

CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123

FRANK L. BEARDEN
JUDGE

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April 29, 2004

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Lynn R. Nakamoto
Markowitz, Herbold, et al
1211 SW 5th Avenue, Suite 3000
Portland, Oregon 97204

Re: May Li, et al v. State of Oregon, et al, 0403-03057

Counsel:

Enclosed you will find a copy of the judgment I filed today. You will need to check with civil docketing or OJIN to determine the "entry" date.

I asked Mr. Bushong to prepare the judgment and he did so in a concise manner which I personally favor. However, after reading Ms. Nakamoto's "revised" proposed form of judgment, I decided to sign that form since it helps the reader track the progress of the case and further explains the reason for the focused oral argument. It was a collaborative effort which I much appreciate.

It should be noted that the time the legislature has to reach a decision (unless stayed or removed by an appellate court) is 90 days from the time they are fully organized and ready for business and, thus, legally convened. That will be when I start the count.

Not all claims filed or briefed were resolved upon agreement to limit the issue to the constitutional effect of Article I, section 20 on ORS Chapter 106. If we need a written order, nunc pro tunc, to bifurcate the other claims which intervenor-defendant wants heard, then I can do so if not doing so is a bar to the appeal.

Very truly yours,



FRANK L. BEARDEN
Circuit Judge

encl. judgment
cc: file

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARY LI and REBECCA KENNEDY;
STEPHEN KNOX, M.D., and ERIC
WARSHAW, M.D.; KELLY BURKE and
DOLORES DOYLE; DONNA POTTER and
PAMELA MOEN; DOMINICK VETRI and
DOUGLAS DEWITT; SALLY SHEKLOW and
ENID LEFTON; IRENE 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,

and

MULTNOMAH COUNTY,

Intervenor-Plaintiff,

vs.

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.

Defendants,

vs.

DEFENSE OF MARRIAGE COALITION,
CECIL MICHAEL THOMAS, NANCY JO
THOMAS, DAN MATES, and DICK
OSBORNE,

Intervenors-Defendants.

No. 0403-03057

**REVISED LIMITED
JUDGMENT**

1 1. On April 5, 2004, plaintiffs moved for summary judgment on the First Claim
2 for Relief. Plaintiffs also moved to dismiss intervenor-defendants' first counterclaim for lack
3 of standing.

4 2. On April 5, 2004, intervenor-plaintiff ("the County") moved for summary
5 judgment on the First Claim for Relief. The County also moved to dismiss intervenor-
6 defendants' first, second, third, fourth, and fifth counterclaims for lack of standing, and
7 intervenor-defendants' fifth counterclaim for mootness and failure to state a claim.

8 3. On April 5, defendants ("the State") moved for summary judgment. In doing
9 so, the State briefed the issue of whether the County has the authority to issue marriage
10 licenses to same-sex couples in contravention of the Oregon statutory code ("the county
11 authority issue").

12 4. On April 5, 2004, intervenor-defendants moved for summary judgment on the
13 First and Second Claims for Relief. Intervenor-defendants also moved for summary
14 judgment on their first and fourth counterclaims.

15 5. On or about April 9, 2004, amici Juvenile Rights Project, National
16 Association of Social Workers, Oregon Chapter of National Association of Social Workers,
17 Open Adoption & Family Services, Inc., Oregon Psychological Association, and Portland
18 Parents, Families and Friends of Lesbians and Gays filed a brief in support of plaintiffs and
19 the County.

20 6. On or about April 9, 2004, amicus deParrie filed a brief in support of the State
21 and intervenor-defendants.

22 7. On or about April 9, 2004, amicus Family Research Council filed a brief in
23 support of the State and intervenor-defendants.

24 8. On April 12, 2004, plaintiffs opposed the State's and intervenor-defendants'
25 motions for summary judgment with respect to the First Claim for Relief only. In light of the
26 State's and intervenor-defendants' motions for summary judgment beyond the First Claim

1 for Relief and the State's briefing of the county authority issue, plaintiffs filed Plaintiffs'
2 Rule 21 E Motion to Strike and Motion for Stay or Extension of Time and Continuance
3 Under ORCP 15 D and 47 F. Plaintiffs also moved to dismiss intervenor-defendants' fourth
4 counterclaim for lack of standing.

5 9. On April 12, 2004, the County opposed the State's and intervenor-defendants'
6 motions for summary judgment.

7 10. On April 12, 2004, the State opposed plaintiffs' and the County's motions for
8 summary judgment on the First Claim for Relief.

