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PRESS CONFERENCE
HELD APRIL 16, 2004

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Regarding The Case: Mary Li, et al. v. State of Oregon, etc.

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DAVID FIDANQUE: Thank you all. I'm David Fidanque, Executive Director of the American Civil Liberties Union of Oregon, and with us are Ken Choe, the attorney who argued the case on behalf of the plaintiffs today; Maura Roche, who is --

MAURA ROCHE: The government relations consultant for Basic Rights Oregon.

DAVID FIDANQUE: -- and, of course, many of our plaintiffs behind us. We are very pleased today. We believe that the arguments have been made extraordinarily well by Mr. Choe, why the Oregon marriage law is unconstitutional under the Oregon Bill of Rights.

What we have heard from the Defendants-Intervenors is that Oregon should turn back the clock to 1857, and that literally every right in history -- which was granted to white men and refused to women, to racial minorities, to ethnic minorities -- should have to be fought for in the realm of majoritarian politics; that is, either in the legislature or at the ballot box

21 through the initiative process, through the
22 constitutional amendment process.

23 We do not believe that is the meaning of the
24 Oregon Bill of Rights. The whole purpose of the Bill of
25 Rights is to place some fundamental freedom outside the

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1 realm of how the majority may feel about that particular
2 right in a given context at a given time. This is the
3 time for this issue to be decided in Oregon, and we are
4 confident that the rights will be extended to same-sex
5 couples that have, for too long, been denied.

6 Do you have anything to add?

7 MR. CHOE: My co-counsel, Lynn Nakamoto, and
8 I are privileged to represent the plaintiff couples
9 behind us. They really represent the best that Oregon
10 has to offer. They are loving, committed couples. They
11 are raising children; they provide good, loving homes to
12 their children. And what I, as an attorney, often have
13 to remember, as I'm struggling through the legalese, is
14 that there is a really human story here, that what this
15 is about is protecting these people and their families
16 equally under the law. They need these protections in
17 their time of need, just like any other family in
18 Oregon, and I don't want anyone to lose sight of that in
19 the minutia of the legal argument that was made today.
20 Thank you.

21 MAURA ROCHE: Basic Rights Oregon, too, is
22 here today because we believe that the 500 or more laws
23 that provide protection to married couples need to be
24 extended to provide those protections to all Oregon
25 families, regardless of whether they are same-sex

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1 couples or opposite sex couples, and what we saw here
2 today, unfortunately, by the Defense of Marriage
3 Coalition was a continuation of using the kinds of lies
4 and slurs about gay people that have been perpetuated
5 for a long time and have led to the kind of
6 discrimination that we face every day in Oregon.

7 So we are very pleased to see the kind of
8 representation through the ACLU and others that will
9 hopefully lead us to a constitutional determination on
10 discrimination in Oregon and settle this issue so that
11 all Oregon families can be protected.

12 AUDIENCE MEMBER: What remedy would you like
13 to see legally?

14 DAVID FIDANQUE: Well, we -- as Mr. Choe
15 argued, we believe that the choice before the Court,

16 based on earlier cases -- in particular, the Hewitt
17 case, which involved gender discrimination -- is to
18 either withdraw the right of marriage from everyone or
19 to extend it to same-sex couples. We think the choice
20 is clear that the right should be extended to all
21 couples, regardless of their gender.

22 AUDIENCE MEMBER: One thing I heard from the
23 opposition was "Let's bring this to the legislature."
24 I didn't hear you really answer that very well. Maybe
25 I missed it. Maybe I didn't understand. You want to

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1 just talk to why we shouldn't do that.

2 MR. CHOE: You know, what the Defense of
3 Marriage Coalition has argued is that the judicial
4 branch has no role in guaranteeing the rights of
5 minorities in our society. That is, in fact, what the
6 legal branch does; it sticks up for minorities when the
7 majoritarian processes trample on their rights, and
8 that's what we have done here, as numerous minority
9 groups have done in the past. They have come to the
10 courts, seeking help in terms of equality for themselves
11 and their families, because the majority in the
12 legislature and elsewhere has refused to do the right
13 thing.

14 DAVID FIDANQUE: Let me just add one other
15 thing, because shortly after the Tanner decision in
16 1998, there was a so-called Defense of Marriage
17 Amendment proposed in the legislature, and it was
18 defeated in the Oregon Senate. So it's not like there
19 hasn't been a debate about this issue in the past. In
20 fact, the argument that was made for that amendment at
21 the time was that, if the legislature didn't refer that
22 constitutional amendment, then, this day would come.

