based imbalances in the marriage relationship. ORS 107.137(4) prohibits preferences in child custody decisions based on gender. ORS 108.010 equalized the civil rights and disabilities of wives and husbands. When the constitutional drafters debated the Oregon provision preserving a woman's property as her own despite marriage (Article XV, section 5), their reference to husband and wife as "bone of one bone and flesh of one flesh"<sup>3</sup> simply described the diminished status of married women at the time -- that a woman was not a legal person separate from her husband once she married. The vestige of this particular fiction occupied the court in *Heino v. Harper*, 306 Or 347, 759 P2d 253 (1988)(holding that interspousal immunity no longer barred negligence claims between spouses).

Thus, historically proscribed gender roles have changed in many areas of life and perhaps no place more profoundly than in the marriage relationship.

**2. *The vision of equality in Article I, section 20 is about the present, not the past.***

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<sup>3</sup> Cited in Intervenor Defense of Marriage Coalition's ("DOMC") Opening Brief on the Merits, at 22.

*Hewitt* means that equality under Article I, section 20 is an evolving principle. In *Hewitt* this court was not constrained by earlier constitutional interpretations that condoned disfavored treatment on the basis of gender. *Hewitt*, like this case, addressed a statute enacted many years ago. The apparent purpose of the workers' compensation benefit enacted in 1927 was to ensure benefits to surviving family members. 294 Or at 47. It classified on the basis of gender because women were assumed to be financially dependent on men. 294 Or at 46. This may have been an unobjectionable assumption at the time. However, this court had no hesitation 55 years later in declaring that using gender as a legislative shorthand for dependency is among the stereotypes forbidden by Article I, section 20. 294 Or at 47.

The defenders of the marriage statute in this case similarly rely on assumptions about those who may be permitted to enter into the marriage relationship. The assumptions about the male and female parties to a marriage may have been uncontroversial in 1857, but they cannot sustain discriminatory laws today. As *Hewitt* holds, simply upholding historical social roles is not a valid justification of invidious classifications. 294 Or at 47.

Nor can the views of the constitutional drafters in 1857 constrain this court's interpretation of equality today. The origins of Article I, section 20 as a guarantee against favoritism remain meaningful to its interpretation. As this court said in

*Priest v. Pearce*, 314 Or 411, 415-516, 840 P2d 65 (1992), when interpreting a constitutional provision it is proper to consider the specific wording, the case law surrounding it and the historical circumstances that led to its creation.

In *State v. Clark*, 291 Or 231, 630 P2d 810, *cert. den.*, 454 US 1084, 102 S Ct 640, 70 L Ed 2d 619 (1981) this court examined the original impetus for Article I, section 20 and noted that it

reflects early egalitarian objections to favoritism and special privileges for a few rather than the concern of the Reconstruction Congress about discrimination against disfavored individuals or groups. 291 Or at 236.

But the protective effect of Article I, section 20

was soon held to extend to rights against adverse discrimination as well as against favoritism. 291 Or at 237.

A law such as the marriage statute, which grants privileges and immunities to some necessarily denies it to others. The terms upon which the beneficial status of marriage is conferred are clearly challengeable under Article I, section 20.

Understanding the historical circumstances leading to enactment of a particular constitutional provision is not the same thing as exploring what the founding drafters might have understood by certain constitutional words. And, for some constitutional provisions, the framers' understanding of a particular concept may not be relevant at all. The constitutional text provides the answer.

For example, Article I, section 17, the right to jury trial in civil cases, directs that “the right to Trial by Jury *shall remain* inviolate.” (Emphasis added). This is a textual direction to examine the extent of the civil jury trial right in 1857 in order to compare contemporary changes for departure from or consistency with a designated standard. *Tribou v. Strowbridge*, 7 Or 156, 158-159 (1879) (directing review of laws at the time of the adoption of the constitution in order to determine whether a jury trial right existed for the claim before the court). Even this explicit textual directive does not limit the court to the literal confines of history; the right to jury trial also applies to “cases of like nature as they may hereafter arise.” *State v. 1920 Studebaker Touring Car*, 120 Or 254, 263, 251 P 701 (1926); *Molodyh v. Truck Ins. Exchange*, 304 Or 290, 295, 744 P2d 992 (1987).

