

SAN FRANCISCO

City Lawyer Argues Against Bias Law

A defense attorney representing San Francisco in a bias case is using the ironic argument that state law preempts the city's own discrimination ordinance. Meanwhile, the city is defending its statute as an *amicus curiae* before the California Supreme Court in a separate case granted review on Tuesday.

Clinical psychologist Jonathan Pesner, who is gay, had sued the city and county-owned Laguna Honda Hospital administrator Mary Anne Johnson for violating Article 33 of the Municipal Code, which bars discrimination on the basis of sexual orientation. His constructive discharge complaint, filed in October, also claimed the city violated the state Constitution and local labor codes.

Two weeks ago the city's outside counsel in the case argued for its dismissal. Carroll, Burdick & McDonough associate Garrett Sanderson III, who also represents Johnson, sought summary judgment on her behalf. In the alternative Sanderson sought adjudication that Article 33 had been preempted by the state.

In a press release, plaintiff attorney Jonathan Siegel of Oakland's Eggleston, Siegel & LeWitter called the motion "a backhanded attempt by the city to declare its own ordinance invalid."

But Deputy City Attorney Scott Emblidge noted that the preemption defense was made only for defendant Johnson and not for the city.

"I'd be surprised if the city used that argument in its own defense for policy reasons," said Emblidge. "But any attorney would be bound to use that defense on the part of an individual, or face charges of legal malpractice."

Sanderson could not be reached for comment.

Bill Kisliuk