23 So our opponents -- our political opponents
24 certainly understood when the Tanner decision came down,
25 as did we, the implications of the holding by the Oregon

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1 Court of Appeals that sexual-orientation discrimination
2 violates Article I, section 20.

3 Will that debate continue? Sure. But we
4 are confident that Oregonians will, once again, reject
5 discrimination and reject writing discrimination into
6 our constitution.

7 AUDIENCE MEMBER: The judge called himself
8 an "asterisk" in this whole process. Based on his
9 timeline, how quickly do you think it might get to the
10 Supreme Court? Do you have a sense of that today?

11 MR. CHOE: No. We just don't know.

12 AUDIENCE MEMBER: Could we possibly hear
13 from some of the couples on what it was like to be in
14 the courtroom today and hear this argued in the Oregon
15 court.

16 MARY LI: Well, we were all sitting together
17 here, and I think for me, personally, I'm filled with
18 hope, and I have faith. We started this journey towards
19 this decision, and to be able to realize all of our
20 basic civil rights as a family, with the hope that we
21 would ultimately be granted them, and that is what this
22 has been about from the beginning. Our relationship is
23 about the hope and faith and belief in our rights as a
24 family. Our marriage was about that, and we hope that
25 this case will ultimately affirm that hope and that

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1 faith.

2 AUDIENCE MEMBER: Are you in limbo now
3 because the State is not recognizing your marriage
4 license that Multnomah County gave you.

5 MARY LI: Certainly. The legal rights and
6 protections that we assumed we would be granted access
7 to as a result of our marriage license have not been
8 accorded to us as a result of our marriage licenses not
9 being registered with the State.

10 AUDIENCE MEMBER: What does that do to you
11 personally?

12 MARY LI: Well, it continues to have our
13 lives under a cloud, under a cloud of uncertainty, under
14 a cloud of worry about what would happen if I were to
15 lose my job and lose the benefits that I have with my
16 job, what would happen to my spouse Becky, what would
17 happen to our 10-month-old daughter Ava, and I think you
18 have heard with from a number of the other couples who
19 are partners with us in this suit, the types of daily
20 worries that we all have that other families here in
21 Oregon don't have to grapple with.

22 AUDIENCE MEMBER: Sort of like a feeling
23 that you are so close, given that the timeline is kind
24 of sped up here -- I mean, the final decision is, you
25 know, within sight, is it not?

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1 MARY LI: I don't know about that. I think,
2 as Ken said, we don't know where the legal process is
3 going and go and how long it's going to take. We are in
4 it for the long haul. We are walking this walk, and we
5 are going to walk this path down to the very end,

6 However long it takes and wherever it takes us.
7 AUDIENCE MEMBER: Remind us of your name.
8 MARY LI: Mary Li.
9 DAVID FIDANQUE: Spelled L-I.
10 CURTIS KIEFER: Hi, my name is Curtis
11 Kiefer, and I'm from Corvallis, and I found this morning
12 very inspiring. I think Ken did a great job, and the
13 ACLU has done a great job, as has Basic Rights Oregon.
14 It makes me at this point very proud to be with my
15 partner Walter, as we try to strengthen our
16 relationship, and we have gained a lot of support as we
17 have gone through this process and a lot of
18 encouragement, and we were very encouraged today.
19 WALTER FRANKEL: And we stepped to the floor
20 because the Benton County Commissioners stood up for us,
21 and, at that point, we decided we had to stand up, as
22 well, after 23 years together.
23 AUDIENCE MEMBER: We heard today the
24 marriage law was designed to encourage procreation of
25 families. What do you think about that?