The constitutional framers expressed many class prejudices that are offensive and unlawful today. See *Cox ex rel Cox v. State*, 191 Or App 1, 7, 80 P3d 514 (2003)(Schuman, J., concurring). They drafted a constitution that prohibited laws granting privileges or immunities to one class over another and, at the same time, imposed significant restrictions on racial and ethnic classes. Or Const, Art I, § 35 (imposing disability on current “negro” and “mulatto” residents; banning further emigration into the state)(repealed Nov 2, 1926); Or Const. Art I, §31 (prohibiting Chinese and other nonwhite “foreigners” from owning property)(repealed May 26, 1970). The early coexistence of an equality mandate

with laws regarded as clearly unequal today does not make racial or ethnic inequality sound or unreachable as a matter of Article I, section 20 jurisprudence.

*Hewitt* makes this very clear. In *Hewitt* this court recognized that gender roles can be implicated in an unconstitutional manner today, even if in the past they were widely accepted and condoned under the same constitutional provision. And certainly, there was no expectation in *Hewitt* that the views of the constitutional drafters should be explored for interpretive clues. It is obvious that the framers' conception of equality "is not ours." *Cox ex rel Cox v. State, supra*, 191 Or App at 7 (Schuman, J., concurring).

It is useful to return to the constitutional text. The same drafters who debated whether "Chinamen" were better or worse than "negroes" while enacting laws to disadvantage both,<sup>4</sup> also adopted a constitutional text that is distinctly timeless and inclusive. Article I, section 20 provides:

No law shall be passed granting to any citizen or any class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

The constitutional text calls for an equal playing field. It is a mandate by which every law can be measured. The "terms" of access to privileges or

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<sup>4</sup> Charles H. Carey, ed., the Oregon Constitution and Proceedings and Debates of the Constitutional Convention of 1857, 359-62 (1926). *See also discussion in Cox ex rel Cox v. State.*, 191 Or App 1, 7-8, 80 P3d 514 (2003)(Schuman, J., concurring).



immunities are those set in the challenged law itself. It is left to this court to evaluate those terms in light of contemporary principles of equality.

This is not an exercise the court conducts in a vacuum. One important measure of evolving equality is how the law already has changed to include a class of citizens who have faced historically negative treatment.

**3. *Changes in contemporary laws help define the meaning of equality under Article I, section 20.***

In many ways important to this case, Oregon laws have changed. As discussed below, criminal laws no longer punish homosexuals for intimate conduct that failed to conform to sex-role stereotypes. Other laws permit homosexuals as couples or individuals to build families on the same terms as heterosexuals.

*Hewitt* made reference to many cases from the federal courts and other states which challenged various laws that disadvantaged women. 294 Or at 35-36, 39-41. It also noted that many states had passed constitutional proscriptions against gender discrimination. 294 Or at 44, n. 9. This backdrop of the changing legal status of women, and the changing social roles of women and men provided context for the court's ultimate interpretation of Article I, section 20.

Similarly, in *State ex rel Adult & Family Serv. Div. v. Bradley*, 295 Or 216, 666 P2d 249 (1983) this court noted that under Oregon law all children are now

entitled to the same rights to parental support whether or not their parents have married. ORS 109.060. 295 Or at 219-220. For this reason, the court stated:

We have no occasion to consider whether some lesser support right may be constitutionally "adequate." By statutory mandate the only adequate right is an equal right. 295 Or at 220.

Thus, existing laws, which reflect contemporary views of appropriate class treatment, inform the Article I, section 20 analysis.

At one time Oregon designated sexual relations between persons of the same sex an "offense against nature" and punished such conduct as a felony. General Laws of Oregon 1864, p. 560, Sec 639; *State v. Start*, 65 Or 178, 132 P 512 (1913). These laws were repealed in Oregon in 1971. Or Laws 1971, chap 743, sec 432. When Texas convicted two men for consensual, private sexual activity, the Supreme Court overturned the convictions on federal constitutional grounds, thus making it unconstitutional for any state to prosecute homosexuals for private intimate conduct. *Lawrence v. Texas*, 539 US 558, 123 S Ct 2472, 156 L Ed 2d 508 (2003).

