

MARK JOHNSON
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January 27, 2005

Via Messenger

Beth A. Allen
Lane Powell PC
601 S.W. Second Avenue, Suite 2100
Portland, OR 97204

Re: Martinez v. Kulongoski

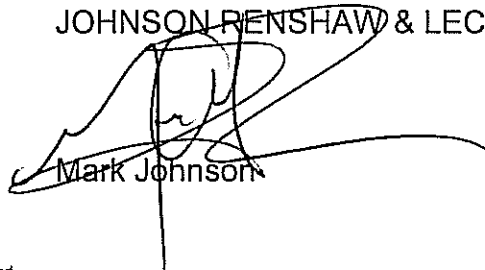
Dear Beth:

Enclosed is the original Complaint. Please sign it and return it to me for signing and filing.

Thank you.

Very truly yours,

JOHNSON RENSHAW & LECHMAN-SU PC



Mark Johnson

sp

X:\MAJ\Basic Rights 9560-00108 Measure 36 Challenge\Allen 1-27-05.wpd

Enclosure

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

JUAN MARTINEZ and BYRON BECK;
DAN O'NEIL and STEVE KENISON;
RUPERT KINNARD and SCOTT
STAPLEY; MARC ACITO and FLOYD
SKLAVER; BECKY HANSON and
KATHY FLYNN; CRISTINA CARAVACA
and SANDRA NARANJO; MICHELLE
SNYDER and HEIDI THORSTAD;
DIANE GROFF and LIZ CAHILL; TIM
SMITH and KENT KULBY; KELLY
BURKE and DOLORES DOYLE;
DANIEL E.H. BRYANT; and GLENNA
SHEPHERD,

Plaintiffs,

vs.

THEODORE R. KULONGOSKI,
Governor of the State of Oregon; and
STATE OF OREGON,

Defendants.

No.
COMPLAINT
(Declaratory Relief; Constitutional
Violations)
(Not Subject to Mandatory
Arbitration)

Plaintiffs allege:

NATURE OF ACTION

1.

This is an action for declaratory relief brought under ORS 28.010 to 28.160,
the Uniform Declaratory Judgments Act, challenging the constitutionality of
Measure 36. The full text of Measure 36 provides: "It is the policy of Oregon, and its
political subdivisions, that only a marriage between one man and one woman shall
be valid or legally recognized as a marriage."

//

1 2.

2 The voters enacted Measure 36 on November 2, 2004, and the results of the
3 election were certified on December 2, 2004. Pursuant to ORS 254.555(2)(b),
4 defendant Kulongoski was responsible for issuing a proclamation declaring the
5 measure approved.

6 3.

7 Plaintiffs assert that Measure 36 is unconstitutional because: (1) it revises,
8 rather than amends, the Oregon Constitution, in violation of Article XVII, section 2;
9 (2) it consists of two or more amendments, but was not submitted to the voters in a
10 manner that permitted a separate vote on each as required by Article XVII, section
11 1; and (3) it merely expresses a policy statement in violation of the initiative power
12 contained in Article IV, section 1.

13 4.

14 Pursuant to ORS 250.044, Marion County is the proper venue for this action.

15

16 IDENTITY AND INTERESTS OF THE PARTIES

17 5.

18 All of the plaintiffs are Oregon residents, taxpayers and registered voters.

19 6.

20 Plaintiffs Juan Martinez and Byron Beck are a couple who are not yet married
21 but are involved in a committed relationship. Plaintiffs Martinez and Beck wish to
22 marry and to secure the legal benefits that defendants bestow automatically upon
23 married couples, yet they are precluded from doing so by the enactment and
24 enforcement of Measure 36.

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7.

2 Plaintiffs Dan O'Neil and Steve Kenison are a couple who are not yet married
3 but are involved in a committed relationship. Plaintiffs O'Neil and Kenison wish to
4 marry and to secure the legal benefits that defendants bestow automatically upon
5 married couples, yet they are precluded from doing so by the enactment and
6 enforcement of Measure 36.

7

8.

8 Plaintiffs Rupert Kinnard and Scott Stapley are a couple who are not yet
9 married but are involved in a committed relationship. Plaintiff Kinnard is paraplegic
10 and is confined to a wheelchair. Because they are not married, plaintiffs Kinnard
11 and Stapley are unable to obtain health insurance for Kinnard through Stapley's
12 employer. Measure 36 removes the ability of plaintiffs Kinnard and Stapley to
13 provide Kinnard with proper and inexpensive health insurance coverage.

14

9.