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1 CURTIS KIEFER: I'm not a legal expert, and
2 I'm not quite sure why laws are done always the way they
3 are.
4 AUDIENCE MEMBER: Does that apply in your
5 case, though? That you have a commitment.
6 CURTIS KIEFER: At this point we are not
7 planning on adopting any children. (Laughter)
8 DAVID FIDANQUE: But that doesn't mean you
9 are not a family.
10 CURTIS KIEFER: No, it doesn't.
11 WALTER FRANKEL: And if any anyone reads any
12 of the declarations or the briefs and see any of our
13 names, when Curtis's mom, who was living with us for 13
14 years, was in intensive care in the hospital, dying,
15 Curtis had to come out with the doctors to the hospital
16 and say, "I'm gay; this is my partner; he belongs in
17 this room, as well." We should not have had to go
18 through that.
19 STEPHEN KNOX, M.D.: Hi, I'm Steve Knox, and
20 this is my partner Eric Warshaw, and we are really doing
21 this for our family. I found it kind of interesting
22 when all of the arguments for marriage being for
23 procreation, I turned to Eric -- and, actually, Mary --
24 and I said, "Does that mean that everybody who gets
25 married and after five years doesn't have a child, they

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1 are going to get their marriage license revoked? No,"
2 but the whole argument sort of made no sense to me.
3 Though, we are doing this for our children. We have
4 three adopted children, and we feel their rights and
5 their recognition as a family need to be recognized
6 forever, and doing this -- being a plaintiff in this
7 lawsuit is very exciting for us. It is very, very
8 meaningful for us, and I think it's absolutely mandatory
9 for us as a family.

10 ERIC WARSHAW, M.D.: I think one of the
11 important things that we teach our kids is that
12 discrimination is wrong, no matter what form it comes
13 in, and we, as a family, were being discriminated
14 against, and that's why we decided to stand up and be
15 here on March 3 and again today in this room.

16 JULIE WILLIAMS: I'm Julie Williams from
17 Benton County, and this is my partner Coleen Belisle.
18 One of the things that struck me here in watching this
19 is that I don't live a statutory life; I live a whole
20 life, and I want levels one, two, and three -- I do. In
21 fact, level three is the most important part to me. We
22 can chase down all the fingers of the legal issues --
23 through lawyers and all that stuff -- and try and find
24 ways to acquire the privileges afforded heterosexual
25 couples, but level 3 is the most important, and this

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1 nation has already distinguished itself in the
2 understanding that "separate but equal" is an oxymoron,
3 and, figuratively, you might as well start constructing
4 the separate drinking fountains, because that's how it
5 feels. I want to drink from the well of community.
6 I want to be invited to drink from the well of
7 community.

8 DAVID FIDANQUE: Thank you all. We will
9 turn the podium over to the defendants.

10 MR. CLARK: I have no prepared statement.
11 I would be happy to respond to any questions that
12 anybody has.

13 AUDIENCE MEMBER: Kelly, there is a lot of
14 discussion about biological differences. Legally, does
15 the purported biological differences that gays and
16 lesbians have that makes them become gay or lesbian --
17 does that qualify in that in any way?

18 MR. CLARK: Say that again.

19 AUDIENCE MEMBER: You talked about the
20 biological differences or the distinction for why gays
21 and lesbians are denied their marriage rights, but does

22 the evidence that some say that gays and lesbians have
23 biological differences -- does that count here?

24 KELLY CLARK: I don't know. That argument
25 has not been made. The question is: is the law that's
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1 being attacked based on biological differences between
2 Class A and Class B. We think it is; they think it
3 isn't. But the subargument that you are making I don't
4 know the answer to.

5 AUDIENCE MEMBER: The plaintiffs seem very
6 confident that this will go their way. Do you have that
7 same confidence.

8 KELLY CLARK: I have been doing this long
9 enough to not try to read the tea leaves. Judge Bearden
10 is a very good, very thorough judge. He'll do his
11 homework. He'll call it as he sees it, and he won't
12 care about the -- he'll care at a human level, but
13 analytically he'll call it the way he sees it.

14 AUDIENCE MEMBER: What's the distinction now
15 between the decisions made by this Court in fact and
16 that sort of thing versus the decisions to be made by
17 the appellate and the Supreme Court?

18 MR. CLARK: One of the things that maybe was
19 not clear today was that there was a whole set of facts
20 before the Court that the parties had agreed to.
21 Normally, before a judge can make a finding, a ruling,
22 there has to be a trial to decide what the facts are.
23 We were able to stipulate to a whole host of facts. So
24 the judge, essentially, has to make no factual
25 determinations, with the possible exception of what I
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1 call the "Battle of the Experts." There were expert
2 affidavits submitted on behalf of both sides, asking the
3 question -- directing the question of the consequences
4 of same-sex marriage as it pertains to families and
5 children. There are very different approaches, very
6 different conclusions in these affidavits.