Oregon prohibits discrimination on the basis of sexual orientation in employment. ORS 659A.030(1)(b); *ACLU v. Roberts*, 305 Or 522, 526-527, 752 P2d 1215 (1988)(so suggesting); *Tanner v. OHSU*, 157 Or App 502, 515, 971 P2d 435 (1998)(so holding; interpreting statute as formerly numbered ORS 659.030). Homosexual employees cannot be denied insurance benefits for same-sex partners

when benefits are available to spouses of married employees. *Tanner, supra*, 157 Or App at 447-448.

Oregon law places no limits on the ability of same-sex couples to have and raise children. Courts may not differentiate between homosexual and heterosexual parents in custody and visitation decisions. *Collins v. Collins*, 183 Or App 354, 359, 51 P3d 691 (2002)(court cannot consider parent's homosexual relationship when deciding custody arrangement); *Ashling v. Ashling*, 42 Or App 47, 50, 599 P2d 475 (1979)(homosexuals and heterosexuals held to same standard of behavior when deciding custody and visitation). A Department of Justice support enforcement rule credits a parent with child support payments made by his or her domestic partner of either sex. OAR 137-050-0410(4).

The State does not differentiate between same-sex and opposite-sex couples who wish to adopt a child. ORS 109.309(1)(“[a]ny person may petition the circuit court for leave to adopt”); OAR 413-120-0200(3) (providing that adoption is open to unmarried and married couples, and individuals); OAR 413-120-0310 (providing minimum standards for adoptive homes). As this record reflects, the State accommodates adoptive gay and lesbian parents by issuing a birth certificate on which the same-sex parents are denominated “parent” and “parent” rather than “mother” and “father.” (Stip Facts Between Pls and Defs ¶1; Johnson Decl ¶ 11).

The State's treatment of gays and lesbians in the areas of family relations and parenting, in particular, indicates the extent to which equality already forms an undisputed part of Oregon law. Intervenor DOMC's view that opposite-sex marriage represents a "legislatively determined optimal environment" for child rearing is entirely undercut by existing laws. DOMC Opening Brief on the Merits, at 4. In fact, the reverse is the case. Other state laws indicate what equal treatment means. When it comes to marriage, other state laws indicate, as they did in *Bradley*, that "the only adequate right is an equal right." 295 Or at 220.

**4. *A classification based on gender cannot be sustained because it is not necessary to the purposes of marriage.***

*Hewitt* held that a gender classification may be valid if it "reflects specific biological differences between men and women." 294 Or at 46. In *State ex rel Adult & Family Serv., supra*, the court held that the only genuine distinction between legitimate and illegitimate children who sought support from their fathers was the need for proof of paternity. Accordingly, a blanket statute of limitations on filiation actions short of the child's age of majority could not stand. 295 Or at 222-224.

Here, the question is whether limiting marriage to male-female couples and denying marriage to male-male and female-female couples is related to any genuine distinction between opposite-sex and same-sex marriage partners. There

is a biological difference, of course -- same-sex couples are unable to produce a child together. But this appears to have little to do with the state's interest in marriage. Producing children together is an option but not an obligation for opposite-sex marriage partners. Heterosexual and homosexual couples, as well as individuals, have the same rights to pursue adoption, foster-parenting and alternative child-producing means.

No biological reason justifies withholding marriage from same-sex couples. Nor is there anything else about a same-sex relationship that makes it inherently unsuitable for the long-term relationship of commitment, care, dependence and mutual responsibilities that is marriage. To the contrary, in other respects described above, Oregon law permits and facilitates family-building for gays and lesbians in the same ways available to heterosexuals. Limiting marriage to opposite-sex couples simply perpetuates stereotypic assumptions about the "proper" parties to a marriage.

## **CONCLUSION**

Marriage offers many benefits that committed partners can obtain only if married. While some privileges, such as property interests, may be replicated by private contract between domestic partners, many other privileges are unique to marriage; they are available only to legally recognized spouses. As significantly, marriage confers a public affirmation of and support for the relationship and the

family encompassed within it. The marriage statute unconstitutionally discriminates on the basis of gender. It should be extended to include same-sex couples.

DATED this 14th day of October, 2004.

Respectfully submitted,

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Maureen Leonard      OSB 82316  
Ellen Taussig Conaty      OSB 01426