15 Plaintiffs Marc Acito and Floyd Sklaver were married in Canada in July 2003.
16 They are co-owners of a small business corporation. Under Measure 36, they are
17 ineligible for a spousal exemption from unemployment compensation insurance. As
18 a result, plaintiffs Acito and Sklaver must pay a premium of \$2,500 per year for such
19 insurance. Defendants do not require similarly situated opposite-sex married
20 couples to obtain such insurance.

21

10.

22 Plaintiffs Becky Hanson and Kathy Flynn were married in Multnomah County
23 in March 2004. Plaintiff Flynn is a sergeant at the Eugene Police Department.
24 Under Measure 36, plaintiff Hanson is ineligible for spousal survivor benefits if
25 plaintiff Flynn is injured or killed in the line of duty. Defendants accord such benefits
26 automatically to similarly situated opposite-sex married couples.

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11.

Plaintiffs Cristina Caravaca and Sandra Naranjo were married in Multnomah County in March 2004. They cannot afford expensive legal services and do not have advance directives for medical care or an estate plan. Defendants provide automatically for similarly situated opposite-sex married couples to make medical decisions for each other and to inherit by intestate succession. Under Measure 36, such legal benefits are denied to plaintiffs Caravaca and Naranjo.

12.

Plaintiffs Michelle Snyder and Heidi Thorstad were married in Multnomah County in March 2004. They are both teachers in the Milton-Freewater school district and are members of defendants' Public Employees Retirement System (PERS). Under Measure 36, plaintiffs Snyder and Thorstad are denied spousal benefits under PERS that defendants accord automatically to similarly situated opposite-sex married couples. In addition, plaintiffs Snyder and Thorstad travel frequently to other states and are concerned about having access to each other and the ability to make medical decisions in the event of a medical emergency in another state. Defendants provide interstate portability and the ability to make medical decisions automatically to similarly situated opposite-sex married couples. Under Measure 36, such legal benefits are denied to plaintiffs Snyder and Thorstad.

13.

Plaintiffs Diane Groff and Liz Cahill were married in Multnomah County in March 2004. They are both teachers in the Milton-Freewater school district and are members of PERS. Under Measure 36, plaintiffs Groff and Cahill are denied spousal benefits under PERS that defendants accord automatically to similarly situated opposite-sex married couples.

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14.

2 Plaintiffs Tim Smith and Kent Kulby were married in Eugene in March 2004.
3 Plaintiff Kulby is employed by the City of Eugene and is a member of PERS. Under
4 Measure 36, plaintiffs Groff and Cahill are denied spousal protections under PERS
5 that defendants accord automatically to similarly situated opposite-sex married
6 couples.

7

15.

8 Plaintiffs Kelly Burke and Dolores Doyle were married in Multnomah County
9 in March 2004. They are the parents of one son, and they desire to have more
10 children. Defendants provide an automatic presumption of filiation for the children
11 of similarly situated opposite-sex married couples. Under Measure 36, such legal
12 benefits are denied to plaintiffs Burke and Doyle. Additionally, plaintiff Doyle is the
13 family's primary breadwinner, and plaintiff Burke is a stay-at home mom. Plaintiffs
14 Burke and Doyle are able to obtain health insurance for Burke through Doyle's
15 employer only if defendants recognize their marriage as valid. Measure 36 removes
16 the ability of plaintiffs Burke and Doyle to provide their family with proper and
17 inexpensive health insurance coverage.

18

16.

19 Plaintiff Daniel E.H. Bryant is the pastor of First Christian Church in Eugene.
20 He has performed numerous commitment ceremonies for same-sex couples and
21 would perform marriages for same-sex couples if allowed by law. Measure 36
22 elevates one particular religious perspective on marriage above all others and
23 interferes with plaintiff Bryant's ability to freely exercise the tenets of his faith.

24

17.

25 Plaintiff Glenna Shepherd is the Senior Pastor at the Metropolitan Community
26 Church of Portland. Metropolitan Community Church is a progressive, inclusive

1 worldwide movement of more than 300 churches in twenty countries around the
2 world. It is a Christ-centered community of faith that welcomes all people and has a
3 primary outreach to gay, lesbian, bisexual and transgendered communities. Plaintiff
4 Shepherd has performed hundreds of marriages for same-sex couples. Measure 36
5 has a unique impact upon plaintiff Shepherd and her congregation, nullifying those
6 marriages and removing permanently the right of plaintiff Shepherd and the
7 members of her congregation to marry the people they love. Measure 36
8 impermissibly favors those religions that do not recognize same-sex marriages over
9 those that do, thereby compromising the religious freedoms of the disfavored
10 churches and their memberships, including plaintiff Shepherd.