9 11. On April 12, 2004, intervenors-defendants opposed plaintiffs' and the
10 County's motions for summary judgment on the First Claim for Relief. In doing so,
11 intervenor-defendants briefed the county authority issue. In addition, intervenor-defendants
12 opposed plaintiffs' and the County's motions to dismiss intervenor-defendants'
13 counterclaims for lack of standing. Intervenor-defendants also moved to dismiss plaintiffs'
14 and the County's claims for relief for lack of standing.

15 12. On April 13, 2004, the Court sent a letter to all parties in which it noted that
16 "new issues have been raised by defendants and intervenors which are beyond the agreed
17 upon scope" and in which it stated that "[its] focus and [its] ruling will be on the
18 constitutionality issue only and all other issues will be separated and dealt with later if need
19 be."

20 13. On April 14, 2004, the parties filed replies that were limited to the
21 constitutionality issue (including the issue of remedy, but not including the county authority
22 issue), with the exception of plaintiffs' and the County's oppositions to intervenor-
23 defendants' motion to dismiss plaintiffs' and the County's claims for relief for lack of
24 standing, and plaintiffs' and the County's briefing of the issue of whether an interlocutory
25 ruling would be certifiable and appealable. In light of the Court's letter of April 13, 2004,
26 the parties reserved further argument on other issues.

1 14. On April 16, 2004, the Court conducted a hearing that was limited to the
 2 constitutionality issue (including the issue of remedy, but not including the county authority
 3 issue). Appearing were Lynn R. Nakamoto and Kenneth Y. Choe for plaintiffs, Agnes Sowle
 4 for the County, Stephen K. Bushong for the State, and Kelly W.G. Clark for intervenor-
 5 defendants.

6 15. On April 20, 2004, the Court issued its Opinion and Order, a copy of which is
 7 attached hereto as Exhibit 1.

8 In accordance with ORCP 67, ORS 18.005 et seq., and the Court's Opinion and Order
 9 of April 20, 2004, it is hereby ADJUDGED that:

10 (1) Plaintiffs and intervenor-plaintiff have judgment against defendants and
 11 intervenor-defendants on the First Claim for Relief for a declaration that, to the extent that
 12 ORS Chapter 106 acts as a bar to the rights and privileges guaranteed by Article I, section 20
 13 of the Oregon constitution, that portion of Chapter 106 is unconstitutional.

14 (2) On plaintiffs' and intervenor-plaintiff's First Claim for Relief, the Court
 15 hereby declares that, to the extent that ORS Chapter 106 acts as a bar to the rights and
 16 privileges guaranteed by Article I, section 20 of the Oregon constitution, that portion of
 17 Chapter 106 is unconstitutional.

18 (3) Plaintiffs and intervenor-plaintiff have judgment against defendants and
 19 intervenor-defendants on the Fourth Claim for Relief, in the alternative to the Second and
 20 Third Claim for Relief, for a writ of mandamus ordering defendant Woodward to record the
 21 marriages of same-sex couples licensed and solemnized in Oregon within thirty days of the
 22 judgment entered in this case.


23 (4) On plaintiffs' and intervenor-plaintiff's Fourth Claim for Relief, in the
 24 alternative to plaintiffs' and intervenor-plaintiff's Second and Third Claims for Relief, the
 25 Court hereby issues a writ of mandamus ordering defendant Woodward, within thirty days of
 26

1 the judgment entered in this case, to record the marriages of same-sex couples licensed and
2 solemnized in Oregon.

3 (5) The remedy for the constitutional violation is as follows: The Court will
4 allow the legislature until ninety days after the commencement of the next regular or special
5 session, whichever comes first, to produce legislation that would balance the substantive
6 rights of same-sex domestic partners with those of opposite-sex marriage couples or the
7 County will be required to issue marriage licenses to same-sex couples to avoid further
8 violating Article I, section 20. Until that time, the County is enjoined from further issuing
9 marriage licenses to same-sex couples.

10 There is no just reason for delaying appeal on these claims, and so this limited
11 judgment shall be entered as an appealable judgment pursuant to ORCP 67 B forthwith.

12 DATED this 29 day of April, 2004.

13
14 
15 _____
16 Frank L. Bearden
17 Circuit Court Judge
18
19

20 SUBMITTED BY:

21 Lynn R. Nakamoto
22 OSB #. 88087
23 Of Attorneys for Plaintiffs
24
25
26

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that I have made service of the foregoing REVISED LIMITED JUDGMENT on the party/ies listed below in the manner indicated:

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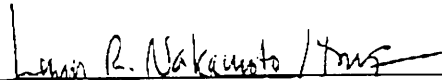
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DATED this 28th day of April, 2004.


Lynn R. Nakamoto
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Attorney for Plaintiffs