7 It's argued that the judge does not have to
8 pick a winner between those two sets of affidavits if --
9 if the judge follows the reasoning that "This is a
10 discussion to be had in the legislature; that it's not
11 my job to create policy; it's my job to interpret
12 constitutional text," and in the absence of direction
13 from the legislature -- the battle of the experts
14 doesn't matter in that sense.

15 So if he -- he -- he will be able to make a
16 decision, even though there is conflicting expert

17 testimony.

18 AUDIENCE MEMBER: What do you think about
19 the other side's point that there shouldn't be any role
20 in the rights of the legislature in this, that the
21 legislature would -- just because it represents the
22 majority -- just roll over the minority? What do you
23 think about that argument?

24 MR. CLARK: Well, I agree that the reason
25 that we have a Bill of Rights is to protect the rights

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1 of minorities. Again, it's what Madison called the
2 "Tyranny of the majority." Clearly, that's the reason
3 that any government has a Bill of Rights. That doesn't
4 answer the question, though. The question is, is this
5 claim covered in that Bill of Rights?

6 If it is not -- I mean, I want to come back
7 to the racial analogy. Claims of racial equality were
8 not covered in the original basic rights, and the
9 proponents of racial equality made their case, and they
10 convinced society, they convinced the voters, they
11 convinced the owners of the Constitution that our
12 society would be well-served by that change. That is
13 the discussion that we need to be having here, and it is
14 significant, as a matter of observation, that the
15 plaintiffs have come here first, regardless of what
16 Mr. Fidanque said about what happened in the legislature
17 a while back. There has not been a sustained debate --
18 public debate.

19 Let's not forget the way we got here was
20 apparently because the interest groups involved decided
21 they did not want to make the public case; they wanted
22 to come to the courts. We are absolutely not saying the
23 courts have no role in enforcing the constitutional
24 rights. We are saying the courts have a role in
25 enforcing constitutional rights that are on the books,

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1 and there is a way to amend the constitution. You don't
2 come to the court and ask the court to create whole
3 cloth a new constitutional right. That's our argument.

4 AUDIENCE MEMBER: What do you say to the
5 case where the rights were extended for, like, adoption
6 after the Tanner decision, in addition to the defeat of
7 the Defense of Marriage Amendment -- that the
8 legislature has, indeed, spoken already on this issue?

9 MR. CLARK: The legislature has never
10 spoken. The legislature has never passed any statute
11 addressing the way they want to treat marriage in the

12 context of gays and lesbians. There has not been one
13 bill -- there has been one bill, and I haven't checked
14 it out, but my guess is it died in committee. That's
15 not a debate.

16 Apart from that, the reason for the ballot
17 process -- the initiative process in Oregon -- is if
18 you've got a legislature that you think is corrupt or
19 unfair or unwise, that you can go around it to the
20 people. What are these folks saying? They are saying
21 they don't trust the people of Oregon to be fair enough,
22 wise enough, or smart enough to handle questions of
23 equality in marriage. That is implicit in the argument
24 they are making.

25 AUDIENCE MEMBER: What about the Measure 9
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1 and other gay rights measures that were defeated by the
2 initiative process?

3 MR. CLARK: There are plenty of people who
4 said, "I will not stand up for discrimination as
5 recognizing Measure 9, who are not prepared to say that
6 they are willing to redefine marriage. Those are two
7 different issues.

8 Jefferson was quoted as saying, "I know of
9 no safe repository of power but in the hands of the
10 people," and if we think the people are not enlightened
11 enough to handle it, then the remedy is not to take the
12 power from the people, but to educate the people.

13 I would welcome -- my clients would welcome
14 a debate about this. If the people need to be educated,
15 let's educate the people. Maybe it is time to have that
16 discussion. But the discussion ought to be had in the
17 public, and we ought to ask the owners of the
18 constitution, the people of the State of Oregon, what
19 they want their constitution to say.

20 AUDIENCE MEMBER: I'm interested legally if
21 you could look ahead to the Supreme Court. If they side
22 with the other side of this, does this in any way trump
23 the constitutional amendment that the pastors are
24 pushing?

25 KELLY CLARK: No.

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1 AUDIENCE MEMBER: Or does that totally --
2 I know it will have a separate day in court, but could
3 that say that Article I, section 20, could overpower any
4 effort to change that?