11 18.

12 The rights, status, and other legal relations of all plaintiffs, as Oregon citizens,
13 residents, and registered voters, are affected by the integrity and enforcement of the
14 Oregon Constitution, including the provisions governing initiatives and amendments.

15 19.

16 Defendant Kulongoski is the Governor of Oregon. As such, he is responsible
17 for declaring the measure approved and will direct the state's actions in
18 implementing and enforcing Measure 36.

19 CONSTITUTIONAL REVISION VS. AMENDMENT

20 20.

21 The Oregon Constitution is the most basic law by which our state's citizenry
22 constitutes itself, in adherence to the fundamental principles of justice, order, and
23 liberty.

24 21.

25 The constitution can be amended by the legislature or by the people. Article
26 XVII, section 1.

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22.

The constitution can only be revised, in whole or in part, by the Oregon Legislature. Article XVII, section 2.

23.

Measure 36 revises, rather than amends, the Oregon Constitution and is therefore an improper and invalid exercise of the initiative power under Article XVII, section 2. The measure violates the fundamental principles of liberty and equality for all Oregon citizens. The measure further disturbs the allocation of power among the branches of government by divesting the Oregon judiciary of its role in interpreting the constitution and by imposing a policy choice on local governments.

SEPARATE VOTE REQUIREMENT

24.

All amendments to the constitution must be voted on separately. Article XVII, section 1; *Armatta v. Kitzhaber*, 327 Or 250, 959 P2d 49 (1998).

25.

Measure 36 consists of two or more changes to the Oregon Constitution that are substantive and not closely related. These multiple changes constitute separate amendments that were not submitted in a manner that permitted the voters to vote on each separately. While Measure 36 may consist of only one sentence, the addition of this provision to the Oregon Constitution affects, at a minimum, Article I, section 1 ("All men when they form a social compact are to be equal in right"), section 3 (freedom of religious opinion), section 5 (no money to be appropriated for religion), section 10 ("every man shall have remedy by due course of law"), section 20 (equality of privileges and immunities), section 21 (impairment of contract), section 32 (uniform taxation), and section 33 ("This enumeration of rights, and privileges shall not be construed to impair or deny others retained by the

1 people."); Article XI, section 2 ("home rule"); Article XI-A, section 3 ("The eligibility of
2 a surviving spouse under this subsection shall terminate on his or her remarriage.");
3 and Article 15, section 5 ("The property and pecuniary rights of every married
4 woman, at the time of marriage or afterwards, acquired by gift, devise, or inheritance
5 shall not be subject to the debts, or contracts of the husband; and laws shall be
6 passed providing for the registration of the wife's separate [sic] property.").

7 26.

8 Because these multiple amendments and fundamental changes were all
9 included under the umbrella of Measure 36 in a manner that prevented separate
10 votes on each amendment, the measure violates Article XVII, section 2.

11 ENACTMENT OF POLICY STATEMENT

12 27.

13 Article IV, section 1(2)(a), describes the initiative power: "The people reserve
14 to themselves the initiative power, which is to propose laws and amendments to the
15 Constitution and enact or reject them at an election independently of the Legislative
16 Assembly."

17 28.

18 Measure 36 is merely a statement of policy, and not a "law or amendment."

19 29.

20 Because the initiative power is only reserved to propose laws and
21 amendments (and not policy statements), the measure is void.

22 ATTORNEY FEES

23 30.

24 Plaintiffs brought this action to defend the integrity of the initiative and
25 amendment processes and the constitutional rights of all Oregonians. Plaintiffs are
26 //

1 entitled to attorney fees. See *Armatta v. Kitzhaber*, 327 Or 250, 959 P2d 49 (1998);
2 *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975).

3 WHEREFORE, plaintiffs pray for a judgment as follows:

4 (1) Declaring that Measure 36 violates sections 1 and 2 of Article XVII of the
5 Oregon Constitution, and therefore that it is void;

6 (2) Declaring that Measure 36 only contains a policy statement, in violation of
7 Article IV, section 1, and therefore that it is void; and

8 (3) Awarding plaintiffs reasonable attorney fees, costs and disbursements.

9 DATED this _____ day of January, 2005.

10 LANE POWELL PC

11

12 _____
13 Beth A. Allen, OSB #96547
14 Of Attorneys for Plaintiffs

15 JOHNSON RENSHAW & LECHMAN-SU PC

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17 _____
18 Mark Johnson, OSB #87264
19 Of Attorneys for Plaintiffs

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