5 MR. CLARK: Either side is able to go amend
6 the constitution, provided you get the requisite number

7 of signatures and requisite number of votes, and they
8 can jump through the Armada hurdles. But either side,
9 if you go amend the constitution, it will just end this
10 debate. It will be over. Once the people have spoken
11 and amended the constitution one way or another, it will
12 be over -- assuming that there is no federal
13 equal-protection problem, or we have not violated the
14 federal constitution one way or another.

15 So my answer is this case has only political
16 consequences for the question of the constitutional
17 amendment. It has no binding legal effect one way or
18 another.

19 AUDIENCE MEMBER: Considering this will
20 probably be resolved -- this particular legal issue --
21 in the Supreme Court, what is the importance of this
22 forum right here in Multnomah County? Is this just a
23 step on the way to a larger journey?

24 MR. CLARK: No. The reason that we have
25 three steps in the legal process is each court stands on

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1 the shoulders of the court below and gets to consider
2 the wisdom, the thinking, and the decision of the lower
3 court. So, even though Judge Bearden would like to sort
4 of minimize his role in this by saying he's just an
5 asterisk along the way, that's not true, the appellate
6 court will read and consider what the trial judge says.
7 And the quality of the trial judge and the quality of
8 the opinion matters.

9 This is Tim Nashif from the Defense of
10 Marriage Coalition, if you have questions for him.

11 MR. NASHIF: Okay. I just have one comment.
12 I couldn't help but overhear Maura Roche and her
13 description of the Defense of Marriage Coalition and all
14 of their participants as liars, and, you know, I just
15 hope that the debate doesn't lower itself to those kinds
16 of accusations. I do agree that we have a difference of
17 opinion, Maura, but I would say that, if you examine the
18 people that we work with, all of the people that are
19 involved in this, the thousands of Oregonians who would
20 differ with Maura's opinion -- that does not
21 automatically constitute them as liars and perpetrators
22 of a nontruth, and so I think the debate needs to be
23 kept level, unless, of course, Maura feels that we are
24 entering into a new campaign period and those kinds of
25 accusations are necessary. We'll see. We do not

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1 believe they are. We hope the rhetoric doesn't get

2 there, but, so be it, on her part.

3 AUDIENCE MEMBER: And you are, again?

4 TIM NASHIF: I'm Tim Nashif with the Defense
5 of Marriage Coalition.

6 AUDIENCE MEMBER: Spelled?

7 TIM NASHIF: N-A-S-H-I-F.

8 AUDIENCE MEMBER: Are you coming out of this
9 more hopeful, Tim, than --

10 TIM NASHIF: We are hopeful, because we feel
11 that there's a push by the Attorney General and others
12 to get the legislature involved and to get the people
13 involved, and that's what we have been saying all along.
14 We don't think this is an issue about any specific
15 class. We think this is a -- the defense of an
16 institution of marriage between one man and one woman,
17 as it's been defined.

18 We want a public debate. We encourage a
19 public debate. We are hoping for an initiative, and we
20 are hoping for the legislature to deal with all of -- as
21 the Attorney General mentioned -- some of these
22 second-class two issues that they have marked up here --
23 I mean, I think those are all debatable issues in the
24 legislature.

25 AUDIENCE MEMBER: One question. How would
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1 extending the right of marriage to same-sex couples in
2 any way damage the right of different-sex couples to
3 marry?

4 TIM NASHIF: I think that that's an issue
5 that is not being directly addressed here, and so for us
6 to get into that specifically right now at this press
7 conference, I'd prefer not to, but I do think that there
8 are some psychological analyses and different things
9 that would differ with the opinions of the opposition,
10 and I think that those things should be rehearsed and
11 looked at. Have you looked at the briefs?

12 AUDIENCE MEMBER: I haven't had a copy of
13 them. There are 300 pages of them.

14 TIM NASHIF: Some of that was addressed in
15 that.

16 MR. CLARK: The question that was asked was
17 not -- part of what I was trying to argue. You don't
18 have to show that the State -- that there's only one way
19 for a piece of legislation to reach its goal. We can
20 concede that the purpose of the statute is not harmed if
21 gays and lesbians are adopting children or serving as
22 foster parents. It's not an either/or analysis.

23 The question is: Is the distinction made in
24 the statute one that is based on biological differences?
25 We think so.

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1 Thank you.

2 (END OF PRESS CONFERENCE AT 11:25 P.M.)

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